

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 5 - Higher rates residential property transactions

Part 5 - Supplementary provisions

210. [Part 5](#) provides supplementary rules in relation to the higher rates residential property transactions.

Further provision in connection with replacement of main residence exception

211. [Paragraph 23](#) makes further provision in respect of the rules on “replacement of main residence exception”. The higher rates will not normally apply to the purchase of a residential property where it is intended to replace the buyer’s or buyers’ only or main residence provided the purchase of the new residence and disposal of the previous main residence occurs within a 36 month period. Where a return has been submitted for the replacement of the main residence and the buyer has paid the LTT applicable to higher rates residential property transactions but has subsequently disposed of the previous main residence within the timescales allowed, the buyer may claim a repayment of the amount of tax overpaid from WRA. They can do this by either making an amendment to their return (subject to meeting the timescales allowed for making an amendment to the return in accordance with the conditions set out in section 41 of TCMA); or where they are unable to amend the return, the buyer can make a claim for repayment of the overpaid tax (see chapter 7, part 3 of TCMA).
212. A special rule at paragraph 23(4) allows a buyer who is replacing their main residence to submit the return in respect of the purchase of the new main residence as though it had never fallen into the category of a higher rates residential property transaction. The buyer is able to do this provided that the sale of the previous main residence has occurred within the 30 day period for submitting a return to WRA in relation to the purchase of the new dwelling and a return has not already been submitted in respect of that new main residence.

Spouses and civil partners purchasing alone

213. [Paragraph 25](#) sets out how the higher rates residential property transaction rules apply to spouses and civil partners purchasing alone. These provisions provide that such transactions are to be treated as being higher rates residential property transactions if this would be the case had the buyer’s spouse or civil partner been a buyer also.

Paragraph 25(3) sets out the exceptions to this rule (broadly where the couple are separated).

Property adjustment on divorce, dissolution of civil partnership etc.

214. [Paragraph 26](#) provides for a further exception to the higher rates residential property transaction rules. A buyer does not need to take into account when acquiring a new residential dwelling a major interest held in a former matrimonial residence where that interest is retained as a result of an order made in relation to divorce or dissolution of a civil partnership. That interest must be the only or main residence of the person for the benefit of whom the order is made. Any other dwellings owned will, however, need to be taken into account.

Settlements and bare trusts

215. [Paragraphs 27 to 30](#) provide rules about the application of the rules about higher rates residential property transactions in relation to bare trusts and trusts that are settlements for the purposes of the Act (to the extent that they entitle the beneficiary to occupy the dwelling for life or to the income earned). In such situations the beneficiary of the bare trust, or the settlement, is to be treated as the buyer, or the owner of an interest held in the dwelling for the purpose of determining whether the higher rates residential property transaction rules apply to another purchase.
216. [Paragraph 29](#) clarifies that the transfer of beneficial interests (for example undivided shares) arising under a trust in a residential property will be treated in the same way as a transfer of a major interest where the seller of the beneficial interest was, immediately prior to the transaction, deemed to own the major interest in the dwelling and immediately after the transaction the buyer is deemed to own the major interest.
217. [Paragraph 30](#) provides that where a child (i.e. a child under the age of 18) is to be treated as the buyer or holder of an interest, as a result of the trust rules in this Act then the parent (and any spouse or civil partner of the parent unless they are not living together) is to be treated as the buyer or holder of the interest.
218. [Paragraph 30\(4\)](#) dis-applies the effect of paragraph 30(2) in circumstances where an incapacitated child's interest is acquired, held on trust, or disposed of, by a deputy appointed under the Mental Capacity Act 2005 (or a person acting in an equivalent capacity outside Wales and England).
219. [Paragraph 31](#) provides rules in relation to settlements where the beneficiaries of the settlement are not entitled to occupy the dwelling for life or to the income earned in respect of the dwelling or dwellings. In such circumstances the trustee or trustees are to be taxed under the same rules as relate to buyers who are not individuals.

Partnerships

220. [Paragraph 32](#) sets out the rules for deciding whether the higher rates residential property transactions apply to purchases made by a partner in a partnership. Where a partner acquires a property but not for the purpose of the partnership, any major interest in a dwelling held by or on behalf of the partnership for the purposes of a trade carried on by the partnership is not to be treated as held by or on behalf of an individual buyer purchasing a residential property in a transaction unrelated and unconnected to the operation of the partnership.

Alternative finance arrangements

221. [Paragraph 33](#) states how the rules for higher rates residential property transactions apply where alternative finance arrangements are entered into by a person and a financial institution for the purposes of the acquisition of a major interest in a dwelling. These provisions have the effect of ensuring that the financial institution does not enter into

a residential property transaction by virtue of being party to a transaction. Instead the person who enters the alternative finance arrangement with the financial institution in order to ultimately own the property is to be treated as the buyer and it is their circumstances that will be relevant in establishing if the higher rates apply.

Major interests in dwellings inherited jointly

222. [Paragraph 34](#) makes provision in respect of higher rates residential property transactions where major interests in dwellings are inherited jointly. These provisions set out that where a buyer inherits a share of 50% or less in a property which has been inherited within 3 years of the buyer purchasing a residential property, the inherited property is not taken into account for the purposes of establishing whether the higher rates residential property transaction rules of this Act apply. However, if at any time during that 3 year period the buyer's beneficial share of the interest in the inherited property exceeds 50%, then the major interest in the inherited property is taken into account for the purposes of the buyer's purchase of their residential property.
223. [Paragraph 34\(5\)](#) provides that spouses and civil partners who are no longer living together as defined by paragraph 25(3) should not have their respective interests combined for the purposes of establishing whether the £40,000 threshold is met for the higher rates residential property transaction rules.
224. [Paragraph 34\(7\)](#) makes further provision in respect of a major interest inherited as a result of a variation of a will. This sub-paragraph clarifies that where a major interest in a dwelling is acquired as a result of a variation of a will it is to be treated as inherited property for the purposes of establishing if a buyer holds interests in other property. Where the interest acquired does not exceed 50% the buyer is not to be treated as owning a major interest in that property for 3 years from the date of the variation of the will for the purposes of this Schedule.