

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref:

Annwyl Simon,

13 September 2016

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

To support the Committee's scrutiny of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill which I introduced into the National Assembly for Wales on 12 September, please find attached a statement of policy intent. This document provides information on the policy intent for the delegated powers within the Bill, if enacted.

I trust Members will find this document helpful and I look forward to providing evidence to the Committee in due course.

A copy of this letter and the attachment referenced is also being sent to Huw Irranca-Davies AM, Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government

CC: Chair of the CLA Committee

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

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

Policy intent for subordinate legislation to be made
under this Bill

September 2016

LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL POLICY INTENT FOR SUBORDINATE LEGISLATION

This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers are empowered or required to make under the provisions of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ('the Bill'). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with Chapter 5 of the Explanatory Memorandum and Explanatory Notes.

The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill is the second of three bills to establish devolved tax arrangements in Wales. This Bill was preceded by the Tax Collection and Management (Wales) Act 2016 (TCMA) which provides the powers and duties to collect the tax and will be followed by a bill to establish Landfill Disposals Tax (LDT).

The purpose of this Bill is to introduce a "Land Transaction Tax" (LTT), which will replace the UK Stamp Duty Land Tax (SDLT) in Wales from April 2018, as well as measures to tackle devolved tax avoidance. In particular, the Bill provides for:

- the key principles of LTT, such as the types of transactions that will incur a charge to LTT and the person liable to pay LTT;
- the procedure for setting tax rates and bands;
- how the tax will be calculated and what reliefs may apply;
- specific measures to tackle devolved tax avoidance;
- the application of the Bill in relation to leases;
- the specific provisions applicable to a variety of persons and bodies in respect of LTT;
- the provision for making a land transaction return and for the payment of the tax; and
- duties on taxpayers to make payments and pay penalties and interest in certain circumstances.

Section 79 of the Bill provides that certain provisions set out in Part 8 will come into force on the day the Bill receives Royal Assent. The other provisions in the Bill will be commenced by Order.

Section	Description	Policy intention
PART 2: THE TAX AND KEY CONEPTS		
Section 5(4)	The Welsh Ministers may, by regulations, add, amend or declassify interests that are exempt from Land Transaction Tax (LTT).	<p>Section 5 provides for a list of interests that are exempt from LTT. This power enables the Welsh Ministers to add to the categories of exempt interests, or for the description of an existing exempt interest to be varied. It also enables an interest listed to cease to be an exempt interest. It is intended that this power would be used to reflect policy changes and/or changes in the economic and property market conditions of the time, such as where an exempt interest ceases to exist in law, or where the rules on an exempt interest are abused as part of a tax avoidance arrangement.</p> <p>A similar power is provided for in section 48(5) of the Finance Act 2003, and section 5(4) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT(S)A 2013).</p>
Section 18(2)	The Welsh Ministers may, by regulations, amend or repeal provisions relating to what is to count as chargeable consideration and how the amount of chargeable consideration is calculated.	<p>Sections 18 to 23 and Schedule 4 make provision as to how the amount of chargeable consideration is determined in respect of a transaction. It is intended that the power to amend the rules used to determine the amount of chargeable consideration would be used, to reflect policy changes and/or the economic and property market conditions of the time, or to prevent tax avoidance activity.</p> <p>This power mirrors section 50(2) Finance Act 2003 and section 17(2) LBTT(S)A 2013.</p>
PART 3: CALCULATION OF TAX AND RELIEFS		
Section 24(1)	<p>The Welsh Ministers must by regulations specify the first set of tax bands and percentage tax rates for each band applicable to residential and non-residential property transactions.</p> <p>The power may subsequently be used by the Welsh Ministers to vary tax bands and percentage tax rates.</p>	The ability to set and vary tax rates and bands is an integral feature of the tax regime. The power places the Welsh Ministers under a duty to set the initial rates and bands applicable to LTT and provides Welsh Ministers with the power to vary tax rates and bands in the future. This power will enable the Welsh Ministers to set and vary the tax rates and bands promptly to reflect fluctuations in the wider economy or property market conditions, as well as wider policy changes.

		<p>The first set of regulations made under this power will be subject to the affirmative procedure, while subsequent regulations will be subject to the provisional affirmative procedure. This procedure will permit the Welsh Ministers to vary rates and bands at short notice on a provisional basis, while maintaining the Assembly's role in approving any permanent variation.</p> <p>This power is similar to section 24(1) LBTT(S)A 2013.</p>
Section 30(6)	The Welsh Ministers have the power, by regulations, to introduce new reliefs, modify existing reliefs, remove a relief entirely, or modify section 31 (reliefs: anti-avoidance).	<p>Section 30(1) introduces a suite of Schedules which relieve certain transactions from the payment of LTT. This power will enable the Welsh Ministers to introduce a new relief, vary existing reliefs, or remove a relief entirely, and would be used to reflect policy changes and/or to respond to changes in economic and property market conditions in the future or to prevent tax avoidance activity.</p> <p>The power may also be exercised to modify section 31, which prohibits a relief from being claimed as part of a tax avoidance arrangement. It is intended that this power would be used to make changes to the operation of the rule, such as to modify the meaning of "arrangement", or "tax", to reflect the creation of a new tax or type of arrangement.</p> <p>A similar provision is provided for in section 27(3) LBTT(S)A 2013.</p>
PART 5: APPLICATION OF ACT AND TCMA TO CERTAIN PERSONS AND BODIES		
Section 33(7)	The Welsh Ministers may, by regulations, make further provision about the application of LTTA, or TCMA, in relation to companies or a description of a company specified in the regulations.	Section 33 makes provision as to the application of this Bill and TCMA to companies. This power is intended to enable changes to be made to the application of the Bill in relation to companies should it become inappropriate for the provisions relating to companies to apply, or should further provision be necessary to clarify how the tax applies to companies.

Section 34(6)	The Welsh Ministers may, by regulations, specify that a particular type of unit trust scheme is to be treated as not being such a scheme for the purpose of the Bill and TCMA.	This power is intended to enable changes to be made where new types of unit trust schemes emerge and it becomes inappropriate for the provisions on unit trust schemes to apply. A similar power is provided for in section 101(5) Finance Act 2003 and Section 45(6) LBTT(S)A 2013.
Section 35(1)	The Welsh Ministers may make regulations to specify how the Bill and TCMA will apply to open-ended investment companies.	This power is intended to enable changes to be made to the application of the Bill and TCMA to transactions by open-ended investment companies so that they are treated in a similar manner to transactions by unit trusts. This is so there is, broadly, parity of treatment between the two different types of investment vehicles. A similar power is provided for in section 102 (1) Finance Act 2003 and Section 46(1) LBTT(S)A 2013.
Section 40(2)	The Welsh Ministers may make regulations to amend Schedule 6 in relation to the application of the Bill and the TCMA to partnerships.	Schedule 6 makes provision as to the application of this Bill and TCMA to partnerships. This power is intended to enable changes to be made to these rules to reflect any changes in the operation of partnerships, or to prevent tax avoidance activity. A similar power is provided for in Section 49(2) LBTT(S)A 2013.
Section 41(2)	The Welsh Ministers may make regulations to amend Schedule 7 of the Bill in relation to the application of the Bill and the TCMA to trusts.	Schedule 7 makes provision as to the application of this Bill and TCMA to trusts. This power is intended to enable changes to be made to these rules reflect any changes in the operation of trusts, or to prevent tax avoidance activity. A similar power is provided for in Section 50(2) LBTT(S)A 2013.
PART 6: RETURNS AND PAYMENTS		
Section 45(10)	The Welsh Ministers may, by regulations, amend the amount of consideration and relevant rent at which point a transaction becomes a notifiable transaction.	Section 45(3) provides that the acquisition of a major interest in land is not a notifiable transaction where the chargeable consideration for the acquisition, together with any linked transaction, is less than £40,000. Subsections (6) and (7) also introduce thresholds at which grants, assignments and surrenders of leases cease to be notifiable transactions. This power enables the Welsh Ministers to amend these thresholds to implement policy changes regarding notifiable transactions, for example as

		<p>a consequence of changes to tax rates and bands, or to reduce the administrative burden on taxpayers in low-value transactions.</p> <p>Comparable provision is provided for in Section 30(7) LBTT(S) A 2013.</p>
Section 46(5)	The Welsh Ministers may amend, by regulations, the period after which late payment interest is payable where a contingency ceases or consideration is ascertained.	<p>It is intended that this power will be used if the filing date for a return (under section 43) is changed (by regulations made under section 51). The period after which late payment interest is payable would then be amended to match that period.</p> <p>A similar power is provided for in section 39(1) LBTT(S)A 2013.</p>
Section 48(5)	The Welsh Ministers may, by regulations, amend the period after which late payment interest is payable where relief is withdrawn.	<p>It is intended that this power will be used if the filing date for a return (under section 43) is changed. The period after which late payment interest is payable under would then be changed to match that period.</p> <p>A similar power is provided for in section 39(1) LBTT(S)A 2013.</p>
Section 51(1)	The Welsh Ministers may, by regulations amend the period in which an LTT return must be submitted.	<p>It is intended that this power would be used if there was a strong rationale for amending the period in which a return should be made.</p> <p>A similar power is provided for in Section 76(2) Finance Act 2003 and Section 39(1) of LBTT(S)A 2013.</p>
Section 63(1)	The Welsh Ministers may, by regulations, make further provision about applications for deferral of payment of tax, including provisions relating to rent (which is not subject to deferral rules), rules relating to contracts for works or services, and amendments to section 61 to enable WRA to agree to impose variations to deferral agreements previously made.	<p>This power is necessary to enable Welsh Ministers to be able to prescribe further details, as well as to enable WRA to make variations to agreements in the event that taxpayers seek to exploit the deferral rules.</p> <p>Similar power are provided for in section 90(2) Finance Act 2003 and Section 42(1) LBTT(S)A 2013.</p>
Section 64(5)	A registration of land transaction may not be made by the Chief Land Registrar unless a WRA certificate accompanies the application to register. The Welsh Ministers may, by regulations, make provision about WRA certificates, including the conditions which must be met before a certificate is issued; the issue of duplicate certificates; and the issue of multiple certificates.	<p>The Welsh Ministers intend to exercise this power to prescribe the form of a WRA certificate, which may vary to reflect changes in the operation of WRA or the Land Registry in the future.</p> <p>This mirrors the regulation making power in section 79(4) Finance Act 2003.</p>

PART 8: INTERPRETATION AND FINAL PROVISIONS		
Section 71(10)	The Welsh Ministers may, by regulations change or clarify cases where use of a building is, or is not to be, use of a building as a dwelling, or amend the number of dwellings purchased in a single transaction which may be defined as a 'non residential' transaction (or repeal that rule).	Section 71(4) and (5) provides a list of buildings of a particular description which are, or are not, treated as dwellings. This power is intended to be used to address any future policy changes. Similar powers are provided for in section 116(8) Finance Act 2003 and Section 59(9) LBTT(S)A 2013.
Section 76(1)	The Welsh Ministers can make supplementary, incidental, consequential, transitional, transitory or saving provisions in order to give full effect to a provision of the Bill	This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the new system. Transitional, saving and consequential elements are designed to cater for the process of moving from one land transaction tax regime to another, so that the process is as "seamless" as possible and that the new law operates as intended. Similar powers are provided for in section 109 Finance Act 2003 and section 67 LBTT(S)A 2013.
SCHEDULE 3: TRANSACTIONS EXEMPT FROM CHARGE		
Paragraph 7 of Schedule 3	Schedule 3 provides a list of transactions that are exempt from LTT. The Welsh Ministers may, by regulations made under para 7 Schedule 3, add amend or declassify an exempt transaction.	This power is intended to be used to reflect policy changes in relation to exempt transactions. Similar power are provided for in paragraph 5 of Schedule 3 to Finance Act 2003 and paragraph 8 of Schedule 1 LBTT(S)A 2013
SCHEDULE 5: LEASES		
Paragraph 27(2) of Schedule 5	Paragraph 27(1) of Schedule 5 provides that no tax is chargeable on the rent element of a residential lease when granted. Paragraph 27(2) provides the power for Welsh Ministers to change this position so that tax is charged on the rent element of residential leases.	This power enables the Welsh Ministers to extend the scope of LTT to include the rent element of residential leases if required in the future. Currently, taxing the rent element of a residential lease in Wales brings in little revenue (£10,000 in 2014/15). However, Welsh Ministers may wish to exercise this power if future changes in behaviour mean that the rent element on newly granted residential leases should be taxed due to increases in rents payable and the length of leases, or potentially to counteract avoidance activity.

Paragraph 28(1) of Schedule 5	LTT is chargeable on the rent element of non-residential or mixed leases when granted. The Welsh Ministers must by regulations made under paragraph 28(1) of Schedule 5 prescribe the tax bands and the percentage tax rates applicable to the chargeable consideration which consists of rent. Welsh Ministers also have the power under this section to vary rates and bands in the future.	<p>This power is necessary to enable the Welsh Ministers to set and vary the rates and bands for the rent element of non-residential and mixed leases to reflect policy changes and/or to respond to changes in economic and property market conditions in the future.</p> <p>The first set of regulations made under this power will be subject to the affirmative procedure, while subsequent regulations will be subject to the provisional affirmative procedure. This procedure will permit the Welsh Ministers to vary rates and bands at short notice on a provisional basis, while maintaining the Assembly's role in approving any permanent variation.</p> <p>A similar power is provided in paragraph 3(1) of Schedule 19 LBTT(S)A 2013.</p>
Paragraph 32 of Schedule 5	Paragraph 32 provides that the temporal discount rate is set at 3.5%. The temporal discount rate forms part of a wider formula used to calculate the net present value of future rental payments. The Welsh Ministers may specify an alternate temporal discount rate through regulations.	<p>This power enables the Welsh Ministers to vary the temporal discount rate in the future to reflect the economic and property marked circumstances of the time.</p> <p>Similar power are provided in paragraph 8 of Schedule 5 Finance Act 2003 and paragraph 7 of Schedule 19 LBTT(S)A 2013.</p>
Paragraph 36(1) of Schedule 5	The Welsh Ministers may specify the amount of relevant rent for the purposes of determining the amount of tax chargeable in the case of the acquisition of a newly granted non-residential or mixed lease where the lease provides for rent and consideration other than rent (e.g. a premium).	This power enables the Welsh Ministers to set the amount of "relevant rent" and to vary that amount in the future to reflect the economic and property marked circumstances of the time. This power will enable Welsh Ministers to ensure that taxpayers pay a fair amount of tax and cannot unfairly benefit from the zero rate tax bands for both rents and consideration other than rent.
SCHEDULE 10:RELIEF FOR ALTERNATIVE INVESTMENT BONDS		
Paragraphs 8(1), 9(1), 12(b), 16, and 18(5) of Schedule 10	Schedule 10 makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds. The Welsh Ministers have the power under paragraphs 8(1), 9(1), 12(b), 16, and 18(5) to prescribe in regulations further provisions for the application of the relief.	<p>This power is intended to enable changes to be made to the treatment of alternative finance investment bonds, to reflect changes in the operation of those bonds.</p> <p>Similar powers are provided in paragraphs 5(4), 5(6), 5(12), 9, and 18(6) of Schedule 61 Finance Act 2009 and paragraphs 10(1), 11(1), 14(2), 20, and 21(6) of Schedule 8 LBTT(S)A 2013.</p>

SCHEDULE 12: RELIEF FOR ACQUISITIONS INVOLVING MULTIPLE DWELLINGS

Paragraph 6(6) of Schedule 12	Schedule 12 applies where multiple dwellings are acquired by an individual through a single transaction. The relief ensures that a single transaction involving multiple dwellings is not taxed at a higher rate where the dwellings acquired would attract a lower tax charge if consisting of separate transactions. This is achieved by calculating the average price per dwelling, establishing the tax liability for that average price, and multiplying by the number of dwellings acquired. If the calculation leads to the average price per dwelling resulting in a lower tax liability than (currently) 1% of the total consideration given, a minimum rate of tax of 1% of the total consideration given applies instead. Paragraph 6(6) enables the Welsh Ministers to amend these percentages.	This power enables the Welsh Ministers to vary the minimum percentage of tax payable for multiple dwellings relief to reflect the economic and property market circumstances of the time and to ensure that taxpayers continue to pay a fair share of tax. A similar power is provided in Paragraph 12 of Schedule 5 LBTT(S)A 2013.
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SCHEDULE 14: RELIEF FOR CERTAIN TRANSACTIONS RELATING TO SOCIAL HOUSING

Paragraph 2(3) Schedule 14	The power enables the Welsh Ministers, by regulations, to prescribe a person as a relevant public sector body for the purposes of relief for right to buy transactions.	This power enables regulations to reflect changes such as the creation of a new public body. A similar power is provided in paragraph 1 of Schedule 9 Finance Act 2003.
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SCHEDULE 16: RECONSTRUCTION AND ACQUISITIONS RELIEF

Paragraph 3(1) of Schedule 16	In cases where acquisition relief is claimed, the amount of tax chargeable is determined by paragraph 3(1) of Schedule 16. The Bill currently provides that in these cases, the amount of tax chargeable is limited to 0.5% of the chargeable consideration given for the transaction. The Welsh Ministers may, by regulations, amend this percentage.	This power is intended to reflect policy changes toward acquisitions relief and/or economic and property market conditions. A similar power is provided in paragraph 6(3) of Schedule 11 LBTT(S)A 2013.
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SCHEDULE 19: RELIEF FOR ACQUISITIONS BY PUBLIC BODIES AND HEALTH BODIES

Paragraph 1(2) of Schedule 19	Where a transaction is effected as a result of a statutory public sector reorganisation, it will normally be relieved from LTT as both buyer and seller will be public bodies. Paragraph 1(2) of Schedule 19 gives the Welsh Ministers the power, by regulations, to designate that a particular transaction is relieved from LTT where the transaction falls under the specific requirements of the regulations but where only either the buyer or seller is a public body.	This power enables regulations to be made in cases where transactions involving a public sector reorganisation should be relieved from LTT but will not be because either the buyer or seller is not a specified public body. Similar powers are provided for in section 66(2) Finance Act 2003 and paragraph 2 of Schedule 16 LBTT(S)A 2013.
Paragraph 1(4) of Schedule 19	The Welsh Ministers may, by regulations, specify additional persons whom will count as public bodies.	This power enables regulations to reflect changes such as the creation of a new public body. Similar powers exist at Section 66(4) of the Finance Act 2003 and paragraph 4 of Schedule 16 LBTT(S)A 2013.
Paragraph 2 of Schedule 19	The Welsh Ministers may, by regulations, specify additional persons whom will count as health service bodies for the purpose of relief for acquisitions by health bodies.	This power enables regulations to reflect changes such as the creation of a new health body.
SCHEDULE 20: COMPULSORY PURCHASE RELIEF AND PLANNING OBLIGATION RELIEF		
Paragraph 2(3) of Schedule 20	The Welsh Ministers may, by regulations, specify additional persons for whom relief for compliance with planning obligations will apply.	This power enables regulations to reflect changes such as the creation of a new public body. Similar powers exist at section 61(3) Finance Act 2003 and paragraph 5 of Schedule 15 LBTT(S)A 2013
SCHEDULE 22: AMENDMENT TO THE TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016		
Paragraph 7 of Schedule 22	Paragraph 7 of Schedule 22 (new section 39A TCM(Wales)A 2016 gives the Welsh Ministers the power to specify, in regulations, descriptions of records and supporting documents which are required to be kept in relation to tax returns.	The power is to enable regulations to be made which set the detail of what records taxpayers have to keep after making a tax return, and which can be kept up to date. Similar powers exist at paragraph 9(4), Schedule 10 Finance Act 2003 and section 74(9) Revenue Scotland and Tax Powers (Scotland) Act 2014..