

Explanatory Memorandum to

The Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
23 March 2018

1. Description

- 1.1 These Regulations make an amendment to the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018 so as to provide an additional transitional provision in respect of the introduction of land transaction tax ("LTT") in Wales by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ("the LTTA Act"). The amendment ensures that transactions which take place on or after 1 April 2018 receive treatment which is consistent, meaning that transactions are not taxed twice under LTT and Stamp Duty Land Tax ("SDLT").

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 Section 79(3) of the LTTA Act provides that Regulations made under section 78(1) of the LTTA Act are subject to the negative procedure, unless they have the effect of imposing or increasing liability to tax. The effect of the regulation contained in this instrument does not impose tax liabilities, in fact it provides for a reduction in the amount of LTT chargeable to ensure that a double charge to tax does not arise, therefore the Regulations are subject to the negative procedure.
- 2.2 In order to provide certainty to Welsh taxpayers and avoid any risk that a taxpayer may be affected by any double taxation arising as a result of the transition from SDLT to LTT, it is necessary to breach the 21 day rule to ensure that the Regulations come into force on 1 April 2018.

3. Legislative background

- 3.1 Section 78(1) of the LTTA Act provides for the Welsh Ministers to make such transitional provision as they think appropriate for the purposes of, or in connection with, or giving full effect to any provision under the Act.
- 3.2 Commencement of LTT will take place after SDLT has been dis-applied in Wales, which will be on 1 April 2018, in accordance with the Wales Act 2014, Sections 16 and 19 (Disapplication of UK Stamp Duty Land Tax and UK Landfill Tax) (Appointed Date) Order 2018 (S.I. 2018/214).

4. Purpose & intended effect of the legislation

- 4.1 The **purpose** of these Regulations is to set out the treatment of certain leases granted on or after 1 April 2018 which follow a period where the tenant continued in occupation after the contractual termination date of the old lease.
- 4.2 When a lease reaches its contractual termination date, a number of events may occur:
 - i. A new lease may have been negotiated prior to the termination date which is granted to start on the day after that termination date;
 - ii. The tenant may vacate the property; or
 - iii. When permitted by law or agreed between the parties to the lease, the tenant may continue in occupation until both parties agree the terms of a new lease (a situation known as 'holding over'). The effect of holding over the lease is that the terms of the lease continue (including paying rent as agreed under the lease) for the duration of the holdover.

4.3 Various tax consequences arise as a result of a tenant holding over. The immediate consequence is that liability to additional tax might arise as a result of the rent paid during the holdover period. For leases that cross the LTT 'go live' date (that is they were granted under the SDLT regime, but a hold-over period arises, or continues, on or after 1 April 2018), the additional tax payable is assessed to SDLT. Once a new lease is granted a LTT liability will arise.

4.4 There is a risk of a double-taxation situation arising where a new lease is granted, but the landlord and tenant decide to backdate the term of that lease so that it commences on a date falling within the hold-over period. In these circumstances, paragraph 8 of Schedule 6 to the LTTA Act is made available to ensure that the amount of rents chargeable during the hold-over period may be taken into account when calculating the LTT liability.

4.5 The **intention** is to ensure that paragraph 8 of Schedule 6 to the LTTA Act is also made available where rent is paid during a holdover period and assessed to SDLT and a subsequent lease (that will be liable to LTT) is granted with a backdated commencement date. The regulation ensures that the rents on that holdover period are not taxed twice (by both SDLT and LTT) as a result of the transition from SDLT to LTT, and despite the fact that the old ('SDLT') lease was granted prior to the commencement date

4.6 Guidance on the effect of this transitional rule will be published by WRA.

5. Consultation

5.1 The risk of taxpayers incurring a double charge to tax under both SDLT and LTT was brought to the Welsh Government's attention by external advisers.

6. Regulatory Impact Assessment

6.1 A primary aim of the Regulations is to ensure the correct liabilities to tax arise to the correct tax authority and that no taxpayer is unfairly disadvantaged by the switch from SDLT to LTT for Welsh land transactions. The key benefit of these Regulations is therefore that they provide taxpayers with certainty, clarity and fairness in the tax liability results arising from their land transactions.

Option 1: Do Nothing

6.2 The key potential impact of not making this instrument as part of the legislative framework for LTT would be that some transactions with relevant events falling either side of the commencement date will be taxed, on the same consideration given, to both SDLT and LTT. The instrument ensures the proper and fair collection of LTT and SDLT for leases affected by the transition from one tax to the other.

Option 2: Provide for the Welsh Ministers to make transitional provision for the purposes of LTT

- 6.3 Description: the regulation applies to leases that were granted before 1 April 2018 and were, on grant, subject to SDLT. If the lease terminates and is heldover following that termination date an SDLT liability will arise on for each year following the termination date until the tenant (the taxpayer) leaves the premises or a new lease is granted. In some cases that lease may be backdated so that the lease is expressed to begin in a holdover period for which the taxpayer will have paid SDLT. In these cases the regulation ensures that the amount of taxable rent payable under the holdover tenancy for the old lease is, for the purposes of LTT on the newly granted (but backdated lease), taken into account when determining the LTT chargeable.
- 6.4 Impact: These regulations are expected to reduce tax; removing double taxation, for a few non-residential leasehold transactions over the next few years as the conditions to which it applies are considered to be relatively exceptional. Given the number of taxable transactions to which these regulations may apply, it is therefore estimated to reduce revenues by less than £0.2m per year, with a declining profile over future years as fewer transactions are affected.
- 6.5 Benefit: These regulations ensure where rents are paid under a holdover tenancy which was assessed under SDLT, the rents assessed under SDLT will be taken into account when calculating the tax liability under LTT on the grant of the new lease. This enables these types of leasehold situations to not be double taxed.

7. Post Implementation review

- 7.1 Section 77 of the LTTA Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within 6 years of the day after the day of the LTTA Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the LTTA Act.