

Explanatory Memorandum to

The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Amendment to Schedule 5) 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 and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Amendment to Schedule 5) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM – Cabinet Secretary for Finance
8 January 2018

1. Description

1.1 The purpose of these Regulations is to adapt the rules relating to married couples and civil partners acquiring additional interests in their current main residence, and the treatment of such acquisitions as a higher rates residential property transaction for the purposes of Schedule 5 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTTA Act”). The amendment is designed to ensure consistency of treatment.

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

2.1 None.

3. Legislative background

3.1 Schedule 5 is introduced by section 24 of the LTTA Act and makes provision about higher rates residential property transactions. It provides the rules identifying when the acquisition of a major interest (or an interest that is deemed to be a major interest) is a higher rates residential property transaction.

3.2 These regulations are made under section 24(11) of the LTTA Act, and will be subject to the **affirmative** procedure as prescribed for under section 79(2) of the LTTA Act.

4. Purpose & intended effect of the legislation

4.1 The **purpose** of these Regulations is to make a small amendment to the rules in paragraphs 7 and 16 of Schedule 5 to the LTTA Act relating to the acquisition of additional interests in a taxpayer’s current main residence. For example, a transaction giving rise to a lease extension, the acquisition of a freehold interest, or a transfer of interests between spouses or civil partners.

4.2 The change ensures that where married couples¹ acquire new or additional interests in their current main residence the transaction is not a higher rates residential property transaction, even where previously one of the spouses did not have a beneficial interest in that main residence. The change ensures that there is consistency of treatment in this area for married couples as is provided elsewhere in Schedule 5 to the LTTA Act². This amendment therefore extends this basic rule so that the higher rates do not apply where a buyer acquires a major interest in a dwelling:

- i. in which the buyer’s spouse or civil partner had another major interest before the transaction; and
- ii. which is the buyer’s only or main residence immediately before and after the effective date of the transaction.

4.3 The **intended effect** of the regulations is to ensure that the higher rate rules are applied consistently to married couples. The regulations provide clarity and ensure the rules are aligned to the stated policy intention.

¹ Married couples’ and ‘spouse’ for the purpose of this Explanatory Memorandum includes persons in a civil partnerships and civil partners.

² It should be noted that Schedule 5 to the LTTA Act already provides different rules in relation to unmarried couples entering into transactions that may be within the scope of the rules for higher rates residential property transactions, which are not affected by this amendment.

5. Consultation

5.1 No consultation has been undertaken for these regulations as they represent only a minor change to ensure the rules are consistent.

6. Regulatory Impact Assessment

6.1 As the SDLT higher rates on additional properties only came into effect in April 2016 limited evidence is currently collected on these types of transactions and it is therefore not possible to obtain data and provide detailed costs for these specific regulations. However, there is expected to be a very low number of transactions where a married couple would have been required to pay the higher rate which these regulations will now exclude from the higher rates.

6.2 An initial assessment of the impact of these regulations identifies an expected very minor reduction in revenue - small differences which exist between LTT and SDLT rules which will not have a significant effect on the revenues between the two taxes. This does not materially affect the forecast of LTT revenue.

6.3 The benefit of these regulations is that they will create further consistency in the treatment of married couples.

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.