



Llywodraeth Cymru  
Welsh Government

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

**Explanatory Memorandum**  
Incorporating the  
Regulatory Impact Assessment and  
Explanatory Notes

March 2017

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

## **Explanatory Memorandum to Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill**

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.

It was originally prepared and laid in accordance with Standing Order 26.6 in September 2016, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

### **Member's Declaration**

In my view the provisions of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, introduced by me on the 12 September 2016 would be within the legislative competence of the National Assembly for Wales.

***Mark Drakeford AM***

Cabinet Secretary for Finance and Local Government  
Assembly Member in charge of the Bill

21 March 2017

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# **PART 1 – EXPLANATORY MEMORANDUM**

## **Chapter 1: Description**

1.1 It is intended that this Bill will 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. The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (“the Bill”) is the second of three bills to establish devolved tax arrangements in Wales. This legislation is interlinked with the Tax Collection and Management (Wales) Act 2016 (TCM (Wales) Act 2016) which provides the powers and duties to collect the tax, and will be followed by a Bill to establish Landfill Disposals Tax (LDT).

1.2 In particular the Bill sets out:

- 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.
- the procedure for applying a surcharge to additional residential dwelling transactions

## Chapter 2: Legislative competence

2.1 The National Assembly for Wales (“the Assembly”) has the legislative competence to make the provisions in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (“the Bill”) pursuant to Part 4 of the Government of Wales Act 2006 (“GoWA 2006”). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.

2.2 Paragraph 16A of Schedule 7 set out the following subject on which the Assembly may legislate.

### **16A Taxation**

*Devolved taxes (as defined in section 116A(4))*

2.3 Section 116A(4) of GOWA 2006 provides that a tax specified in Part 4A of GOWA 2006 is defined as a devolved tax. Part 4A gives the Assembly legislative competence to make provision in relation to a tax on transactions involving an interest in land (*section 116L*), and a tax on disposals to landfill (*section 116N*).

2.4 Section 116L defines a tax on transactions involving an interest in land as:

*(1) A tax which is charged on a Welsh land transaction and complies with the requirements of this section is a devolved tax.*

*(2) In this Chapter a “Welsh land transaction” means an acquisition of—*  
*(a) an estate, interest, right or power in or over land in Wales;*  
*(b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.*

*(3) The tax may be chargeable—*  
*(a) whether or not there is any instrument effecting the transaction,*  
*(b) if there is such an instrument, regardless of where it is executed,*  
*and*  
*(c) regardless of where any party to the transaction is or is resident.*

*(4) The tax may not be imposed on so much of a Welsh land transaction as relates to land below mean low water mark.*

*(5) The following persons are not to be liable to pay the tax—*

*Government*

*A Minister of the Crown*

*The Welsh Ministers, the First Minister and the Counsel General*

*The Scottish Ministers*

*A Northern Ireland department*

*Parliament etc.*

*The Corporate Officer of the House of Lords*  
*The Corporate Officer of the House of Commons*  
*The Assembly Commission*  
*The Scottish Parliamentary Corporate Body*  
*The Northern Ireland Assembly Commission.*

## Chapter 3: Purpose and intended effect of the legislation

### Reason for the Bill and explanation of its timing

3.1 The Welsh Ministers' purpose in relation to this Bill is to establish LTT in Wales to replace SDLT from April 2018.

3.2 As set out in paragraph 2.2, section 16 of the Wales Act 2014<sup>1</sup> provides for SDLT to be dis-applied in Wales. This will take effect in relation to land transactions on a date to be appointed by the Treasury under section 16(4) of the Act. If the Welsh Ministers chose not to implement a form of tax on transactions involving interests in land in Wales, then the Welsh Government would not receive the receipts from this tax, which have varied from £100 million to £235 million per annum<sup>2</sup>. In addition, higher rates on additional properties have been charged in Wales through SDLT since April 2016 and revenues have recently increased as a result. The Office for Budgetary Responsibility (OBR) forecast this element of the tax is due to raise £44 million in Wales in 2016-17 rising to £54 million in 2018-19. This revenue has a significant impact on the resources available to fund public services in Wales.

3.3 The intended effect of the legislation is to provide a replacement for SDLT so that public services in Wales can continue to receive the benefit of the revenues raised by that tax. In line with the views of stakeholders, the legislation will broadly be consistent with SDLT, providing stability and clarity to businesses and the property market.

3.4 The TCM (Wales) Act 2016 established a clear and strong governance framework in Wales that will support the effective collection and management of Welsh taxes and establish the Welsh Revenue Authority (WRA). The TCM (Wales) Act 2016 provides the WRA with the relevant functions and powers to enable it to meet its responsibilities. These new arrangements will come into force in April 2018.

3.5 The WRA will need to establish the operational processes and procedures for the collection and management of LTT revenue prior to April 2018, as well as developing clear, robust guidance to support tax-payers and their agents. This is why the Bill was introduced in September 2016 in order to allow time to set up the new systems prior to the 'go live' date in April 2018.

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<sup>1</sup> Wales Act 2014 is available at: <http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

<sup>2</sup> See HMRC (2015) *UK Stamp Tax statistics*:

<https://www.gov.uk/government/statistics/uk-stamp-tax-statistics>

## Policy background

- 3.6 The 2015 *Tax Devolution in Wales – Land Transaction Tax*<sup>3</sup> consultation set out the policy context of this Bill. In summary, the Wales Act 2014 paved the way for new tax powers to come to Wales, further strengthening our ability to manage our own financial affairs. This welcome step forward in Welsh devolution allows us, for the first time, to replace established UK taxes with our own distinctively Welsh taxes, designed and implemented in ways that reflect our circumstances. In developing policy and establishing a tax which meets the needs of Wales, the Welsh Government has drawn on the responses to the consultation, a summary of which was published in October 2015<sup>4</sup>.
- 3.7 The Scotland Act 2012 provided for the devolution of SDLT to Scotland from April 2015. The Scottish Land and Buildings Transaction Tax (LBTT) replaced SDLT in Scotland on 1 April 2015 and applies both to residential and non-residential property transactions. The Scottish Government introduced a marginal rate system of taxation for property transactions, which was subsequently mirrored in the UK. The rates and bands for Scotland were announced in January 2015<sup>5</sup>. The Scottish experience of devolution provides a useful comparator for Wales. However, key differences include the different land law system in Scotland and the different nature of the Scottish-English border.
- 3.8 When preparing the Bill, an analysis of existing UK SDLT legislation and Scottish LBTT legislation was undertaken. The Welsh Ministers agreed, in line with the views of stakeholders, that LTT would broadly replicate SDLT processes and systems, unless there was a reason to change the existing provisions to improve efficiency, effectiveness or focus on Welsh needs and priorities. It is recognised that this will provide stability, and that the processes and procedures used to collect and manage SDLT are commonly understood by taxpayers and their agents. In addition, Welsh taxpayers will continue to pay tax to HMRC for non-devolved taxes and many individuals and businesses work across the England-Wales border.
- 3.9 The full impact of LTT will not be known until the rates and bands for the new tax have been announced. The Cabinet Secretary for Finance and Local Government has committed to publishing the intended rates and bands for land transaction tax, including on the higher rates surcharge, by October 2017. Regulations will then be laid following the UK Government's Autumn Budget in

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<sup>3</sup> *Tax Devolution in Wales - Land Transaction Tax Consultation* (February 2015) available at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

<sup>4</sup> *Tax Devolution in Wales - Land Transaction Tax Consultation - Summary of Responses* (September 2015) available at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

<sup>5</sup> The rates and bands for LBTT were first announced in October 2014 by the Scottish Government. However, following the reform to residential SDLT by the UK Government in December 2014, the Scottish Government revised the rates and bands of LBTT in January 2015. See Scottish Government (2014) *Scottish Approach to Taxation: Land and Buildings Transaction Tax* <http://www.scotland.gov.uk/Topics/Government/Finance/scottishapproach/lbtt>



2017. A research paper was published by the Welsh Government<sup>6</sup> in September 2016 which sets out the analytical context, the conditions and some of the criteria to be considered in setting LTT rates and bands in Wales.

3.10 In considering a tax to replace SDLT it is important to take into account the revenue generated by SDLT in Wales in recent years. Paragraphs 3.11-3.19 below sets out data on the revenue received in relation to residential and non-residential transactions, leases and the notional cost of reliefs<sup>7</sup>. It also draws attention to the Scottish experience with LBTT<sup>8</sup>.

### **Residential and non-residential transactions**

3.11 The data on SDLT in Wales is available from HMRC over the period 2006-07 to 2015-16<sup>9</sup>. Over this period, revenues have been as high as £235 million (2006-7) and as low as £100 million (2009-10)<sup>10</sup>. SDLT revenues have recently increased as a result of the higher rates charged on additional residential properties introduced in Wales through SDLT since April 2016.

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<sup>6</sup> See *Land Transaction Tax: Setting rates and bands* available from: <http://gov.wales/docs/caecd/publications/160915-ltt-bands-en.pdf>

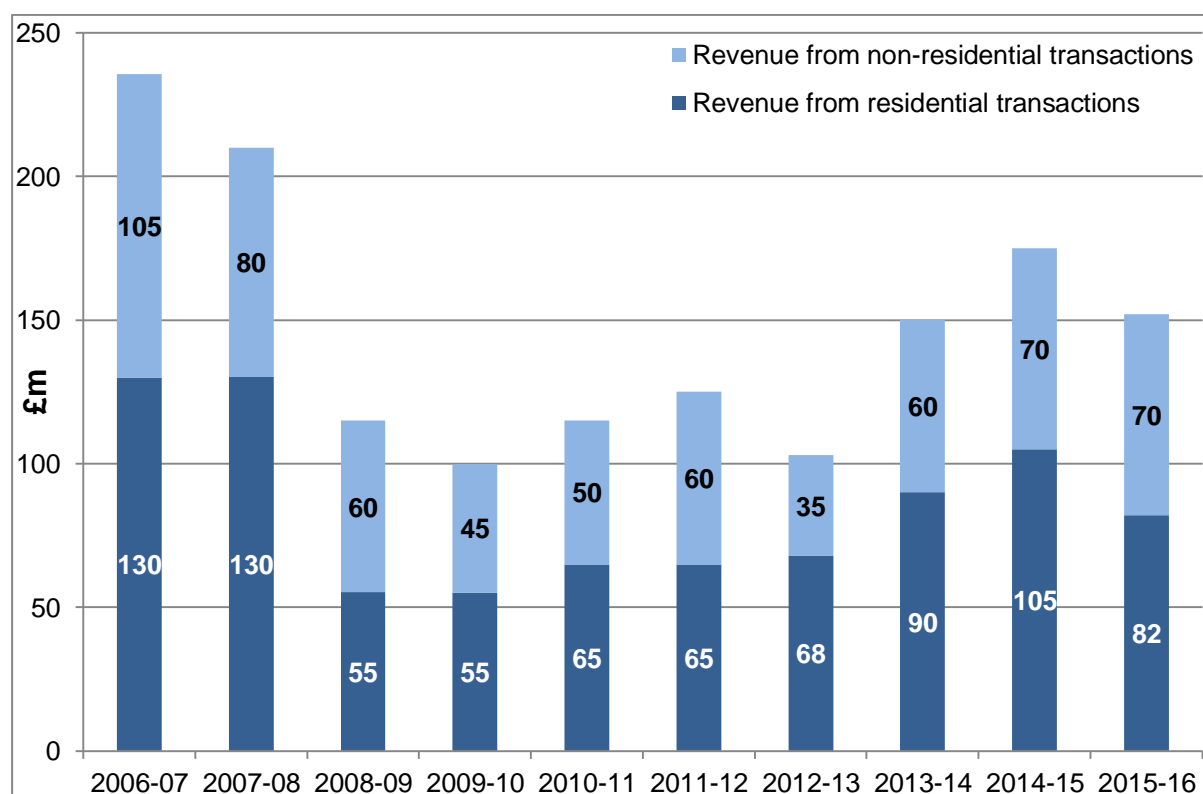
<sup>7</sup> Costs are expressed as 'notional' as there is, in many cases, no certainty that these transactions would occur if the relief did not exist

<sup>8</sup> Land and Buildings Transaction Tax (Scotland) Act 2013: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/56718.aspx>

<sup>9</sup> See HMRC (2015) *UK Stamp Tax statistics*: <https://www.gov.uk/government/statistics/uk-stamp-tax-statistics>

<sup>10</sup> See HMRC (2015) *UK Stamp Tax statistics*: <https://www.gov.uk/government/statistics/uk-stamp-tax-statistics>

**Figure 1: SDLT revenues by transactions type in Wales, 2006-7 to 2015-16 (£m)**



Source: HMRC, *UK Stamp Tax Statistics* various years

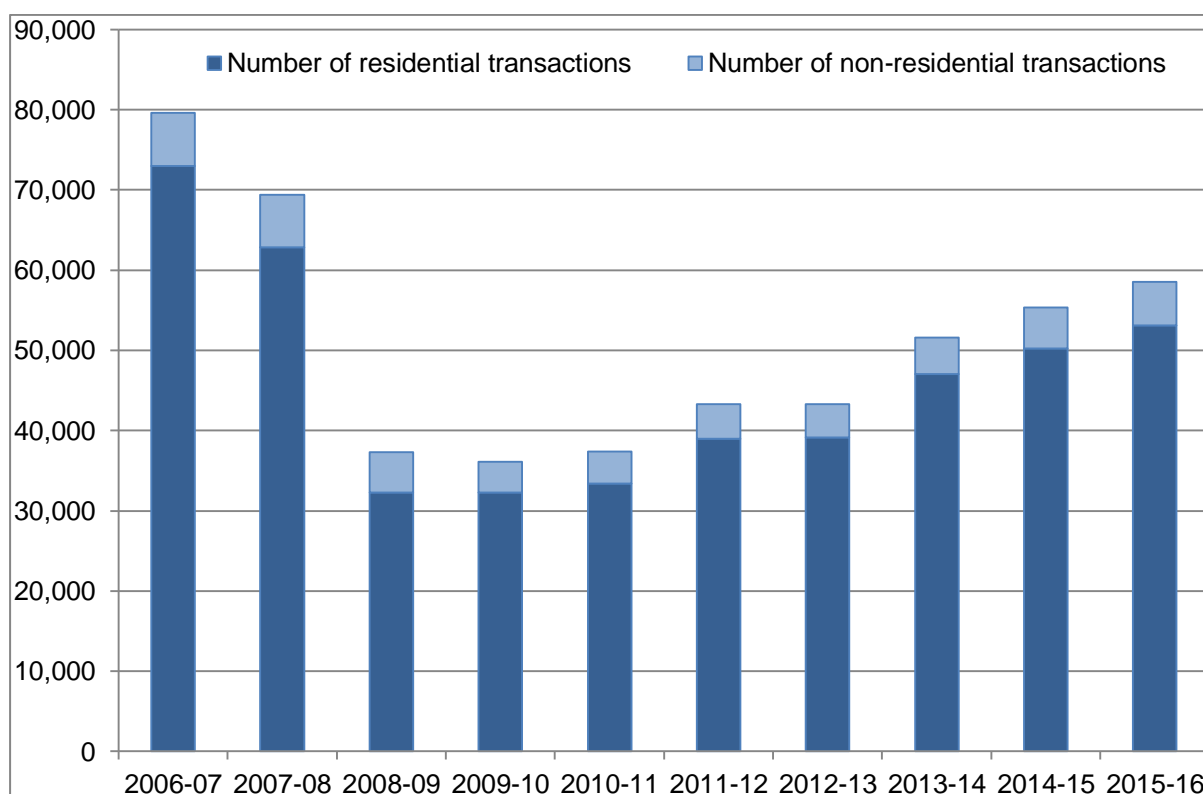
3.12 Since 2006-7 there have been various changes applied to SDLT. A significant change in December 2014 involved a switch from the slab to marginal rates for residential property transactions<sup>11</sup>. A marginal structure of taxation is unlikely to cause much distortion around the starting threshold and band value, as the incentive to agree a price below these thresholds is significantly reduced, relative to a slab rate system.

3.13 This change also resulted in a reduction in tax for the majority of residential properties which reduced revenue in the last quarter of 2014-15 and then for 2015-16. However, the changes to SDLT revenues between other years are likely to have been impacted by other factors including the general movement in the property market as prices and the number of transactions has changed, particularly during the economic downturn.

<sup>11</sup> A slab based system of tax rates tax the entire value of the transaction at the applicable rate, not just the value above the tax threshold or band. This results in large increases in tax from a small increase in transaction value. For example, under the former slab rates of residential SDLT, a transaction price of £125,000 pays no SDLT but a transaction of £126,000 would pay £1,260. This can create significant financial incentives for prices to be agreed under each threshold which can distort the property market, especially for prices close to each band and threshold where slab rates apply. An alternative to a slab rate system is a marginal rate structure. This structure will only tax the value within each band by the relevant rate. This means that even if the price is only slightly more than one of the thresholds, then the tax due will only incrementally increase, unlike with a slab rate system. For example, using the new SDLT marginal rates, a residential transaction price of £125,000 pays no SDLT but a transaction of £126,000 would pay £20.

- 3.14 A key new UK policy announced in the Autumn Statement 2015 was the introduction of higher rates of SDLT on purchases of additional residential properties such as buy-to-let properties and second homes. Following a short consultation, the SDLT higher rates came into force in England and Wales from 1 April 2016. The Scottish Government also passed legislation to implement from 1 April 2016 a similar additional dwelling supplement for their Land and Buildings Transaction Tax (LBTT).
- 3.15 To help us better understand whether the higher rates should be a feature of LTT in Wales from April 2018, a Treasury Paper was published in summer 2016 and a technical survey undertaken on the operation and application of the higher rate provisions. As the responses to the technical survey were published in October, the Bill as introduced in September did not include provision for higher rates on purchases of additional residential properties. Following analysis of the responses, the Cabinet Secretary for Finance and Local Government announced in October 2016 that he would seek to amend the LTTA Bill to make provision for higher rates residential property transactions ('the LTT surcharge').
- 3.16 Further changes were announced by the UK Government in Budget 2016. The first of these set out that from 17 March 2016 non-residential transactions will also now be taxed under a marginal rate system. This change is in line with Scotland, where LBTT already applies marginal rates to both residential and non-residential transactions. As set out in paragraph 3.34, this change will be mirrored in Wales, in line with a consistent approach to SDLT.
- 3.17 Figure 2 sets out the number of residential and non-residential SDLT transactions in Wales. Around 90% of transactions were residential throughout the period 2006-7 to 2015-16.
- 3.18 There are, in comparison to residential transactions, relatively few non-residential transactions in Wales. However, the revenues generated by these transactions are significant. This is likely to be because very high priced non-residential properties (for example, in excess of £1 million) are not as unusual as they are with residential transactions.
- 3.19 Transactions fell by around half between 2007-8 and 2008-9 in line with the economic downturn, and revenues also fell significantly over this period: with residential revenues falling more than 50%. As transactions have started to increase since the depths of the recession, revenues have also increased. However, in 2015-16 both revenues and transactions were still below their 2006-7 levels.

**Figure 2: SDLT transactions by transaction type in Wales, 2006-7 to 2015-16**



Source: HMRC, UK Stamp Tax Statistics

NB only includes transactions that need to be notified to HMRC, this excludes transactions of value less than £40,000 which under SDLT are exempt from requiring a return.

## Leases

3.20 SDLT is also payable on residential and non-residential leases. Any upfront payment (the 'premium') for a new lease or an assignment is treated the same as a transfer of a freehold interest<sup>12</sup>.

3.21 In SDLT the rent payment obligations under the lease is taxed differently from the premium. They are taxed at 1% on the value of the rents which is over the tax threshold (£125,000 for residential and £150,000 for non-residential)<sup>13</sup>. The value of the rents is determined by a calculation to establish a total amount of rent paid over the duration of the leasehold agreement on the grant of the lease. This is then converted into a net present value by discounting future values. Rents are therefore only taxed once on the grant of the lease and not on the assignment of the lease (unlike a premium).

3.22 Table 1 below shows the number of new leases and their revenues in Wales by residential and non-residential transactions for 2015-16. It shows that compared

<sup>12</sup> SDLT may need to be paid when all or part of an interest in land or property is transferred, depending, primarily, on the consideration given.

<sup>13</sup> From 17 March 2016 a new 2% marginal rate for non-residential leasehold rent transactions where the net present value is above £5 million also applied to SDLT.

to the numbers of transactions in Figure 2, there are far fewer new leasehold transactions. There are also more non-residential new leases than residential. New non-residential leases also generate far more revenue than new residential leases: £8.7 million compared to £1.5 million. Very little of the revenue generated by new residential leases comes from the rent element: only £0.01 million in total. For non-residential, the tax from the lease rent is a far larger element, with revenues of £6.2 million in total.

**Table 1: Leasehold transactions and revenues in Wales, 2015-16**

	<b>Number</b>	<b>Tax revenues</b>
Residential	1,235	£1.5m of which from lease rent £0.01m
Non-residential	2,350	£8.7m of which from lease rent £6.2m

Source: Calculations based on HMRC administrative datasets

## Reliefs

3.23 Tax reliefs are an important part of the tax regime and targeted at a variety of different objectives. Some reliefs are designed to encourage a particular behaviour, aimed at achieving social or economic policy objectives, whereas others are created to ensure fairness within the tax regime, for example, to prevent 'double taxation', where land is transferred without any effective change in its economic ownership. The intention is to provide a suite of reliefs consistent with the LBTT and SDLT regimes.

3.24 Under SDLT, there are various reliefs which may be applied. These can be broadly grouped into three categories:

- **Business** - including relief for certain transactions between companies within a group, relief for sale and leaseback and pre-completion transactions, relief for transactions connected to alternative finance arrangements, relief for transactions connected with the incorporation of a limited liability partnership (LLP), and the amalgamation and transfer of undertakings of certain societies;
- **Residential** – relief for the acquisition of multiple dwellings, lease enfranchisement, part-exchange transactions and other measures to provide liquidity, certain shared ownership schemes; and
- **Public benefit** – charities relief, certain acquisitions by registered providers of social housing, relief for transactions relating to the reorganisation of public bodies, compulsory purchases, transactions relating to compliance with planning obligations, changes to parliamentary boundaries, and compliance with treaty obligations.

3.25 Table 2 below provides a summary of the most common residential and non-residential reliefs claimed in Wales in 2015-16 (the most recent data available to the Welsh Government). For residential transactions, the total relief claimed was £2.6 million. It shows that the relief available to house-building companies for part-exchange transactions was the most frequent residential relief claimed in Wales in 2015-16. This relieved tax of £0.5 million. Charities relief was the next most frequent, relieving tax of £0.6 million. There are a number of reliefs that have also been claimed in Wales which have had very limited use so the data is omitted in accordance with HMRC rules on disclosure of administrative datasets. These are likely to have only relieved very low amounts of tax.

3.26 For non-residential transactions, the total relief claimed was £57.9 million. Charities and group relief were the two most commonly claimed reliefs in 2015-16 (see Table 3). Group relief was by far the largest relief in terms of tax relieved, accounting for 77% of the total value of tax relieved for non-residential transactions.

**Table 2: Frequency and value of SDLT residential reliefs in Wales, 2015-16**

<b>Relief</b>	<b>No.</b>	<b>Value of tax relieved (£m)</b>
Part-exchange (house-building company)	588	0.5
Charities relief	178	0.6
Registered social landlords	114	0.2
Other relief	70	0.0+
First-time buyers relief <sup>++</sup>	182	0
Designated disadvantaged areas (residential)	***	
Relocation of employment	***	
Compulsory purchase facilitating development	***	
Group relief	***	
Reconstruction relief	***	
Transfers involving public bodies	***	
Right to buy relief	***	
Alternative property finance	***	
Multiple dwellings relief	***	
Pre-completion transaction	***	
Relief from 15% rate of SDLT	***	
<b>Total</b>	<b>1,240</b>	<b>2.6</b>

\*\*\* Data is omitted for disclosivity

+ 'Other relief' will sometimes be claimed where there has been a new relief introduced but the new code necessary has not yet been created for the HMRC on-line filing system, or where there is not a specific relief code allocated (there are a number of reliefs that relate to very specific circumstances and for which a specific code has not been provided).

++ Can no longer be claimed.

Source: Calculations based on HMRC administrative datasets

**Table 3: Frequency and value of SDLT non-residential reliefs in Wales, 2015-16**

Relief	No.	Value of tax relieved (£m)
Group relief	176	44.4
Charities relief	153	7.2
Other relief	55	4.1
Compulsory purchase facilitating development	***	
Reconstruction relief	***	
Acquisition relief (tax at 0.5%)	***	
Demutualisation of a building society	***	
Incorporation of a limited liability partnership	***	
Transfers involving public bodies	***	
Acquisition by bodies established for national purposes	***	
Registered social landlords	***	
Alternative property finance	***	
Combination of reliefs	***	
Multiple dwellings relief	***	
Pre-completion transaction	***	
Relief from 15% rate of SDLT	***	
<b>Total</b>	<b>456</b>	<b>57.9</b>

\*\*\* Data is omitted for disclosivity

† Whilst these reliefs only relate to residential property it is possible that they occasionally appear as non-residential due to errors in the returns made. For example, if the taxpayer was a company and therefore considered that it was acquiring the property as a non-residential property (meaning not to be lived in).

Source: Calculations based on HMRC administrative datasets

### Forecasts of SDLT in Wales

3.27 Forecasts of LTT revenues will be published once the rates have been published. Forecasts of SDLT in Wales have been produced by the Office for Budget Responsibility (OBR) up to 2021-22 for both residential and non-residential SDLT (see Table 4 below). The latest forecast published in March 2017 shows total revenues rising 126% between 2015-16 to 2021-22. The forecast of total SDLT revenues in the year of its devolution to Wales, 2018-19, is £263 million. As the



property market can be volatile, it is very likely that these forecasts will be revised ahead of 2018-19.

**Table 4: Forecasts of SDLT in Wales**

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Residential	82	139	179	194	211	235	266
Commercial	70	64	64	69	71	76	78
Total	152	203	243	263	282	311	343

Source: *Economic and fiscal outlook Devolved taxes forecast*, (March 2017)OBR.

## Provisions of the Bill

3.28 The Bill sets out the key principles of the tax and establishes which types of transaction will incur a charge and who will be liable to pay the tax. It sets out how the tax will be calculated, the reliefs which will apply and how returns and payments can be made. There are specific provisions applicable to a variety of persons and bodies (for example; companies and partnerships) in respect to the tax, and on the application of the Bill in relation to leases. The Bill also contains specific measures designed robustly to tackle tax avoidance. The specific parts of the Bill are set out below:

### Part 2: Key Concepts

3.29 Part 2 of the Bill provides that a tax, to be called “Land Transaction Tax” (LTT), will apply to transactions involving property (to include land and buildings) situated in Wales. It sets out the key principles of the tax and which types of transactions incur a charge to LTT and on whom. This Part provides:

- which type of transactions are to be regarded as land transactions for the purposes of this Bill and which are not;
- which interests are to be regarded as chargeable interests (see paragraph 3.30) in land and which are not;
- the treatment of transactions involving contracts which have been substantially performed<sup>14</sup>;
- which land transactions are, and which are not, to be regarded as chargeable transactions;
- what is and what is not chargeable consideration in relation to a chargeable transaction;
- who is liable to pay the tax and comply with the notification requirements.

<sup>14</sup> See EN Glossary

3.30 For the purposes of the tax a “land transaction” is defined as an acquisition of a chargeable interest. A “chargeable interest” is any estate, interest, right or power over land in Wales or the benefit of an obligation under any restriction that affects such an estate, interest, right or power over land in Wales. Land in Wales does not include land below mean water mark.

3.31 Chargeable interests do not include exempt interests. The following exemptions from charge will be on the face of the Bill:

- A transaction where there is no chargeable consideration;
- Transactions involved with divorce or dissolution of civil partnership, and variations of testamentary dispositions;
- Transactions under which the buyer is any of the following;
  - (a) the Welsh Ministers, the First Minister, the Counsel General to the Welsh Government;
  - (b) a Minister of the Crown;
  - (c) the Scottish Ministers;
  - (d) a Northern Ireland department;
  - (e) the National Assembly for Wales Commission;
  - (f) the Corporate Officer of the House of Lords;
  - (g) the Corporate Officer of the House of Commons;
  - (h) the Scottish Parliamentary Corporate Body; and
  - (i) the Northern Ireland Assembly Commission.

3.32 This Part determines that land transactions involving the acquisition of a chargeable interest where the land is partly in Wales and partly in England, shall be treated as comprising two separate transactions, one relating to land in Wales and the other relating to land in England. The consideration for the transaction is to be apportioned on a just and reasonable basis. Paragraphs 8.46-8.49 of the Regulatory Impact Assessment explore the potential effects and administrative costs in relation to these ‘cross title’ transactions. It is anticipated that there would only be around 30 of these types of transaction in a year based on figures from previous years.

3.33 Finally, this Part sets out that the collection and management of LTT will be the responsibility of the WRA. The WRA is established by the TCM (Wales) Act 2016.

## **Part 3: Calculation of Tax and Reliefs**

### *Calculation of tax*

- 3.34 Part 3 sets out how the tax is calculated. The method of calculating the tax due will mirror SDLT legislation and is on the face of the Bill.
- 3.35 The Welsh Ministers have committed to the use of a marginal rate calculation of the tax for residential and non-residential transactions. This mirrors recent changes outlined in paragraph 3.14 announced by the UK Government in the 2016 Budget that non-residential property transactions will be charged SDLT using a marginal, rather than slab, rate system. The change is in line with consultation responses of the benefits of consistency with SDLT, particularly for business stakeholders, with the aim that this would promote stability and certainty for taxpayers and practitioners. This is also aligned with Scotland, where LBTT is calculated on a marginal basis, irrespective of whether the property is residential or non-residential.
- 3.36 In addition, the Bill introduces a framework for setting land transaction tax rates and bands which requires the Welsh Ministers to set at least three bands (one of which must be a zero rate band), and requires the rates to be progressive in nature (that is, the tax rate increases as the taxable amount increases). This is consistent with the approach taken in Scotland.
- 3.37 The Bill makes provision for the LTT surcharge, which will apply to purchases of additional residential properties and sets out how the higher rates will be charged and calculated. It specifies that the higher rates must always be higher than the standard residential land transaction tax rates.
- 3.38 As outlined at paragraph 3.9, the rates and bands which will apply to the tax will be set out in regulations closer to the implementation date. The first set of rates and bands will be set by regulations and be subject to the affirmative procedure, and so will need to be formally approved by the National Assembly before taking effect. However, subsequent changes will be made by regulations subject to a 'provisional affirmative' procedure which will enable the Welsh Ministers to make regulations so that it has temporary legal effect as soon as it is made. However, the regulations will need to be approved by the National Assembly within 28 days (excluding any period where the Assembly is dissolved or in recess for more than 4 days) of the regulations being made. If the regulations are not approved by the National Assembly within that period, any tax paid at a higher rate may be refunded.
- 3.39 This approach is in line with Scotland. The ability to change tax rates very shortly after an announcement has been made is desirable as it ensures that changes do not create distortionary activity in the market, such as buyers forestalling.

## *Reliefs*

- 3.40 As outlined in paragraph 3.23, reliefs will form an integral part of the Welsh Government's land transaction tax policy, as they do in relation to SDLT and LBTT. The Bill sets out the transactions that should be relieved from the payment of the tax, and the circumstances in which those reliefs should apply. The intention is to, broadly, provide a consistent suite of reliefs as provided in the SDLT and LBTT regimes; but, where there are differences between them, more closely follow SDLT than LBTT. This is to reflect the desire of stakeholders for the tax to be consistent with SDLT where possible.
- 3.41 The SDLT legislation includes a number of Targeted Anti-avoidance Rules (TAARs) in the various reliefs, many of which are expressed in the same way so can appear repetitive. The Bill will extend and significantly simplify and strengthen this by creating an overarching TAAR for all land transaction tax reliefs. In practice, this will mean that a person will not be able to claim a relief where the obtaining of a tax advantage for any person is the main purpose, or one of the main purposes, of any person entering into the arrangement, and the arrangement lacks genuine economic or commercial substance. The impact of this change is set out at paragraph 8.64-8.65 of the Regulatory Impact Assessment. This will be a robust and useful tool to ensure that reliefs are not exploited to avoid paying the tax, but it will still allow taxpayers to operate the familiar SDLT rules, thus ensuring consistency in line with consultation responses.
- 3.42 As well as providing for specific reliefs on the face of the Bill, the Welsh Ministers will be given the power to introduce new reliefs, modify existing reliefs, or remove a relief entirely.
- 3.43 One example of where the power to introduce new reliefs in future may be used is in relation to Co-ownership Authorised Contractual Schemes (COACS) or Property Authorised Investment Funds (PAIFs). The Bill outlines a general rule that sets out how CoACS are to be treated for tax purposes and ensures that the tax is not charged on the transfer of an interest within a Scheme and only on the acquisition of property by the Scheme itself. The rule provides that a CoACS is treated as if the scheme were a company, and the rights of the participators were shares in the company, except in relation to group, reconstruction, or acquisition relief (for anti-avoidance reasons).
- 3.44 This relief was introduced as part of SDLT recently; however, there is not yet a strong enough case to show that this is suitable for Wales. There is no information on the potential future demand for such a relief and analysis is required on the application of the SDLT 'portfolio test' in the Welsh context. However, the general rule is included in the Bill in order to create the conditions that we may introduce a seeding relief in the future if needed through regulations made under section 30. The rule will also provide administrative simplicity for any CoACS that purchases land or buildings in Wales.

3.45 The following reliefs are set out on the face of the Bill:

<b>Relief</b>	<b>Purpose</b>
Transactions entered into before completion of contract	Relief provided to intermediate buyers where they transfer the rights under a contract prior to completion or under a free standing transfer.
Reliefs for transfers involving multiple dwellings	Lowers the cost of bulk purchases of residential property so that the tax applies to the average price.
Certain acquisitions of residential property	Relief available on acquisitions where employers, house-builders or property traders buy a property on a temporary basis, for example to enable employee relocations, to avoid the breakdown of chains, and house-builder part-exchanges.
Alternative property finance	Relief from multiple charges of LTT for alternative property finance arrangements, so that the users of such finance are not disadvantaged by the land transaction tax regime in comparison to persons using conventional financial products.
Alternative finance investment bonds	Relief from multiple charges on alternative finance investment bonds so that the issuing of such bonds is not disadvantaged by the land transaction tax regime in comparison to persons issuing conventional bonds.
Right to buy transactions and shared ownership leases	The tax is only due on discounted value (not market value). Applies to transactions such as right to buy transactions. Special rules also apply for shared ownership leases and rent-to-shared ownership lease schemes.
Certain acquisitions by registered social landlords	Relief on property acquired by registered social landlords that meet the required conditions.
Sale and leaseback	Leaseback is relieved from the tax in sale and leaseback transactions.
Group, reconstruction or acquisition relief	Allows companies to transfer property between grouped companies for commercial reasons for example, meeting finance requirements, risk management) without incurring the tax.
Amalgamation and transfer of building societies	Relieves the amalgamation and transfer of engagements of building societies, friendly societies and co-operative and community benefit societies and credit unions.
Incorporation of limited liability partnerships	Provides relief on the transfer of property from a person (the transferor) to a limited liability partnership in connection with its incorporation.
Charities	Relief when a charity, or a charitable trust, purchases

	property for charitable purposes.
Arrangements involving public or educational bodies	Relief for certain arrangements involving qualifying public or educational bodies.
Transfers involving public bodies	Relief provided where a public body reorganisation under a statutory provision results in transfers of property.
Transfer in consequence of reorganisation of parliamentary constituencies	Allows relief on the transfer from a former local constituency association to a new local constituency association that occurs as a result of boundary changes.
Acquisition by bodies established for national purposes	Relief for interests acquired by: Trustees for the British Museum, Trustees of the National Heritage Memorial Fund and Trustees of the Natural History Museum.
Acquisitions by certain health service bodies	Relief for property acquired by certain health service bodies.
Exercise of collective rights by tenants of flats	When flat leaseholders act collectively to purchase the freehold, this divides the freehold consideration by the number of flats and charges tax based on these notional individual interest.
Compulsory purchase facilitating development	Relieves local authority when it uses Compulsory Purchase Order and then sells property on to property developer.
Compliance with planning obligations	Relieves the acquisition by a public authority from a developer of an interest created following planning obligations for extra work, for example, a road.
Miscellaneous provisions	Includes reliefs relating to elements such as: Visiting Forces and Allied Headquarters; Lighthouses, property accepted in satisfaction of tax.
Conversion of authorised unit trust	Relieves from the land transaction tax property transferred as part of the conversion of authorised unit trust to open ended investment company.
Amalgamation of authorised unit trust	Relieves from land transaction tax property transferred as part of the amalgamation of authorised unit trust with open ended investment company.

## **Part 4: Application of Act to Leases**

3.46 Part 4 of the Bill broadly mirrors SDLT in that the granting, varying, assigning and surrendering of a lease will be a land transaction for the purposes of the tax. The tenant of a lease, as purchaser, will be liable to calculate and pay any land transaction tax and submit a return when they enter into a notifiable transaction.

3.47 The Scottish Government has made a number of departures from the SDLT regime, particularly because Scottish law relating to leasehold interests and its terminology varies considerably from English and Welsh law. Also, in Scotland residential leases are exempt from the charge to LBTT apart from leases which convert to ownership under the Long Leases (Scotland) Act 2012<sup>15</sup>. It is considered that the SDLT provisions are more applicable to Wales.

3.48 However, the Bill includes a number of changes from the SDLT rules so as to provide greater consistency between the treatment of fixed term leases that continue after the term expires and leases for an indefinite term. Additional changes have also been made where leases are backdated. In both cases these changes were made to make the taxation of leases operate more fairly.

3.49 The Welsh Ministers will be given the power to specify by order the tax bands and percentage tax rates for each such band in respect of chargeable consideration comprising the rent element of a lease. The Welsh Ministers will set at least three bands, as for chargeable consideration other than rent.

3.50 Under SDLT, there are provisions to tax the rent element of new residential leases. The vast majority of new residential leases in Wales will pay no tax on the rental element, as the value would be below the current tax threshold. As set out at paragraph 3.22, very little of the SDLT revenue received from new residential leases comes from the lease rent element: only £10,000 in 2015-16. The Bill therefore mirrors the LBTT approach and removes this element, simplifying the tax. The impact of this change is explored further in paragraph 8.56-8.59 of the Regulatory Impact Assessment.

## **Part 5: Application of Act and TCM (Wales) Act 2016 to Certain Persons and Bodies**

3.51 Part 5 of the Bill sets out the specific provisions applicable to a variety of persons and bodies in respect of the tax, and broadly mirrors SDLT legislation.

3.52 This part defines a 'company' as any body corporate or unincorporated association (but not partnerships), and specifies the treatment of these bodies under this Bill and TCM (Wales) Act 2016 to ensure LTT is correctly administered where the buyer is a company. This mirrors the position set out in SDLT and

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<sup>15</sup> Long Leases (Scotland) Act 2012 available to view at:  
<http://www.legislation.gov.uk/asp/2012/9/enacted>

LBTT and captures unincorporated associations, such as sports clubs, and other body corporates such as community councils. It specifies that a company should act through the 'proper officer' of the company or the person authorised to act for the company, except in cases of liquidation where the liquidator or administrator is the proper officer.

- 3.53 Unit trust schemes are generally to be treated for the purposes of the tax as if the trustees were a company, and the rights of the unit holders were shares in the company, except in relation to group relief, reconstruction and acquisition relief (so that a claim to relief is not available).
- 3.54 A power is conferred on the Welsh Ministers to make, by regulations, further provisions providing for different types of schemes not to be treated as unit trusts for the purpose of the tax.
- 3.55 Open-ended investment companies (OEICs) are companies and fall under the company rules set out in this part. However, the Welsh Ministers will be given the power to make regulations to ensure that the Bill and TCM (Wales) Act 2016 provisions applying to OEICs operate appropriately.
- 3.56 The partnership provisions are intended to ensure that the correct amount of tax is paid on a variety of transactions that may occur in the life of a partnership. They include situations where the partnership enters into a land transaction and where individual partners join or leave a partnership. The Bill also provides different treatment for 'trading' partnerships and property investment partnerships. The Welsh Ministers are also given the power to make regulations to amend the partnership provisions.
- 3.57 Specific provision is also made for the application of the Bill and TCM (Wales) Act 2016 to trusts and persons acting in a representative capacity.

## **Part 6: Returns and Payments**

- 3.58 Part 6 sets out that for every notifiable transaction the buyer must make a return to the WRA and make any necessary payment. Consistent with Revenue Scotland, it will be for the WRA to specify the form and content of the return. This will ensure the WRA has the operational flexibility to respond to developments, for example in the IT infrastructure and create a system which is fit for purpose and reflects the changing requirements of users. The WRA will allow taxpayers to submit a return electronically, while retaining the option for taxpayers to submit a paper return, balancing the need to maintain flexibility for users, whilst ensuring returns are filed promptly and efficiently.
- 3.59 The WRA will need to enable taxpayers to file and pay as efficiently as possible. If the transaction is a chargeable transaction then the buyer must include a self-assessment of the tax chargeable.



3.60 It will be a general rule that a land transaction is notifiable unless there are circumstances that permit it not to be notifiable. These circumstances are in the Bill and are:

- an exempt transaction;
- an acquisition of ownership of land where the chargeable consideration is less than £40,000;
- where the purchase is of an interest other than a major interest in land and the chargeable consideration is chargeable at a rate of more than 0%; or
- where there is a non-notifiable transaction in relation to leases.

3.61 Non-notifiable transactions in relation to leases are as follows:

- where the lease is granted for less than 7 years and the chargeable consideration does not exceed the zero rate tax band;
- where the lease originally granted is for less than 7 years and is then assigned or surrendered, and the chargeable consideration does not exceed the zero rate tax band;
- where the lease is granted for 7 years or more, and any chargeable consideration other than the rent is less than £40,000, or
- where the lease originally granted is for 7 years or more, and the chargeable consideration on assignment or surrender is less than £40,000.

### *Payment of Tax*

3.62 The Bill sets out where the buyer is under an obligation to pay LTT and prescribes the date by which the tax must be paid to the WRA. Part 3 of the TCM (Wales) Act 2016 sets out the rules regarding payment of tax where there has been an enquiry, determination or assessment by the WRA. In such circumstances the taxpayer must pay any tax assessed or determined by the WRA within 30 days of the issue of the relevant notice (although interest is payable from the date following the date the tax should have been paid).

3.63 The TCM (Wales) Act 2016 establishes a penalty regime for devolved taxes. It includes duties on taxpayers to pay penalties and interest in certain circumstances and the setting of criteria for penalties. It provides the ability to be able to take individuals and businesses to court for the non-payment of tax, based on those criteria and internal decisions.

3.64 The Bill contains a series of provisions, which will amend that the TCM (Wales) Act 2016 for specific circumstances in which various penalties (for example; failing to make returns on time, failing to pay tax and/or inaccuracies in a taxpayer document) will be charged, the conditions for applying them and how

they are calculated. The amendments ensure that the provisions in the TCM (Wales) Act 2016 fully reflect the operation of the two devolved taxes. The Bill also provides rules for the application of interest to land transaction tax liabilities.

- 3.65 The Bill also provides devolved taxpayers with an opportunity to request that the WRA postpones its recovery of an amount of tax in dispute in certain circumstances until a review or appeal has taken place. This will apply across all devolved taxes and therefore will be enacted through an amendment to the TCM (Wales) Act 2016. This will also ensure that all the administrative rules around payment are located in the same area of legislation.
- 3.66 Collectively, this is broadly consistent to the existing approach taken in relation to SDLT and UK Landfill Tax (LFT) (although additional Landfill Disposal Tax rules will be included in that Bill), and goes further than the equivalent Scottish rules. This approach to postponement is considered proportionate, recognising that, where an amount of tax is under dispute (through a review or appeal), the WRA should not deprive taxpayers of funds prior to a tribunal ruling in appropriate cases.

## **Part 7: Addressing tax avoidance in devolved taxes**

- 3.67 Tax avoidance is often defined as applying legislation in a way that was not intended to gain a tax advantage. It is often characterised by the use of artificial transactions that have little or no other purpose than to produce a tax advantage. Tax avoidance gives people an unfair advantage over those who pay the fair amount of tax. It also reduces the amount of money available to fund public services and undermines confidence in the coherence of the tax system.
- 3.68 UK and Scottish legislation provide for a UK general anti-abuse rule (the UK GAAR), which became law in 2013, and a Scottish general anti-avoidance rule (the Scottish GAAR), which became law in 2015. Such measures are intended to provide tax authorities with a tool to challenge any attempt to exploit the legislation in a manner that was not originally intended and therefore provides a level of protection across all of the taxes to which it applies. The measures also act as a disincentive for advisers and taxpayers when considering whether to promote or enter into artificial/abusive arrangements designed to avoid the payment of tax. There are a number of differences between the scope of the rules, with the Scottish GAAR being considered to have a wider application as it applies to arrangements that lead to the tax advantage that are considered to be “artificial”, whereas the UK GAAR applies to situations where arrangements are considered to be “abusive”. Another key difference is that the UK GAAR does not apply to UK Landfill tax whereas the Scottish GAAR does apply to Scottish Landfill Tax.
- 3.69 Responses to the 2015 *Tax Devolution in Wales – Land Transaction Tax*<sup>16</sup> consultation were broadly in favour of introducing a Welsh tax avoidance rule

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<sup>16</sup> *Tax Devolution in Wales - Land Transaction Tax* Consultation (February 2015) available at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

along similar lines to the Scottish GAAR. In consideration of this and the approaches taken elsewhere, the Bill will allow the WRA to counteract a tax advantage that has been obtained as a result of an “artificial” tax avoidance arrangement.

3.70 Part 7 of the Bill sets out provisions for an overarching general anti-avoidance rule (“GAAR”) which will enable the WRA to robustly tackle tax avoidance across devolved tax legislation, and help to deter and prevent tax avoidance. The GAAR will provide WRA with the power to recover any devolved tax that has been avoided as a result of an “artificial” tax avoidance arrangement. An arrangement will be an “artificial tax avoidance arrangement” if the entering into or carrying out of the arrangement is not a “reasonable course of action”, having regard to the relevant legislation applying to the arrangements. Some of the factors that may be taken into account when deciding whether an arrangement is ‘artificial’ include whether there is any genuine economic or commercial substance to the arrangement, or whether the arrangement leads to the taxpayer paying less tax than one would reasonably expect to be paid when having regard to the applicable legislation.

3.71 The GAAR is broadly based on the equivalent Scottish rule, with a number of changes to improve the operation of the rule. One of those changes is to make clear that an arrangement cannot be “artificial” if it reflected the prevailing practice at the time the arrangement was entered into, and WRA had indicated its acceptance of the practice at the time. In addition, the rule provides for a simplified method of recovering the tax avoided, providing greater clarity for any taxpayer caught by the GAAR provisions.

3.72 The Bill also provides safeguards in that before WRA can counteract a tax advantage using the GAAR, it must follow a procedure prescribed in the legislation. Furthermore, WRA counteraction will be an “appealable decision” for the purposes of Part 8 of the TCM (Wales) Act 2016. Owing to the fact that the GAAR will apply across both devolved taxes (and potentially any future devolved taxes), the rule will be set out in the TCM (Wales) Act 2016, by way of an amendment introduced by the Bill.

## **Part 8: Interpretation and Final Provisions**

3.73 The final provisions include the meaning of key terms referred to throughout the Bill, the subordinate legislation procedure to be used in relation to the various powers conferred throughout the Bill, and the minor and consequential amendments to be made to the TCM (Wales) Act 2016, for the purposes of implementing the tax.

### **Who is affected by the Bill?**

3.74 This Bill may affect those who are associated with, or have some connection to, the property market. This includes home buyers and sellers, builders, developers and/or investors in property, businesses buying or renting premises and those

involved in the transaction process (for example; conveyancers and the Land Registry). There are likely to be small administrative changes for practitioners such as solicitors or taxation specialists involved in the transaction process. The potential impact of these changes on practitioners is explored in more detail in paragraphs 8.39-8.43 of the Regulatory Impact Assessment (RIA).

### **Implementation and delivery**

3.75 The main elements of the legislation are on the face of the Bill. However the Bill enables the Welsh Ministers to make subordinate legislation and these powers are summarised in Table 5 of this Explanatory Memorandum.

3.76 It is anticipated that the legislation will come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.

### **Risks/hazards if the legislation is not made**

3.77 If the Bill is not approved by the National Assembly for Wales or does not receive Royal Assent there will be no legislative mandate for the collection of land transaction tax. The Welsh Government would either need to operate with a significantly reduced budget or find alternative ways of raising revenues to maintain existing resource levels.

### **Territorial extent**

3.78 The Bill applies in relation to Wales.

### **Timescale of transition**

3.79 Following the Royal Assent of the TCM (Wales) Act 2016 in April this year, and the establishment of the WRA and governance arrangements for tax collection and management, an implementation period of around a year is considered to be appropriate to create the necessary processes for the implementation of LTT. This is in line with lessons learned from the Scottish Government in relation to the establishment of Revenue Scotland. This will allow time to conduct thoroughly a significant amount of preparatory work with the WRA, practitioners and other stakeholders.

3.80 Subject to the approval of the Bill by the National Assembly for Wales and subsequent Royal Assent, the anticipated implementation milestones are as follows:

Bill Introduction	Autumn 2016
Landfill Disposals Tax Bill Introduction	Autumn 2016
Bill anticipated Royal Assent	Summer 2017
Landfill Disposals Tax Bill anticipated Royal Assent	Summer 2017
Announce rates and bands for Wales	October 2017
'Go live' tax collection and management in Wales	April 2018

## Chapter 4: Consultation

### Consultation on proposals for Land Transaction Tax

4.1 The 2015 *Tax Devolution in Wales - Land Transaction Tax*<sup>17</sup> consultation was the second in a series of Welsh Government consultations aimed at developing devolved tax arrangements in Wales.

4.2 In preparation for the devolution of taxes, the Welsh Government initially consulted on the collection and management arrangements<sup>18</sup>. The issues discussed in that consultation and the subsequent provisions of the TCM (Wales) Act 2016 link directly to the development of both land transaction tax and landfill disposals tax. A public consultation on the development of land disposals tax has also been held and a summary of the responses were published on 15 September 2015<sup>19</sup>.

### Consultation responses

4.3 The 2015 *Tax Devolution in Wales - Land Transaction Tax*<sup>20</sup> consultation received 38 responses from a range of stakeholders. The responses came from individuals, public and third sector bodies, businesses, advisers, and organisations representing different sectors including umbrella organisations representing their associated affiliations and members. Responses came from respondents in Wales, the Wales branch of UK-wide organisations or UK wide organisations with experience of operating existing tax arrangements in Wales.

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<sup>17</sup> *Tax Devolution in Wales - Land Transaction Tax Consultation* (February 2015) is available to view at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

<sup>18</sup> *Collection and management of devolved taxes in Wales - Summary of responses* (February 2015) available to view at: <http://gov.wales/consultations/finance/devolved-taxes/?status=closed&lang=en>

<sup>19</sup> *Landfill Disposals Tax Consultation – summary of responses* (September 2015) available to view at: <http://gov.wales/consultations/finance/landfill-disposals-tax/?lang=en>

<sup>20</sup> *Tax Devolution in Wales - Land Transaction Tax Consultation* (February 2015) is available to view at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

**Table 5: Breakdown of response by Respondent Category**

<b>Respondent category</b>	<b>Number</b>	<b>%</b>
Banks	1	3
Building Contractors	1	3
Businesses	8	21
Estate Agents	1	3
Professional Bodies	6	16
Legal / Tax, Accountancy	7	18
Town & Community Councils	3	8
Public Bodies	2	5
Individuals	5	13
Third Sector	4	11
<b>Total</b>	<b>38</b>	<b>100%</b>

\*Percentages have been rounded to the nearest whole number

4.4 A clear message from the land transaction tax consultation responses was that consistency with SDLT, wherever appropriate, is highly desirable for taxpayers, agents, and business. Respondents noted the positive impact of the SDLT 'marginal rate' system, introduced by the UK Government for residential property in December 2014. It was also felt that the current SDLT approach to partnerships, trusts and companies, and reliefs should all be retained. These are well understood by the Welsh business community, and will provide the consistency that businesses desire. Furthermore, it will also assist a smooth transition for the property market, enabling individuals and businesses to plan confidently for the future.

4.5 As set out above, the Welsh Government have consulted on both the collection and management arrangements<sup>21</sup> and on the detail of this specific Bill. The responses clearly indicated a preference for land transaction tax to broadly follow SDLT. Although there has not been a consultation on a Draft Bill, the Bill as introduced is strongly aligned to the responses of stakeholders. Where there are specific aspects which differ to SDLT, for example the creation of an overarching TAAR for all land transaction tax reliefs (see paragraph 3.41), these are clearly outlined in this Explanatory Memorandum. However, a draft of the Bill was published on 5 July 2016 to provide an opportunity over the summer for

<sup>21</sup> *Collection and management of devolved taxes in Wales - Summary of responses* (February 2015) available to view at: <http://gov.wales/consultations/finance/devolved-taxes/?status=closed&lang=en>

Assembly Members and other interested stakeholders to become familiar with what is a long and technical Bill.

## **Land Transaction Tax: Higher Rates for Purchases of Additional Residential Properties – Technical consultation**

4.6 The Treasury Paper on '*Land transaction tax: higher rates for purchases of additional residential properties*'<sup>22</sup> published in July 2016 explored the implications of the stamp duty land tax (SDLT) higher rates for additional residential dwellings for land transaction tax in Wales. The Treasury Paper included a series of largely technical questions seeking to obtain the views of interested stakeholders and practitioners on the SDLT (and where relevant Scotland's land and buildings transaction tax additional dwellings supplement). The Treasury Paper was supported by an anonymous online survey, which ran for 7 weeks and included the questions from the Treasury Paper. Stakeholders were also encouraged to provide their views via other channels such as in writing or by email.

### **Consultation responses**

4.7 The survey received 94 responses, with 6 formal responses received in writing<sup>23</sup>.

4.8 The responses varied depending on the individual motivation for the response but there were a number of points on which there was a clear consensus. These included the importance of adopting the same exemptions to the LTT surcharge as provided under SDLT, and the importance of a single consistent rate across the UK so distortions are not created, particularly across the Wales-England border.

4.9 The Treasury Paper and technical survey also provided an opportunity to seek stakeholder views about how we could adapt the LTT surcharge to make it better suited to Wales. Suggestions included alignment to the Housing (Wales) Act 2014 and Wellbeing of Future Generations (Wales) Act 2015. There were also calls to consider the impact and use of long-term empty properties to be brought back into use as affordable housing.

4.10 Stakeholders were also clear in their responses to the technical consultation that Welsh Ministers will need the ability to amend the higher rates rules in light of emerging practice going forward. As evidence and data on the nature of higher rates transactions and their impact emerges, areas may become clear where Ministers may want to make additional policy or operational changes.

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<sup>22</sup> Available at: <http://gov.wales/docs/caecd/publications/160712-2nd-homes-en-v1.pdf>

<sup>23</sup> Available at: <http://gov.wales/docs/caecd/publications/161014-ltt-responses-en.pdf>



## Chapter 5: Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation. Table 6 below sets out in relation to each provision in the Bill:

(i) The person upon whom, or the body upon which, the power is conferred.

(ii) The form in which the power is to be exercised.

(iii) The appropriateness of the delegated power.

(iv) The applied procedure; that is, whether it is “affirmative”, “provisional affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate<sup>24</sup>.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

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<sup>24</sup> See paragraph 3.38

**Table 6**

**Summary of powers to make subordinate legislation for provisions in the Bill**

<b>Table 6 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Section 5(4)	Welsh Ministers	Regulations	<b>Exempt interests</b> – This section provides a list of interests in land that are treated as “exempt interests”. The Welsh Ministers require the power to add, amend or declassify interests that are exempt from LTT to reflect policy changes and/or economic and property market conditions.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase a buyer’s tax liability.
Section 18 (2)	Welsh Ministers	Regulations	<b>Chargeable consideration</b> – The Welsh Ministers require the power to amend or repeal the provisions of the Act relating to what is to count as a chargeable consideration and how the amount of chargeable consideration is calculated to reflect policy changes and/ or economic and property market conditions.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase a buyer’s tax liability.
Section 24 (1)	Welsh Ministers	Regulations	<b>Tax rates and bands</b> – 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 land transaction tax and provides the Welsh Ministers with a power to vary rates and bands in the future to reflect policy changes and/or the economic and	Affirmative in the first instant and Provisional Affirmative <sup>25</sup> thereafter	The affirmative procedure is prescribed for the first regulations made under this power because the regulation will be used to prescribe the amount of tax chargeable in respect of residential and non-

<sup>25</sup> This procedure enables regulations specifying new rates and bands to have effect from the date the regulations are made. However, the regulations must be approved by the Assembly within 28 days of being made if they are to have permanent legal effect

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			property market circumstances of the time. The regulations require rates and bands to be set for residential property transactions, higher rates residential property transactions and non-residential property transactions.		residential property transactions.  Second and subsequent regulations would be subject to the provisional affirmative procedure. The provisional affirmative procedure will minimise forestalling and provide market certainty.
Section 24 (11)	Welsh Ministers	Regulations	<b>Higher rates residential properties transactions</b> – The Welsh Ministers require the power to amend Schedule 5 containing the higher rates on additional residential properties to reflect policy changes, to respond to avoidance activity and/or the economic and property market conditions.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to amend the rules by which additional residential property transactions are taxed, including any reliefs from the higher rate. Amendments made could increase a buyer’s tax liability.
Section 30 (6)	Welsh Ministers	Regulations	<b>Reliefs</b> – The Welsh Ministers require the power to introduce new reliefs, modify existing reliefs, remove a relief entirely, or modify section 31 (reliefs: anti-avoidance) to reflect policy changes and/or the economic and property markets conditions.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to introduce, modify or remove reliefs, which could be used to impose or increase a buyer’s tax liability.

<b>Table 6 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Section 33 (7)	Welsh Ministers	Regulations	<b>Companies</b> - The Welsh Ministers require the power to make further provision in relation to land transaction tax, to companies or a description of company specified in the regulations.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase an individual's tax liability.
Section 34 (6)	Welsh Ministers	Regulations	<b>Unit trust schemes</b> –The Welsh Ministers require the power, by regulations, to specify that a particular type of unit trust scheme falling within the definition provided by section 34(5) is not to be treated as such a scheme for the purpose of this Bill. This power is necessary to enable changes to be made where types of unit trust schemes emerge, or where it becomes inappropriate for the provisions on unit trust schemes to apply.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to change the person liable to pay the tax.
Section 35(1)	Welsh Ministers	Regulations	<b>Open-ended investment companies</b> – The Welsh Ministers require the power to make regulations to specify how the Bill will apply to open-ended investment companies. This power is necessary to enable changes to be made to the application of the Bill to reflect changes in the operation of open-ended investment companies.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase an individual's tax liability.
Section 36 (8)	Welsh Ministers	Regulations	<b>Co-ownership Authorised Contractual Schemes (CoACS)</b> - The Welsh Ministers require the power, by regulations, to specify that a particular type of CoACS falling within the definition provided by section 34(7) is	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to change the person

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			not to be treated as such a scheme for the purpose of this Bill. This power is necessary to enable changes to be made where types of CoACS emerge, or where it becomes inappropriate for the provisions on CoACS to apply (for example, to address the risk that a CoACS is deliberately constructed in a particular way for the purpose of avoiding tax).		liable to pay the tax.
Section 41 (2)	Welsh Ministers	Regulations	<b>Partnerships</b> - The Welsh Ministers require the power to amend Schedule 7 in relation to the application of this Bill and TCM (Wales) Act 2016 to partnerships, to reflect changes in the operation of partnerships.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase an individual's tax liability.
Section 42 (2)	Welsh Minister	Regulations	<b>Trusts</b> – The Welsh Ministers require the power to modify Schedule 8 in relation to the application of this Bill and TCM (Wales) Act 2016 to trusts, to reflect changes in the operation of trusts.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose <i>or increase an individual's tax liability</i> .
Section 46(10)	Welsh Ministers	Regulations	<b>Thresholds for notifiable transactions</b> –The Welsh Ministers require the power, by regulations, to amend the amount of consideration and relevant rent at which point a transaction becomes a notifiable transaction. This power is necessary to enable Welsh Ministers to make change to the threshold at which transactions become notifiable and a return must be sent to WRA. This power will enable changes to be made quickly.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose an additional administrative burden on taxpayers.

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
Section 47(5)	Welsh Ministers	Regulations	<b>Period after which late interest is chargeable where further return made following an event specified in section 47(2)</b> – The Welsh Ministers require the power, by regulation, to amend the period after which late interest is payable so that if the filing date for a return (under section 44) is changed the period after which late interest is payable under this section will match that period. The power will enable changes to be made at the same time.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase an individual’s liability.
Section 49(5)	Welsh Ministers	Regulations	<b>Period after which late interest is chargeable where further return made if relief is withdrawn</b> – The Welsh Ministers require the power, by regulation, to amend the period after which late interest is payable so that if the filing date for a return (under section 44) is changed the period after which late interest is payable under this section will match that period. The power will enable changes to be made at the same time.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase an individual’s liability.
Section 52 (1)	Welsh Ministers	Regulations	<b>Period within which a return must be made</b> – The Welsh Ministers require the power, by regulation, to amend the period in which a return must be submitted, including returns for additional residential property transactions. This power is necessary to enable Welsh Ministers, by regulation, to reduce, or increase, the period in which a return must be submitted. This power will enable changes to be	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to reduce the period in which a return must be made, which may increase the administrative burden on taxpayers.

<b>Table 6 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
			made quickly.		
Section 64 (1)	Welsh Ministers	Regulations	<b>Regulations about agreements to defer payment</b> – section 64 provides the power to make further provision about applications for deferral of the payment of tax including provisions relating to rent (which is not subject to the deferral rules), rules relating to contracts for works or services, and amendments to section 61 to enable WRA to agree or impose variations to deferral agreements previously made. It is necessary to enable the 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.	Affirmative	The affirmative procedure is prescribed as, in some cases, the power may be used to impose on taxpayers a requirement to pay a deferred tax liability earlier (or otherwise to change when a taxpayer may apply to defer tax).
Section 65 (5)	Welsh Ministers	Regulations	<b>Registration of land transactions</b> – The Welsh Ministers require the power, by regulations to, among other things, make provision about the conditions which must be met before a certificate is issued, the issue of duplicate certificates and/or multiple certificates.	Negative	The negative procedure is prescribed as regulations would not impose additional administrative or tax liabilities on taxpayers.
Section 72(10)	Welsh Ministers	Regulations	<b>Meaning of “residential property”</b> – section 72 provides a definition of “residential property” for the purposes of the Bill. This power enables the Welsh Ministers to amend the definition of ‘residential property’. This power is necessary to provide the Welsh Ministers with flexibility to amend the definition	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to increase an individual’s tax liability.

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			or number of dwellings in the event that changes are necessary to tackle tax avoidance arrangements.		
Section 77 (1)	Welsh Ministers	Regulations	<b>Power to make consequential etc. provision</b> – The Welsh Ministers may by regulations make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purpose of, or in connection with, or for giving full effect to, any provision made by or under this Act.	Negative unless the Welsh Ministers consider that effect of the regulations may lead to the imposition or an increase in an individual's liability to tax.	The negative procedure is prescribed where regulations are limited to giving effect to the provisions in the Bill. However, where the Welsh Ministers form the opinion that the effect of the regulations may lead to the imposition or an increase in an individual's liability to tax, the affirmative procedure is prescribed.
Section 80 (2)	Welsh Ministers	Order	<b>Coming into force</b> – The Welsh Ministers may appoint by order made under a statutory instrument the coming into force date of provisions in the Bill.	No procedure	
Paragraph 7 of Schedule 3	Welsh Ministers	Regulations	<b>Exempt transactions</b> – Schedule 3 provides a list of transactions that are exempt from land transaction tax. The Welsh Ministers require the power to add, amend or declassify an exempt transaction to reflect policy changes and/ or economic and property market conditions.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase buyer's tax liability.



<b>Table 6 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Paragraph 27(2) of Schedule 6	Welsh Ministers	Regulations	<b>Rent element of residential leases</b> –The Welsh Minsters require the power to include the rent element of residential leases within the scope of the tax. This power enables Welsh Ministers to charge tax in the future on residential leases (as it is charged currently on non-residential leases) to reflect the economic and property market circumstances of the time. This power will enable change to be made quickly.	Affirmative	The affirmative procedure is prescribed because the regulation making power would impose a tax liability where such a liability did not previously exist.
Paragraph 27(4) Schedule 6	Welsh Ministers	Regulations	<b>Tax rates and bands: rent element of residential leases</b> - The ability to set and alter tax rates is an integral feature of the tax regime. In the event that the Welsh Ministers exercise the power in paragraph 27(2) to include the rent element of residential leases within the scope of the tax, regulations must set the initial rates and bands for the rent element of residential leases applicable to the tax. The power enables the Welsh Ministers to vary rates and bands in the future to reflect the economic and property market circumstances of the time.	Affirmative in the first instant and Provisional Affirmative thereafter <sup>26</sup>	The affirmative procedure is prescribed for the first regulations made under this power because the regulation will be used to prescribe the amount of tax chargeable in respect of property transactions consisting of residential leases.  Second and subsequent regulations would be subject to the provisional affirmative procedure. . The provisional affirmative procedure is prescribed to minimise forestalling and provide market

<sup>26</sup> This procedure enables regulations specifying new rates and bands to have effect from the date the regulations are laid. However, the regulations must be approved by the Assembly within 28 days of being laid if they are to have permanent legal effect

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
					certainty.
Paragraph 28(1) of Schedule 6	Welsh Ministers	Regulations	<b>Tax rates and bands: rent element of non-residential and mixed leases</b> – The ability to set and alter tax rates is an integral feature of the tax regime. The Welsh Ministers require the power to set by regulations the initial rates and bands for the rent element of non- residential and mixed leases applicable to the tax and the power to vary rates and bands in the future to reflect the economic and property market circumstances of the time.	Affirmative in the first instant and Provisional Affirmative thereafter <sup>27</sup>	The affirmative procedure is prescribed for the first regulations made under this power because the regulation will be used to prescribe the amount of tax chargeable in respect of property transactions consisting of non-residential and mixed leases.  Second and subsequent regulations would be subject to the provisional affirmative procedure. The provisional affirmative procedure is prescribed to minimise forestalling and provide market certainty.
Paragraph 32 of Schedule 6	Welsh Ministers	Regulations	<b>Temporal discount rate</b> – The Welsh Ministers require the power, by regulations, to specify an alternative ‘temporal discount rate’ for the purposes of the calculation of net present value.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to increase an

<sup>27</sup> This procedure enables regulations specifying new rates and bands to have effect from the date the regulations are laid. However, the regulations must be approved by the Assembly within 28 days of being laid if they are to have permanent legal effect

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
					individual's tax liability.
Paragraph 36(1)(b) of Schedule 6	Welsh Ministers	Regulations	<b>Relevant rent</b> – The Welsh Ministers require the power to specify the amount of “relevant rent” for the purposes of determining the amount of tax chargeable in respect of consideration other than rent (paragraphs 34 and 35), which may be varied from time to time.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to increase an individual's tax liability.
Paragraph 37 of Schedule 6	Welsh Ministers	Regulations	<b>Tax chargeable on non-residential leases</b> – The Welsh Ministers require the power to amend or repeal paragraphs 34 to 36 of Schedule 6 in relation to the calculation of the amount of tax chargeable on the acquisition of a non-residential lease.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to increase an individual's tax liability.
Paragraph 2 of Schedule 11	Welsh Ministers	Regulations	<b>Relief for alternative finance investment bonds</b> – The Welsh Ministers require the power to make further provision for the application of relief where a land transaction involves alternative finance investment bonds.	Negative	The negative procedure is prescribed as regulations will prescribe technical detail as to the application of the relief, and will not impose additional administrative or tax liabilities on taxpayers.
Paragraph 6(7) of Schedule 13	Welsh Ministers	Regulations	<b>Multiple Dwellings Relief</b> – Schedule 13 applies where multiple dwellings are acquired by an individual through a single transaction. The relief available ensures that a single transaction involving multiple	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to amend the

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			<p>dwelling is not taxed at a higher rate where the dwellings acquired would attract a lower tax charge if consisting of separate transactions. Schedule 13 achieves this by calculating the average price per dwelling, which is multiplied by the number of dwellings acquired. In some cases, the calculation may lead to the average price per dwelling being low. In such a case a minimum rate of tax applies and this power enables the Welsh Ministers to amend the minimum percentage of tax in sub-paragraph (2) to be charged in these cases.</p>		percentage of relief for multiple dwellings and increase a buyer's tax liability.
Paragraph 2(3) Schedule 15	Welsh Ministers	Regulations	<p><b>Relief for right to buy transaction</b> – The Welsh Ministers require the power, by regulations, to prescribe a person to be included as a relevant public sector body for the purposes of this relief, for example following the creation of a new public body.</p>	Negative	The negative procedure is prescribed as regulations made will relieve liability to tax in relation to certain transactions, and cannot be used to impose additional administrative or tax liabilities on taxpayers.
Paragraph 3(1) of Schedule 17	Welsh Ministers	Regulations	<p><b>Acquisition Relief</b> – The Welsh Ministers require the power to prescribe the proportion of tax chargeable where there is a claim for acquisitions relief to reflect policy changes and/or changes in the economic and property markets.</p>	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to prescribe the proportion of acquisitions relief, which could cause a consequential increase in a buyer's tax liability.

<b>Table 6 – Regulations</b>					
<b>Section or Paragraph</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness for delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Paragraph 1(2) of Schedule 19	Welsh Ministers	Regulations	<b>Relief for certain acquisitions by public bodies</b> - The Welsh Ministers require the power to designate that a particular transaction is relieved from LTT where either the buyer or seller is a public body.	Negative	The negative procedure is prescribed as regulations made will relieve liability to tax in relation to certain transactions, and cannot be used to impose additional administrative or tax liabilities on taxpayers.
Paragraph 1(4) of Schedule 20	Welsh Ministers	Regulations	<b>Relief for certain acquisitions by public bodies</b> – The Welsh Ministers require the power to specify, in regulations, additional persons whom will count as public bodies for the purposes of relief for acquisitions by public bodies, for example following the creation of a new public body.	Negative	The negative procedure is prescribed as regulations made will relieve liability to tax in relation to certain transactions, and cannot be used to impose additional administrative or tax liabilities on taxpayers.
Paragraph 2 of Schedule 20	Welsh Ministers	Regulations	<b>Relief for acquisitions by certain health service bodies</b> - The Welsh Ministers require the power to specify, in regulations, additional persons whom will count as health service bodies for the purposes of relief for acquisitions certain health service bodies, for example following the creation of a new health service body.	Negative	The negative procedure is prescribed as regulations made will relieve liability to tax in relation to certain transactions, and cannot be used to impose additional administrative or tax liabilities on taxpayers.
Paragraph 2(3) of Schedule 21	Welsh Ministers	Regulations	<b>Relief for compliance with planning obligation</b> - The Welsh Ministers require the power to specify additional persons for whom planning obligations relief will apply, for example following the creation of a	Negative	The negative procedure is prescribed as regulations made will relieve liability to tax in relation to certain transactions,

Table 6 – Regulations					
Section or Paragraph	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			new public body.		and cannot be used to impose additional administrative or tax liabilities on taxpayers.
Paragraph 8 of Schedule 23	Welsh Ministers	Regulations	<b>Power to make regulations about records</b> - The Welsh Ministers require the power, by regulations to provide for particular descriptions of records and supporting documents which are required to be kept in relation to a tax return.	Negative	The negative procedure is prescribed as regulations will provide technical detail as to the types of documents and records that must be retained, and do not impose additional administrative or tax liabilities on taxpayers.
Paragraph 42 of Schedule 23	Welsh Ministers	Regulations	<b>Power to make regulations to amend table of late payment penalties</b> – The Welsh Ministers require the power, by regulations to amend the type of devolved tax, amount of tax, or penalty dates included at Table A1 in relation to late payment penalties.	Affirmative	The affirmative procedure is prescribed because the regulation making power could be used to impose or increase an individual's liability.

## **Chapter 6 – Regulatory Impact Assessment**

- 6.1 A Regulatory Impact Assessment has been completed for the Bill and it follows below.
  
- 6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

## PART 2 – REGULATORY IMPACT ASSESSMENT

**Table 7**

### SUMMARY – REGULATORY IMPACT ASSESSMENT (RIA)

#### *Land Transaction Tax and Anti-avoidance of Devolved Taxes*

Preferred option: *Implementing a replacement tax for SDLT (pages 8.20-8.61)*

<b>Stage:</b> Amendments	<b>Appraisal period</b> 2016-17 - 2020-21	<b>Price base year</b> 2016-17
<b>Total cost</b> Total: £13.9 – 19.4m Present value: £12.9 – 18.0m	<b>Total benefits</b> Total: £- Present value: £-	<b>Net Present Value (NPV):</b> £12.9 – 18.0m

#### Administrative cost

**Costs:** The RIA presents an estimate of the cost of collecting and managing devolved taxes more broadly in Wales. These costs will fall solely to the Welsh Government and the Wales Revenue Authority. It has not yet been possible to separate the administrative costs relating specifically to LTT. Set up costs are estimated to be £4.8m - £6.3m over the period 2016-17 to 2018-19. Welsh Ministers are committed to providing further details on likely costs of collection and management as they become available, and operational decisions on the scale and scope of the WRA are clarified. There will be an additional cost to Welsh Government estimated to be £1m associated with HMRC switching off the collection of SDLT and LTT in Wales. Operating costs are estimated to be £2.8m to £4m per annum from 2018-19.

<b>Transitional:</b> £5.8 - 7.3m	<b>Recurrent:</b> £8.4 – 12.0m	<b>Total:</b> £14.2 – 19.3m	<b>PV:</b> £13.2 – 17.9m
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**Cost-savings:** HMRC will no longer incur the costs associated with collecting SDLT in Wales and is expected to reimburse this money to the Welsh Government. Based on data from Scotland, the reimbursement is estimated to be £275,000 per annum. This reimbursement will apply from 2018-19 (there will be three payments during the appraisal period).

<b>Transitional:</b> £	<b>Recurrent:</b> £0.8m	<b>Total:</b> £0.8m	<b>PV:</b> £0.7m
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**Net administrative cost: £13.4 – 18.5m (undiscounted)**



## Compliance costs

There will be a transitional cost to practitioners (conveyancers and property lawyers) to learn about LTT and understand the differences with SDLT. This cost is estimated to be between £400,000 and £800,000 and is expected to be incurred in 2018-19.

There will be a small number of property transactions each year which require separate tax returns for the authorities in England and Wales. The total additional administrative cost for these properties in any given year is estimated at approximately £30,000.

<b>Transitional:</b> £0.4 – 0.8m	<b>Recurrent:</b> £0.09m	<b>Total:</b> £0.49 – 0.89m	<b>PV:</b> £0.45 – 0.8m
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## Other costs

Cross title transactions may benefit from both the LTT and the SDLT zero rate bands, which may result in lower revenues and a cost to the Welsh public services. However, this represents an equivalent saving, or benefit, to individual taxpayers, so the net economic impact is zero.

<b>Transitional: £-</b>	<b>Recurrent: £-</b>	<b>Total: £-</b>	<b>PV: £-</b>
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## Unquantified costs and disbenefits

There are no costs to report here.

## Benefits

The main benefit of introducing a replacement to SDLT is to ensure the Welsh Government can continue to invest the tax revenue in public services in Wales. The devolution of taxes also provides an opportunity to create a tax system that is more efficient and effective. Devolution also means that the taxes can be better tailored to the economic and social conditions in Wales.

The General anti-avoidance rule (GAAR) is intended to help deter and prevent tax avoidance from occurring across devolved tax legislation.

<b>Total: £-</b>	<b>PV: £-</b>
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### **Key evidence, assumptions and uncertainties**

As noted above, the administrative costs identified in the RIA relate to the collection and management of devolved taxes more broadly and not specifically to LTT.

All of the figures in this summary have been rounded to the nearest £0.1m. Some of the totals may not sum due to this rounding.

## Chapter 7: Options

7.1 Two options are outlined below and the advantages and disadvantages of each are briefly considered. The options are:

- Option 1 – do nothing
- Option 2 – implement replacement “Land Transaction Tax” in Wales

7.2 This is followed by analysis of the costs and benefits of the two options in Chapter 8.

7.3 It is considered that there are only two options that could be taken forward: to either replace or not replace Stamp Duty Land Tax in Wales. The 2015 *Tax Devolution in Wales - Land Transaction Tax*<sup>28</sup> consultation set out the options for how we might take forward a replacement tax and the responses were clear that LTT should be broadly consistent with SDLT. For this reason, Option 2 is premised on this basis.

7.4 A further option would be to consider possible alternatives to tax land and property in a more appropriate way for Wales. However, the *Wales Act 2014*<sup>29</sup> clearly limits the scope of the Assembly’s competence to legislate for a replacement tax to SDLT to taxing land transactions. Therefore, as any other approaches are not currently within competence these were not covered in the scope of the consultation and neither are they included in the content of this assessment.

### Option 1 - do nothing

7.5 In the do nothing option, SDLT will cease to be collected in Wales from April 2018, resulting in the Welsh Government’s block grant being reduced, as set out in *The Wales Bill: Financial Empowerment and Accountability* Command Paper<sup>30</sup>. The block grant adjustment for 2018-19 will be known at the time of the UK Government’s Autumn Budget 2017.

7.6 Not levying a tax would result in reduced transaction costs to those acquiring interests in land in Wales as no tax would be payable. This may have the effect of increasing the number of property transactions. There would also be no additional costs to Welsh Government from the implementation of tax collection and administration systems. However, if the Welsh Ministers choose not to

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<sup>28</sup> *Tax Devolution in Wales - Land Transaction Tax* Consultation (February 2015) is available to view at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

<sup>29</sup> Wales Act 2014 is available to view at: <http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

<sup>30</sup> *The Wales Bill: Financial Empowerment and Accountability* Command Paper (March 2014) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294470/Wales\\_Bill\\_Command\\_Paper\\_-\\_English.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294470/Wales_Bill_Command_Paper_-_English.pdf)

implement a form of tax on transactions involving interests in land in Wales, then the Welsh Government would not receive the receipts from a replacement tax, which have been up to £235 million per annum<sup>31</sup> and are likely to rise over the medium term. This would have a significant impact on the resources available to fund public services in Wales.

- 7.7 The purpose of taking forward the TCM (Wales) Act 2016, which received Royal Assent on 25 April 2016, was to enable the Welsh Government to have the legal framework to collect the new devolved taxes. The costs involved in establishing and running the WRA from April 2018 are not justifiable if the organisation does not carry out its intended purpose of collecting devolved taxes, which in the first instance are LTT and Landfill Disposals Tax.

## **Option 2 - Implementing a replacement tax for SDLT in Wales**

- 7.8 This option will set out the impact of introducing a replacement SDLT tax, known as “Land Transaction Tax”, on Welsh taxpayers and their agents from April 2018. An Assembly Bill is required to deliver this option.
- 7.9 The tax will be broadly consistent with SDLT, including the LTT surcharge, but will introduce minor changes to simplify and adapt the tax to reflect the circumstances and priorities in Wales. The impact of the legislation and associated costs in Wales are set out in Chapter 8; to summarise, these are minimal as introducing a replacement tax which is largely consistent with the existing SDLT legislation is essentially a ‘business as usual’ approach. For example, the minor differences adopted in the LTT surcharge provisions compared to the SDLT higher rates legislation, are intended to make the charge simpler and easier for taxpayers and agents to comply with their obligations.
- 7.10 As set out in paragraph 3.9 of the Explanatory Memorandum, the full effect of the tax will not be known until the rates and bands for the new tax have been announced. The Cabinet Secretary for Finance and Local Government has committed to publishing the intended rates and bands for land transaction tax by October 2017. It is the Welsh Government’s intention to set the rates and bands for the tax through secondary legislation. This RIA therefore does not include an analysis of the rates and bands options for Wales. A research paper was published by the Welsh Government<sup>32</sup> in September 2016 which sets out the analytical context of these options in Wales and the process by which a decision will be made to set rates and bands.

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<sup>31</sup> See HMRC (2015) *UK Stamp Tax statistics*:

<https://www.gov.uk/government/statistics/uk-stamp-tax-statistics>

<sup>32</sup> See *Land Transaction Tax: Setting rates and bands* available from:  
<http://gov.wales/docs/caecd/publications/160915-ltt-bands-en.pdf>

7.11 The *Wales Act 2014*<sup>33</sup> paves the way for the Welsh Government to replace established UK taxes with our own distinctively Welsh taxes. This is an opportunity to design and implement a devolved tax in a way that reflects circumstances in Wales. Notwithstanding this, as set out in Chapter 4, the primary message received from stakeholders through our consultation in 2015 was the need to implement a replacement tax which provides consistency, certainty and stability for businesses and the property market in Wales, maintaining our attractiveness to commercial enterprises. By implementing a replacement tax, Wales will continue to receive the benefits of SDLT; primarily as a revenue raiser and a potential housing and business lever. The Welsh Government will also have the opportunity to amend the rates and bands in the future to ensure the best outcomes for the Welsh property market.

7.12 Practitioners who currently support and advise on SDLT transactions in Wales will need to familiarise themselves with both the minor changes set out in the Bill and any new transaction system. The change to a new system will be particularly relevant for those businesses that operate across the Wales and England border, in that they will be required to operate two slightly different tax collection and management systems. The impact of these changes is set out in more detail in at paragraphs 8.39 to 8.45, but they are unavoidable unless the Welsh Government chose not to introduce a replacement tax for SDLT in Wales.

### **Other policy options**

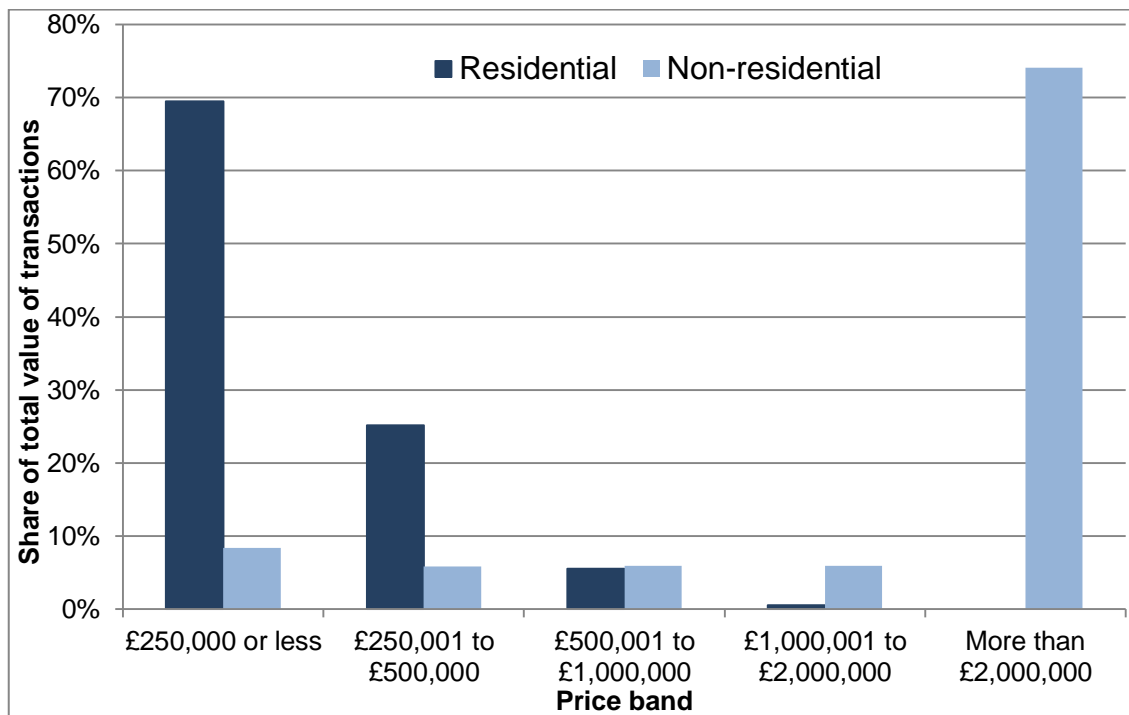
7.13 This RIA sets out the two possible options: to either replace or not replace SDLT in Wales from April 2018. However, it is recognised that within the option to replace the tax, there are many possible permutations of what the tax structure may look like. For example, there is the possibility of introducing a single system of taxation which applies to both residential and non-residential transactions. This may remove the need to have a definition of residential and non-residential property, at least in terms of the amount of tax which is payable, and could simplify the system.

7.14 However, a single tax system may create other issues. For example, the different price distributions of residential and non-residential property transactions in Wales suggest that these may require different rates and bands. Figure 3 shows the estimated value (price of the transactions multiplied by their volume) of residential and non-residential transactions in Wales by price band. The majority of the value for residential transactions is towards the lower end of the price distribution, whereas with non-residential it is towards the top end of the price distribution. The differential between the highest rates indicates some of the complexity with having a single rate for all transactions.

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<sup>33</sup> Wales Act 2014 is available to view at:  
<http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

**Figure 3: Estimated property value of transactions in Wales, 2015-16**



Source: HMRC (2016) *Annual Stamp Tax Statistics*  
 N.B. Data includes transactions which are relieved from SDLT.

7.15 A single tax system may be overly restrictive and not provide sufficient flexibility to alter rates and bands appropriately for each type of transaction. For the purposes of this RIA, a single tax system in Wales which applies to both residential and non-residential property transactions is considered unsuitable. There is therefore no provision in the Bill to take forward this option. Instead, a separate system, or rates of tax, will be required for residential and non-residential property transactions. This is premised on the responses to the 2015 *Tax Devolution in Wales - Land Transaction Tax*<sup>34</sup> consultation which emphasised that consistency with the existing SDLT legislation is key.

<sup>34</sup> *Tax Devolution in Wales - Land Transaction Tax* Consultation (February 2015) available to view at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

## Chapter 8 - Costs and Benefits

8.1 This Chapter outlines the costs and benefits of the two options outlined in Chapter 7 and sets out the preferred option of the Welsh Government to introduce LTT in Wales as a replacement to SDLT.

### **OPTION 1 - Do nothing**

8.2 The option to do nothing would be to not implement LTT to replace SDLT in Wales. As set out in paragraph 7.6, it is clear that would mean the Welsh Government would have to operate with a reduced budget.

8.3 In order to estimate the costs and benefits of the do nothing option we need to consider what the effect of removing SDLT on the property market in Wales is, as this would be the impact for businesses and households in Wales.

### **Effect on public services**

8.4 Not implementing the tax would result in a reduced budget for the Welsh Government, which would mean less resource to spend on public services in Wales. It is not possible to identify which areas of spending would be reduced given that it would be a matter for the Welsh Government, year-on-year, to determine how its budget is allocated.

8.5 According to the Office of National Statistics (ONS), in 2014-15 the poorest fifth of UK households received more benefits in kind than the top fifth of households<sup>35</sup>. Benefits in kind include education, health, transport and housing, the majority of which are devolved to the Welsh Government. These services constitute around 70% of devolved funding on services in Wales. Looking at the Welsh Government's main spending area; health, evidence also shows that spending on this area also benefits lower income groups the most<sup>36</sup>. As those who benefit the most from public services are those on below average incomes, reduced government spending from not introducing LTT is likely to have a disproportionately large effect, or dis-benefit, on lower income households in Wales through its effects on resources for public services.

### **Effects on the property market**

8.6 By not replacing SDLT with LTT in Wales, the removal of any form of a land and property transaction tax in Wales is likely to have an effect on the Welsh property market. Paragraphs 8.7-8.11 below explore how SDLT can affect property prices and the number of transactions.

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<sup>35</sup> ONS (2016) *The Effects of Taxes and Benefits on Household Income, Financial Year Ending 2015* available at:

<http://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/theeffectsoftaxesandbenefitsonhouseholdincome/financialyearending2015>

<sup>36</sup> IFS (2010) *The distributional impact of public spending in the UK*

## *Effect on property prices*

- 8.7 Currently residential transactions in Wales only pay SDLT if the value is greater than £125,000. Therefore, there would be no direct or first round effect on prices and transactions in Wales of relatively low priced residential property if the tax was not replaced. It is possible that transactions in these properties will be negatively impacted by indirect or second round effects of not replacing the tax in the property market; as the effects on higher priced properties may filter through to all properties, for example through market chains. However, this impact is likely to be much smaller than the direct effect of properties being previously liable for the tax no longer having to pay any.
- 8.8 For non-residential property transactions, the current SDLT threshold is £150,000, so low priced non-residential transactions in Wales are also unlikely to be affected by SDLT not being replaced in Wales.
- 8.9 Despite SDLT being payable by the buyer, the welfare effect of the tax (or economic incidence) is found to predominately fall on the seller. In terms of the property market, this means that the tax has a negative effect on the value of the property. Research suggests<sup>37</sup> that this effect could be as much as the value of the tax; for example, a tax of £1000 on a transaction could mean that the property will sell for up to £1000 less than it would without the tax. This implies that the do nothing option could result in property owners in Wales collectively benefiting from increased property values up to the value of the potential tax revenue.
- 8.10 SDLT rates are currently progressive; a higher rate of tax is paid on higher priced properties. Therefore, the removal of the tax is likely to be of the greatest benefit to those who are selling higher priced properties. For residential property, the owners of high value properties are also likely to be the wealthiest households in Wales (as property wealth is a significant component of overall household wealth<sup>38</sup>). Therefore, the effect on prices in the residential market from not levying the tax is likely to provide the greatest benefit to wealthier households in Wales.
- 8.11 Similarly, for non-residential transactions, the owners of the more expensive properties will gain proportionately more. Overall, not replacing SDLT in Wales is likely to only benefit larger, and possibly wealthier, businesses in Wales, although the link between the size of property assets and company wealth or profitability may not be directly linked.

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<sup>37</sup> E.g. see Besley, T., Meads, N. and Surico, P. (2014) "The incidence of transaction taxes: Evidence from a stamp duty holiday", *Journal of Public Economics*, 119, pp. 61-70 and Kopczuk, W. and Munroe, D. (2015) "Mansion Tax: The Effect of Transfer Taxes on Residential Real Estate Market", *American Economic Journal: Economic Policy*, 7(2), pp. 214-257

<sup>38</sup> See ONS (2014) Wealth and Income, 2010-12 available at: <http://www.ons.gov.uk/ons/rel/was/wealth-in-great-britain-wave-3/wealth-and-income--2010-12/stb--wealth-and-income--2010-12.html>



### *Effect on the number of transactions*

- 8.12 An additional benefit from not levying LTT would be an increase in property transactions in Wales. This may also indirectly improve welfare for lower income households, as transactions are considered to have positive economic effects, which in turn lead to increased revenues and ultimately increased spend on public services. The potential benefits from trade are normally experienced by both buyers and sellers, and therefore both would gain from an increase in the number of transactions.
- 8.13 An estimate of the potential number of households who would benefit from increasing the number of transactions can be calculated using the transaction elasticity with respect to a change in the residential SDLT rate published by the OBR<sup>39</sup>. Using the current SDLT rates, it is estimated that not replacing SDLT with LTT would increase residential property transactions in Wales by 1 to 1.5%. At current levels this would increase the number of residential transactions by 500 to 750. If both sellers and buyers benefit from these transactions, then between 1,000 and 1,500 households per year may be made better off by not replacing SDLT in Wales, this would equate to between 0.01% and 0.11% of total households in Wales. It is not possible to estimate what the size of these gains would be for each household.
- 8.14 For non-residential transactions, there is far less evidence on the effect of SDLT. However, in terms of the number of transactions, the number of businesses which might benefit is likely to be much smaller than the number of households which would benefit. Non-residential transactions in Wales are generally around 10% of residential transactions. If the same elasticities were to also apply to non-residential transactions then potentially 100 to 150 businesses in Wales may benefit each year from the transaction effect of not replacing SDLT with LTT. This assumes that each transaction involves different businesses, but it is likely that some businesses are involved in more than one transaction. Given that there are approximately 90,000 businesses<sup>40</sup> in Wales, around 0.11 to 0.17 per cent of total businesses per year in Wales could be made better off from the transactions effect. As with residential transactions, it is not possible to quantify the size of the gains for individual businesses.
- 8.15 Since April 2016, higher rates on additional properties have been charged in Wales through SDLT. Therefore, in 2018-19, when SDLT is due to be replaced in Wales, if the LTT surcharge is not implemented then those involved in transactions of additional residential properties will benefit relative to those involved in a similar purchase in Wales over the previous two years, and also relative to transactions in England. Providing a tax reduction to these types of transactions may encourage more of them to occur in Wales, as people may

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<sup>39</sup> See OBR (2014) *Elasticities used in the costing for the reform of stamp duty land tax* available at: <http://budgetresponsibility.org.uk/wordpress/docs/SDLT-costing-elasticities.pdf>

<sup>40</sup> ONS (2014) *Business Demography, 2013* available at: [http://www.ons.gov.uk/ons/dcp171778\\_387261.pdf](http://www.ons.gov.uk/ons/dcp171778_387261.pdf)

switch their purchase of an additional residential property to Wales. Not applying the tax may also create some forestalling where people looking to purchase an additional property in Wales may delay their purchase until 2018-19 so that they can apply LTT without the surcharge. These two effects are likely to cause some disruption to the property market in Wales, and perhaps also to some degree in England.

### *Other effects*

- 8.16 Not replacing SDLT in Wales would also mean that there would be an additional reduction in cost to buyers and sellers as the administration associated with the tax would also no longer be required. These costs are likely to have similar effects to removing the tax; potentially benefiting both buyers and sellers through increased transactions and increased property prices. The benefits to these might be more evenly spread across property prices, assuming the administration cost of the tax is fairly constant across all property prices. Therefore there might be some benefits to those who do not currently pay SDLT for transactions which are relieved or below the price threshold for the initial starting rate of tax. The impact of this cost is considered to be fairly small, as relative to paying the tax, paying the administration costs associated with the tax is likely to be small. In addition, given the other associated costs of property transactions and the need in most cases to have an agent (usually in the form of a conveyancer or property solicitor), the removal of the need to administer the cost of the tax is considered to have very minor effects on both the residential and non-residential property markets.
- 8.17 A further effect from increasing property transactions could be enhanced labour mobility if the tax currently restricts people from moving for work. However, evidence suggests that the type of moves which are likely to be reduced as a result of SDLT (and therefore also LTT) are those which involve relocation over short distances<sup>41</sup>. The evidence suggests that such a tax may only affect the housing market and does not adversely affect the labour market. Therefore, there is unlikely to be any significant effect on the labour market if LTT did not replace SDLT in Wales.
- 8.18 Not levying LTT in Wales may have some effect on transactions in England, especially in areas close to the Welsh border. It is possible that people may look to switch purchases from properties on the English side to those on the Welsh side, in order to avoid the transaction tax. This could further increase some property prices on the Welsh side of the border and reduce them on the English side. These effects would be in addition to those described above. However, these effects are likely to occur at a local level and are unlikely to have a significant overall impact across Wales.
- 8.19 The introduction of the LTT surcharge may result in fewer people purchasing properties as buy to lets; or, if they do purchase them, the increase in tax may mean that they pass on this increased cost to their tenant. In either scenario, the

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<sup>41</sup> See Hilber and Lyytikäinen (2015) *Transfer Taxes and Household Mobility: Distortion on the Housing or Labor Market* SERC Discussion paper 2015

surcharge may have an indirect effect of increasing rents which could adversely affect low income households. The extent to which this indirect effect occurs and how large it may be is currently unknown as this element of SDLT only came into effect in April 2016 and the effect on rents is likely to happen gradually, as more properties are acquired and then made available to rent. However, it will not affect the majority of properties which are currently available for rent, as these are likely to have been purchased before April 2016. In addition, it is unknown whether, or how much, of the tax will be passed on through higher rents, and for how long a period, or how many tenants, this would be spread over. Taking this into consideration, if there is any effect on rents from this element of the tax, it is likely to be very small and will only appear gradually.

8.20 Overall, implementing the LTT surcharge is considered to potentially have some very minor negative effects on the property and rental markets. However, as with the introduction of land transaction tax more generally (see paragraph 3.2), these effects are ultimately outweighed by the need to protect public resources. Continuing the surcharge after devolution in April 2018 means that the Welsh Government will continue to receive the receipts from this element of the tax, (forecast at £58 million in 2018-19) and public services in Wales will continue to benefit from this revenue.

### **Summary**

8.21 The do nothing option would result in a reduced budget for the Welsh Government and a lower level of public expenditure in Wales. Lower income households tend to benefit most from public services, so it is likely that lower income households would be more negatively affected by the revenue effect of not levying the tax in Wales.

8.22 There are likely to be some households and businesses in Wales which would benefit from not replacing SDLT. This is because there may be more transactions and property prices may rise. However these effects are likely to benefit only a very small proportion of businesses and households in Wales and, for households at least, the greatest beneficiaries are likely to be amongst the wealthiest.

### **OPTION 2 - Implementing a replacement tax for SDLT in Wales**

8.23 This option sets out the impact of introducing LTT as a replacement to SDLT in Wales from April 2018. The tax will be broadly consistent with SDLT, but will introduce minor changes to meet Welsh circumstances and priorities. These changes are set out in paragraphs 8.52-8.71. LTT preserves the underlying structure and broadly mirrors key elements of SDLT, such as partnerships, trusts, reliefs and exemptions and the LTT surcharge.

8.24 Chapter 4 sets out how stakeholder responses to the LTT consultation emphasised the benefits of consistency with existing legislation and that, although the legislation has evolved and changed over time and appears

complex, this has largely happened in a meaningful way and, critically, is well understood by practitioners. In addition, responses to the technical consultation on the higher rates for additional properties indicated that there should be consistency across the UK, and that the same exemptions should be adopted for the LTT surcharge as provided under SDLT higher rates. It is, however, recognised that as evidence and data on the nature of higher rates transactions and their impact emerges, the Welsh Ministers may want to make additional policy or operational changes.

8.25 Fundamentally, it is recognised that having a tax which operates significantly differently from SDLT in Wales may create additional transaction costs for property purchases in Wales. This could potentially act as a disincentive to investment or property purchases in Wales, especially if the option to do so is only marginally favourable over other parts of the UK. Wales, in comparison to Scotland, has a more integrated land and property market with England, because of the more densely populated border areas as well as sharing the same land law. There are therefore more benefits in broadly retaining the current SDLT tax system and structure in Wales. It would also minimise the burdens on businesses, including the conveyancing sector, because they would not need to become acquainted with a significantly different system of taxation.

8.26 The full impact of LTT will not be known until the rates and bands for the new tax have been announced. The Cabinet Secretary for Finance and Local Government has committed to publishing the intended rates and bands for land transaction tax by October 2017. Regulations will then be laid following the UK Government's first Autumn Budget in 2017 and an assessment of costs, in particular the impact on buyers and sellers, will be set out at that time. Paragraphs 8.27-8.49 therefore focus on the impact of the procedural and administrative changes to the tax as set out in the Bill on the WRA and on practitioners.

## Costs

### **Administrative Costs**

#### *Welsh Revenue Authority*

8.27 As set out at paragraph 2.2, the *Wales Act 2014*<sup>42</sup> provides for the disapplication of UK SDLT in Wales and this will be applied from April 2018. The *Wales Bill: Financial Empowerment and Accountability* Command Paper<sup>43</sup> confirmed that the process of devolving SDLT (and Landfill Tax, (LFT)) will result in the Welsh Government's block grant being reduced<sup>44</sup>. The amount the block

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<sup>42</sup> Wales Act 2014 is available to view at:

<http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

<sup>43</sup> *The Wales Bill: Financial Empowerment and Accountability* Command Paper (March 2014)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294470/Wales\\_Bill\\_Command\\_Paper\\_-\\_English.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294470/Wales_Bill_Command_Paper_-_English.pdf)

<sup>44</sup> The 'block grant', is the basis of the Welsh Government's annual budget. For more information see: <http://law.gov.wales/constitution-government/government-in-wales/finance/?lang=en#/constitution-government/government-in-wales/finance/?tab=overview&lang=en>

grant will be adjusted by in Wales will be known at the time of the UK Government's Autumn Budget 2017. Initially it is likely to be similar to the amount of revenue that SDLT will raise in Wales around the time of the devolution of the taxes. In 2015-16, the value of SDLT collected on transactions in Wales was £153 million. The OBR's latest forecast (see Table 4 of the Explanatory Memorandum) estimates that this will rise to £263 million in 2018-19.

8.28 There are direct operational and administrative costs attached for the WRA to effectively collect and manage LTT, including those relating to the surcharge. This includes, for example, consideration of online service provision, compliance and enforcement effort, refunds, the level of customer services and the need for Welsh language capacity-building. These costs are associated with the implementation of devolved taxes more broadly in Wales, following the TCM (Wales) Act 2016 which provides the powers and duties to collect the tax. The Regulatory Impact Assessment for the TCM (Wales) Act<sup>45</sup> set out costings at Table 3 for a comparator organisation to provide a best estimate of the potential scale of costs.

8.29 Following this assessment, the then Minister for Finance and Government Business published in November 2015<sup>46</sup> further details on the proposed roles and responsibilities of the WRA and HMRC in the collection and management of devolved taxes. This set out an initial estimate of costs for the set up and operation of collection and management arrangements for devolved taxes. Set up costs are estimated to be between £4.8 million to £6.3 million over the period 2016-17 to 2018-19. These set up costs includes the production and issuing of voluntary guidance for practitioners in 2017-2018. Operating costs are estimated to be between £2.8 million to £4 million annually, beginning in 2018-19. These cost estimates are in line with set-up and operating costs figures published by Revenue Scotland. A WRA Implementation Director (Chief Operating Officer) has been appointed to the Senior Civil Service and took up post in August 2016. On 1 July 2016 the Cabinet Secretary for Finance and Local Government confirmed<sup>47</sup> that the WRA would undertake all collection and management functions for LTT, with HMRC providing expertise and knowledge through secondments to develop and enhance the WRA's LTT compliance expertise.

8.30 The WRA Implementation Programme provided an update to Finance Committee in March 2017 on the work to develop cost estimates for the implementation of the WRA<sup>48</sup>. The main costs are for the people needed to operate the WRA from April 2018, and for the provision of digital and ICT services for it to collect and manage its taxes. The letter set out the estimated WRA implementation cost over the next two years (2016/17 and 2018/19). A digital supplier for the WRA will be

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<sup>45</sup> Tax Collection and Management (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Note, July 2015. Available to view at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

<sup>46</sup> Available to view at National Assembly for Wales website: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=12989>

<sup>47</sup> Oral Statement Cabinet Secretary for Finance and Local Government - Tax Devolution and the Fiscal Framework: <http://gov.wales/about/cabinet/cabinetstatements/2016-new/taxdevolution/?lang=en>

<sup>48</sup> Available to view at National Assembly for Wales website: <http://senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=15873>

appointed in spring 2017. The WRA will be supported by core Welsh Government ICT functions but will have a distinct separation in terms of data sharing systems, such as finance and file sharing. Overall the implementation costs remain under the £6.3 million previously published. Welsh Ministers have committed to providing termly updates on the progress of the WRA; this update will include cost updates as well as the progress against critical implementation milestones.

### *Welsh Government*

8.31 The Regulatory Impact Assessment for the TCM (Wales) Act<sup>49</sup> sets out that HMRC is expected to reimburse the Welsh Government with the costs of not collecting SDLT in Wales from April 2018: the equivalent amount to the Scottish Government is £275,000 per annum (according to Revenue Scotland figures). It should be noted that HMRC have charged the Scottish Government with the costs of 'switching off' the collection of both SDLT and LFT in Scotland. We understand that the equivalent charge to the Scottish Government was £1 million. This currently represents the best estimate of the cost to the Welsh Government at this stage. The cost is expected to be incurred in 2018-19. It is understood that these 'switch off' costs will predominately be related to ICT costs incurred by HMRC and that the specific costs will not be available until summer 2017. Further details of 'switch off' costs will be published in the next termly report for the WRA in summer 2017.

### *Public bodies*

8.32 The implementation of LTT will have an impact on a number of public sector bodies across England and Wales, and in particular the Valuation Office Agency (VOA) and Land Registry (LR). Both of these organisations share data with HMRC on SDLT, and the VOA also now share data with Revenue Scotland. WRA have the opportunity to establish efficient and cost-effective service relationships for the tax. The WRA implementation team is in discussions with LR and VOA about information sharing requirements and developing processes with both organisations and this work will be formalised with an Information Sharing Agreement.

8.33 An assessment is currently in progress to establish what changes LR may need to make to their systems as a result of the implementation of the tax. It is anticipated that any potential small costs to the Welsh Government will be identified by autumn 2017, and this will be funded through existing Welsh Treasury budgets.

8.34 The VOA is an Executive Agency of HMRC and the data used by VOA is expected to be part of a monthly data feed from WRA to HMRC and therefore will be covered by the transition costs. HMRC will pass this data on to VOA using the existing channels.

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<sup>49</sup> Tax Collection and Management (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Note, July 2015. Available to view at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

8.35 There are also implications for LR and VOA on the rare occasions where there are transactions for cross title properties and two separate returns are required. Discussions have been held with LR to clarify which properties currently straddle the border between England and Wales and to ensure taxpayers and agents can easily identify such titles. Maps are also available from the Land Registry website using the 'MapSearch' facility. This facility provides a map which identifies the border between Wales and England that taxpayers, advisers and the WRA will be able to use to establish the land for each separate title registered that falls in Wales or England. Finally, the WRA will lead on developing joint guidance with HMRC on cross title and cross border properties, which will include input from LR on how to identify the border in these cases, as well as from the VOA (who will be responsible for any valuation disputes). For more information on cross title properties see paragraphs 8.47-8.49.

8.36 There are also opportunities for improved information-sharing on residential and non-residential transactions between WRA and local authorities, in the context of devolution of SDLT, subject to appropriate safeguards such as taxpayer confidentiality.

### **Compliance Costs**

8.37 The indirect costs of a replacement tax are centred on the compliance and administrative burden that LTT may place on practitioners, businesses and individuals.

#### *Practitioners*

8.38 Currently, SDLT returns are most frequently completed by conveyancing practitioners acting on behalf of those who purchase residential properties in Wales. As land and building transactions are already taxed in Wales through SDLT, and the intention is to mirror the key elements of the SDLT structure in LTT, the compliance and administrative burden for practitioners is not expected to increase for the vast majority of transactions. With regards to the LTT surcharge, the intention is to provide clear, accessible guidance. Specific examples of where there may be an additional cost are set out at paragraph 8.47-48 for cross title properties and paragraph 8.49 for transactions which cover multiple properties in England and Wales.

#### *Transition costs associated with the legislation*

8.39 It is recognised that there will be transition costs for the tax independent of how the tax is collected. As the vast majority of property transactions involve a conveyancer or property lawyer, it is expected that the costs will be borne by this industry. Practitioners who currently support and advise on SDLT transactions in Wales will need to become familiar with LTT and how it differs from SDLT. This is anticipated to be a one-off cost in 2018-19, or just before the Bill comes into force. This is not the cost per transaction relative to SDLT as this will depend on how the WRA collects the tax.



8.40 It is likely that these costs will be absorbed as part of an individual firm's ongoing operational costs; and indeed this is likely to occur as part of existing processes established to deal with legislative changes. For example, this would be likely to happen following changes to SDLT in a UK budget. The small number of differences between LTT and SDLT set out at paragraphs 8.52-8.66 are considered to be similar in scale to previous changes to SDLT, such as those announced in December 2014 when the residential tax system changed from slab to marginal and in April 2016 when a higher rate on additional properties was introduced. The estimated costs to practitioners are set out at paragraphs 8.38-8.45. However, although we not aware of any evidence suggesting this, it is still possible that these costs may be passed on through higher fees from the practitioners to their clients, so the ultimate burden is uncertain. These are still costs to the economy as a result of the Bill.

8.41 The costs have been estimated using the number of people working in Wales who will need to learn about the tax and its differences to SDLT. It is acknowledged that it is likely that some practitioners in England may also need to familiarise themselves with LTT. However, it is unknown how many agents in England this affects, as this would require an estimate on the number or proportion of agents in England who deal with land or property transactions in Wales and this data is not collected.

8.42 To estimate the impact in Wales, the number of people who are employed in conveyancing and commercial property law is required. However, there is no readily available information on this for Wales. There are two ways in which the number can be estimated: by industry or by occupation. Both methods suggest that there may be up to 2,000 to 4,000 people in Wales whose work may be affected by the change from SDLT to LTT.

8.43 It is estimated that the mean cost per hour of these occupations in Wales in 2018-19 will be £24.82<sup>50</sup>. If it is assumed that it takes a maximum of one day's work (8 hours) to learn about the tax and its differences from SDLT, then this generates a one-off cost estimate of between £400,000 and £800,000 (based on the estimate of 2,000 to 4,000 practitioners in Wales). This cost will be incurred in 2018-19. Even if the number of people affected by the transition was to double, this one-off cost would still be less than 1% of the current SDLT revenues.

#### *Transaction costs associated with a Welsh tax collection and management system*

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<sup>50</sup> The mean cost per hour of these occupations in Wales in 2015 is between £8.65 (legal secretaries) to £26.50 (Legal professionals n.e.c.), according to the Annual Survey of Hours and Earnings (ASHE) 2015. An average of these two values is £17.58 (this assumes an equal share of people affected across the professional groups). This cost per hour then needs to be increased for the associated on-costs of employment, such a pension contributions and national insurance contributions by employers. This is estimated to increase the cost by around 30%, taking the per hour cost to an average of £22.85. By 2018/19, the OBR forecast that real wages will increase by 8.6%, taking the total cost per hour to £24.82 for 2018-19.



8.44 It is recognised that there will also be an impact on practitioners by operating a slightly different tax collection and management system in Wales. This will be particularly relevant for those practitioners that operate across the England and Wales border, in that they will be required to use both systems. It is clear that many of the decisions on a new system will be operational, for example, the specific format and content of a LTT return. As these decisions have not yet been taken, the specific costs and benefits of potential new administrative processes are not set out in this impact assessment. As set out in paragraph 8.28 these costs are not predicated specifically on this Bill but are rather part of the wider implementation programme for the WRA, so they are not included in this assessment. However, the policy intention in designing LTT is to ensure that these impacts will be either neutral or beneficial, for example by designing a simpler transaction return.

8.45 Ongoing engagement between Welsh Government officials, legal firms, conveyancers and businesses to establish the impact of the tax is continuing during the Bill's passage. In addition to the existing Welsh Government Tax Forum, Tax Advisory Group and Technical Experts Group, there will be specific engagement exploring the existing tax from a user experience perspective, considering where changes and improvements in the operation of the tax would be beneficial to those who need to interact with the WRA's services.

#### *Cross title properties*

8.46 The latest data from Land Registry (LR) suggests that there are around 450 properties which straddle the Wales-England border<sup>51</sup>. In addition, the LR indicate that of those 450 titles, there were 141 transactions lodged against them (transfers, new leases granted and first registrations) in the last 5 years<sup>52</sup>. This suggests there are on average less than 30 cross title transactions per year over the last few years. To put this in context, currently there are over 60,000 property transactions occurring in Wales in a given year.

8.47 If the consideration given for the two parts of a cross title property are established to be, individually, above the tax return notification amount (current £40,000 in SDLT and LTT) for both taxes, the taxpayer will need to submit two returns – one to HMRC and one to WRA, and will therefore incur an additional administrative cost. In the first instance this will be incurred by the taxpayer's (that is the buyer's) agent, but this could be at least partially passed on to the buyer (and possibly onward to the sellers) of the property being transacted. The total cost for this additional administration is likely to be very small given the very few transactions this is expected to affect and the low cost of submitting a return for the average transaction. For example, even if the cost of submitting an additional return was £1,000 per transaction (and this is more than the complete cost of

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<sup>51</sup> <http://senedd.assembly.wales/documents/s55349/FIN5-10-16%20PTN3%20-%20Additional%20evidence%20from%20the%20Land%20Registry%20-%20Land%20Transaction%20Tax%20and%20Anti-avoid.pdf>

<sup>52</sup> See National Assembly for Wales (2016)

<http://senedd.assembly.wales/documents/s54611/LTTA%2001%20Land%20Registry.pdf>

many residential conveyances) then the total additional administrative cost for the estimated 30 cross title properties in any given year will still be well below £50,000.

8.48 Furthermore, for the taxpayer LTT and/or SDLT will only be due if the consideration given for the land or property in Wales or England is over the tax threshold for the respective taxes. Therefore, a cross title transaction may benefit from both the LTT and the SDLT zero rate bands. For example, a taxpayer purchasing a property costing £300,000 where 75% of the consideration given is for the land in Wales and 25% in England will make two returns. One return will be sent to HMRC showing consideration of £75,000 and with nil tax due (as the threshold at which tax is paid under SDLT starts above £125,000). A second return will be made to the WRA with consideration of £225,000 and (assuming the same rates and bands as SDLT) £2,000 tax due ( $= 2\% \times (225,000 - 125,000)$ ). Had the transaction not been split between the two authorities then tax of £5,000 would have been payable (assuming the same rates and bands as SDLT). This could result in lower LTT (and SDLT) revenue overall. Using the average number of annual cross title properties and their split by residential and non-residential transactions, this is estimated to be on average less than £250,000.

#### *Transactions involving multiple cross border properties*

8.49 For the vast majority of transactions, only one system will be used, but for a very small number of *multiple property* transactions (where a single transaction includes some properties are in Wales and some in England) separate returns will need to be completed for each tax authority. Data is not available on the number of instances in which a conveyancer will be required to complete a second return and therefore this cost is unknown as it is not possible for it to be estimated. However, the number of transactions this will affect is expected to be very small. For non-residential transactions, it may be more likely than with residential that a transaction may involve multiple properties located in England and Wales. However, even for non-residential transactions it is estimated that less than 5% of business properties in Wales are transacted per year, and of these a very small proportion are likely to be involved in cross border property transactions.

#### *Benefits*

8.50 As set out in paragraph 7.6, the key benefit of introducing a replacement SDLT in Wales is to ensure the Welsh Government continues to receive the revenues raised by this tax to invest in public services. Devolved taxation also provides an opportunity to develop taxes to meet Welsh needs, which are adaptable to Welsh circumstances and priorities and to create a tax system which is more efficient, effective and simpler. Although not quantifiable, it is expected that any future operational changes will create additional benefits over the longer term.  
Prosperous and secure

8.51 Overall, three key benefits have been identified as potentially deriving from devolved tax powers, including the introduction of LTT in Wales. *Taking Wales*

*Forward* which sets out the Welsh Government's programme to drive improvement in the Welsh economy and public services, delivering a Wales which is prosperous and secure, healthy and active, ambitious and learning, united and connected. Alongside this, well-being objectives have been published setting out how we will use the Well-being of Future Generations Act 2015<sup>53</sup> to help deliver our programme for government and maximise our contribution to the 7 shared national well-being goals. Devolved taxation will help to achieve this through:

- i. **Improving the efficiency and effectiveness with which public resources are used** in Wales to help increase impact on the National Goals. This is about enabling compliance and ensuring that those who are due to pay do pay and are enabled to pay. Improving the efficiency and effectiveness of our tax collection and management systems may lead to both cost savings, and also potentially higher tax collection revenues. This can be used to benefit public services, and ultimately the economy, in Wales. This is also about Wales retaining taxes paid by Welsh taxpayers as our economy grows.

Furthermore, retaining devolved taxes raised in Wales offers an opportunity to improve public perception of tax collection and management as taxpayers can more clearly see how revenue raised in Wales is being spent on investment and public services in Wales. Although not quantifiable, this in turn may lead to a heightened sense of collective responsibility and a positive impact on social well-being for both individual taxpayers and communities. In this way, devolved taxation is in line with the well-being goal of supporting cohesive communities.

- ii. **Boosting the resources available for public bodies in Wales to invest in improving well-being:** There is an opportunity provided by the creation of the WRA to invest resources in public bodies in Wales by adapting a tax collection and management system to meet Welsh priorities, for example by offering a truly equal Welsh language service. This will enable better working with people and communities and contribute to the well-being goal to create a Wales of vibrant culture and thriving Welsh language. In addition, although the Bill sets out a consistent approach to SDLT, it will still improve small areas in the legislation including simplicity of drafting. More fundamentally, we have already seen an early 'devolution dividend', as the removal of the 'slab' structure in Scotland's LBTT is viewed widely as a positive and progressive measure, and led to the UK Government restructuring SDLT rates, as announced in the 2014 Autumn Statement. This supports the well-being goal to create both a prosperous Wales, and cohesive communities.
- iii. **Delivering enhanced fiscal levers** for Welsh Ministers and using these levers to improve outcomes for the people of Wales. The new tax and borrowing powers coming to Wales give us more flexibility and better

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<sup>53</sup> Well-being of Future Generations (Wales) Act 2015, available to view at: <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

control over the budget for Welsh public services, enabling us to invest in Welsh infrastructure, while improving accountability and providing greater clarity about how our expenditure is financed. This again is in line with the well-being goal to create a prosperous Wales, allowing us to deliver enhanced fiscal levels for Welsh Ministers and using these levers to improve outcomes for the people of Wales.

*Impact of proposed minor changes to tax structure*

8.52 The analysis of the impact of the proposed minor changes to the structure of the tax is set out below.

**a) Provisions addressing anomalies and providing clarity for the LTT surcharge**

8.53 In developing the LTT surcharge, the opportunity has been taken to address some anomalies in the SDLT higher rates legislation and provide additional clarity where issues have been highlighted by stakeholders. An assessment of the general effects of these changes is set out below. As the SDLT higher rates on additional properties only came into effect in April 2016 and only limited evidence is currently collected on these types of transactions, it is not possible to obtain data and provide detailed costs for these specific changes. Overall, this analysis assumes that the elements that differ between the SDLT higher rates and the LTT surcharge will have a very minor impact on revenues, both taken individually and collectively, especially as there are changes which will be likely to slightly increase revenues and others which slightly reduce revenues. In addition, the majority of the changes provide additional clarity to existing rules so should help to reduce the complexity of the LTT surcharge relative to SDLT, and through this reduce the administrative burden for taxpayers and their agents. The Welsh Government has taken technical advice from practitioners on these changes, and are advised these changes may affect relatively few transactions and overall represent an improvement on existing SDLT legislation

8.54 The specific areas where the LTT surcharge differs from the SDLT higher rates are:

- i. The surcharge will not apply where the taxpayer is required to maintain an interest in the former matrimonial home due to a court order on divorce or the dissolution of a civil partnership, in order to ensure the welfare of children and/or former spouse/partner. This position is fairer than the current SDLT rules. The impact of this change may have a very minor negative impact on revenues;
- ii. An additional interest acquired in the current main home (for example through a lease extension, enfranchisement or transfer of equity) will not count as a purchase of an additional dwelling or interest liable to the surcharge. This change is fairer than SDLT as the individual is not acquiring an additional property and LTT will no longer treat the purchase as an additional property. This may have a very minor negative affect on revenues;

- iii. LTT rules for the surcharge will clarify that the time of day for establishing the ownership of properties, in all cases, will be the end of the day (that is, the last moment of the last minute of the day). This will include a rule to ensure that avoidance cannot occur through granting leases to connected persons. These changes will provide greater clarity for conveyancers making it easier to comply with the rule. The provision of certainty may have a negative effect on revenues but the inclusion of an avoidance rule should limit the impact so that it is only a minor negative effect on revenues;
- iv. LTT rules provide for a clawback mechanism to address potential avoidance activities arising from people downsizing by; firstly selling their main residence, then purchasing a buy-to-let (only owning one property so no surcharge) and then purchasing a new main residence (replacing their main residence within 3 years so avoids the surcharge) thereby attempting to circumvent the payment of the surcharge. This closes this potential avoidance loophole and may have a minor positive effect on revenue;
- v. LTT rules clarify that if the disposal of main residence and acquisition of a new main residence occur in the 30 day filing deadline for the first transaction that would attract the surcharge, then the return can be made using only the standard rates of tax and does not need to include the surcharge rates. This will apply only where the disposal of the main residence occurs before the return is submitted. This change will reduce the administrative burden on both the taxpayer and agent and also reduce the number of refunds the WRA will be required to administer. This may have a minor positive effect on costs. This change should have no effect on revenues net of refunds.
- vi. LTT rules also clarify that property acquired as a result of a variation to a will is to be treated as inherited property for the purposes of establishing if a taxpayer has interest in other property. The rules provide that if a 50% or less interest is inherited in a property, it does not count as an additional property for three years from the date it is inherited. This measure provides further clarity and consistency, as well as making the tax fairer. Any negative effect on revenues is expected to be very minor.

## **b) Removing tax on rent element of residential leases**

8.55 Under SDLT, there are provisions to tax the rent element of new residential leases. The current tax threshold for this element is £125,000. This is the Net Present Value (NPV) of a new lease over its total duration. If the value of the NPV exceeds £125,000 for residential properties then SDLT at 1% over this value is payable. In Scotland, the rent element for residential leases is exempt from tax.

8.56 Recent data up to 2015-16 from HMRC shows that there were around 1,200 residential new lease returns in Wales per year. As set out in paragraph 3.22, very little of the revenue received from new residential leases comes from the lease rent element which is between £5,000 to £200,000 per year in Wales<sup>54</sup>. In the most recent years, tax revenues have been at the lower end of this range. The vast majority of new residential leases will have paid no tax on the rental element, as the value would be below the current tax threshold.

8.57 Removing this element of the tax will simplify the tax and reduce some administrative burden for practitioners. The impact of this is hard to quantify as the administrative cost of taxing the rent element of new leases under LTT is uncertain, in that it is difficult to separate from the overall cost of completing a tax return.

### **c) Simplification of rules in relation to leases**

8.58 Other than the removal of the rent element of residential leases, the Bill as currently drafted for the most part mirrors the SDLT lease provisions. However, there are opportunities to simplify the rules in relation to leases. These include changes to give, broadly, the same treatment to leases for an indefinite term<sup>55</sup> as exist for fixed leases that continue after the end of the term. Additionally, small changes to how the rules operate where a new lease is granted, but the date on which it is expressed to commence is backdated, have been introduced to provide for situations where the new lease is backdated to a date other than the termination date of the old lease. The aim of introducing these changes is to provide simpler, more consistent and fairer rules for our taxpayers. Although these changes may, in some cases, reduce the amount of tax due in some instances (primarily because the rules are fairer), these simplifications and changes should not have a noticeable impact on overall revenues, as both the amount of tax this will forgo and the number of transactions this will effect will not be large. No other specific impacts are envisaged as result of these changes.

### **d) 15% slab rate for certain transactions involving non-natural persons**

8.59 Under SDLT a slab 15% tax rate is applied to non-natural persons acquiring residential property. This was introduced to tackle the loss of tax on residential dwellings that were being acquired by 'non-natural' persons, such as companies or collective investment schemes. It was believed that such properties, or more accurately the shares or interests in the owning entities, were being sold without SDLT being paid as SDLT applies to land transactions and not to share transactions. In Scotland, LBTT has not adopted the 15% rate rules. Instead

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<sup>54</sup> Source: Calculations based on HMRC administrative datasets.

<sup>55</sup> Under the SDLT rules a taxpayer under the former will pay less tax in comparison to the latter, even though they pay the same rent.

they have the power to introduce rules to tax the transfer of interests in 'residential property holding companies' as though they were land transactions.

8.60 The 15% slab rate within SDLT currently applies to considerations of greater than £0.5 million being acquired by 'non-natural' persons. It is aimed at a particular section of the high value property market, primarily in London and the South East. The provision is not considered currently relevant to Wales. We will continue to monitor the impact of this, and there is scope within existing powers set out in Section 24(5) of the Bill to re-introduce this provision through regulations in the future if appropriate.

#### **e) General anti-avoidance rule (GAAR)**

8.61 UK and Scottish legislation provide for a UK General Anti-Abuse Rule (the UK GAAR), which became law in 2013, and a Scottish General Anti-Avoidance Rule (the Scottish GAAR), which became law in 2015. There are a number of differences between the scope of the rules, with the UK GAAR considered to be narrower as it applies to situations where arrangements that lead to the tax advantage are considered to be "abusive", whereas the Scottish GAAR applies to arrangements which are considered to be "artificial".

8.62 The principal aim of having a GAAR is to help deter and prevent tax avoidance from occurring across devolved tax legislation. The GAAR complements the TAARs (see paragraph 8.66) by providing a general rule which enables the WRA to take action where those targeted rules are not in place, or where a taxpayer contends that they have found a way to circumvent one of the TAARs. The GAAR will operate as a final course of action open to WRA to challenge avoidance activity. As this mirrors the current status quo, no differential impacts are envisaged.

8.63 The UK approach requires the establishment of an Advisory Panel that must approve HMRC guidance on tax avoidance and provide an opinion on cases before HMRC can recover any tax avoided. Given the relatively few taxes that are to be devolved to Wales at this time and the anticipated complexity and cost that would arise in establishing a panel (along the lines of the UK GAAR panel) this is not considered necessary or appropriate. The Scottish Government do not have a formal Advisory Panel. The impact of not replicating the establishment of an Advisory Panel is likely to be positive, reducing complexity and administrative burden. The WRA will still seek expert advice in a transparent and proactive way on the application of a GAAR, but legislation is not necessary for this.

#### **f) Targeted anti-avoidance rules (TAARs)**

8.64 The SDLT legislation includes a number of TAARs in the various reliefs, many of which are expressed in the same way. These are designed to stop avoidance schemes involving the claiming of one or more reliefs and provide taxpayers with certainty that existing avoidance schemes cannot operate within LTT. LTT will extend and significantly simplify and strengthen this by creating an overarching

TAAR which will cover all LTT reliefs. In practice, this will mean that a person will not be able to claim a relief if the transaction forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of the tax and it is not effected for genuine economic or commercial reasons. This is considered an improvement as it applies to all current reliefs, and any future reliefs, making it clear that they cannot be abused to avoid tax.

8.65 The overall impact will be to simplify the legislation, whilst protecting revenues by ensuring reliefs cannot be exploited to avoid paying LTT. However, it will still allow taxpayers to operate the familiar SDLT rules, thus ensuring consistency in line with consultation responses.

### **g) Reliefs**

8.66 LTT reliefs are broadly consistent with SDLT. However, the tax does not make provision for the crofting community right to buy relief as this is not relevant in Wales. In addition, two reliefs in relation to the demutualisation of insurance companies and building societies are not replicated. The level of demutualisation activity has been very low for some time and therefore, these reliefs are not considered necessary under LTT. This approach is consistent with LBTT in Scotland where the demutualisation reliefs were considered unnecessary and have not subsequently been adopted. In addition, as the 15% slab rate for certain transactions by non-natural persons has not been currently adopted in LTT the reliefs relevant to that charge are unnecessary in the Bill and have not been replicated. Our approach will help make the Bill relevant and simpler. No other specific impacts are envisaged as a result of these changes.

#### *Summary of the preferred option*

8.67 The preferred option is to implement a replacement tax for SDLT. The new tax will be known as Land Transaction Tax (LTT). This change is being introduced via the Bill and, subject to the will of the Assembly it is expected to come into force in April 2018 when SDLT is dis-applied in Wales.

8.68 By implementing LTT, the key benefit is that Wales will continue to receive revenues raised through property transactions which will support public services and boost the economy of Wales. In total, the cost to public services in Wales of not levying the tax is considered to be much larger than levying LTT.

8.69 In line with responses to the *2015 Tax Devolution in Wales - Land Transaction Tax Consultation*<sup>56</sup>, LTT will be broadly consistent with SDLT and therefore the impact of introducing the tax will be small. Minor changes will be made to simplify and improve the tax and to ensure it reflects the circumstances and priorities of Wales. By ensuring consistency with SDLT, LTT will provide stability and certainty for both the residential and non-residential property markets in

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<sup>56</sup> *Tax Devolution in Wales - Land Transaction Tax Consultation* (February 2015) available to view at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>



Wales. The Welsh Government will also have the opportunity to amend the rates and bands in the future to ensure the best outcomes for the Welsh property market.

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## Chapter 9: Specific Impact Assessments

- 9.1 A series of impact assessments on the draft Bill were completed as part of this RIA. Initial impact assessments were completed prior to the 2015 *Tax Devolution in Wales – Land Transaction Tax*<sup>57</sup> consultation and these were reviewed following the close of the consultation and the drafting of the Bill.
- 9.2 Overall, the establishment of LTT as a replacement for SDLT is not expected to have a significant impact on most businesses or people. While there are some minor variations in the structure of the tax itself, the requirement to pay this tax exists now and will still exist when the tax is devolved to Wales.
- 9.3 The Bill will establish the procedural framework for the Welsh Government to set its own rates and bands for the tax in Wales. As set out in paragraph 3.9, the full impact of the tax will not be known until the rates and bands for the new tax have been announced. The Cabinet Secretary for Finance and Local Government has committed to publishing the intended rates and bands for land transaction tax, including on the higher rates surcharge, by October 2017. Regulations will then be laid following the UK Government's Autumn Budget 2017 and it is recognised that a separate impact assessment will need to be completed.
- 9.4 There are also likely to be impacts for specific groups in relation to the collection and management of the tax which will be undertaken by the WRA. Information on this is available in the RIA for the TCM (Wales) Act<sup>58</sup>. There are also future operational decisions to be taken on the collection and management of this tax and separate impact assessments may be required.

### Impact on small business

- 9.5 The indirect costs of a replacement tax are set out in paragraphs 8.38-8.46 of the RIA and focus on the compliance and administrative burden that LTT may place on practitioners and businesses. The majority of businesses that will be directly involved with the tax are professional firms such as solicitors and conveyancers acting on behalf of their clients. The Bill does not represent a significant change from existing practices, and so the burden for agents is not expected to increase for the vast majority of transactions. However, it is recognised that there will be transitional costs as practitioners who currently support and advise on SDLT transactions in Wales will need to become familiar with LTT and how it differs from SDLT.
- 9.6 The LTT surcharge will apply to purchases of second homes and buy-to-let properties (and any purchase of residential property by a person who is not an individual), as is the case currently under SDLT. This includes second homes used as furnished holidays lets and also those properties with restricted-

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<sup>57</sup> *Tax Devolution in Wales - Land Transaction Tax* Consultation (February 2015) available at: <http://gov.wales/docs/caecd/consultation/150210-land-transaction-tax-en.pdf>

<sup>58</sup> Tax Collection and Management (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment, July 2015. Available to view at: <http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

occupation rights such as chalets, which cannot be occupied all year round and therefore may impact on small businesses. However, applying higher rates to purchases of second homes and buy-to-lets is consistent with the overall strategic approach to housing policy in Wales and forms part of a balanced and proportionate approach to supporting home ownership with ensuring the provision of good quality, affordable housing. It is recognised that this element of SDLT only came into effect relatively recently in April 2016, and as evidence and data on the nature of higher rates transactions and their impact emerges, the Welsh Ministers may want to make additional policy or operational changes, and the appropriate impact assessments would be undertaken.

9.7 There will also be an impact on practitioners to operate a slightly different tax collection and management system in Wales. This is particularly relevant for practitioners that operate across the England and Wales border, in that they will be required to use both systems. It is clear that many of the decisions in relation to a new system will be operational, for example, the specific format and content of a LTT return. However, the policy intention in designing LTT is to ensure that these impacts will be either neutral or beneficial, for example by designing a simpler transaction return. The WRA will develop robust guidance to support the processes involved in any cross title and cross border returns.

### **Impact on voluntary sector**

9.8 The Bill includes a relief for charities. This relief is available where a charity, or charitable trust, purchases an interest in land, subject to certain conditions. The relief replicates a charities relief in SDLT legislation, and therefore we do not expect that voluntary sector organisations will be impacted by this Bill as there will be no change. Changes to the actual method of collection of the tax are not expected to create any additional burden on the voluntary sector.

### **Equality impact assessment**

9.9 An impact assessment has been carried out to evaluate if this legislation has any adverse effect on protected groups and to ensure that it does not contravene the Human Rights Act 1998.

9.10 The collection and management of LTT will be undertaken by the WRA. As a public body, the WRA will need to comply with the requirements of the Equality Act 2010.

9.11 Overall, as set out in paragraphs 8.4-8.5 of the RIA, not implementing LTT would result in a reduced budget for the Welsh Government, which would mean less resource to spend on public services in Wales. It is likely therefore that not introducing LTT would have a disproportionately large effect, or dis-benefit, on lower income households in Wales, as those who benefit the most from public services tend to be those on below average income. Some protected groups are proportionally more likely to fall into this category. Therefore, introducing a

replacement tax and protecting public service spend is a positive action for these groups.

9.12 There has been significant external stakeholder engagement throughout the policy development process, including workshops across Wales during the consultation process on LTT legislative proposals in 2015. Although no responses to this consultation were received from specific equalities organisations, relevant responses included the Wales Council for Voluntary Action, the Bevan Foundation and the Community Land Advisory service. These organisations broadly supported proposals for a replacement tax but emphasised the need to retain the relief for Charities (which may have a disproportionate impact on specific protected groups). As set out above, a relief for charities will be retained and mirrors existing SDLT provisions.

## **Protected groups**

### *Age*

9.13 Younger people – as set out below, a Child’s Rights Impact Assessment was undertaken to inform the provisions of the Bill and found that there will be no direct impact on children as a result of the legislation.

9.14 People aged 18 and older – people aged 18 and older may be affected by the LTT, but the tax itself is not considered to have an age related differential impact. The requirement to pay a tax on land transactions exists now and the new legislation does not create any additional burden.

### *Disability*

9.15 The Bill itself is procedural and does not have any direct impact for this protected group. However, the collection and management of LTT will be undertaken by the WRA, and there may be minimal impacts for the following categories in terms of the operational delivery of the WRA. Further consideration will be given to this as part of preparations for making the WRA operational.

- Visual impairment – the day to day operation of the WRA may have a minimal impact on people with a visual impairment. For example, if a “digital by default” approach is taken to services then this may have an impact on those who are visually impaired.
- Hearing impairment - the day to day operation of the WRA may also have a minimal impact on people with a hearing impairment. This impact comes if hearing impaired people want to contact the organisation by telephone.
- Physically disabled - the day to day operation of the WRA may also have a minimal impact on people with a physical disability: there may be an impact on those who have a physical disability if they are not able to use standard computer equipment to submit tax returns and other documentation. This may be mitigated by the use of specialist hardware equipment such as a specially

adapted keyboard and/or mouse, which a physically disabled person who wishes to access the internet may have already.

9.16 Although the digital agenda will be an important part of WRA's strategy for improving services to customers and increasing the amount of revenue collected, this does not mean that the internet will be the only way of engaging with the organisation.

9.17 For those with a learning disability and/or mental health problems, the establishment of the WRA and the tax collection and management regime is not considered to have a differential impact.

#### *Gender*

9.18 LTT is not considered to have a differential impact in relation to gender.

#### *Transgender*

9.19 LTT is not considered to have a differential impact on those who are transgender.

#### *Marriage and civil partnership*

9.20 LTT is not considered generally to have a differential impact in relation to marriage or civil partnership. However, the LTT surcharge rules do provide that a couple who are married or in a civil partnership will be treated as, effectively, a single economic unity, meaning that they will have different tax consequences when compared to an un-married/not in a civil partnership co-habiting couple. The LTT surcharge rules also differ from the SDLT higher rates in that it will not apply where the taxpayer is required to maintain an interest in the former matrimonial home due to a court order on divorce or the dissolution of a civil partnership, in order to ensure the welfare of children and/or former spouse/partner. This position is fairer than the current SDLT rules and will have a positive impact on people who were once married or in a civil partnership. The impact of this change may have a very minor negative impact on revenues.

#### *Pregnancy and Maternity*

9.21 LTT is not considered to have a differential impact on those who are pregnant or during maternity or paternity leave.

#### *Race*

9.22 The race protected group covers ethnic minority people, national origin, asylum seekers and refugees, gypsies and travellers, migrants and others. LTT is not considered to have a differential impact on those in the race protected group.

### *Religion and belief or non-belief*

9.23 The establishment of LTT is not considered to have a differential impact on those in the religion and belief, or non-belief, protected group.

### *Sexual orientation*

9.24 This protected group includes gay men, lesbians and bi-sexual people. The establishment of LTT is not considered to have a differential impact on those in this protected group.

### **Human rights**

9.25 The Human Rights Act (1998), which partially incorporates the European Convention on Human Rights (ECHR), has been considered in this Equality impact assessment.

9.26 The Government of Wales Act 2006 states that a Bill will not be within the legislative competence of the National Assembly for Wales if it is incompatible with the ECHR and could not become law (section 108(6) (c) GOWA 2006).

9.27 The areas in the ECHR relevant to tax consist of a number of Articles setting out basic principles of human rights. The principal Articles which are relevant for the purposes of this Bill are:

- Article 1 which guarantees the right to peaceful enjoyment of property;
- Article 6 which guarantees the right to a fair and public hearing in the determination of civil rights and obligations and criminal charges and affords further rights where a person is charged with a criminal offence;
- Article 8 which requires respect for private and family life; and
- Article 14 which prohibits discrimination.

9.28 Article 1 is relevant because the Bill provides for the control of the use of property to secure the payments of taxes, other contributions or penalties in certain circumstances, although the framework has been devised with the principle of proportionality in mind and ensuring that there are adequate safeguards built into the system. Articles 6 and 8 are relevant as the taxpayer will be able to appeal a variety of notices and assessments that may be issued in relation to LTT. Relevant case law shows that, generally, tax rules do not engage Article 6 of the European Convention on Human Rights. However, it is accepted that some of the provisions within the Bill and TCM (Wales) Act 2016 may be capable of engaging rights under Article 6. Whether or not strictly engaged, the Bill ensures that these rights are safeguarded. In particular, all decisions made by WRA about a person's liability to the tax, including decisions about any penalties

payable, will be subject to the right to ask WRA to review the decision, and a right to appeal to the tribunal.

9.29 Although Article 14 is mentioned for completeness, the WRA, which will collect LTT, will be a public body and will therefore, have a duty to maintain and promote the high standards expected of every public sector organisation in Wales.

9.30 The compatibility of the Bill with the ECHR (including the Articles above) has been considered prior to the introduction of the legislation. That analysis has found that the bill does not contain provisions that are incompatible with the European Convention on Human Rights (ECHR).

### **Privacy Impact Assessment**

9.31 A Privacy Impact Assessment screening has been completed and the Information Rights Unit has confirmed that because these taxes are already collected (on a UK basis) and the proposal is for that function to be devolved to Wales, there is not necessarily a change in the privacy expectations of individuals. There is currently a process for taxes to be paid which includes the processing of personal data, and there will be a similar process when it is devolved to Wales. Therefore, a full Privacy Impact Assessment is not required.

### **Rights of the Child impact assessment**

9.32 A Child's Rights Impact Assessment was undertaken to inform the provisions of the Bill and found that there will be no direct impact on children as a result of the legislation.

## Rural proofing checklist

9.33 The Rural Proofing Checklist assesses whether the Bill causes a significant detrimental impact on the rural community.

9.34 The table below summarises the rural proofing checklist results:

Questions	Comments
<p><b>Q1. Stakeholders</b></p> <p>What contact have you had with rural stakeholders? Please briefly describe any events targeted at rural stakeholders.</p>	<p>A 12 week consultation on LTT began on 10 Feb 2015 and ended on 6 May 2015. In total the consultation received 38 responses from a range of stakeholders including Country and Landowners Association (CLA) and National Farmers Union (NFU). Engagement events were held in various locations across Wales. Engagement has continued to date during the drafting of the Bill, for example, CLA events were held in April and June 2016.</p>
<p><b>Q2. Access</b></p> <p>Will access be an issue for rural people? (Rural people may have to travel long distances to access services).</p>	<p>No</p>
<p><b>Q3. Needs of Rural People</b></p> <p>Has the policy taken account of rural needs, e.g. older population, lack of affordable housing, language requirements?</p>	<p>The Bill is procedural and sets out the framework and structure for taxing land transactions in Wales and will therefore have minimal impacts on the needs of rural people.</p> <p>However, the Bill makes provision for the Welsh Ministers to set rates and bands for the tax in secondary legislation. In setting rates and bands consideration will be given to factors such as how to best support affordable housing in Wales. However, the impacts of specific rates and bands will be explored in a separate RIA with the introduction of secondary</p>



legislation. Rates and bands will be announced in October 2017 and regulations will follow the UK Government's Autumn Budget 2017. The rates and bands reflect the property market in Wales and the general economic situation at that time.

Furthermore, evidence suggests the effectiveness of the UK SDLT as a tool to influence the housing market (such as affordable housing) is mixed. For example, the UK Government's experiences of introducing a First Time Buyers Relief was concluded to be largely unsuccessful in terms of stimulating extra first time buyer transactions.

The Bill could also indirectly have a positive impact on rural communities as the tax collected will be available to help fund public services in Wales, which would include supporting rural communities.

The LTT surcharge will apply to purchases of second homes and buy-to-let properties, as is the case currently under SDLT. There may be specific impacts for rural areas. For example, the impact of second homes (as opposed to buy-to-let properties) may be disproportionately felt in some areas of North Wales and the three most westerly counties of Wales. In these areas, not only is second home ownership high due to the attractive tourist nature of the areas but, in the three National Parks the pressure may be particularly acute (in particular, planning permission for building new properties for full time residential occupation may be harder to obtain). To support local authorities to mitigate some of the impacts of second home ownership in these areas, the Housing (Wales) Act 2014, gives local authorities a discretionary power to charge more than the standard rate of Council Tax on certain types of second homes. The higher rates on second homes therefore, are consistent with existing Welsh policy in this area, and may serve to support the provision of housing in rural areas.

However, it is recognised that as this element of SDLT only came into effect in April 2016, and as evidence and data on the nature of higher rates transactions and their impact emerges, the Welsh Ministers may want to make additional policy or operational changes, and the appropriate impact assessments would be undertaken.

<p><b>Q4 (a) Impact on Services</b></p> <p>Will the policy lead to the creation of new services (positive impacts) or the closure of existing services (negative impacts)?</p>	<p><b>List positive impacts:</b></p> <p>It is not anticipated that the policy will lead to the creation of any new services.</p> <p><b>List negative impacts:</b></p> <p>It is not anticipated that the policy will lead to the closure of any existing services.</p>
<p><b>Q4 (b) How do you plan to overcome or mitigate any negative impacts?</b></p>	<p>N/A</p>
<p><b>Q5. Rural Places-Land</b></p> <p>Does your policy require the purchase or use of land? Have you considered rural dimensions such as land value, availability or restrictive designation?</p>	<p>No.</p>
<p><b>Q6. Terrain</b></p> <p>Will your policy work in areas of difficult terrain, e.g. narrow roads, steep</p>	<p>No.</p>

mountains?	
<b>Q7. Rural Business</b> Is your policy relevant to SMEs or Micro Businesses?	Yes. We consulted with, and continue to engage with, the Federation of Small Businesses, Country and Landowners Association, Royal Institution of Chartered Surveyors, Chartered Institution of Taxation, National Association of Estate Agents, Law Society and other representative bodies of businesses potentially impacted by LTT. We have a Wales wide network that we are consulting which includes rural areas and SMEs.
<b>Q8. Access to Support</b> Does your policy expect business to be able to access support? (This may be in the form of advice, training, finance etc.)	Yes.  The WRA will develop guidance on LTT (in line with SDLT and LBTT) and this will be available for practitioners prior to the 'go live' date for the collection and management of land transaction tax in Wales (April 2018).
<b>Q9. Infrastructure</b> Does your policy depend on infrastructure such as good road/rail connections or fast broadband speeds.	Yes – Broadband.  In 2015-16, 96.2% of SDLT returns in Wales were estimated to have been submitted electronically. This is primarily agents submitting on behalf of individual taxpayers.  The WRA will seek to promote and encourage this use of digital services where appropriate. However, it is recognised that this may have an impact in rural areas with poor broadband connection. However, this does not mean that the internet will be the only way of engaging with the organisation.
<b>Q10. Other Issues</b> Did any other issues come up as a result of the	No.

engagement with stakeholders mentioned in Q1 or any other consultation?	
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## **Impact on Welsh Language**

9.35 A Welsh Language Impact Assessment has been undertaken to inform the provisions of the Bill and found that there is unlikely to be any direct impact on the Welsh Language as a result of the legislation. However, the collection and management of LTT will be undertaken by the WRA who will be required to comply with the Welsh Language standard and to treat the English and Welsh languages equally. Consideration will continue be given to Welsh language needs as preparations are made for making the WRA operational.

## Chapter 10: Competition Assessment

10.1 There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition.

10.2 The table below summarises the competition filter results.

<b>The competition filter test</b>	
<b>Question</b>	<b>Answer yes or no</b>
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

10.3 In view of the answers above, the second stage of the competition assessment is not required.

## **Chapter 11: Post implementation review**

- 11.1 It is anticipated that this legislation will be reviewed on a regular basis following land transaction tax going live, and allowing the WRA sufficient opportunity to establish itself as a tax authority.
- 11.2 A review of LTT could also complement an existing commitment to review the WRA's delegation decisions 3-5 years after April 2018. This would also sit alongside statutory obligations imposed upon WRA by the TCM (Wales) Act 2016 :
- prepare annual reports and lay a copy before the National Assembly for Wales (section 28 TCMA); and
  - prepare accounts and a tax statement on an annual basis (section 29 and 30 TCMA).

*These notes refer to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 16 February 2017.*

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (“the Bill”) as introduced into the National Assembly for Wales on 12 September 2016 and amended following Stage 2 proceedings on 16 February 2017. They have been prepared by the Department of the First Minister and Cabinet Office of the Welsh Government in order to assist the reader of the Bill.
2. The Explanatory Notes should be read in conjunction with the Bill but are not part of it. They are not meant to be a comprehensive description of the Bill. Where a section or part of a section of the Bill is self-explanatory and does not seem to require any further explanation or comment, none is given.
3. The National Assembly for Wales has the power to make this Bill by virtue of the provisions contained in Parts 4 and 4A of, and paragraphs 14 and 16A of Schedule 7 to, the Government of Wales Act 2006 (“GoWA 2006”). These provisions give the National Assembly for Wales the legislative competence to make provision in relation to devolved taxes (which are defined as taxes specified in Part 4A of GoWA 2006).



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## **BACKGROUND TO THE BILL**

4. The Wales Act 2014 provides for the disapplication of the UK Stamp Duty Land Tax (SDLT) in Wales, and confers powers on the National Assembly for Wales to replace it with a Welsh tax on transactions involving interests in land. This Bill provides for the Welsh Land Transaction Tax (LTT) which will replace SDLT in Wales from April 2018, and is the second of three related items of legislation. The Tax Collection and Management (Wales) Act 2016 (TCMA) was the first of these pieces of legislation and sets the legal framework necessary for the devolved tax regime in Wales including establishment of the Welsh Revenue Authority (WRA), whose main function will be to collect and manage devolved Welsh taxes. The third item of tax legislation relates to the development of the Landfill Disposals Tax (LDT). This Bill provides for the first of the devolved taxes to fall under the WRA's remit and therefore, the provisions of this Bill are relevant to, and will need to be read alongside, the TCMA.
5. The SDLT legislation was first introduced in 2003 and since then has been amended and added to on a regular basis, to take account of how the UK property market operates and has itself transformed. SDLT influences behaviour - affecting the nature and execution of the transactions to which it applies. It is important to ensure that stakeholders who currently work with the SDLT legislation can easily understand and operate the LTT regime as provided for by this Bill. As such, many of the fundamental principles of SDLT and the procedural rules governing the range of transactions, and transaction structures, are also adopted in LTT.

## **APPLICATION OF THE BILL**

6. The LTT is a tax on land and property transactions in Wales. Where such a transaction is 'notifiable' to the WRA (broadly, the transaction is not exempt and the amount of consideration is above a minimum threshold), then a land transaction return must be submitted, and any tax due paid. The tax liability is calculated by reference to the consideration paid but this is subject to special rules for certain cases and the availability of relief for different types of transactions.
7. At its most basic level of operation this legislation will affect the majority of people when they purchase a residential property to live in, or any person (e.g. as part of a business) who acquires non-residential property. However, the payment of LTT will form a small part of a much longer and complex property purchase process for which people normally instruct an 'agent' or solicitor to oversee.

## **GENERAL OVERVIEW OF THE BILL**

8. The Bill comprises 81 sections and 23 Schedules and is divided into eight Parts as follows:

### **Part 1 - Overview**

This Part sets out how the Bill is structured.

*These notes refer to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 16 February 2017.*

## **Part 2 – The Tax and Key Concepts**

Part 2 establishes the Land Transaction Tax and sets out the fundamental concepts that underpin the operation of the tax. This Part also introduces the schedules on pre-completion transactions, transactions exempt from charge and chargeable consideration.

## **Part 3 – Calculation of Tax and Reliefs**

This Part makes provision for how the tax is to be calculated and provides that the Welsh Ministers can by regulations set and subsequently change the tax rates and tax bands for LTT. In addition, this Part introduces the majority of the schedules which govern the operation of the reliefs available, and the schedule on higher rate residential property transactions. It also establishes the anti-avoidance provisions related to the reliefs to ensure reliefs cannot be claimed where they form or contribute to ‘tax avoidance arrangements’.

## **Part 4 – Leases**

This Part introduces the Schedule on leases, which makes provision for the application of this Bill to leases.

## **Part 5 – Application of Act and TCMA to Certain Persons and Bodies**

Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including partnerships, companies and trusts and introduces the relevant schedules.

## **Part 6 – Returns and Payments**

Part 6 sets out the framework for making land transaction returns and for the payment of the tax.

## **Part 7 – General Anti-avoidance Rule**

Part 7 amends the TCMA to make provision for a general anti-avoidance rule (GAAR) to apply to devolved taxes in Wales (currently LTT and LDT). The GAAR introduces certain tests by virtue of which the WRA is able to intervene to counteract any ‘tax advantages’ arising from artificial ‘tax avoidance arrangements’.

## **Part 8 – Interpretation and Final Provisions**

This Part contains provisions on subordinate legislation powers and commencement as well as other final and ancillary provisions. It also introduces Schedule 22 which sets out the amendments that this Bill makes to TCMA.

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## **COMMENTARY ON SECTIONS**

### ***Part 1 – Overview***

9. This Part sets out how the Bill is arranged and provides a brief summary of each of the Parts.

### ***Part 2 – The tax and key concepts***

#### **Section 2: Land Transaction Tax**

10. Section 2 provides that a tax, to be called Land Transaction Tax (LTT), is to be charged on land transactions in Wales, irrespective of how and where the transaction is documented. The concept of land transaction is defined in sections 2 to 5. The Welsh Revenue Authority (WRA) will be responsible for collecting and managing the LTT.

#### **Section 3 – 5: Land transactions, chargeable interest and exempt interests**

11. A “land transaction” is defined as an acquisition of a chargeable interest (section 3). A “chargeable interest” is any estate, interest, right or power over land in Wales or the benefit of an obligation under any restriction that affects such an estate, interest, right or power over land in Wales (section 4). Land in Wales does not include land below mean water mark.
12. Section 5 provides that chargeable interests do not include exempt interests. For the purposes of LTT exempt interests include a security interest (e.g. a mortgage); a licence to use or occupy land; a tenancy at will; a franchise or a manor . The term “manor” relates only to a Lordship of the manor or seignory. A seignory may be accompanied by chargeable interests such as profits à prendre which will not be exempt interests.
13. Further provision for exempt interests in relation to alternative financial arrangements is made in paragraph 7 of Schedule 10.
14. The Welsh Ministers may vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure.

#### **Section 6: Acquisition and disposal of chargeable interest**

15. Section 6 defines the acquisition and disposal of a chargeable interest, namely the creation, surrender, release or variation of the interest (although the variation of a lease is treated as an acquisition and disposal of a chargeable interest only where it applies to the grant of a new lease or paragraph 24 of Schedule 6 (reduction of rent or term or other variation of a lease applies).
16. The provisions in this section apply subject to the provisions in section 10(4) (substantial performance without completion), section 11(3) (substantial performance of contract providing for transfer to third party) and paragraphs 20 and 24 of Schedule 6 (agreement for lease and reduction of rent, term or other variation of lease).

#### **Section 7: Buyer and seller**

17. Section 7 provides that for the purposes of LTT the “buyer” is the person acquiring the subject-matter (i.e. the interest and related rights) and the “seller” is the person

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disposing of the subject-matter of the transaction. These terms apply even where there is no consideration provided.

### **Section 8: Linked transactions**

18. This section defines when a number of different transactions may be treated as 'linked transactions' for the purposes of this Bill. It is subject to section 16. The concept of a linked transaction is then used elsewhere.

### **Section 9: Land partly in Wales and partly in England**

19. This section determines that land transactions involving the acquisition of a chargeable interest where the land is partly in Wales and partly in England, shall be treated as comprising two separate transactions, one relating to land in Wales and the other relating to land in England. The consideration for the transaction is to be apportioned on a just and reasonable basis, with the Welsh transaction giving rise to liability to LTT and the English transaction giving rise to liability to Stamp Duty Land Tax under the Finance Act 2003.

### **Section 10: Contract and transfer**

20. Section 10 provides that where a person enters into a contract for a land transaction, the effective date of the transaction is the date of the completion of the contract. Section 10 makes particular provision for cases where the contract is substantially performed before its completion. In those cases, the effective date of the transaction is the date of that substantial performance; both the contract and completion are notifiable transactions. Additional tax may be payable on completion if the amount chargeable is greater than that previously paid on the contract; and, where the contract is (in whole or in part) rescinded, annulled or for any other reason not brought into effect then the WRA will, on receipt of a claim (made by amendment), repay tax overpaid.

### **Section 11: Contract providing for transfer to third party**

21. When a contract provides that the buyer of a chargeable interest (P2) may direct the seller (P1) to transfer that interest, to a third person (P3), P2 is not regarded as having entered into a land transaction, unless P2 substantially performs the contract before that transfer. In that case, P2 is treated as having entered into a land transaction, effective from the date of the substantial performance, and where the contract is (in whole or in part) rescinded, annulled or for any other reason not brought into effect then the WRA will, on receipt of a valid claim, repay tax overpaid.

22. Section 11 does not apply to the contract between P1 and P2, unless the chargeable interest is transferred to both P2 and P3. But section 8 does apply to the person P2 to P3 contract.

### **Section 12: Contract providing for transfer to third party: effect of transfer of rights**

23. Section 12 applies to situations such as those described above, where P2's rights become exercisable by another party (P3). Each such transfer of rights is treated as a separate (or 'secondary') contract and section 11 applies as though P4 were the buyer (instead of P2). The chargeable consideration is the amount that is to be paid under the original contract, together with the additional amount of consideration given for the transfer of rights.

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24. Where the transfer of rights relates to only part of the subject-matter or some of the rights under the original contract then references to original contract and secondary contract are limited to the part or rights being transferred. The remaining subject-matter or rights not being transferred are to be treated as a separate contract.

### **Section 13: Pre-completion transactions**

25. This section makes reference to Schedule 2, which provides rules relating to the application of section 10 (contract and transfer) in situations where, because of an assignment of rights under a contract, a sub-sale or any other transaction is entered into without the contract being completed.

### **Section 14: Meaning of substantial performance**

26. A contract is to be treated as 'substantially performed' either when the buyer or anyone connected with them takes possession of the whole of (or substantially the whole of) the property, or when a substantial amount of the consideration has been paid or provided. Taking possession includes receiving any rents or profits (or the right to receive them) that ownership of the property generates, regardless of how that possession is effected i.e. under the contract, licence or lease agreement. A substantial amount of the consideration is provided when the whole or substantially the whole of the consideration is made or, if rent is the only consideration, when the first payment of rent is made.

### **Section 15: Options and rights of pre-emption**

27. The treatment of options and rights of pre-emption (i.e. the rights of first refusal) are set out in this section. The acquisition of an option binding the grantor to enter into a land transaction, or right of pre-emption preventing the grantor from entering into a land transaction constitutes a land transaction which is distinct from any land transaction that results from the exercise of the option or right. As such, that acquisition may be chargeable to LTT (in addition to any subsequent land transaction resulting from the exercise of the right).

### **Section 16: Exchanges**

28. Section 16 establishes that where parties enter into land transactions, either alone or jointly, which comprise exchanges of land the transactions are treated as two separate transactions that are not linked. This provision applies regardless of how the exchange is structured. Therefore, a land transaction where the consideration is discharged by the buyer, either in full or in part by entering into a separate transaction as seller, is still chargeable to LTT (on each leg of the exchange).

### **Section 17-18: Chargeable transactions and chargeable consideration**

29. Land transactions are chargeable transactions i.e. liable to LTT, unless they are exempt from charge (see Schedule 3) or unless they are relieved from charge and that relief is claimed (section 30(2)). Section 18 and Schedule 4 make provision as to the calculation of chargeable consideration. Regulations may amend or repeal the provisions of the Bill relating to chargeable consideration.

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### **Sections 19-20: Contingent, uncertain or unascertained consideration**

30. Section 19 provides that where all or part of the chargeable consideration is contingent (dependent upon some future event occurring) the amount of consideration includes the amount related to the contingency (regardless of whether the event occurs).
31. Section 20 further stipulates that where the amount of the consideration is uncertain or unascertained then the consideration payable must be estimated to the best judgement of the taxpayer.
32. The rules in sections 19 and 20 are subject to section 47 and 48 (adjustment where contingency ceases or consideration is ascertained) and section 58 (application to defer payment in case of contingent or uncertain consideration).

### **Section 21: Annuities**

33. Where chargeable consideration consists of an annuity, payable for life, in perpetuity, for an indefinite period or for a period exceeding twelve years, the chargeable consideration is limited to twelve annual payments or, where the annual payments vary, the twelve highest payments, starting from the effective date of the transaction. Subsection 5 defines “annual payments”. No account is taken for provision to adjust the amounts in line with inflation. Where the amounts payable under the annuity are contingent, the uncertain or unascertained rules in sections 19 and 20 apply.

### **Sections 22 - 23: Deemed Market Value**

34. When a company purchases land from a connected person, or the consideration comprises the issue or transfer of shares in any company with whom the person is connected, the consideration will be calculated according to the market value of the land and if applicable, any rent paid under the grant of a lease. Such transactions are not to be treated as though there is no chargeable consideration. Section 22 does not apply where:
  - the buyer holds the land or property as a trustee in the course of a business consisting of the management of trusts;
  - the buyer holds the land or property as trustee and is not “connected” to the seller other than as provided for in section 1122(6) Corporation Tax Act 2010, for example because the seller is a settlor of the settlement; or,
  - the seller is a company and the transaction is as a result of the distribution of the assets of the company, including distribution on liquidation and the seller has not claimed group relief in relation to that interest in the 3 years before the transaction.

## ***Part 3 – Calculation of tax and reliefs***

### **Sections 24 – 29: Calculation of tax**

35. This Bill does not set out the tax rates and tax bands for LTT but makes provision for the Welsh Ministers to specify tax bands and the percentage tax rate for each band through regulations. Regulations must specify the tax bands and tax rates for residential and non-residential property transactions, and higher rate residential property transactions. The regulations must specify a zero rate band and at least two or more tax bands above the zero rate band, together with the tax rate for each such band for residential and non-residential property transactions. The regulations must also specify, in relation to higher rate residential property transactions, three or more tax bands, which must be

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progressive in nature and higher than would be applicable were the transaction a residential property transaction.

36. The first set of regulations made under section 24 will be subject to the affirmative procedure. Subsequent changes to the rates and bands will be given effect through further regulations, which will be subject to the provisional affirmative procedure. Changes which are made to tax rates and tax bands by those regulations will only have effect for 28 days (as defined by section 25(2)) unless the regulations are approved by a resolution of the Assembly within that period. If the Assembly resolves to disapprove those regulations within that up to 28 day period, the regulations will cease to have effect on the day on which the Assembly resolves to disapprove them.
37. The regulations setting the rates and bands for residential, higher rates residential and non-residential property transactions may be used to provide for different rates and bands in relation to different categories of transaction, and different rates and bands for different types of buyer (for example, companies). These rules will ensure Welsh Ministers are able to use rates and bands in a flexible manner to respond to changes in the property market and behaviours of purchasers.
38. Section 24 also introduces Schedule 5 which contains the rules for higher rates residential property transactions.
39. Section 26 deals with the consequences of regulations ceasing to have effect as a result of section 25 (2) or (3). In these cases, subsection (2) provides the general rule that the rates and bands applicable to transactions where the effective date falls within the period between the regulations taking effect and subsequently falling are those specified in the regulations that fall (the “interim regulations”). If this results in the taxpayer paying more LTT than under the original tax bands and rates then a claim for repayment may be submitted under section 63A of the Tax Collection and Management (Wales) Act 2016 (TCMA). However, the general rule provided by subsection (2) does not apply where the transaction falls within subsection (4) (5) or (6). These include cases where the effective date falls within the interim period, but the buyer fails to submit a return, or submits a late return after the interim regulations have fallen, or where a further or later return is required after the interim regulations have fallen. In these cases, the rates and bands applicable are those specified in the regulations that would have been in force had the interim regulations not been laid.
40. Section 27 sets out how to calculate the amount of tax chargeable for a land transaction which is not one of a number of “linked transactions” so that each rate of tax is payable on the portion of the chargeable consideration falling within the relevant tax band.
41. If the transaction is one of a number of linked transactions, section 28 applies. In these cases, the amount of tax due for a transaction is calculated by applying each rate of tax to the aggregate chargeable consideration for all the linked transactions, and then dividing the resulting amount to the transaction in proportion to its share of the relevant consideration. In any case where the amount of tax chargeable relates to rent, the provisions of Schedule 6 apply.

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42. Section 29 identifies certain relief provisions to which the general calculation of LTT provisions are subject.

### **Sections 30– 31: Reliefs**

43. Section 30 introduces the schedules which make provision about reliefs that can be claimed in respect of certain transactions normally liable to LTT. The section is divided into those reliefs that provide 100% relief from charge to LTT and those where partial relief is provided or where relief is provided by LTT being calculated in a different manner or at a different rate to that which normally applies. Reliefs are not applied automatically but must be claimed through a tax return or amendment to such a return. The Welsh Ministers may by regulations add, modify or remove reliefs and also may amend section 31.

44. Section 31 provides a targeted anti-avoidance rule that applies to all claims to relief by a taxpayer. The rule operates so that a taxpayer cannot claim relief where the transaction is, or is part of, a “tax avoidance arrangement”. A tax avoidance arrangement is defined as an arrangement where the obtaining of a “tax advantage” by any person was the main or one of the main purposes of the arrangement, and the arrangement lacks a genuine economic or commercial main purpose (other than the obtaining of a tax advantage).

45. “Arrangements” has been defined by subsection (3) to include any transaction, scheme, agreement, understanding, promise or any series of such arrangements. Subsection (3) also defines “tax advantage” to capture (among other things) situations where a person gains a financial advantage through the claim to relief. This is intended to apply to cases where relief is claimed in circumstances where it is not the intention of the Assembly that relief should be given. Therefore, in situations where a transaction is structured in a manner that complies with generally prevailing practice and the taxpayer claims relief as intended then that claim will not fall within the scope of this anti-avoidance rule. However, where additional arrangements or steps are entered into solely to create a situation in which the conditions for claim to relief are met then the claim will fall within these provisions and should not be made. Whether an arrangement has a genuine economic or commercial main purpose will, ultimately, depend on the facts of the transaction. However, the rule should not prohibit a claim to relief by a charity where it acquires a property for charitable purposes (for example housing people who meet the charity’s charitable purposes) as, whilst there may not be a commercial reason to the acquisition, there is an economic purpose as the charity has exchanged cash for a physical asset – the property – with which to further its charitable purposes.

46. “Tax” for the purposes this section is wider than just LTT, and includes some taxes imposed at a UK level as well (e.g. corporation tax). This will ensure that where a Welsh land transaction is entered into (and for which relief would otherwise be allowable) relief from LTT cannot be claimed if the land transaction forms part of arrangements to avoid that other tax, or taxes. Prohibiting the claim for relief from LTT in these circumstances is without prejudice to any action HMRC might take to recover the non-devolved tax that has been avoided.

47. The Welsh Ministers are provided with the power to amend this section (as part of the powers provided by section 30(6)) so as to change the operation and scope of the anti-avoidance rule.



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#### **Part 4 – Leases**

##### **Section 32: Leases**

48. This section defines ‘lease’ for the purposes of this Bill and introduces Schedule 6, which makes further provision for the treatment of leases under the LTT regime.

#### **Part 5 – Application of Act and TCMA to certain persons and bodies**

##### **Section 33: Companies**

49. This section defines a ‘company’ as any body corporate or unincorporated association (but not partnerships), and specifies the treatment of these bodies under this Bill to ensure LTT is correctly administered where the buyer is a company. It specifies that a company should act through the ‘proper officer’ (subsection (2)) of the company or the person authorised to act for the company, except in cases of liquidation where the liquidator or administrator (subsection 6) is the proper officer.

##### **Section 34: Unit trust schemes**

50. Section 34 provides that a unit trust scheme is treated for the purposes of LTT as if the trustees were a company, and the rights of the unit holders were shares in the company, except in relation to group, reconstruction, or acquisition relief.

51. A power is conferred on the Welsh Ministers to make, by regulations (subject to the affirmative procedure), further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Bill and the Tax Collection and Management (Wales) Act 2016 (TCMA).

##### **Section 35: Open-ended investment companies**

52. This section confers a regulation making power on the Welsh Ministers, to ensure that the provisions of this Bill and TCMA apply to open-ended investment companies in the same way as they apply to unit trust schemes.

##### **Section 36: Co-ownership Authorised Contractual Schemes**

53. Section 36 provides that a co-ownership authorised contractual scheme (‘CoACS’) is treated for the purposes of LTT as if the scheme were a company, and the rights of the participators were shares in the company, except in relation to group, reconstruction, or acquisition relief. A CoACS must be constituted in accordance with the relevant UK financial services legislation, or under the law of an EEA state other than the UK.

54. A power is conferred on the Welsh Ministers to make, by regulations (subject to the affirmative procedure), further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a CoACS for the purposes of this Bill and TCMA.

##### **Section 37 – 40: Joint buyers**

55. Sections 36-39 set out how the provisions of this Bill and TCMA apply to joint buyers (other than partners and trustees). Joint buyers have joint and several liability to comply with the LTT regime. This includes compliance with making returns, and paying any tax due. However, declarations must be made by all the buyers.

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### **Sections 41 and 42: Partnerships and Trusts**

56. Section 40 introduces Schedule 7 which provides for the application of this Bill and TCMA to partnerships and provides that the Welsh Ministers may by regulations amend this Schedule.

57. Section 42 introduces Schedule 8 on Trusts which makes provision about the application of this Bill and TCMA to trusts.

### **Section 43: Persons acting in a representative capacity**

58. This section deals with how the provisions of this Bill and TCMA apply to a person acting in a representative capacity, such as where a person is acting on behalf of someone whose assets are under the direction and control of a court, or the executor of the estate of a deceased person. In this situation, the person acting in a representative capacity is responsible for complying with the requirements of this Bill (such as making a return and paying any tax due).

## ***Part 6 - Returns and payments***

### **Section 44: Duty to make a return**

59. This section places the buyer under an obligation to make a return to the Welsh Revenue Authority (WRA) of every notifiable transaction within 30 days of the effective date of the transaction. If the transaction is a chargeable transaction then the taxpayer is also required to provide a self-assessment.

### **Sections 45 and 46: Notifiable land transactions and exceptions**

60. Section 45 defines a notifiable land transaction as: the acquisition of a major interest in land that is not covered by one of the exceptions in section 46, the acquisition of certain interests in land that are not major interests, the substantial performance of contracts providing for the transfer to third parties, and certain notional land transactions.

61. Section 46 sets out the exceptions to the rules in section 45. The section provides a list of those transactions which, whilst being the acquisition of a major interest in land, are not notifiable land transactions. The list includes; exempt transactions, where the consideration given (other than for the grant, assignment or surrender of a lease) is less than £40,000, the grant of a lease for less than 7 years where the chargeable consideration is not more than the zero rate threshold. The Welsh Ministers have the power to amend by regulations any of the amounts (such as £40,000 consideration) in this section.

### **Sections 47 to 51: Adjustments and additional returns**

62. Section 47 provides for cases where a contingency ceases or the consideration is ascertained and the taxpayer must make a return. Where the consideration for a transaction is unascertained or contingent upon a future event happening or not happening, then the taxpayer must make a return within 30 days of the event happening if the event means that the transaction becomes notifiable, additional tax is chargeable, or tax is now chargeable when none was previously chargeable. Interest on any tax payable as a result of these rules is chargeable from 30 days after the effective date of the transaction.

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63. Section 48 provides the rules for cases where a contingency ceases or the consideration is ascertained and, the taxpayer has overpaid tax. The taxpayer can make a claim to repayment of tax by amending their return (if within the time limits) or may make a claim to WRA for repayment either within 4 years of the filing date or, if later, within 12 months beginning with the event leading to the repayment arising. However, no claim is allowed if the repayment arises from the repayment of a deposit or loan that was treated as consideration, or any consideration refunded under arrangements that are contingent on the ending or assignment of a lease or the grant of a chargeable interest out of the lease.
64. Section 49 provides rules where a taxpayer must make a return where relief has been withdrawn. Relief may be withdrawn under a number of reliefs (for example group relief) if a future action or event occurs (known as a 'disqualifying event'). Where there is a disqualifying event the taxpayer must make a return within 30 days of the date of the disqualifying event and pay any additional tax within the same 30 day period. Interest generally runs on any tax payable under the further return from the date that tax is payable. However, where relief under Schedule 11 (alternative finance investment bonds) is withdrawn, interest exceptionally runs from 30 days after the effective date of the initial land transaction.
65. Sections 50 and 51 provide rules in relation to making returns where there are linked transactions. For linked transactions that have the same effective date, a single return may be made for all the transactions. Where a return needs to be made as a result of a later linked transaction so that an earlier transaction becomes notifiable, or tax or additional tax is payable on the earlier transaction, then a return in relation to that earlier transaction must be made 30 days after the date of the later transaction.

### **Section 52: Power to amend period in which returns must be made**

66. Section 52 provides the Welsh Ministers with the power to amend the time limits for making returns under sections 44, 47, 49, and 51 and Schedule 5.

### **Sections 53 - 55: Declarations**

67. Section 53 provides that any return sent to the WRA must include a declaration that the return is to the best of the taxpayer's knowledge correct and complete. However, where an agent has been appointed to act for the buyer special rules apply in relation to the declaration.
68. Sections 54 and 55 provide further rules in relation to declarations where the Official Solicitor or another person has been appointed to act for the buyer.

### **Sections 56 - 57: liability for tax and payment of tax**

69. Section 56 states that the buyer must pay any LTT due and therefore the provisions of the TCMA apply to the chargeable amounts. The section also signposts special rules that apply to joint buyers, partnerships and trusts.
70. Section 57 provides that where a return is made the taxpayer must make payment of the amount of tax self-assessed in that return no later than the filing date for the return. In the event that the taxpayer amends their return, if the amendment is made before the filing date, they must pay any additional tax arising from that amendment no later than

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that filing date. If they make the amendment later, they must pay at the same time they make the amendment. However, these rules do not apply to any LTT which the WRA has agreed can be deferred.

### **Section 58: Deferred payment in cases of contingent or uncertain consideration**

71. Section 58 makes provision for taxpayers to ask WRA to agree to defer payment of LTT where the consideration is contingent or uncertain. The WRA must agree to the deferral request if taxpayer meets a number of conditions in their request, including; the request is made within the same time limit as the period for filing the return (and that return must also have been made before the filing date), the request specifies the amount of tax to be deferred and provides a calculation of the deferral amount etc. These rules allow for the imposition of a number of different payment dates for different amounts of deferred tax so that contracts providing for deferred payments related to the provision of works and services can also be agreed. If the request does not conform to the conditions WRA must refuse the request, although if it believes that a smaller amount should be deferred the WRA can grant a deferral in that smaller amount. Importantly, a deferral request cannot be made if there are any tax avoidance arrangements in relation to the transaction. Tax avoidance arrangements are defined by section 31. When making a request to defer tax under this section, the taxpayer must state the proposed expected end date of the deferral period. If the taxpayer is not able to predict a date, the fifth anniversary of the effective date of the transaction will be used as the end date for the deferral period. This will enable the WRA to monitor and check whether additional tax is payable in such cases as it will for cases where a date can be predicted.

### **Section 59: Calculation of deferrable amount**

72. Section 59 provides the method for calculating the amount of deferrable tax. The amount is calculated by following the four steps set out; firstly, calculate the tax liability using the normal rules, secondly, establish the amount of deferred consideration, thirdly, calculate the tax liability on the chargeable consideration excluding the amount established at step 2, and finally, take the tax liability under step 3 away from the total tax liability and the result is the amount that may be deferred. Importantly, step 2 only allows amounts of deferred consideration that are expected, at least in part, to be paid more than 6 months after the effective date of the transaction to be included in the calculation.

### **Section 60: Deferral requests: notices of WRA decisions**

73. Section 60 provides the rules for the notices that WRA must issue on deciding a deferral request. WRA must issue a notice of its decision to the taxpayer specifying the deferred amount, the expected end date of the deferral period, any conditions, and, if the deferred amount is lower than the request, the reason for WRA deciding to agree to that different deferred amount. A similar notice must also be issued if there has been a variation request. If the request is refused WRA must issue a notice informing the taxpayer of the refusal and the reasons for that refusal.

### **Section 61: Deferral requests: effect of WRA's decision**

74. Section 61 sets out the effect of WRA's decision of a deferral request. Where a request is agreed the deferral amount does not need to be paid until the end of the deferral period, and late payment interest and late payment penalties do not accrue during the deferral period. Where the WRA refuses, or only partly agrees to, the deferral request, then the

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amount not deferred must be paid by the later of the day on which the notice of refusal is received, or the filing date for the return. Late payment interest will accrue on an unpaid amount from the later of either the day after the date of the WRA's notice of decision, or the filing date for the return (as specified by section 157(3) TCMA).

### **Section 62: Variation of deferral requests**

75. Section 62 provides for situations where the taxpayer may need, following a WRA agreement to a deferral request, to vary the request either because the payment date for the deferred consideration has changed, or to adjust or remove one of the conditions for the deferral. WRA may agree the variation request in full or in part. Where WRA makes a decision on a variation request it must issue a notice of the decision with reasons to the taxpayer. WRA may not vary the terms of a deferral decision unilaterally, nor request that the taxpayer agree a variation. However, section 64 provides Welsh Ministers with the power to make regulations to enable WRA to make variations to the deferral agreement.

### **Section 63: Failure to comply with WRA's agreement to defer**

76. Section 63 provides that where a taxpayer fails to comply with the terms of the deferral or variation, or has provided false or misleading information or has withheld information, then the deferral request is to be treated as though it had never been made. If WRA takes this action it must issue a notice to the taxpayer informing them of this decision and setting out the consequences of that decision.

### **Section 64: Failure to comply with WRA's agreement to defer**

77. Section 64 provides the Welsh Ministers with the power to make, by regulation, further provisions about deferral of LTT; including provisions relating to rent (which is not subject to the deferral rules), rules relating to contracts for works or services, and amendments to section 60 to enable WRA to agree or impose variations to deferral agreements previously made.

### **Section 65: Registration of land transactions**

78. Section 65 provides for the rules relating to WRA certificates which state that, where a return has been made by the buyer of the property, the Chief Land Registrar may not reflect the land transaction in their register. A number of exceptions to this basic rule are also set out. The Welsh Ministers may make regulations about the issuing of WRA certificates. This section also enables the Chief Land Registrar to enter into arrangements with the WRA to provide information and facilities which may enable the WRA to verify that the requirements of this Bill have been complied with.

## ***Part 7 – General anti-avoidance rule***

### **Section 66: General anti-avoidance rule**

79. This section amends the Tax Collection and Management (Wales) Act 2016 (TCMA) by inserting Part 3A, General anti-avoidance rule.

### **Section 81A TCMA: Meaning of “general anti-avoidance rule” and overview**

80. This section sets out the overall purpose of this Part of the Act – to enable the Welsh Revenue Authority (WRA) to counteract tax advantages in relation to the devolved taxes that arise from artificial tax avoidance arrangements. Subsection (2) provides that the

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rules in this Part, taken together, are to be known as the general anti-avoidance rule (GAAR).

81. Although the term “avoidance” does not have an exact definition, it generally refers to a spectrum of activities designed to reduce tax liability. Subsequent sections in Part 7 define the terms used and provide more detail about how the provisions as a whole are to work.
82. The GAAR is intended to operate in tandem with targeted anti-avoidance rules (TAARs).

### **Section 81B TCMA: Tax avoidance arrangements**

83. This section sets out the definition of a “tax avoidance arrangement”. Subsection (1) defines a “tax avoidance arrangement” as an arrangement which has as its main purpose or one of its main purposes, the obtaining of a “tax advantage” for any person entering into the arrangement. In determining whether or not an arrangement has such a purpose, WRA may take account of the amount of tax that would have been chargeable in the absence of the arrangement.
84. Subsection (3) gives a broad definition of an “arrangement”, which includes transactions, schemes, actions, operations, agreements etc. The definition includes any such element taken individually, or taken as a series of elements or stages. It is kept broad so that a wide range of arrangements can be considered to determine whether they constitute tax avoidance arrangements.

### **Section 81C TCMA: Artificial tax avoidance arrangements**

85. The section sets out the tests for deciding whether a tax avoidance scheme is artificial. An arrangement is artificial if it satisfies either test. Subsection (1) provides that an arrangement is artificial if the entering into or carrying out of it is not a reasonable course of action in relation to the tax legislation in question.
86. Subsections (2)(a) and (2)(b) make further provision to assist in determining the question. In subsection (2)(a) regard may be had to whether the arrangement lacks economic or commercial substance (other than obtaining a tax advantage). In subsection (2)(b) regard may be had to whether the arrangement resulted in a different amount of tax chargeable than what was anticipated when the tax legislation was enacted.
87. Subsection (3) provides for a particular case where an arrangement is not artificial. This is where the arrangement was consistent with generally prevailing practice and WRA had indicated its acceptance of that practice.
88. Subsection (4) provides that, where a tax avoidance arrangement forms part of any other arrangements, then, in determining whether it is artificial or not, these other arrangements must also be considered.
89. Subsection (5) provides the meaning of “Welsh tax legislation” being the Welsh Tax Acts and any subordinate legislation made under those Acts.

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### **Section 81D TCMA: Meaning of “tax” and “tax advantage”**

90. This section gives the meaning of “tax” for this Part as being any devolved tax and the meaning of tax advantage as being:

- relief or increased relief from tax;
- repayment or increased repayment of tax;
- avoidance or reduction of a charge to tax;
- deferral of a payment of tax or advancement of a repayment of tax; and
- avoidance of an obligation to deduct or account for tax.

### **Section 81E TCMA: Adjustments to counteract tax advantages**

91. This section provides WRA with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes arising from an artificial tax avoidance arrangement. Subsection (1) provides that WRA may make any adjustments that it considers to be just and reasonable in order to counteract such a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the devolved tax in relation to which a tax advantage has been gained, or in respect of any other devolved tax.

92. Subsection (3) requires that, where the adjustment relates to a tax return in respect of which there is an open enquiry, that adjustment is to be made by a closure notice. In all other cases, the adjustment is to be made by means of a WRA assessment (issued at any time). Before making any adjustment WRA must issue a notice of proposed counteraction, and then a final counteraction notice – this process, in particular, allows the relevant taxpayer to make written representations before any adjustment is made.

### **Section 81F TCMA: Notice of proposed counteraction**

93. This section provides for WRA to issue a proposed counteraction notice to notify a taxpayer when it is intending to counteract a tax advantage that has arisen from an artificial tax avoidance arrangement in relation to a devolved tax.

94. Where a counteraction notice is issued by WRA it must:

- specify the tax avoidance arrangement and the tax advantage;
- provide an explanation of why the WRA considers that a tax advantage has arisen to the taxpayer from an artificial tax avoidance arrangement;
- set out the adjustment that WRA proposes to make to counteract the tax advantage; and,
- specify any amount that the taxpayer will be required to pay.

95. The proposed counteraction notice must also inform the taxpayer that a final counteraction notice (81G) will be issued after the expiry of a 45 day period from when the proposed counteraction notice is issued. It must also state that the taxpayer may request an extension to the 45 day period, and that they may make representations to WRA before the final counteraction notice is issued.

### **Section 81G TCMA: Final counteraction notice**

96. Subsection (1) provides that where a taxpayer has been sent a notice under section 81F, after the period for making representations about the notice has expired, the WRA must issue the taxpayer with a “final counteraction notice”.

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97. Under subsection (2) any final counteraction notice issued by WRA must state whether the tax advantage is to be counteracted by an adjustment under section 81E. In determining whether the tax advantage is to be counteracted, WRA must under subsection (3) have regard to any representations made by the taxpayer.
98. If a final counteraction notice states that a tax advantage is to be counteracted by means of an adjustment the notice must also –
- (a) specify the adjustment required to give effect to the counteraction,
  - (b) specify the amendment of the return which is to be included in the closure notice issued under section 50 when WRA reaches its conclusions in the enquiry,
  - (c) identify or be accompanied by WRA assessment which gives effect to the adjustment,
  - (d) specify any amount that the taxpayer is required to pay where WRA has reached a conclusion to an enquiry, or is required to pay in accordance with an assessment made by WRA.
99. Under subsection (5) where a tax advantage is not to be counteracted, the final counteraction notice must state the reasons for WRA's decision.

#### **Section 81H TCMA: Proceedings in connection with the anti-avoidance rule**

100. This section makes provision in relation to court or tribunal proceedings arising from the operation of the GAAR in relation to the devolved taxes. Where WRA has made (or is to make) an adjustment to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.
101. In determining any issues in connection with the GAAR, a court or tribunal may take account of guidance published by WRA about the GAAR which was extant when the tax avoidance arrangement was entered into. They may also take account of any other guidance, statements or other material (whether published or made by WRA or any other person) that was in the public domain at that time when the tax avoidance arrangement was entered into. They may also take account of evidence of practice generally prevailing at that time.

#### **Section 81I TCMA: General anti-avoidance rule: commencement and transitional provision**

102. This section makes provision relating to when the GAAR comes into effect and for transitional arrangements. Subsection (1) provides that the GAAR has effect in relation to a tax avoidance arrangement entered into on or after the date that the GAAR provisions come into force. Subsection (2) provides that where the tax avoidance arrangement forms part of other arrangements that were entered into before the GAAR came into force, such other arrangements are to be ignored for the purpose of section 81C(4) unless having regard to them would be to determine that the tax avoidance arrangement was not artificial.



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## **Part 8 – Interpretation and final provisions**

### **Sections 67 - 81**

103. This Part sets out the meaning of key terms referred to throughout the Bill. It includes final provisions and provides for subordinate legislation powers and commencement.

104. Sections 72 and 73 provide the meaning of “residential property” and “dwelling”. LTT, like SDLT and LBTT, contains a definition of residential property. Non-residential property is defined in the negative as being property which is not residential property. Residential property includes a building or part of a building used or suitable for use as a dwelling. It also includes the garden and grounds of the building or any other land that subsists for the benefit of the building. There are a number of buildings that are confirmed to be residential property (for example residential accommodation for school pupils) and some which are confirmed not to be residential property (for example a prison). A rule also provides that where 6 or more dwellings are acquired in a single transaction then, for the purposes of that transaction, those properties are to be treated as non-residential property. The Welsh Ministers may, by regulations subject to the affirmative procedure, amend the meaning of residential property (and accordingly non-residential property).

105. Section 74 provides how connected persons are to be established (by use of section 1122 of the Corporation Tax Act 2010 subject to certain adjustments). Section 75 provides other definitions, including “land” and “retail prices index”.

106. Section 76 introduces Schedule 23 which contains amendments to the Tax Collection and Management Act (Wales) 2016.

107. Power is conferred on the Welsh Ministers to make further ancillary changes to give full effect to any provision of this Bill. Section 79 sets out the application of this Bill to the Crown. Commencement of the Bill is provided for at section 80 and section 81 sets out the short title will be the “Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017”.

### **Schedule 1 - Overview of Schedules**

108. This Schedule contains an overview of the Schedules to this Bill.

### **Schedule 2 - Pre-completion transactions**

#### **Part 2: Pre-completion transactions which are assignments of rights**

109. Where a “person A” sells land to “person B” and as a result of a further transaction, “person C” becomes entitled to call for a transfer, a “pre-completion transaction” takes place. This Schedule sets out the rules relating to the treatment of these types of intermediate purchases or “pre-completion transactions” under this Bill, so that the end buyer (C) is liable for LTT and relief may be claimed by B to prevent a double charge to LTT.

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#### *Application of the Schedule*

110. This Schedule applies where there is an acquisition of a chargeable interest that is to be completed by a transfer; and there is a pre-completion transaction. Where a pre-completion transaction is an assignment of rights in respect of another contract, then it cannot be the “original contract” (as defined in paragraph 2(1)(a)), for the purposes of pre-completion transactions. This Schedule does not apply where there is an assignment of agreement for lease (paragraph 21, Schedule 6).

111. Under this Schedule, joint original buyers for any one contract for the acquisition of a chargeable interest are to be treated as one original buyer.

#### *Meaning of pre-completion transaction*

112. Paragraph 3 defines what is meant by a “pre-completion transaction” and sets out where certain transactions are not pre-completion transactions. Sub-paragraph (4) allows for a transaction which discharges the original contract to be a pre-completion transaction. The definitions of other key terms referred to in this Schedule are set out in paragraph 4.

113. Paragraph 5 provides that entering into a pre-completion transaction does not in itself incur a charge to LTT. However, the provisions of section 10 (contract and transfer) and the rest of this Schedule still need to be applied where a pre-completion transaction takes place.

### **Part 3: Pre-completion transactions which are free-standing transfers**

#### *Pre-completion transactions which are assignment of rights*

114. Part 2 of the Schedule deals with the treatment of pre-completion transactions that are assignment of rights, (as defined in paragraph 6,) and in which case the provisions of paragraph 7 apply.

#### *Assignment of rights: application of rules about completion and consideration*

115. Paragraph 7(2) provides that where the original contract is completed by a transfer to the transferee, that transfer is taken to be the completion of the original contract and the provisions of section 10(10)(a) are disregarded.

116. Sub-paragraph (3) provides for the amount of chargeable consideration for the transferee’s acquisition where either of the conditions at sub-paragraph (3) applies. The consideration includes any amount given by the transferee (or a connected person in accordance with the provisions in sub-paragraph (8)), whether in acquiring the chargeable interest or for the assignment of rights.

117. Sub-paragraph (9) sets out the circumstances in which the transferee is to be regarded as having substantially performed the original contract. The meaning of “substantial performance” and references to “possession” and “substantial amount of consideration” are to be read in accordance with the meanings provided in section 14.

#### *Assignment of rights: transferor treated as making separate acquisition*

118. Paragraph 8 deems the transferor as making a separate acquisition, referred to as a “notional land transaction” where there is an assignment of rights. The notional land

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transaction is “associated with” the assignment of rights under which the original buyer is the transferor.

119. Where there is an assignment of rights and the original contract is either substantially performed or transferred to the transferee, the effective date of that land transaction is the date of the notional land transaction, and the original buyer is deemed to be the buyer under that notional land transaction.

120. In cases involving preceding assignments of rights to the “implemented assignment of rights” mentioned in paragraph 7(1), prior to substantial performance or completion by transfer of the original contract, there is deemed to be an additional notional land transaction for each of the preceding assignment of rights, with a deemed amount of chargeable consideration for each of these transactions.

121. Sub-paragraphs (6) - (9) are to be read together for the rules on how to determine the chargeable consideration (in accordance with the provisions at paragraph 1(1) of Schedule 4 chargeable consideration) for

- a notional land transaction (which does not form part of a chain of transactions that are pre-completion transactions); and
- any additional notional land transactions.

*Notional land transaction: effect of rescission etc. following substantial performance*

122. Paragraph 9 provides for the situation where there is a notional land transaction by virtue of the original contract being substantially performed and the original contract is subsequently rescinded or annulled (to any extent). Although the transferee’s position is provided for by the normal provisions in section 10 (contract and transfer), this paragraph is required to ensure the transferor can claim back an appropriate amount of LTT from the WRA. Any repayment must be claimed through an amendment to the relevant land transaction return.

*Assignment of rights relating to part only of original contract*

123. Paragraph 10 provides for the treatment of assignments of rights relating to only part of the subject-matter of the original contract.

*Assignment of rights: references to “the seller”*

124. Paragraph 11 applies where there is an assignment of rights and the subject-matter of the original contract is transferred to the transferee; or there is substantial performance of the original contract.

125. Sub-paragraph (3) provides the general rule that references in this Bill to the seller where there is an assignment of rights are to be read as the seller under the original contract.

126. Sub-paragraph (4) provides that references to the seller where the original contract was substantially performed before the transferee was entitled to call for a transfer, should be read as the buyer under the original contract, when that contract was substantially performed.

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127. Sub-paragraph (5) provides that in the specified provisions listed at (a)–(e), references to the seller will be read as including the seller under the original contract and the transferor under any relevant assignment of rights.

128. Sub-paragraph (6) provides the definition of “relevant land transactions” for the purposes of paragraph 11. These are land transactions that are effected by a transfer to the transferee or substantially performed by that transferee or a notional land transaction as provided for in paragraph 8(1) or additional notional land transaction referred to in paragraph 8(3).

129. Sub-paragraph (7) provides that for the purposes of the linked transaction rules in section 28 apply, references to the seller will be read as the seller under the original contract or the transferor under any relevant assignment of rights. “Relevant assignment of rights” is defined in sub-paragraph (8).

*Pre-completion transactions which are free-standing transfers*

130. Part 3 of this Schedule sets out the treatment of pre-completion transactions that are free-standing transfers. Paragraph 12 defines a free-standing transfer for the purposes of this Schedule as a pre-completion transaction that is not an assignment of rights.

*Free-standing transfers: consideration and substantial performance*

131. Paragraph 13(2) provides that where the transferee acquires the subject-matter of the free-standing transfer, the consideration provided for the acquisition includes any consideration given for the free-standing transfer.

132. Sub-paragraph (3) provides that any acquisition under sub-paragraph (2) includes any acquisition deemed to take place as a result of substantial performance of a contract without completion (in accordance with section 10(4)). Sub-paragraph (4) provides that where the transferee (or its assignee) takes any action that would constitute substantial performance without completion (in accordance with section 14(1)), that is deemed to effect the substantial performance of the original contract.

133. The treatment of successive free-standing transfers is provided for at sub-paragraph (5), which clarifies that each successive free-standing transfer is to be treated as a separate contract to which section 10 applies. Accordingly, the rules at sub-paragraph (4) in respect of substantial performance also apply to each successive free-standing transfer.

*References to “the seller” in cases involving free-standing transfers*

134. Paragraph 14 sets out various provisions relating to the identity of the seller in free-standing transfers and, where there is a mixture of free-standing transfers and assignments of rights (except where the original contract itself is a free-standing transfer). For the purposes of this paragraph the “relevant land transaction” is that referred to in sub-paragraph (1)(a) and (b).

135. The general rule (sub-paragraph (2)) is that references to the seller in the relevant land transaction will be read as the seller or transferor under the “first appropriate transaction”, which is the original contract (except where the first appropriate

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transaction comprises a pre-completion transaction, that meets the conditions listed at sub-paragraph (8)).

136. Sub-paragraph (3) sets out that in the specified provisions (listed at sub-paragraph (4)) references to the seller in a free-standing transfer will be read as:

- the seller under the original contract;
- the transferor under the final transaction (defined in sub-paragraph (6)(b)); and
- the transferor under any relevant pre-completion transaction.

137. Sub-paragraph (5) provides that for the purposes of the linked transaction rules in section 8, references to the seller will be read as that provided for in sub-paragraph (5)(a) to (c).

138. Sub-paragraph (10) clarifies that where the final transaction in a series of two or more contracts is a pre-completion transaction the original contract is the first contract in that series.

#### **Part 4: The Minimum Consideration Rule**

##### *The minimum consideration rule*

139. Paragraph 15 provides for a minimum consideration rule for pre-completion transactions where there is a relevant connection between the parties. The meaning of “relevant connection between the parties” includes where there are a series of pre-completion transactions, and is provided at sub-paragraph (3). In this Part of the Schedule, references to “the implemented transaction” are to be read as references to pre-completion transactions referred to in paragraphs 7(1) or 13(1).

140. Sub-paragraph (2) provides that where there is a relevant connection between the parties in a pre-completion transaction, the amount of consideration for the final acquisition is to comprise the highest of:

- the consideration it would normally be in the absence of this sub-paragraph;
- the first minimum amount (paragraph 16); or
- the second minimum amount (paragraph 17).

141. Sub-paragraph (4) provides that references to the “original contract” in this Part of the Schedule, where the implemented transaction forms part of a series of contracts relating to the same subject-matter, shall be read as a reference to the first contract in that series. References to the “original buyer” are also to be read accordingly.

##### *The first minimum amount*

142. Paragraph 16 provides the meaning of first minimum amount and sets out how this is calculated for the purposes of paragraph 15.

143. The “first minimum amount” (see paragraph 15(2)(b)) in respect of a chargeable interest acquired under a land transaction referred to in paragraphs 7(4) or 13(2) is:

- the amount of consideration for the subject matter of the original contract (if the whole of the subject matter of that contract is acquired); or
- the amount of consideration just and reasonably apportioned (if a part of the subject-matter of the original contract is acquired).

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144. Sub-paragraph (3) sets out conditions A – C, which if satisfied provide that the first minimum amount is the total of any consideration required to be given by the transferor (the first T – see sub-paragraph (4)(a)) under the terms of the contract for the first T’s acquisition (see sub-paragraph (4)(b)) of the subject matter of that contract and, if not included, any consideration required to be given by the first T under any pre-completion transaction where the first T is a transferee.

145. For the purposes of paragraph 16, the meaning of “the first T” is provided at sub-paragraph (4) (a) and (4) (b) provides that “the transfer to the first T” is the pre-completion transaction where the first T is a transferee or the original contract (if T (see Condition B in sub-paragraph (3)) is the original purchaser).

*The second minimum amount*

146. Paragraph 17 sets out how the second minimum amount is calculated for the purposes of paragraph 15. The second minimum amount is the total amount of consideration given by relevant parties (see sub-paragraph (3)).

147. The formula for determining the net amount of consideration given by a relevant party is set out at sub-paragraph (2). This and the provisions of sub-paragraph (4) require that the calculation is carried out for each relevant party.

148. The relevant parties (subject to sub-paragraph (4)) for the purposes of the calculation of the second minimum amount are the original purchaser; and the transferee. Where there are successive pre-completion transactions, this includes all the transferees in the chain of transactions.

149. Sub-paragraph (4) further clarifies where the transferor and/or transferees comprise relevant parties in relation to a pre-completion transaction (an “implemented transaction”), which is part of a chain of pre-completion transactions in respect of an original contract (see paragraph 15(4)). A “preceding transaction” is defined as a pre-completion transaction that precedes the implemented transaction in a chain.

150. Sub-paragraph (5) provides that any amounts given by connected parties are treated as given by the relevant party for the purposes of sub-paragraph (2).

151. Sub-paragraph (6) provides that amounts given in respect of an implemented transaction where that transaction relates to part of the subject-matter of the original contract are to be adjusted and determined on a just and reasonable basis. This includes any transactions involving part of the subject-matter of the original contract, which precede any implemented transaction.

## **Part 5: Reliefs**

*Relief for transferor: assignment of rights*

152. Paragraph 18 sets out the conditions for full relief (sub-paragraph 2) from LTT where there is an assignment of rights. Relief is available if:

- there is an assignment of rights and a person is liable to LTT in respect of the notional land transaction (see paragraph 8(1)) or any additional land transaction (see paragraph 8(3)); and

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- the original contract had not been substantially performed when the assignment of rights (paragraph 7(1)) was entered into.

153. However, relief is not available if the land transaction under paragraph 7(4) is relieved from LTT by virtue of Schedule 10 (alternative property finance reliefs).

*Relief for original buyer: qualifying subsales*

154. Paragraph 19 sets out the conditions for relief from LTT where there is a qualifying subsale (as defined at sub-paragraph (6)). This provides that relief is available where the pre-completion transaction is:

- a) a qualifying subsale;
- b) the original purchaser would (apart from this paragraph) be liable to LTT on the land transaction effected by completion or substantial performance of the original contract;
- c) the qualifying subsale is performed at the same time as and in connection with the original contract; and
- d) relief is claimed in a land transaction return for the land transaction provided for at (b).

155. Where the qualifying subsale is for the whole of the subject-matter of the original contract, no liability to LTT arises on that transaction.

156. Sub-paragraph (3) sets out how to determine the amount of consideration where the qualifying subsale relates to part of the subject-matter of the original contract. In this situation full relief is not available but the amount of the consideration is reduced accordingly. More than one qualifying subsale may result in more than one reduction in LTT.

157. Relief is not available if the original contract was substantially performed before the qualifying subsale was entered into; or the transaction effected by the qualifying subsale is relieved by virtue of Schedule 10 (alternative property finance reliefs).

158. Where there are successive subsales, the conditions for relief set out in this paragraph apply separately to each successive subsale.

### **Schedule 3 - Transactions Exempt from Charge**

159. This Schedule is introduced by section 17 and sets out certain persons or land transactions which are exempt from LTT. A transaction that is exempt from charge is outside the scope of this Bill and does not need to be notified to the Welsh Revenue Authority (WRA). Other land transactions may be relieved from charge under different provisions provided for in this Bill. However, they are still within the scope of the tax and therefore, any such transactions must comply with the rules set out in the legislation regarding notification. This means relief must also be claimed through a land transaction return. Where a land transaction is exempt under this Schedule, section 45 (notifiable transactions) provides that no land transaction return is required.

*No chargeable consideration*

160. Paragraph 1 provides that land transactions for which there is no chargeable consideration are exempt from LTT. However, this is subject to provisions across the Bill

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that relate to market value. (See section 23 which clarifies that transactions under this section are not to be treated as though there is no chargeable consideration.)

*Acquisitions by the Crown*

161. Paragraph 2 lists those Crown bodies that are exempt from charge under LTT, they include; the Welsh Ministers, Ministers of the Crown and other central and devolved government bodies.

*Transactions in connection with divorce or the dissolution of civil partnership etc.*

162. Paragraphs 3 and 4 respectively provide that certain transactions if effected in pursuance of matrimonial break-up proceedings and proceedings for dissolution of a civil partnership or in connection with such proceedings are exempt from charge.

*Assents and appropriations by personal representatives and variation of testamentary dispositions etc.*

163. Paragraphs 5 and 6 exempts from LTT a transaction if it is effected to implement the wishes of a will, or the variation of testamentary dispositions, provided there is no consideration given and subject to the additional conditions listed.

*Power to add, remove or vary exemptions*

164. Paragraph 7 provides that regulations may amend this Schedule, so as to add to the list of exemptions, remove an exemption or modify an exemption.

#### **Schedule 4 – Chargeable consideration**

165. LTT will be calculated by reference to the chargeable consideration given for the acquisition of the chargeable interest. This Schedule, introduced by section 18, sets out the rules for determining the amount of the chargeable consideration.

*Money or money's worth*

166. Unless expressly provided otherwise, the chargeable consideration for a land transaction is defined as any consideration given in money or money's worth for the subject-matter of the transaction, directly or indirectly by the buyer or a person connected to the buyer.

*Value added tax*

167. Any VAT chargeable in respect of the transaction constitutes chargeable consideration, unless the seller has the option to charge VAT (for example, in the case of a new lease) but has not done so by the effective date of the transaction.

*Postponed consideration*

168. The chargeable consideration is to be determined with no discount for any postponement of the right of the seller to receive it (or any part of it).

*Just and reasonable apportionment*

169. Where consideration is given in an agreement that comprises more than one land transaction or a land transaction and another matter, that consideration is to be apportioned to the (or each) relevant land transaction on a just and reasonable basis, and LTT will be assessed on the value of the consideration so apportioned. This would be relevant where, for example:



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- a buyer pays for the land and building and another amount to cover moveable items (such as white goods, curtains etc.);
- a contract covers the sale of land and an agreement for construction of buildings on the land.

#### *Exchanges*

170. Paragraph 5 provides that in cases where consideration in a land transaction is partly or entirely in the form of another land transaction (e.g. part-exchange of properties), each transaction is treated separately. This paragraph determines how the consideration is to be valued.

171. When the interest is a major interest in land (as defined in section 68), such as a freehold, the value of the consideration is the market value of the interest acquired (including rent, where the interest is a lease) and any VAT actually chargeable in respect of the acquisition. No regard is to be had to any reduction in market value resulting from anything done, the main purpose (or one of the main purposes) of which is to avoid LTT. This targeted anti-avoidance rule is to stop taxpayers manipulating the market value of the land to be exchanged so as to pay no, or a lower amount of, LTT.

172. Where the interest is not a major interest in land (such as an easement), it is only the actual consideration given that is relevant (and not the market value of the interest). Where there are two or more relevant acquisitions in one transaction, the chargeable consideration is to be apportioned appropriately to each transaction, by reference to the market value of each interest.

173. These provisions are subject to the rules on partition and do not apply to cases to which paragraph 18 applies (arrangements involving public or educational bodies).

#### *Partition etc.: disregard of existing interest*

174. Where land is partitioned, the share of that land held by the buyer immediately before the partition does not comprise chargeable consideration.

#### *Valuation of non-monetary consideration*

175. Non-monetary consideration (which comprises all consideration except money and debt) is to be valued at its market value, unless provided otherwise.

#### *Debt as consideration*

176. Where chargeable consideration consists entirely or partly of the assumption, satisfaction or release of debt, that amount of debt is to be taken as the whole or part of the chargeable consideration for a transaction. Where the value of the debt as chargeable consideration exceeds the market value of the land transaction, it will be treated as being limited to that market value.

#### *Cases where conditions for exemption not fully met*

177. Where not all of the conditions for exemption are met under Schedule 3 paragraph 5 (assents and appropriations by personal representatives) and paragraph 6 (variation of testamentary dispositions etc.), chargeable consideration does not include any secured debt assumed (Schedule 3 paragraph 5 (2)) or the making of a variation (Schedule 3 paragraph 6 (2)(b)).

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*Conversion of amounts in foreign currency*

178. The amount or value of chargeable consideration is the amount in sterling and the sterling equivalent of an amount expressed in any other currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction.

*Carrying out of works*

179. Where the whole or part of the consideration consists of construction, improvement, repair or other works to enhance the value of the land, the value of the works counts as chargeable consideration. However, such works will not count as chargeable consideration if they are carried out after the effective date of the transaction, on the land acquired (or some other land held by the buyer or somebody connected with the buyer), and are not required to be carried out by the seller under the transaction. This is subject to paragraph 18 (arrangements involving public or educational bodies).

*Provision of services*

180. Where the consideration consists of the provision of services (other than works of construction, improvement or repair of a building or other structure), its value is to be taken as open market value (including VAT) as at the effective date of the transaction. This is subject to paragraph 18 (arrangements involving public or educational bodies).

*Land transaction entered into by reason of employment*

181. Where the buyer is an employee whose rent is paid (wholly or partly) by their employer and the value of that rent is liable to income tax (as part of the employee's income), the cash equivalent of that amount is to be taken as the rent payable by the buyer for the purposes of valuing chargeable consideration. Where the accommodation is provided for the performance of the employee's duties (and so not liable to income tax), the value of the rent will not be taken to be chargeable consideration. In other cases, the chargeable consideration is the market value of the subject matter of the transaction.

*Indemnity given by employer*

182. An indemnity given by the buyer to the seller in respect of certain third party liabilities does not count as chargeable consideration.

*Buyer bearing inheritance tax liability capital gains tax liability*

183. Where the buyer pays the Inheritance Tax due on an interest, that amount does not count as chargeable consideration.

*Buyer bearing capital gains tax liability*

184. Where the buyer pays Capital Gains Tax due on an interest (and there is no other consideration), that amount does not count as chargeable consideration.

*Costs of enfranchisement*

185. Costs of enfranchisement borne by the buyer do not count as chargeable consideration.

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*Arrangements involving public or educational bodies*

186. Where certain qualifying public or educational bodies (“A”) transfer an interest to another party (“B”), which is then leased back from B to A, the following does not count as chargeable consideration:

- (for the main transfer) the lease-back, building works or the provision of services by B); or,
- (for the lease-back), the main transfer, the transfer of surplus land or money paid to B for building works or provision of services.

## **Schedule 5 - Higher rates residential property transactions**

187. This Schedule is introduced by section 24 and applies to purchases of higher rates residential property transactions and provides the rules identifying when the acquisition of a major interest (or an interest that is deemed to be a major interest) is subject to the higher rates. The charge is applied differently to individuals and buyers who are not individuals, for example companies or other bodies corporate. Fundamentally, when an individual maintains a major interest in a residential property and purchases a major interest in an additional residential property then they must consider if the conditions are satisfied for the higher rates of land transaction tax to apply to the acquisition. Where the buyer, or one of the buyers, is not an individual then the higher rates rules apply to all residential property transactions they enter, regardless of whether they already own residential property or not.

188. Part 1 of the Schedule provides an overview of its contents and Part 6 provides for interpretation of key terms referred to throughout the Schedule. The Welsh Ministers may amend this Schedule by regulations which will be subject to the affirmative procedure.

### **Part 2: Buyer is an individual: single dwelling transactions**

189. Part 2 sets out when a chargeable transaction undertaken by an individual and involving a single dwelling is a ‘higher rates residential property transaction’. Paragraph 3(2) specifies that a transaction is a higher rates residential property transaction when the buyer is an individual; the main subject-matter of the transaction consists of a major interest in a dwelling; and the chargeable consideration for the transaction is £40,000 or more. However, a transaction which meets these criteria is not a higher rates residential property transaction, if at the end of the day of the effective date of the transaction, the dwelling acquired is subject to a lease which is held by someone unconnected to the buyer and has an unexpired term of more than 21 years. Further exceptions to what comprises a higher rates residential property transaction are listed at paragraph 3(5) and relate to ‘interest in same dwelling exception’ and ‘replacement of main residence exception’ which are set out in paragraphs 7 and 8 of the schedule respectively (see below).

190. Paragraph 4 specifies that ‘intermediate transactions’ (set out in paragraph 9) are also subject to the higher rates of land transaction tax.

191. Paragraph 5 ensures that where a buyer already owns a dwelling and this dwelling has a market value of £40,000 or more, then it is to be taken into account for determining whether the new transaction is subject to the higher rates. That is to say, the taxpayer is

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considered to have acquired an additional dwelling and therefore, subject to the rules in paragraph 8 (replacement of main residence), is liable to the higher rates of land transaction tax on the chargeable consideration for the new acquisition. However, paragraph 5 is to be disregarded where the interest is reversionary on a lease which is held by an unconnected person to the buyer and has an unexpired term of more than 21 years.

192. Paragraph 6 sets out that where the transaction involves more than one buyer, all of whom are individuals, the transaction is a higher rates residential property transaction if the transaction meets the conditions set out in paragraph 3 in respect of any one of the buyers. Intermediate transactions (see paragraph 9) are also higher rates residential property transactions where the conditions set out in paragraph 9 apply in respect of any one of the buyers.

193. Paragraph 7 provides for an exception to the higher rates where the buyer is acquiring an additional interest in their only or main residence. This will include situations relating to a main residence such as collective enfranchisement transactions, lease extensions granted as a successor lease rather than a surrender and re-grant, and a transfer of equity where a taxpayer acquires the interest of their co-owner in the dwelling.

194. Paragraph 8 sets out that where the dwelling purchased is intended to be a replacement for the buyer's only or main residence then that transaction is not a higher rates residential property transaction, in so far that it meets the conditions listed in paragraph 8. These include the conditions that the buyer or their spouse or civil partner must not retain a major interest in the sold dwelling (their previous main residence); or acquire a major interest in another dwelling during the 3 year period between relinquishing the previous main residence and the effective date of the transaction, which replaces the only or main residence. A similar set of rules apply where the new main residence is acquired before the old main residence is sold. In these cases the taxpayer may reclaim the element of the higher rates charge once their former main residence is sold (so long as that sale takes place within 3 years of the purchase of the new main residence. However, the condition which requires the buyer or their spouse or civil partner not to retain a major interest in their previous only or main residence does not apply to the spouse or civil partner if they are not living together as defined in paragraph 25 (3) on the effective date of the transaction concerned.

195. Paragraph 9 sets out the rules for 'intermediate transactions'. These are transactions involving the acquisition of a dwelling which takes place during the 'interim period'. The interim period is the period between a buyer selling their only or main residence and replacing their previous only or main residence. The rules will ensure that any intermediate transactions that occur between the taxpayer selling their former main residence and acquiring their new main residence will be liable to the higher rates of land transaction tax. Where the intermediate transaction was not liable to the higher rates, because, for example, the taxpayer did not own any other residential property, but subsequently acquires a second residential property to which the conditions relating to replacement of main residence apply as set out in the respective legislation governing these transactions in other parts of the UK, then the intermediate transaction undertaken in Wales will need to be re-assessed to determine if that intermediate transaction is now

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liable to the higher rates of land transaction tax. Paragraph 9 (4) and (5), ensure that where a buyer replaces a main residence in Wales, England, Northern Ireland or Scotland, in accordance with the conditions set out in the respective legislation governing these transactions, intermediate transactions undertaken in Wales will need to be re-assessed to determine if the intermediate transaction is now liable to the higher rates of land transaction tax. Where the intermediate transaction is a higher rates property transaction as a result of these rules, then the buyer must submit a return (see paragraph 24) to the WRA for that transaction. This return must include a self-assessment and be submitted within 30 days of the interim period ending.

### **Part 3: Buyer is an individual: multiple dwelling transactions**

196. Paragraphs 10 to 18 provide the rules that apply where the buyer acquires a number of residential dwellings in a single transaction. In the main this will mean that the taxpayer will be required to pay the higher rates on all of the dwellings acquired even where one is a replacement of a main residence. Where the transaction is structured so that the replacement of the main residence is effected separately from the other acquisition then each transaction, for the purposes of establishing the liability to higher rates land transaction tax, is considered separately although they may still be regarded as linked transactions. Where the transaction is structured as a purchase of two dwellings, one of which is the replacement of a main residence then the higher rates will apply to both transactions.

197. There is one exception to this basic rule and that is where the second (or further additional) dwelling acquired through the single transactions meet the conditions in paragraph 14; the subsidiary dwelling exception. The rules in paragraph 14 operate so that where two or more dwellings are acquired in a single transaction, for example a house with a cottage within the grounds or a house converted into two flats, then if the second (or all of the additional dwellings) are subsidiary to the main dwelling then the higher rates will not apply to the transaction, unless the buyer already owns a dwelling and is not replacing their only or main residence. The intention is to cover situations where the taxpayer purchases two dwellings that in effect form part of the same complex, for example a main home and an annexe. The taxpayer will be excepted from the higher rates rules where the consideration given for the main dwelling is equal to, or greater than two thirds of the total consideration given for the transaction. If there are more than one subsidiary dwelling then the total consideration allocated to all subsidiary dwellings must be less than one third of the total consideration for the transaction in order to be excepted from the higher rates rules.

### **Part 4: Buyer is not an individual**

198. Part 4 sets out the higher rates rules for transactions undertaken by a buyer who is not an individual. These rules will cover purchases made by entities such as companies or other bodies corporate (sometimes called 'non-natural persons'). Paragraph 22 stipulates that where there are two or more buyers in a transaction, the transaction will be subject to the higher rates of land transaction tax if any one of the buyers is not an individual.

199. Paragraph 20 sets out the conditions that apply to a higher rates residential property transaction where a buyer who is not an individual purchases a single dwelling. These

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provisions have the effect of ensuring that the first purchase of a residential property by a non-natural person will be subject to the higher rates of land transaction tax.

200. Paragraph 21 sets out the conditions that apply for a chargeable transaction involving more than one dwelling to be a higher rates residential property transaction, for a buyer who is not an individual. Such a transaction is a higher rates residential property transaction if the conditions set out in paragraph 21 are met in respect of at least one dwelling.

#### **Part 5: Supplementary provisions**

201. Part 5 provides supplementary rules in relation to the higher rates residential property transactions.

202. 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 higher rates of land transaction tax 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 the 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 the Tax Collection and Management Act); or where they are unable to amend the return, the buyer can make a claim for repayment of the overpaid tax (ch7, pt3 TCMA).

203. 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 the 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.

204. Paragraph 25 sets out how the higher rates 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).

205. Paragraph 26 provides for a further exception to the higher rates rules so that a buyer does not need to take into account for higher rates purposes when acquiring a residential dwelling a major interest held in a former matrimonial where that interest is retained as a result of an order made in relation to the divorce or dissolution of a civil partnership. That interest so retained by the order 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.

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206. Paragraphs 27 to 30 provide rules 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 another residential dwelling at the time of the purchase.
207. Paragraph 29 provides that where a child (i.e. a child under the age of 18) is to be treated as the purchaser, or owner, as a result of the trust rules applicable to the higher rates 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.
208. Paragraph 30 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. Therefore, all purchases of residential property including a dwelling, by trust arrangements other than those to which the rules in paragraphs 27 to 29 apply will be liable for the higher rates if the conditions set out in paragraph 20 (other than 20(1)(a)) or paragraph 21 (other than 21(1)(a)) are met (as appropriate).
209. Paragraph 31 sets out the rules for higher rates residential property transactions as they apply to purchases made by partnerships. These rules specify that a partner in a partnership is treated as a joint buyer where the additional residential property is purchased by or on behalf of the partnership. Therefore, if any one partner would be liable to the higher rates then the higher rates of land transaction tax will apply to the whole transaction. However, 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.
210. Paragraph 32 clarifies the rules for higher rates residential property transactions 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 is not liable for the higher rates 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.
211. Paragraph 33 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 three years of the buyer purchasing a residential property, the inherited property is not taken into account for the purposes of the higher rates. However, if at any time during that three 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.

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212. Paragraph 33(6) 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 three years from the date of the variation of the will for the purposes of the higher rates.

#### **Part 6: Interpretation**

213. Paragraph 34 sets out the rules that apply in establishing whether a buyer holds a major interest in a dwelling located outside Wales. This will include any such dwelling that would be a dwelling for SDLT purposes in England. Outside England and Wales it will be any dwelling that meets equivalent ownership rules. Where it is a child that owns the major interest in a dwelling outside Wales then that child's parent (and their spouse or civil partner) are deemed to own the interest (unless they are not living together).

214. Paragraph 35 sets out what is a dwelling for the purposes of the schedule. It includes a building or part of a building that is used or suitable for use as a dwelling or is in the process of being constructed or adapted for use as a dwelling. It will also include any dwelling to be constructed or adapted under contract for use as a dwelling.

215. Paragraph 36 makes it clear that a major interest for the purposes of this schedule does not include a lease granted for less than 7 years.

#### **Schedule 6 - Leases**

216. Section 32 introduces Schedule 6 which contains the rules for how the rents paid on the grant of a lease are to be taxed.

217. There are a number of changes from the SDLT rules to improve the operation of the rules and to provide consistency of treatment for the different situations that can arise for tenants. These provisions, unlike SDLT, do not tax the rent paid on the grant of a residential lease. However, the Welsh Ministers do have a power to introduce a tax on rent paid on these types of leases in the future if they consider it necessary.

#### **Part 2: Duration of Lease and Treatment of Overlapping Leases**

##### *Leases for a fixed term*

218. Paragraph 2 provides that the Bill applies to a lease for a fixed term so that any clause in that lease which might mean it is terminated early is ignored.

##### *Leases that continue after a fixed period*

219. Paragraph 3 provides that when a lease for a fixed term reaches its contractual termination date ("CTD") and the tenant remains in occupation that the lease is treated as though it was for a year longer than the original fixed term. The filing obligation for this additional year, in the event that there is more tax payable or that tax becomes payable, is 30 days after the end of that additional 12 month period.

220. In the event that there is a further extension then the original lease is to be treated as extended by another year (so, two years) and so on. The filing date for the return is,



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again, 30 days after the end of that two year extension period. However, if the lease terminates early during any deemed extension, it's treated accordingly for LTT (again, with a further return obligation arising if more tax is due).

221. These rules are subject to paragraphs 4 and 8 of this Schedule which provide for specific rules in specific circumstances.

*Leases that continue after a fixed term: grant of a new lease*

222. Paragraph 4 applies where a lease (the 'original lease') is deemed to have continued after the CTD for another year (or subsequent additional year) and that during that period a new lease is granted to the tenant of the same (or substantially the same) premises, and the new lease begins during that period (and is not backdated).

223. In these circumstances the rules in paragraph 3 do not apply to the final additional term. Instead, the term of the new lease is treated as commencing on the date of the CTD of the original lease (or its anniversary, if the extension was for more than one year).

224. Any rent that was payable under the original lease for this period is to be treated as rent payable under the new lease.

*Leases for an indefinite term*

225. Paragraph 5 contains the rules for the treatment of leases that are granted for an indefinite term. When initially granted the lease is to be treated as though it had been granted for a fixed term of a year, and a return is due accordingly 30 days later. If the tenant is still in occupation after the end of that year then they are to be treated as though the lease is for a fixed period of two years and so on.

226. If (more) tax becomes payable, a return must be made 30 days from the end of each deemed longer fixed period. However, if the lease for an indefinite period terminates in the first year then the taxpayer can, exceptionally, amend their return to reflect rent which was actually paid or payable for the period (sub-paragraph 5(6)). The return can only be amended within the normal time limit for making an amendment, i.e. within 12 months of the filing date of the original return.

227. Where the lease terminates in the second, or subsequent, year then the rules similar to those for leases that continue after a fixed term apply. A return will be required 30 days after the date that the lease terminates (sub-paragraphs 5(2) and 5(5)).

*Successive linked leases*

228. Paragraph 6 provides that a series of linked leases are treated as a single lease for tax purposes. This will ensure that LTT cannot be avoided by a taxpayer entering into a series of short leases, where the commercial reality is that a single, longer lease has been agreed from the outset. However, where a lease is renewed on terms that would be available to a third party then that lease will not, normally, to be treated as linked for these purposes.

*Rent for overlap period in case of grant of further lease*

229. Paragraph 7 applies where a tenant surrenders a lease (the 'old lease') and the landlord grants the tenant a new lease for the same or substantially the same property,

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or in other specified, similar circumstances the tenant obtains a new lease of the same or substantially the same property.

230. In these cases the rent payable under the new lease is treated as reduced by the rent that would have been payable under the old lease. This rule is provided so as to ensure that a taxpayer does not pay tax on the same amounts of rent under both the old and the new leases.

*Tenant holding over: new lease backdated to previous year*

231. Paragraph 8 provides rules for a specific case where a renewed lease is backdated, and gives 'overlap relief'. When a fixed term lease continues after its CTD (this period is known as "holdover"), is renewed, and the new lease backdated to a date within the final year of holdover, paragraph 4 will apply. However, where holdover lasts more than one year, and the new lease is backdated to a day during holdover other than in its final year (i.e. during the "whole years of holdover") paragraph 8 will apply.

232. Where the conditions in sub-paragraph 8(1) are met then the new lease is treated as though it commenced on the date that it is expressed to have commenced (i.e. the date stated in the lease). However, the rent payable under the new lease in respect of the "whole years of holdover" is reduced by the amount of rent payable for that same period under the old lease (as extended during holdover, and described as the "holdover tenancy" in this provision). This reduction cannot, though, create a negative amount.

### **Part 3: Rent and Other Consideration**

#### *Rent*

233. Paragraph 9 defines rent for the purposes of the Bill so that a sum payable in respect of rent is treated as such even if it is said to include other matters (such as service charges) unless these are separately identified. 'Rent' does not include any amount that is paid for the grant of the lease.

#### *Variable or uncertain rent*

234. Where rent is variable or uncertain, paragraph 10 applies. The rules provide that the taxpayer must make their return with the amount of rents based on a judgement to the best of their ability as to what the amount of rent will be during the first five years of the lease. For the subsequent years of the lease (if it has been granted for a period of longer than five years) the rent payable is assumed to equal the highest amount paid in any period of 12 consecutive months in the first five years. No account is taken for changes in rent which are purely in line with inflation.

#### *First rent review in final quarter of fifth year*

235. Paragraph 11 provides that where the lease provides for a review of the rents to be carried out but that review commences in the final three months of the first five years of the lease, the review is ignored for LTT purposes.

#### *Adjustment of tax where rent determined on reconsideration date*

236. Paragraph 12 provides that a taxpayer must reassess their LTT liability on the 'reconsideration date' if their original return was made on the basis of contingent, uncertain or unascertained rents for the first five years of the lease.

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237. The reconsideration date is defined as a date falling at the end of the fifth year of the lease or any earlier date at which the rents become certain. The rents become certain when either the contingency occurs (or it is clear that it will not occur) or the amount of rent becomes ascertained.

*Underpayment of tax where rent determined on reconsideration date*

238. Paragraph 13 provides the rules for when reconsideration under paragraph 12 results in an underpayment, or makes the transaction notifiable. The taxpayer must make any return within 30 days of the reconsideration date.

239. However, where the rent remains uncertain at the end of the fifth year, then the taxpayer must make a return to their best judgement, and if within 12 months of that date the rents cease to be uncertain then the taxpayer must amend that return accordingly.

*Overpayment of tax where rent determined on reconsideration date*

240. Paragraph 14 provides for where the reconsideration under paragraph 12 establishes that there has been an overpayment of tax. Where this occurs the taxpayer can amend their return, if they are within the normal 12 month period. Otherwise, the taxpayer can make a repayment claim from WRA.

*Reverse premiums*

241. Paragraph 15 provides that a reverse premium is not treated as chargeable consideration. A reverse premium is defined as one where the premium is paid by the landlord or the assignor, or on the surrender of a lease by the tenant.

*Tenant's obligations etc. that do not count as chargeable consideration*

242. Paragraph 16 provides that a number of obligations, for example an undertaking by the tenant to repair and maintain the property subject to the lease, are not to be treated as consideration given for the granting of the lease. Additionally, where the tenant pays an amount to discharge an obligation then that payment is similarly not treated as chargeable consideration.

*Surrender of existing lease in return for new lease*

243. Paragraph 17 applies where a tenant surrenders an old lease as consideration for a new lease, and the parties remain the same. The surrender is not treated as chargeable consideration for the grant, and vice versa.

*Assignment of lease: assumption of obligation by assignee*

244. Paragraph 18 provides that where a lease is assigned the assumption of the obligation to make rent payments or comply with any other obligations of the lease do not count as consideration for the assignment.

*Loan or deposit in connection with grant or assignment of lease*

245. Paragraph 19 applies where a tenant (or a person connected to them) pays a deposit or loan to any person, and the tenant has some control over whether repayment will occur (or repayment is contingent on the tenant's death). In such a case, the deposit or loan is treated as consideration other than rent given for the lease. The same rule also applies where the deposit or loan is paid for the assignment of a lease.

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246. However, a deposit that equals no more than twice the maximum amount of rent payable in any 12 month period in the first five years on the grant of the lease, or the highest amount in any 12 month period in the first five years of the remaining years of the lease in the case of an assignment does not count as consideration.

#### **Part 4: Agreements for Lease, Assignments and Variations**

##### *Agreement to lease*

247. Paragraph 20 provides the rules for where there has been an agreement to lease and that agreement has been substantially performed without the lease having been executed.

248. Where the agreement to lease has been substantially performed the agreement is treated as a notional lease with the effective date of the transaction being the date of substantial performance. If an actual lease is subsequently granted then the notional lease and the actual lease are treated as forming a single lease, with consideration given for both charged to tax accordingly.

249. The actual grant of the lease is disregarded except for its effect under the linked transaction rules.

##### *Assignment of agreement for lease*

250. Paragraph 21 makes special provision to ensure paragraph 20 still gives the right effect where an interest as tenant under an agreement for lease is assigned.

##### *Cases where assignment of lease treated as grant of lease*

251. Paragraph 22 provides for cases where the assignment of a lease is to be treated as a grant. It is intended to address possible tax avoidance activity. Where a lease has been granted and specified reliefs applied, then (unless those reliefs had already been withdrawn) the first assignment to which the specified reliefs do not apply is treated as a grant of a lease. The lease is treated as granted for a period that represents the remaining unexpired term of the lease at the date of assignment.

##### *Assignment of lease*

252. Paragraph 23 applies where a lease is assigned. Where specified obligations would require the person initially granted the lease to make a return or further, that obligation passes to the assignee.

##### *Reduction of rent or term or other variation of lease*

253. Paragraph 24 provides for cases where a lease is varied so that the amount of rent reduces, or the lease is varied (other than an extension of the term or an increase in the rent payable). In such cases the variation is treated as a land transaction on which LTT is potentially payable by the tenant. Where the variation is that the term of the lease is reduced this is treated as an acquisition of a chargeable interest by the landlord and tax may be payable.

##### *Increase of rent treated as grant of new lease: variation of lease in first five years*

254. Paragraph 25 provides for situations where the lease is varied so as to increase the rents payable, and that variation occurs before the end of the fifth year of the lease. The variation is treated as the grant of a lease in consideration for the additional rents.

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However, this does not apply if the variation is under the original terms of the lease, or by virtue of specified statutory rules.

## **Part 6: Calculation of Tax Chargeable**

*Residential leases, non-residential leases and mixed leases*

255. Paragraph 26 defines an acquisition of residential, non-residential and mixed leases.

*No tax chargeable in respect of rent: residential leases*

256. Paragraph 27 provides that the rents paid under a residential lease are not chargeable to LTT. Any other consideration that is not rent remains chargeable under normal rules. A regulation making power is provided so that the Welsh Ministers can make such rents chargeable to the tax. Further powers are provided so that the Welsh Ministers can set the initial and subsequent rates and bands which would apply should they bring such rents within the tax.

*Tax rates and bands: rent element of non-residential and mixed leases*

257. Paragraph 28 provides the Welsh Ministers with regulation making powers so that they can set the initial and subsequent rates of tax and the bands that are to apply to rents paid under non-residential and mixed leases. The rates and bands must include a zero rate band, the other bands and rates above the zero rate band, and also the date on which those rates and bands are to apply.

*Calculation of tax chargeable in respect of rent: non-residential and mixed leases*

258. Paragraph 29 provides the steps to be taken to calculate the liability to tax by applying the rate of tax to the amount of consideration that falls within a particular tax band, and then adding those different amounts together.

*Calculation of tax chargeable in respect of rent: linked transactions*

259. Paragraph 30 provides calculation rules where the transaction is linked to one or more other transactions.

*Net present value*

260. Paragraph 31 provides the formula for establishing the net present value of future years rent payments. This ensures that rent payments for future years are taxed at an amount that represents the value of that payment at the effective date of the transaction.

*Temporal discount rate*

261. Paragraph 32 sets the temporal discount rate to be used in the net present value formula. It is set at 3.5% and can be varied by the Welsh Ministers through regulations.

*Tax chargeable in respect of consideration other than rent: general*

262. Paragraph 33 confirms that consideration other than rent is taxed under the provisions in the Bill, and that tax charged under this Schedule is in addition to the tax calculated under the other provisions.

*Tax chargeable in respect of consideration other than rent: mixed leases*

263. Paragraph 35 provides for consideration other than rent for a mixed lease to be split on a just and reasonable basis between residential and non-residential property and that those two notional transactions are to be treated as linked transactions.

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#### *Relevant rent*

264. Paragraph 36 provides definitions for “the relevant rent”, “the specified amount” and “annual rent”. The Welsh Ministers are able to make regulations to amend or repeal paragraphs 34 to 36 of this Schedule. Any regulations made under this paragraph will be subject to the affirmative procedure.

### **Schedule 7- Partnerships**

265. This Schedule makes provision for the application of LTT to a range of land transactions involving partners or partnerships. The Welsh Ministers may by regulations amend this Schedule.

266. The Schedule begins with an overview of its contents, which provides for the rules governing ordinary partnership transactions; transactions involving transfers of interests from, or to, partners; transactions between partnerships; and transactions involving corporate bodies. The treatment of property investment partnerships and the situation where the chargeable consideration for transactions includes rent is also considered. Part 10 of the Schedule provides for interpretation and sets out the meanings of key terms referred to in the Schedule.

#### **Part 2: General Provisions**

267. For the purposes of this Bill, the term “partnership” is defined at paragraph 3 of the Schedule to include general, limited and limited liability partnerships and any non-UK entity that resembles these types of UK partnerships. Partnerships are, broadly, treated as transparent so that a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners. Accordingly, a land transaction entered into for the purposes of a partnership is treated as entered into for or on behalf of the partners. This is the case even when the partnership has a separate legal personality.

268. A partnership is deemed to be the same partnership, notwithstanding a change in its membership so long as there is at least one partner in common before and after the change in membership. A partnership is not treated as a unit trust scheme or open-ended investment company.

#### **Part 3 - Ordinary Partnership Transactions**

269. Provisions relating to the treatment of ordinary partnership transactions (i.e. an acquisition by a partnership from a seller who is unconnected to the partnership or its partners, and who does not become a partner by virtue of the transaction) are set out in Part 3 of the Schedule. Ordinary partnership transactions are treated in the same way as any other transaction for the purposes of LTT.

270. Paragraphs 9 to 11 sets out the responsibilities of partners under the Bill. The responsible partners are those persons who are partners at the effective date of the transaction, and any partner who becomes a member of the partnership after the effective date. A representative partner, nominated by a majority of the partners can represent the partnership. However, for the nomination, or revocation of such a nomination, to be effective, notice must be provided to the WRA.

271. Under this Bill, each of the partners in a partnership is jointly and severally liable for any LTT, late payment interest, or penalties. However, no interest or unpaid tax can be

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recovered from a person who did not become a responsible partner until after the effective dates of the transaction.

#### **Part 4: Transactions involving transfers to a partnership**

272. Part 4 provides that the transfer of an interest in land to a partnership by a partner, a person who becomes a partner in return for the interest (a “prospective partner”), or someone connected to either such person, is a chargeable transaction. The chargeable consideration for such a transfer is determined as being a proportion of the market value of the interest transferred. That proportion is a function of the ownership share in the transferred interest in land held by the transferee(s), and the partnership share(s) of the partner(s) or prospective partner(s) immediately after the transfer. In brief, this takes account of the extent to which a person is transferring the interest to themselves in this scenario. The formula used to calculate the chargeable consideration is set out in paragraphs 13 and 14.

273. Part 4 also contains anti-avoidance provisions to prevent a person purporting to transfer property into a partnership in a way which enjoys a tax discount under this Part, in circumstances where the person subsequently exits the partnership, or otherwise reduces their partnership interest or extracts capital from the partnership.

#### **Part 5: Transactions involving transfers from a partnership**

274. Part 5 provides that where an interest in land is transferred from a partnership to a partner or former partner (or someone connected with such a person), this is a chargeable transaction. It defines those situations where there is a transfer of an interest in land out of a partnership and provides that the chargeable consideration is a proportion of the market value transferred. Like under Part 4, that proportion is a function of the ownership share in the transferred interest in land held by the recipient partner(s) (etc.), and the partnership share of that/those person(s) or persons connected to them held immediately before the transfer (paragraphs 21 and 22). Again, this takes account of the extent to which the partner or former partner already owned a proportion of the interest transferred to them.

#### **Part 6: Other partnership transactions**

275. Part 6 of the Schedule makes separate provision for the transfer of a chargeable interest from a partnership to a partnership (paragraph 29). It makes special provision for how Parts 4 (transfer to a partnership) and 5 (transfer from a partnership) of this Schedule apply in this scenario.

276. Where property is transferred from a partnership consisting wholly of bodies corporate to one of the partners, and the sum of the lower proportions (as determined by paragraph 22) is 75 or more, the chargeable consideration is deemed to be equal to the market value of the interest transferred (paragraph 30).

#### **Part 7: Application of Parts 5 and 6 in relation to leases**

277. Part 7 of this Schedule makes provision for the application of Parts 5 and 6 to leases, and as such modifies Schedule 6 accordingly. Where rent forms all or part of the consideration for a transaction under paragraphs 13 or 21, the chargeable consideration for the transaction shall be a proportion of the net present value of the rent as determined by Part 5 of Schedule 6 (leases: calculation of tax chargeable).

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#### **Part 8: Transfers involving property-investment partnerships**

278. Part 8 of the Schedule makes provision for the transfer of interests in property-investment partnerships (paragraph 34) whose sole or main activity is holding or investing in land. When there is a transfer of an interest in a property-investment partnership there is no legal transfer of land except indirectly through a change of members in the partnership. The transfer of an interest in a property-investment partnership results in a charge to LTT for the person who acquires an increased or new partnership share. The chargeable consideration for the transfer of the partnership interest is taken to be equal to a proportion of the market value of the “relevant partnership property” (see paragraph 34(6) and (7)).

279. Paragraph 35 excludes certain leases from the definition of relevant partnership property. These are leases which only have a market value because of changes in market rent and which satisfy certain other conditions.

280. Paragraph 36 allows for a property-investment partnership to disapply paragraph 13 of this Schedule, which provides for transactions involving a transfer of chargeable interest to a partnership. Where such an election is made LTT is calculated on the market value of the chargeable interest transferred. Such an election is irrevocable and cannot at a later date be withdrawn or amended after the election has been submitted.

#### **Part 9: Application of exemptions, reliefs, provisions of TCMA and notification provisions**

281. Part 9 makes provision for the application of exemptions and reliefs, and sets out the notification requirements in respect of transactions to which this Schedule applies.

282. Paragraphs 40 and 41 modify group relief as set out in Schedule 16 for the purposes of partnership transactions. Paragraph 42 modifies charities relief (Schedule 18) for the purposes of partnership transactions.

283. Paragraph 43 provides that a chargeable transaction (as provided for under paragraph 18 or 34) is a notifiable transaction when the consideration exceeds the zero rate threshold.

#### **Schedule 8 - Trusts**

284. This Schedule provides for the treatment of trusts for the purposes of LTT. Trusts are divided into ‘bare trusts’ and ‘settlements’ with settlements defined as trusts which are not bare trusts. Bare trusts are trusts where the beneficiary is absolutely entitled to the property and the bare trustee holds the property as nominee. Here, the beneficiary is liable for any LTT. For other types of trusts the LTT liability is imposed on the trustees, and the tax can be recovered from any one of them.

285. In addition to the rules governing trustees’ liability to tax, interest and penalties the Schedule sets out the responsibilities of trustees in relation to providing the land transaction return and declaration, procedure for notification of a WRA enquiry to trustees and for appeals and reviews. It also provides that payment for a power of



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appointment or discretion to be exercised constitutes consideration for the acquisition of a chargeable interest through the exercise of the power or discretion.

286. The Schedule accounts for the laws of different territories governing trusts so that beneficiaries of trusts in Scotland, or other countries or territories outside the UK, are treated as having an equitable interest in trust property if that would be the result under English and Welsh law.

### **Schedule 9 - Sale and Leaseback Relief**

287. This Schedule sets out the conditions under which the leaseback element of a sale and leaseback transaction is relieved from LTT. The relief provides that only a single charge to LTT will arise where the transactions are effected as part of financing arrangements through sale and leaseback. The arrangements involve the seller in a land transaction ("A") transferring or granting a major interest in land to the buyer ("B"), and out of that interest B grants a lease to A. The first transaction (A to B) will be liable to LTT. The second transaction (the grant of a lease from B to A) will attract relief if the relevant conditions are met. Both transactions will be notifiable.

288. The following conditions have to be met in order to qualify for the relief:

- the interest leased back must be an interest out of the original interest;
- the only other consideration for the sale element, other than the leaseback is the payment of money or release from a debt;
- the sale must not comprise a transfer of rights under section 12 (contract providing for transfer to third party: effect of transfer of rights) or a pre-completion transaction as defined in Schedule 2 on pre-completion transactions; and
- where the seller and buyer are both companies at the effective date of the leaseback transaction, they are not members of the same group for the purposes of group relief (see Schedule 16).

### **Schedule 10 - Alternative Property Finance Reliefs**

289. This Schedule makes provision for relief from LTT for certain land transactions connected to alternative property finance arrangements, which are structured so as to comply with Islamic (or Shari'a) law, by not paying interest, but rather paying rent. Financing a property purchase in such a way would ordinarily involve more than one LTT charge. These provisions ensure that buyers who finance property acquisitions through these alternative methods pay the same amount of LTT, at the same time, as those who use conventional mortgage and re-mortgage products.

#### **Part 2: The Reliefs**

*Land sold to financial institution and leased to a person*

290. The provisions at paragraph 2 cover situations where a financial institution: 1) purchases a major interest in land from a person; 2) leases the land back to that person; and 3) transfers the major interest back to the person. Subject to the conditions set out in the paragraph, those transactions are relieved from LTT. Transactions are also relieved where a financial institution purchases a major interest from another financial institution that has entered into such arrangements with a person.

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*Land sold to financial institution and re-sold to a person*

291. The provisions at paragraph 3 cover situations where: 1) a financial institution purchases a major interest in land 2) sells it to P; and, 3) in return, P grants the financial institution a legal mortgage over the land. Subject to the conditions set out in the paragraph, the purchase is relieved from LTT if the land was purchased from P. Transactions are also relieved where a financial institution purchases a major interest from another financial institution that has entered into such arrangements with a person.

### **Part 3: Circumstances where arrangements not relieved**

292. Relief is not available under paragraphs 2 or 3 when the first purchase could be relieved under group, reconstruction or acquisition relief (even where that relief is subsequently withdrawn). Relief is not available under paragraph 2 where the arrangements allow for a person to acquire control of the financial institution.

### **Part 4: Exempt Interest**

*Interest held by financial institution an exempt interest*

293. Other than for the purposes of the acquisition of the major interest and its transfer back to the person (under paragraph 2), the interest held by the financial institution is an “exempt interest” until the lease (or sub-lease), or the right of the person to regain the major interest ceases to have effect. This is not the case if group, reconstruction or acquisition relief is available on the first transaction.

### **Schedule 11 - Relief for Alternative Finance Investment Bonds**

294. This Schedule makes provision for relief from LTT for land transactions connected to the issue of alternative finance investment bonds. As with alternative property finance these arrangements are designed to be compatible with Shari’a law, which prohibits the payment and receipt of interest.

295. In a conventional securitisation the investor does not have direct ownership of the underlying asset but holds an interest-bearing certificate. However, in the case of alternative finance investment bonds, the investors own part of the underlying asset and derive their reward from the profits or rents generated by that asset. In order to structure the issuance of the bonds it is necessary to (temporarily) change the ownership of the underlying asset on which the bond’s income is to be based, to normally, a special purpose vehicle bond issuer. The bonds can then be issued to the bond-holder and the money raised passed to the person seeking the finance. Once the cancellation date for the bonds is reached the underlying asset must be returned to the person who originally sought the finance. If the asset used to back the bonds and generate the return for the bond-holders is land in Wales, then the arrangement will involve land transactions that in the absence of this relief would be chargeable to LTT, when a conventional bond arrangement would not attract similar LTT charges.

### **Part 2: Issue, transfer and redemption of rights under bond not to be treated as chargeable consideration**

296. The bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets (and so can trade the bonds without giving rise to liability to LTT), unless they acquire control of the underlying assets. Where the bond-holder has no interest in the bond asset (the land), the bonds can be traded between holders without giving rise to liability to LTT. The bond-holder is treated as acquiring

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control over the assets if they acquire the right to manage and control the assets. The bond-holder will not, however, be treated as acquiring control in the following circumstances: 1) the bond-holder did not know (and had no reason to suspect) that they were acquiring such control and (on becoming aware of it) takes steps to remove that control); and 2) the bond-holder underwrites a public offer of rights under the bond and does not exercise the control.

### **Part 3: Conditions for operation of reliefs etc.**

297. Part 3 sets out the conditions to be met for the relevant reliefs to apply. They are as follows:

- a person (A) transfers an interest in land to the bond-issuer (B) (“the first transaction”), with that interest to be transferred back to A when the arrangement comes to an end;
- B enters into an alternative finance investment bond arrangement with bond-holders, with the interest in A’s land held as a bond asset;
- B leases (or sub-leases) the land back to A (the rent paid being the return on the bond-holders’ investment);
- B registers a charge on its land interest in favour of WRA (within 120 days of the effective date of the transaction), which would satisfy any LTT that would have been chargeable but for the reliefs, together with penalties and interest. The land ceases to be subject to this charge after the second transaction, when B provides evidence to WRA that the conditions have been met (paragraph 16 of Part 4) and WRA must notify the Chief Land Registrar of that discharge within 30 days (paragraph 20 of Part 4);
- the payments made by A to B are for not less than 60% of the market value of the interest in land;
- the arrangement lasts no longer than 10 years from the first transaction, during which time B holds the interest in the land as a bond asset until the termination of the bond. Within 30 days of that termination, the interest in land is transferred back to A (“the second transaction”).

### **Part 4: Relief for certain transactions**

298. Where the conditions in Part 3 are met, the first and second transactions are relieved from LTT in accordance with the conditions set out in Part 4, namely:

- for the first transaction, the leaseback from B to A is granted within 30 days of the first transaction; and
- for the second transaction, the provisions of this Bill and the Tax Collection and Management (Wales) Act 2016 (TCMA) have been complied with in relation to the first transaction.

299. Where the relevant conditions are not complied with, the relief may be withdrawn.

300. Under paragraph 17, relief is not available in circumstances where the bond-holders acquire control or management of the bond asset (in the same way as applies under paragraph 4, see above).

#### *Replacement of asset*

301. The provisions at paragraph 18 allow the replacement of the original land as bond asset by another land interest, without disturbing the entitlement to relief, by

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disapplying the requirement that B holds the original interest as a bond asset until the termination of the arrangements (as long as all the other conditions are complied with). Where the replacement land is in Wales, it will become subject to a new charge in favour of the WRA (and the charge on the original land discharged, subject to compliance with the conditions). Where the replacement land is outside Wales, WRA will not take a charge over it (but must nevertheless be satisfied that the conditions in relation to the original land are met before discharging that charge).

### **Schedule 12 - Relief for Incorporation of Limited Liability Partnership**

302. The introduction of limited liability partnerships (LLPs) created a new business vehicle into the UK providing partners in a LLP with limited liability for the debts of the partnership in the event of business failure. Relief, subject to the conditions specified, is provided to enable existing partnerships to incorporate as an LLP without incurring LTT charges on land transactions effected as part of that incorporation.

303. This Schedule sets out the three conditions under which land transferred in connection to the incorporation of a limited liability partnership (LLP) is relived from LTT. A “limited liability partnership” is a partnership formed with limited liability for its members under the Limited Liability Partnerships Act 2000 (c.12). The conditions to be satisfied are:

- the effective date of the transaction cannot be more than one year after the date of the incorporation of the LLP;
- at the relevant time the transferor:
  - is a partner in a partnership comprised of all the persons who are (or who are to be) members of the LLP (and no other person); or
  - holds the interest on bare trust for one or more of the partners; and
- the proportions of the interests held by the partners are the same before and after the transaction or, where they are different, the differences are not as a result of entering a tax avoidance arrangement to avoid LTT or other tax.

### **Schedule 13 - Relief for acquisitions involving multiple dwellings**

304. This Schedule makes provision for relief from LTT for single transactions involving multiple dwellings and multiple linked transactions, which, taken together, involve multiple dwellings. The provisions in this Schedule provide that the total amount of tax chargeable in respect of a particular transaction involving a number of dwellings reflects more closely the tax that would have been chargeable had each dwelling been purchased through single (unrelated) transactions.

#### *Transactions to which this Schedule applies*

305. Paragraph 3 sets out the transactions to which this Schedule applies, which are defined as “relevant transactions”. Sub-paragraphs (3) and (4) provide that a transaction is a “relevant transaction” if the subject-matter consists of interests in more than one dwelling or interests in more than one dwelling and other property. Sub-paragraph (5) excludes certain transactions where other reliefs apply from the provisions in this Schedule. Sub-paragraph (7) excludes superior interests in dwellings subject to a lease of 21 years or more from consideration in determining whether a transaction is a “relevant transaction”, other than in the circumstances provided for at sub-paragraph (8).

306. Key terms used in the Schedule are defined in paragraph 4.

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#### *Determining the amount of tax chargeable*

307. Paragraphs 5, 6 and 7 set out how the amount of tax chargeable should be calculated.

Paragraph 5 requires the amount of tax chargeable to be determined by calculating the sum of the tax related to the consideration attributable to dwellings, and the tax related to the remaining consideration. The appropriate rates and bands should be used to establish the liability to tax, including, where relevant, those that relate to higher rates residential property transactions.

308. The calculation of the tax related to the consideration attributable to dwellings is provided for by paragraph 6. This involves calculating an average price for each dwelling and determining the amount of tax that would be charged on that average price. This amount of tax is then multiplied by the number of dwellings included in the relevant transaction to reach the tax related to the consideration attributable to dwellings. For linked transactions, the amount of tax is then apportioned to each transaction in proportion to its share of the total dwellings consideration.

309. Sub-paragraph (2) introduces a 'tax floor' to ensure that if the amount of tax determined as a result of the above calculation leads to a figure of at least 1% of the total consideration attributable to dwellings. This might occur where the average price for the dwellings falls in the zero rate tax band, leading to the buyer in the relevant transaction being fully relieved from LTT.

310. Sub-paragraph (6) provides that Welsh Ministers may by regulations substitute the current minimum 1% for a different percentage.

311. Paragraph 7(1) provides that the tax related to the remaining consideration is the appropriate fraction of the amount of tax that would be due if this Schedule did not apply. Sub-paragraph (2) sets out the calculation for determining the "appropriate fraction" of the relevant transaction and sub-paragraph (3) defines what is meant by "the total remaining consideration" for the purposes of this Schedule.

#### *Certain buildings not yet constructed or adapted to count as dwelling*

312. Paragraph 8 extends the meaning of a "dwelling" to include cases where a contract is substantially performed and the contract includes an interest in a building or part of a building which is to be constructed or adapted for use as a single dwelling, and where construction or adaptation has not yet commenced.

### **Schedule 14 – Relief for certain acquisitions of dwellings**

313. This Schedule is introduced by section 30 and makes provision for a range of reliefs in relation to certain transactions where a housebuilder, property trader, or employer acquires a dwelling, provided certain conditions are met. The relevant transactions to which the Schedule applies are outlined below. In addition, Part 3 of the Schedule provides relief for transactions entered into by persons exercising collective rights. The relief is provided to the housebuilder, property trader or employer, subject to the relevant conditions, to provide liquidity in the property market in limited cases where a sale of a dwelling is necessary to provide certainty for individuals to move. The dwelling that is subject to the relief should not be acquired by the housebuilder, property trader, or employer with the intention to hold as an investment.

*These notes refer to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill which was amended following Stage 2 proceedings in the National Assembly for Wales on 16 February 2017.*

## **Part 2: Relief for certain acquisitions of dwellings**

314. Paragraph 2 makes provision for full and partial relief from LTT for an acquisition by a housebuilder of an individual's old dwelling where the individual is also acquiring a new dwelling from the housebuilder.
315. Paragraph 3 of the Schedule provides for full and partial relief from LTT for the acquisition of an individual's old dwelling by a property trader where that individual acquires a new dwelling from a housebuilder, and where the property trader is in business to make such acquisitions.
316. Paragraph 4 makes provision for full and partial relief from LTT in respect of acquisitions by a property trader (who is in business to make such acquisitions) of an individual's old dwelling where a chain of transactions involving the individual selling their old dwelling and acquiring a new one breaks down.
317. Paragraph 5 makes provision for full and partial relief for the acquisition by a property trader of property from the personal representatives of a deceased individual, where the property trader is in business to make such acquisitions.
318. Paragraph 6 sets out the rules for the provision of full and partial relief for the acquisition by a property trader (who is in business to make such acquisitions) of an individual's dwelling in connection with a change of residence by the individual due to relocating for employment purposes.
319. Paragraph 7 provides for full and partial relief where an acquisition is made by an individual's employer of the individual's dwelling in connection with a change of residence by the individual resulting from their relocation of employment.
320. In each the above cases, to qualify for the relief certain conditions have to be met. These include:
- The individual must have occupied the dwelling as their only or main residence at some time in the period of two years ending with the date the house-building company, property trader or employer acquires the dwelling;
  - A property trader must not intend to spend more than the 'permitted amount' on refurbishment of the dwelling, which is £10,000 or 5% of the consideration for the acquisition of the dwelling, whichever is the greater, but subject to a maximum of £20,000;
  - 'Refurbishment' does not include cleaning, or works required solely to ensure that the dwelling meets minimum safety standards;
  - A property trader must not intend to grant a lease or licence of the dwelling of more than six months, or allow any of its principals or employees to occupy the property; and
  - The area of land acquired must not exceed the permitted area (which is defined at paragraph 9(1)(e)).
321. Where the area of land acquired exceeds the permitted area, partial relief may be claimed. This is calculated by determining the chargeable consideration relating to the

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‘excessive area’, by deducting the market value of the permitted area from the market value of the dwelling.

322. Paragraph 8 sets out the circumstances under which the reliefs provided for in this Schedule are withdrawn. Broadly, these are where the above conditions are not satisfied. Where relief is withdrawn, the amount of LTT chargeable is the amount that would have been chargeable in the absence of the relief.

323. Paragraph 9 defines the key terms used in this Schedule. In particular, a ‘property trader’ must be a company or limited liability partnership (‘LLP’) or a partnership all of whose members are companies or LLPs that carries on the business of buying and selling dwellings.

### **Part 3: Relief for transactions entered into by persons exercising collective rights**

324. Paragraph 10 provides relief from LTT for transactions entered into by persons exercising collective rights. This is where tenants in flats exercise certain statutory rights to acquire the freehold of the premises containing their flats. The statutory rights relate to a right of first refusal under Part 1 of the Landlord and Tenant Act 1987; and a right to collective enfranchisement under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. The acquisitions referred to in this paragraph are undertaken by nominees or appointees on behalf of the participating tenants. The relief is provided so that the amount of tax payable will be the averaged amount due from each participating leaseholder had it been possible for that leaseholder to purchase their (averaged) interest in the freehold separately from their co-tenants.

325. Sub-paragraph (2) sets out the calculation for determining the amount of LTT chargeable. This amount is to be determined by dividing the consideration given for the freehold by the number of qualifying flats, then calculating the amount of tax due on that sum and multiplying the result by the number of qualifying flats contained in the premises.

326. A “qualifying flat” is that held by a tenant who is participating in the exercise of the collective right.

### **Schedule 15 - Treatment of certain transactions relating to social housing**

327. This Schedule is introduced by section 30 and makes provision for relief from LTT for a variety of social housing related transactions. Paragraphs 2 to 18 provide special rules relating to the purchase of dwellings under a number of arrangements designed to provide access to home ownership. Paragraph 19 provides for relief from LTT for certain acquisitions by registered social landlords.

### **Part 2: Right to Buy Relief**

*Relief for right to buy transaction*

328. Part 2 of the Schedule makes provision for relief from LTT in relation to certain right to buy transactions. A right to buy transaction is defined as involving a ‘relevant public sector body’ disposing of a dwelling or granting a lease of a dwelling to an existing tenant at a discounted price, or pursuant to a preserved right to buy. The circumstance in which a transfer of a dwelling or grant of a lease of a dwelling is made in pursuance of the preserved right to buy is described at paragraph 2(4). A list of relevant public sector

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bodies for the purposes of this paragraph is provided at sub-paragraph (3). Where there is a right to buy transaction, sub-paragraph (1) provides that section 19(1) (relating to the treatment of contingent consideration) does not apply. Sub-paragraph (5) excludes from the chargeable consideration a grant made by the Welsh Ministers under section 20 or 21 of the Housing Act 1996 for certain transactions.

### **Part 3: Shared Ownership Leases**

*Shared ownership lease relief: election for market value treatment*

329. Part 3 of the Schedule makes provision for the specific treatment of shared ownership leases for the purposes of LTT. A shared ownership lease is intended to cover any lease which is granted by a “qualifying body”; or in pursuance of the preserved right to buy. (Paragraph 9 provides for interpretation and defines key terms referred to in this part of the Schedule.)

330. Paragraph 3 makes provision for a taxpayer to make an election for LTT to be calculated by reference to the market value of the dwelling rather than the consideration given on the grant of the shared ownership lease, subject to the conditions at sub-paragraph (2) being satisfied. Sub-paragraph (3) provides that the election is irrevocable and therefore, the buyer cannot at a later date amend the return to withdraw the election after it has been submitted.

331. Paragraph 4 provides that the transfer of the reversion to the tenant under the terms of a lease to which paragraph 3 applies, is relieved from LTT where an election was made under that paragraph and LTT paid accordingly.

332. Paragraph 5 provides for the treatment of LTT in relation to certain types of shared ownership leases where staircasing provisions are included in the lease, which allow the freehold to be purchased in stages. The provisions here allow for an irrevocable election to be made for LTT to be calculated by reference to the minimum rent and the premium obtainable on the open market, subject to the conditions specified at sub-paragraph (2) being met.

333. Paragraph 6 ensures that when a shared ownership lease is granted and relief from LTT claimed under paragraph 3 or paragraph 5 of this Schedule, no further LTT liability arises as a consequence of the tenant acquiring additional interests in the property. Additionally, where the payment does not result in the tenant’s share of the dwelling exceeding 80%, the transaction is also relieved from tax.

334. Paragraph 7 provides that staircasing transactions provided for under paragraph 6 are treated as though they are not linked for the purposes of determining the amount of tax chargeable.

*Rent to shared ownership lease: charge to tax*

335. Paragraph 8 sets out how to determine the chargeable consideration for transactions involving “rent to shared ownership lease” schemes. A “rent to shared ownership lease scheme” is defined at sub-paragraph (2) as one in which a qualifying body grants an occupation contract to a tenant(s) and subsequently grants a shared ownership lease of the dwelling to one or more of them. Sub-paragraph (3) provides that transactions in connection with the scheme are not treated as linked to each other. Sub-paragraph (4)



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provides that the tenant's possession of the dwelling under an occupation contract is disregarded in determining the effective date of the grant of the shared ownership lease. Sub-paragraph (5) defines occupation contract in accordance with the meaning attributed to it in Part 2 of the Renting Homes (Wales) Act 2016.

#### **Part 4: Shared Ownership Trusts**

##### *Shared ownership trusts*

336. Part 4 of this Schedule serves to provide for the similar treatment for LTT of transactions related to shared ownership trusts as that available for shared ownership leases. Paragraph 10 defines what is meant by a "shared ownership trust" in reference to section 1 of the Trusts of Land and Appointment of Trustees Act 1996 and specific conditions which have to be satisfied for the entity to be recognised as a shared ownership trust. Sub-paragraph (6) provides that section 70 in relation to market value does not apply in determining the LTT liability for transactions involving shared ownership trusts.
337. Paragraph 11 identifies the buyer in transactions involving shared ownership trusts, for the purposes of LTT.
338. Paragraph 12 makes provision for the buyer to elect for market value treatment. An election for market value treatment cannot at a later date be withdrawn or amended after the election has been submitted.
339. The chargeable consideration for the declaration of the shared ownership trust is taken to be the amount relating to the market value of the dwelling by reference to which the premium is calculated. Sub-paragraph (3)(b) provides that no account must be taken of rent-equivalent payments.
340. Paragraph 13 provides that where the transaction transfers the interest in the trust property upon the termination of the trust, and an election has been made under paragraph 12, the transaction will be relieved from LTT. This is subject to any tax chargeable in respect of the declaration of the shared ownership trust being paid.
341. Paragraph 14 deals with the treatment of equity-acquisition payments made by the buyer under a shared ownership trust for the purposes of LTT. It provides that where an election under paragraph 12 is made an equity-acquisition payment by the buyer under a shared ownership trust, the increase in the buyer's beneficial interest is relieved from LTT, provided any tax chargeable in respect of the declaration of trust has been paid. However, if an election under paragraph 12 is not made, then the equity-acquisition payment and corresponding increase in the buyer's beneficial interest is only relieved from LTT if following the increase the buyer's beneficial interest does not exceed 80% of the total beneficial interest in the property.
342. Paragraph 15 clarifies how the chargeable consideration for LTT is determined when the buyer has not made an election under paragraph 12. This paragraph provides that in these circumstances the initial capital is to be treated as chargeable consideration other than rent; and any rent-equivalent payment made by the buyer is to be treated as rent.

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343. Paragraph 16 provides that where a declaration of trust giving the buyer a beneficial share in the property is made, the declaration is not to be treated as if it were linked to either:

- an equity-acquisition payment under the trust or any corresponding increase in the buyer's beneficial interest in the trust property; or
- a transfer to the buyer of an interest in the trust property on the termination of the trust.

344. The rules for determining the chargeable consideration for transactions involving part of a rent to shared ownership trust scheme are provided for in paragraph 17.

### **Part 5: Rent to Mortgage**

*Rent to mortgage: chargeable consideration*

345. Part 5 of the Schedule provides for the treatment of LTT for transactions involving rent to mortgage schemes. Paragraph 18 provides the rules that determine the consideration for transactions that take place under a rent to mortgage scheme. Sub-paragraph (2) defines a 'rent to mortgage scheme' as the transfer of a dwelling, or grant of a lease of a dwelling, to a person. This paragraph provides that for a rent to mortgage transaction, LTT is chargeable on the price that would have been payable on a purchase of a dwelling if the tenant had been paying for it all at once or the grant of a lease of the dwelling to the person.

### **Part 6: Relief for certain Acquisition by Registered Social Landlords**

*Relief for certain acquisitions by social housing providers*

346. Part 6 sets out the provisions under which land transactions involving social housing providers can be relieved from the LTT charge where qualifying conditions are met.

347. A profit-making registered social landlord can claim relief from LTT for land transactions where they are buying the chargeable interest with assistance through a public subsidy. A non-profit registered provider of social housing and registered social landlords are deemed eligible housing providers that can claim relief from LTT where they are entering into a land transaction as a buyer. However, the following conditions apply:

- the housing provider must be controlled by its tenants (i.e. the majority of the board members are tenants occupying properties owned or managed by it);
- the seller is a qualifying body; or
- the transaction is funded with the assistance of a public subsidy.

348. Paragraph 19(3) provides for interpretation and sets out the meanings of the terms "board member", "public subsidy" and "qualifying body" for the purposes of this Part. A "registered social landlord" is defined as a body registered as a social landlord in a register maintained under section 1(1) of the Housing Act 1996.

### **Schedule 16 - Group Relief**

349. This Schedule is introduced by section 30. Part 2 of the Schedule provides relief from LTT for the intra-group transfer of property held by companies where relevant conditions are met. The relief provides that the movement of property within a fiscal unity does not incur a charge to LTT, so long as the conditions set out in the schedule are

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met. Part 3 outlines restrictions on the availability of group relief; Part 4 provides for the withdrawal of the relief; and Part 5 makes provision for the recovery of unpaid tax.

## **Part 2: The Relief**

### *Group relief*

350. Paragraph 2 of the Schedule provides that a transaction is relieved from LTT where it involves the acquisition of property by companies (defined as “bodies corporate”) within the same group. This is referred to as ‘group relief’. Group relief allows companies to transfer property within a corporate group structure for commercial reasons without incurring a LTT charge, as such transfers do not result in the effective economic interest changing hands.

351. In this Schedule a company is defined as a “body corporate”, and companies are defined as members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company. Paragraph 3 further explains that ownership means beneficial ownership of the share capital and can include indirect ownership through another company or companies. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

## **Part 3: Restrictions on the Availability of Relief**

### *Restrictions on the availability of group relief*

352. Part 3 of the Schedule sets out specific anti-avoidance rules (with exceptions set out at paragraph 4(2) and (7)) which restrict the availability of group relief. This Part applies where different types of arrangements are entered into whereby the acquiring company may become controlled from outside the group, where consideration may be provided from outside the group, or where the seller and buyer are (otherwise) to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available. In addition, group relief is unavailable if the transaction itself is not for genuine commercial reasons, or forms part of arrangements where the main purpose is, or one of the main purposes is, to avoid a liability to LTT.

353. However, under paragraph 5 the availability of group relief will not be restricted in relation to certain agreements which govern a joint venture company (with two or more member companies), and make provision for the contingencies specified at paragraph 5(3). But this exception does not apply where those contingencies have actually occurred. Certain mortgage arrangements are also not caught within the restrictions governing the availability of group relief (subject to exceptions in paragraph 6) provided the shares or securities in a company are used as a security under a mortgage, which on default or other event occurring allows the mortgagee to exercise its rights against the mortgagor.

## **Part 4: Withdrawal of Relief**

### *Withdrawal of group relief*

354. Group relief is withdrawn where the buyer ceases to be a member of the same group as the seller within three years of the effective date of the transaction (or under arrangements made during the three year period), and, broadly, at that time the relevant chargeable interest is still held by the buyer or a company it controls. Exceptions from the withdrawal of group relief is provided for in paragraphs 9 to 11. These include:

- where the de-grouping arises because of anything done in the course of winding up the seller (or another company that is above the seller on the group structure);

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- where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 applies (subject to exceptions) and the buyer leaves the group as a result (an anti-avoidance provision applies);
- where the seller leaves the group; and
- certain cases where the buyer leaves the group as a result of the transfer of a business by a 'mutual society' or similar.

Paragraph 12 further provides for the withdrawal of group relief in certain cases involving successive transactions, subject to the exceptions provided for in paragraph 12 (6).

### **Part 5: Recovery of Relief from Certain Persons**

*Recovery of group relief from another group company or controlling director*

355. Part 5 provides for the recovery of tax following the withdrawal of group relief under paragraph 8. If the tax chargeable under paragraph 8 is not paid within 6 months after the date it became due, and there is no live or potential appeal, it can be recovered from the seller, another group company or a controlling director. The WRA can serve notice on any of these persons requiring the payment of any unpaid amount within 30 days of serving the notice. The notice must be issued within the 3 year period beginning with the date of the final determination of the tax chargeable and it must state the amount payable by the person served the notice.

### **Schedule 17 - Reconstruction and Acquisition Reliefs**

356. This Schedule makes provision for the treatment of reconstruction relief; acquisition relief; and related anti-avoidance rules.

#### **Part 2: Reconstruction relief**

357. Part 2 of the Schedule provides for "reconstruction relief" so that, where the specified conditions are met, a scheme for reconstruction of a company (the 'target company') does not attract a charge to LTT. Reconstruction relief is provided for land transactions connected to the transfer of the whole or part of an undertaking from a target company ("T") to an acquiring company ("A"), which form part of a scheme for the reconstruction of T. The consideration for the acquisition must be wholly or partly non-redeemable shares issued by A to T's shareholders. 'Non-redeemable shares' are shares that are not redeemable; they may be traded or held to maturity but cannot be bought back by the issuing company at a future date. A key condition of reconstruction relief is that, following the acquisition, a shareholder of T must also be a shareholder of A, and vice versa. Further, any shareholder must hold the same proportion of shares in T and A (or as close as possible). As with group relief, the reconstruction must be for genuine commercial reasons and must not form part of any arrangement to avoid the payment of LTT.

#### **Part 3: Acquisition relief**

358. Part 3 of the Schedule provides for "acquisition relief", where a land transaction forms part of the transfer of an undertaking from a target company to an acquiring company, but not in the context of a scheme for the reconstruction of the target company. Acquisition relief is a partial relief from LTT. Where a transaction is eligible for acquisition relief and meets the conditions specified in paragraph 3, the amount of LTT chargeable is reduced to a fixed tax rate of 0.5% of the relevant consideration given.

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The rate of LTT chargeable under acquisition relief may be changed by regulations made by the Welsh Ministers.

#### **Part 4: Withdrawal of reconstruction and acquisition relief**

359. Part 4 of the Schedule provides for the withdrawal of reconstruction or acquisition relief where control of the acquiring company changes within 3 years beginning with the effective date of the transaction (or there are arrangements under which control will change after three years, which are entered into within the 3 year period), and, broadly, at that time the relevant chargeable interest is still held by the acquiring company or a company it controls.

360. Exceptions from the withdrawal of reconstruction or acquisition relief are provided for at paragraph 6. These include where control changes:

- due to a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons;
- due to a share transaction in connection with transactions which vary dispositions following death;
- due to an exempt intra-group transfer of shares (as defined in paragraph 6(5)), but note this is subject to paragraph 7;
- due to a transfer to another company to which share acquisition relief applies (as defined in paragraph 6(8)) but note this is subject to paragraph 7; and
- where control changes due to a loan creditor becoming or ceasing to be treated as having control.

#### *Withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer*

361. Paragraph 7 provides anti-avoidance rules for the withdrawal of reconstruction or acquisition relief. These apply to the exceptions from withdrawal of relief under paragraph 6(5) and (8). They turn off these exceptions, so that relief is withdrawn. They apply where there is a specified change in control and, broadly, at that time the relevant chargeable interest is still held by the acquiring company or a company it controls.

#### **Part 5: Recovery of reconstruction or acquisition relief**

362. Part 5 makes provision for the recovery of tax following the withdrawal of reconstruction relief or acquisition relief. This Part provides that if the tax chargeable under paragraph 5 or 7 of the Schedule is not paid within 6 months of the date it is due, and there is no live or potential appeal, it can be recovered from another group company or a controlling director. The WRA can serve notice on any of these persons requiring the payment of any unpaid amount within 30 days of serving the notice. The notice must be issued within the 3 year period beginning with the final determination of the tax chargeable and it must state the amount payable by the person served with the notice.

#### **Schedule 18 - Charities Relief**

##### *Charities relief*

363. This Schedule provides relief (referred to as “charities relief”) from LTT where the buyer, or one of the buyers, in a land transaction is a qualifying charity, subject to certain conditions being met. Charities relief is provided so that the resources of the charity can be used for furthering the charitable purposes of the charity rather than payment of LTT.

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*Transactions eligible for relief*

364. A charity (“C”) which is party to a land transaction as the buyer is a “qualifying charity” if it intends to hold the whole of the subject-matter of the transaction for “qualifying charitable purposes”.

365. However, where C is a buyer in the land transaction with one or more buyers, C is a “qualifying charity” and can claim partial relief from LTT if C intends to hold its undivided share of the subject-matter of the transaction for qualifying charitable purposes.

366. The subject-matter of the transaction is held by a charity for “qualifying charitable purposes” if it is used by that charity or another charity for charitable purposes; or as an investment from which the profits are used to further the charitable purposes of the buyer. For the purposes of this relief, “charitable purpose” has the meaning given by section 2 of the Charities Act 2011, and “charity” is defined in accordance with Part 1 of Schedule 6 to the Finance Act 2010.

*Withdrawal of charities relief*

367. Charities relief is withdrawn, or partially withdrawn, and LTT becomes chargeable in the following circumstances:

- if a disqualifying event occurs within three years of the effective date of the transaction for which charities relief was claimed (“the relieved transaction”); or
- if the disqualifying event occurs due to or in relation to an arrangement put in place during that three year period, and
- at the time the disqualifying event occurs, C holds a chargeable interest that it acquired under the relieved transaction or holds a chargeable interest derived from the interest acquired under the relieved transaction.

368. A “disqualifying event” is defined by paragraph 2(4) as when C ceases to be established for charitable purposes only; or the whole or any part of the subject-matter acquired under the relevant transaction (or any interest or right derived from it) is used or held for purposes other than qualifying charitable purposes.

369. Where the relieved transaction becomes liable for LTT the amount chargeable is the amount of tax that would have been chargeable, or an appropriate proportion of that amount, had the transaction not been originally relieved from LTT. An “appropriate proportion” in this context is determined by taking into account what was acquired in the relieved transaction and is still held by C; and what is being used by C for non-charitable purposes.

*Charity not a qualifying charity*

370. Paragraph 5 makes provision for charities relief to be available where a charity (“C”) is a buyer but not a qualifying charity as defined in this Schedule (i.e. C must intend to hold the greater part of its share of the subject-matter for qualifying charitable purposes). In this situation the rules relating to disqualifying events (paragraph 4) apply as already outlined (subject to the modifications at paragraph 5(4)) but includes that relief may be wholly or partially withdrawn if

- C transfers a major interest in the whole or part of the subject-matter of the relieved transaction; or

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- C grants a low rental lease at a premium for reasons other than C's charitable purposes.

371. In this Schedule, a lease is granted at a premium if there is consideration other than rent and a lease is a "low rental" lease if the annual rent is less than £1000 a year.

*Joint purchase by qualifying charity and another person: partial relief*

372. Paragraph 6 of this Schedule makes provision for partial relief for joint buyers where:

- There are two or more buyers under a land transaction;
- The buyers acquire the land as tenants in common;
- At least one of the buyers is a qualifying charity and another person who is not; and
- The transaction is not entered into to avoid the LTT charge.

373. Partial relief is made available by reducing the tax due on the transaction by the amount of relief provided for under sub-paragraph (3). This clarifies that the relief available is equal to the "relevant proportion" of the tax that would otherwise have been chargeable on the transaction.

374. Relevant proportion is defined as the lower of the proportion of the subject-matter acquired by all the qualifying charities (P1); and the proportion of the chargeable consideration for the transaction that is given by the qualifying charities (P2).

*Withdrawal of partial relief*

375. Paragraph 7 of the Schedule provides for the withdrawal of partial relief where charities relief is provided under paragraph 6 but a disqualifying event occurs. The disqualifying event must occur before the end of three years from the effective date of the transaction or in pursuance of, or in connection with, arrangements that were made before the end of that three year period. In addition, at the time of the disqualifying event, the charity ("C") must hold a chargeable interest in, or an interest derived from, the subject-matter acquired under the relevant transaction.

376. Sub-paragraph (5) provides that the amount of tax chargeable is the amount of relief given under paragraph 6, or an appropriate proportion of that relief. The proportion of the relief is calculated by sub-paragraph (7) or (8); the precise calculation applied will depend on whether P1 or P2 was the lower amount in the calculation under paragraph 6.

377. Sub-paragraph (9) provides that in determining the appropriate proportions, account must be taken of what C acquired and what it held at the time of the disqualifying event, and the extent to which what is held by C at the time of the disqualifying event is used or held for non-charitable purposes.

*Partial relief: charity not a qualifying charity*

378. Paragraph 8(1) provides the conditions under which a charity ("C"), which is not a qualifying charity, is subject to the rules for partial relief under paragraphs 6 and 7. These are where:

- C is acquiring land jointly as tenants in common with a non-charity purchaser;
- C is not a qualifying charity;
- The partial relief provisions would apply if C were a qualifying charity; and

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- C intends to hold the greater part of its share in the property for qualifying charitable purposes.

379. Where paragraph 7 regarding the withdrawal of partial relief applies, sub-paragraph (2) provides that a disqualifying event includes:

- any transfer by C of a major interest in the whole or any part of the subject-matter of the relevant transaction; and
- any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter.

This is subject to the modifications at sub-paragraph (4).

*Application of this Schedule to certain trusts*

380. Charities relief is available to charitable trusts in the same way that it applies to charities. A charitable trust is a trust of which all the beneficiaries are charities or a unit trust scheme in which all the unit holders are charities.

### **Schedule 19 - Open-Ended Investment Company Reliefs**

381. The two reliefs for open ended investment companies are provided to enable certain collective investment schemes to be reorganised either through conversion to an open ended investment company or where an authorised unit trust and an open ended investment company amalgamate.

*Relief from Land Transaction Tax: Conversion of an authorised unit trust to an open-ended investment company*

382. Paragraph 1 of this Schedule outlines the conditions under which relief from LTT may be claimed where a land transaction transfers property of an authorised unit trust to an open-ended investment company. The conditions provide that relief is restricted to those cases where:

- the authorised unit trust is converted into an open-ended investment company; and the whole of the property available is transferred and becomes the whole of the property of the open-ended investment company;
- as part of the transaction all the units in the authorised unit trust are extinguished;
- the consideration given consists of or includes the issue of shares in the open-ended investment company to the persons who held the extinguished units;
- the shares are issued in the same proportion as the extinguished units held; and
- the consideration only comprises the assumption or discharge of liabilities of the trustees of the authorised unit trust.

*Relief from Land Transaction Tax: Amalgamation of an authorised unit trust with an open-ended investment company*

383. Paragraph 2 of this Schedule outlines the conditions under which relief from LTT may be available where a land transaction transfers property of an authorised unit trust to an open-ended investment company, where there is a merger between the two. The conditions provide that relief is restricted to those cases where:

- the whole of the property of the authorised unit trust becomes a part (but not all) of the property of the open-ended investment company;
- as part of the transaction all the units in the authorised unit trust are extinguished;
- the consideration given for the property consists of or includes the issue of shares in the open-ended investment company to the persons who held the extinguished units;



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- the shares are issued in the same proportion as the extinguished units held; and
- the consideration only comprises the assumption or discharge of liabilities of the trustees of the authorised unit trust.

384. For the purposes of this Schedule, “the whole of the available property of the target trust” does not include any property retained for the purpose of discharging liabilities of the trustees.

## **Schedule 20 – Relief for acquisitions by public bodies and health bodies**

*Relief for certain acquisitions involving public bodies*

385. Paragraph 1 of this Schedule provides relief from LTT for certain land transactions entered into between qualifying public bodies in connection with a statutory reorganisation. Relief may also be claimed where the Welsh Ministers make regulations under sub-paragraph (2) where there is a reorganisation and one of the parties to the land transaction is a public body.

386. In this paragraph, “reorganisation” means changes involving:

- the establishment, reform or abolition of one or more public bodies;
- the creation, alteration or abolition of functions to be discharged by one or more public bodies; or
- the transfer of functions from one public body to another.

387. Sub-paragraph (4) provides a list of those entities that constitute a public body for the purposes of this paragraph. References to public body in this paragraph also includes a company where all the shares of the company are owned by the public body and the public body is a wholly owned subsidiary of such a company.

388. The Welsh Ministers may add to the list of public bodies in sub-paragraph (4) by making regulations.

*Relief for acquisitions by certain health service bodies*

389. Paragraph 2 of this Schedule provides relief from LTT where the buyer is a specific health authority defined as follows:

- a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
- a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006; and
- a National Health Service Trust established under section 18 of the National Health Service (Wales) Act 2006.

390. The Welsh Ministers may through regulations add to the list of health bodies entitled to claim this relief.

## **Schedule 21 – Compulsory purchase relief and planning obligations relief**

*Relief for compulsory purchase facilitating development*

391. Paragraph 1 of this Schedule provides relief from LTT where land is purchased following the making of a compulsory purchase order for the purposes of facilitating development by another party. For example, this relief might be claimed where a local authority makes a compulsory purchase order (whether by agreement or not) to acquire

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land or property for development by a separate developer. As this situation comprises two land transactions, two amounts of LTT would be due. However, as long as the local authority is not responsible for the development, it is able to claim relief from LTT when it acquires the chargeable interest under the first transaction.

#### *Relief for compliance with planning obligations*

392. As a condition of granting planning permission, a public body may require the developer to provide certain amenities, such as new roads or a school, known as planning obligations imposed under section 106 (or section 106A) of the Town and Country Planning Act 1990. Paragraph 2 of this Schedule provides relief from LTT where the public body (the buyer) acquires a chargeable interest when the developer (the seller) is complying with a planning obligation. In order to qualify for the relief the planning obligation must be enforceable against the seller; the buyer must be a public body; and the effective date of the transaction must fall within a five year period beginning with the date of the planning obligation or when the planning obligation was modified.

393. Paragraph 2(3) defines the entities that constitute a public body for the purposes of this relief and further provides that the Welsh Ministers may through regulations add to the list of public bodies entitled to claim this relief.

#### **Schedule 22 - Miscellaneous Reliefs**

394. This Schedule, as introduced by section 30 provides relief from LTT for land transactions entered into in specific circumstances.

#### *Lighthouses Reliefs*

395. Paragraphs 1 and 2 of this Schedule provides relief from LTT for certain land transactions involving lighthouses. Specifically, a land transaction entered into by or under either of the following conditions is relieved from LTT:

- a land transaction entered into by or under the direction of the Secretary of State for the purposes of carrying into effect Part 8 (lighthouses) of the Merchant Shipping Act 1995; or
- a land transaction entered into by or under the direction of the Trinity House for the purpose of carrying out the services referred to in section 221(1) of the Merchant Shipping Act.

#### *Visiting forces and international military headquarters reliefs*

396. Paragraph 3 sets out the situations in which land transactions involving visiting forces or international military headquarters may be relieved from LTT.

397. Paragraph 3 provides relief from LTT where the land transaction involves:

- building or enlarging, barracks or camps for a visiting force;
- facilitating the training of a visiting force; or
- promoting the health or efficiency of a visiting force.

The above conditions apply to any designated international military headquarters as if it were a visiting force of a designated country; and the members of that force were the persons serving at or attached to the headquarters who are members of the armed forces of a designated country.

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*Relief for property accepted in satisfaction of tax*

398. Paragraph 6 of this Schedule provides relief from LTT for a land transaction involving the transfer of land or property which is accepted in satisfaction of tax under section 9 of the National Heritage Act 1980 (Disposal of Property accepted by Commissioners). The land transaction in this situation must transfer the chargeable interest to a person nominated by the Secretary of State (section 9(4) of the National Heritage Act) or an institution or body defined in section 9(2) of the 1980 Act as:

- any museum, art gallery, library or other similar institution having as a purpose the preservation of a collection of historic, artistic or scientific interest for public benefit;
- any body having as a purpose the provision, improvement or preservation of amenities enjoyed or to be enjoyed by the public or the acquisition of land to be used by the public; and
- any body having nature conservation as a purpose.

*Trunk roads relief*

399. A land transaction involving either the Welsh Ministers or the Secretary of State is relieved from LTT if it relates to a highway or proposed highway which is or will become a trunk road, and the Welsh Ministers or the Secretary of State would otherwise be charged LTT for the transaction. In this Part, the meanings of “highway”, “proposed highway” and “trunk road” are those provided in section 329(1) of the Highways Act 1980.

*Relief for bodies established for national purposes*

400. Paragraph 8 provides that a land transaction is relieved from LTT where the buyer is any of the following:

- the Trustees of the British Museum;
- the Trustees of the National Heritage Memorial Fund; or
- the Trustees of the Natural History Museum.

*Relief for reorganisation of Parliamentary constituencies*

401. Paragraph 9 of this Schedule applies where an Order in Council is made under the Parliamentary Constituencies Act 1986 (orders specifying new parliamentary constituencies). Where a land transaction is entered into as a consequence of such an Order, the land transaction is relieved from LTT where the seller is an existing local constituency association and the buyer is either:

- a new association formed to succeed the existing association; or
- a body related to the existing association that seeks to transfer the interest or right as soon as possible to a new association which is a successor to the existing association.

In the latter case both land transactions would be relieved from LTT.

402. For the purposes of Paragraph 9, interpretation of key terms and their meanings is provided for in paragraph 9(3), (4), (5) and (6).

*Building societies relief*

403. Land transactions are also relieved from LTT where they take place in connection with the amalgamation of two or more building societies under section 93 of the Building Societies Act 1986; or where they relate to a transfer of engagements between building societies under section 94 of that Act.

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*Friendly societies relief*

404. The provisions in paragraph 11 provide relief from LTT for certain land transactions involving friendly societies. The transactions eligible for relief under this paragraph are those effected by or in consequence of:

- a transfer of engagements or an amalgamation of two or more registered societies under section 82 of the Friendly Societies Act 1974;
- an amalgamation of two or more friendly societies under section 85 of the Friendly Societies Act 1992;
- a transfer of engagements of a friendly society under section 86 of the Friendly Societies Act 1992; or
- a transfer of engagements of a friendly society pursuant to a direction given by the appropriate authority under section 90 of the Friendly Societies Act 1992.

*Co-operative and community benefit society and credit union relief*

405. The provisions in paragraph 12 provide relief from LTT where a land transaction takes place in connection with:

- a transfer of engagements between registered societies takes place in accordance with section 110 of the Co-operative and Community Benefit Societies Act 2014 (the “2014 Act”); or
- a registered society is converted or amalgamated with a company, or the whole of the engagements of the registered society is transferred to a company, in accordance with section 112 the 2014 Act.

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

406. This Schedule makes a number of amendments to the Tax Collection and Management (Wales) Act 2016 (TCMA) for the purposes of LTT.

407. Paragraph 6 introduces a new section 38A which sets out the responsibilities of buyers where no return is required, to keep and preserve such records that demonstrate that no return was required for the time periods specified.

408. Paragraph 8 introduces new section 39A which provides the Welsh Ministers the power by regulations to specify whether particular descriptions of records must, or need not, be kept and preserved.

409. Paragraph 11 provides that Section 42 of the TCMA is amended so that it provides that where an enquiry notice has been issued in relation to a further return that a 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).

410. Paragraph 14 introduces a new section 45A to ensure 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).

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411. Paragraph 24 provides a further amendment to TCMA by introducing section 63A 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. A few consequential changes are also made to TCMA to reflect the insertion of new section 63A.
412. Paragraph 42 substitutes Section 122 TCMA (penalty for failure to pay tax on time) and now provides that a late payment penalty will apply where a sum of LTT or LDT has not been paid by the “penalty date” set out in Table A1. Taxpayers will be liable to a late payment penalty if the amount of tax has not been paid 30 days after the amount should have been paid. The Welsh Ministers will be able to amend the type of devolved tax, amount of tax, or penalty dates included at Table A1. Regulations made under this power will follow the affirmative procedure.
413. Paragraph 42 also introduces a new section 122A TCMA which sets out the amounts and dates for further late payment penalties in cases of continued non-payment.
414. Taking sections 122 and 122A TCMA together, there are three late payment penalty dates and amounts: 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; and a final penalty of 5% on the tax that remains unpaid after 12 months after the penalty date. However, where there is postponement, the period covered by that postponement is ignored when calculating the 6 and 12 month periods.
415. Paragraph 56 introduces a new section 154A TCMA which provides that a liability for a penalty due from a person who is deceased becomes the liability of the personal representative, and that debt so due is payable out of the deceased person’s estate.
416. Paragraph 58 provides a substitute for section 157 TCMA which ensures that in every case late payment interest is to run from the day when tax ought to have been paid (whether or not the taxpayer made a return). The new version also improves the clarity of the provision.
417. Paragraph 58 also introduces new sections 157A and replaces 158 TCMA. Section 157A provides rules for the charging of interest on late payment interest on penalties. Section 158 makes supplementary provision about late payment interest.
418. Paragraph 63 introduces a new Chapter 3A to Part 8 of the 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. It contains nine new sections 181A to 181I. These provisions, broadly, give the taxpayer with the ability to request that WRA agree to postpone the recovery of a disputed amount of tax, pending resolution of the dispute.
419. New 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.

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420. New section 181B provides that, where there is a request for a review or an appeal, the taxpayer may make a request for what the taxpayer considers to be an amount of excessive devolved tax that is the subject of the review or appeal 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.
421. New 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.
422. New 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.
423. New section 181E provides the taxpayer with the right, within 30 days of the WRA notice giving 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.
424. New 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 the WRA and the taxpayer. If within 21 days of 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.
425. New 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

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a deemed postponement in force from the date the taxpayer makes their request, for the amount that they request, until WRA decides the request.

426. New 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 might 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.

427. New section 181I provides there is to be no appeal against a decision by the First-tier Tribunal in relation to a postponement request.

428. Paragraph 65 introduces a new section 183A to the 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 to that body 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 the WRA appeal and, additionally, considers that refusing WRA's request not to repay would prejudice subsequent payment by the taxpayer will the request be granted.

429. Paragraph 66 introduces a new section 187A to the TCMA which sets out how the TCMA will apply to the Crown in relation to LTT.

430. Paragraph 68 introduces new subsections into section 190 to the TCMA to make it clear 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.

## Glossary

Alternative finance investment	Investments structured so that rents or a profit share rather than interest is paid on the finance provided. Alternative finance investment products meet the requirements of certain religions that prohibit the payment and receipt of interest.
Annuity	A fixed sum of money paid annually.
Assignment of rights (pre-completion)	The transfer of the rights under a contract by the buyer to a third party before the contract is completed.
Assigned lease	A lease which has been transferred by a tenant to a third party.
Bare Trusts	Trusts where the beneficiary is absolutely entitled to the property and those where the trustee holds the property as nominee. Generally, the liability for LTT rests with the beneficiary.
Chargeable consideration	The total amount paid for the chargeable interest. Generally this refers to the purchase price.
Chargeable interest	An interest, right or power in or over land for which LTT is chargeable. This includes freehold or leasehold interests in a property or piece of land.
Chargeable transaction	A transaction liable to LTT.
Contingent consideration	Where the chargeable consideration is contingent on a future event happening.
Co-ownership Authorised Contractual Scheme (CoACS)	A Co-ownership Authorised Contractual Scheme (CoACS) is a form of investment vehicle that is similar to a unit trust scheme which, due to the absence of trust law in much of continental Europe, is a common form of investment vehicle there.
Cross border transaction	A cross border transaction can include cross title transactions but is also wider and will include transactions where, as part of a single deal, land is in Wales and land is also not in Wales.
Cross title transaction	A cross title transaction is one where there is a Land Registry title that crosses the border, and part of the property is in Wales and part in England.
Crown acquisitions	Acquisitions by Crown bodies including the Welsh Ministers and UK Government Ministers.
Disclosure of tax avoidance scheme (DOTAS)	UK legislation which requires a promoter of a tax avoidance scheme to disclose the main elements of the scheme to HMRC and for users of the scheme to identify their use of the scheme.
Easement	The right to use someone else's land for a specified purpose, for example a right of way across the land.



Effective date	The date on which the land transaction is considered to have taken place. Generally, this is the completion date (but see substantial performance).
Exempt interest	An interest, right or power over land for which land transaction tax is not chargeable. Examples include a mortgage company's charge over a mortgaged property, a licence to occupy the land, or a franchise to hold a market or fair.
Exempt transactions	A transaction which is exempt from LTT including: Examples include transactions where there is no chargeable consideration; property left in a will; transactions in connection with divorce or dissolution of civil partnership.
Freehold	Property tenure where the land or property is owned indefinitely.
Free-standing transfer (pre-completion)	A pre-completion transaction that is not an assignment of rights. It will include sub-sales (where the original contract will be completed and all or part of the subject matter of that contract immediately sold to a third party).
General Anti-Avoidance Rule (GAAR)	Overarching rule that a taxpayer cannot enter into a tax arrangement if the main, or one of the main, purposes of that arrangement is to avoid tax.
Her Majesty's Revenue and Customs (HMRC)	The tax collection body for UK taxes.
Higher rates residential property transaction	A purchase of an additional residential, or interests therein, (or a purchase by a non-individual, for example a company) of a property in Wales where consideration given is £40,000 or more.
Land transaction	The acquisition of a chargeable interest in or over land. This generally refers to the purchase of either a freehold or leasehold of a property or piece of land.
Land and Buildings Transaction Tax (LBTT)	A tax applied to land transactions in Scotland.
Lease or leasehold	Property tenure where the right to occupy land or a building is given for a length of time, reverting to the owner of the land or property after the lease period expires.
Lease premium	The non-refundable lump sum payment made by the tenant to the landlord upon entering the tenancy.
Licence	Permission to occupy the land or premises without becoming entitled to sole possession of them.

Linked transactions	Transactions are considered linked when: there is more than one transaction; those transactions are between the same buyer and seller (or between people connected with either of them); and the transactions are part of a single arrangement or scheme or part of a series of transactions.
Land Transaction Tax (LTT)	The tax to apply to land transactions in Wales in place of SDLT. It will be established by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill.
Market value	The price at which something could reasonably be expected to sell on the open market between an arm's length seller and buyer.
Major Interest	A freehold or leasehold interest in a property or piece of land.
Net Present Value (NPV)	The present value of future rental payments – taking account, in particular, of the time value of money. It is used in calculating chargeable consideration in respect of a lease.
Non-residential	A property not designed or suitable to be used as a dwelling.
Notifiable transaction	Transactions which are notifiable to the Welsh Revenue Authority.
Open-ended investment company (OEIC)	A collective investment scheme that acquires investments such as stocks and shares, property etc. with the aim of spreading investment risk and giving investors the benefits of the results of the management of those investments.
Pre-completion transactions	The collective term for assignment of rights transactions and freestanding transfer transactions.
Pre-emption rights	A pre-emption right is a right to acquire property before it can be offered for sale to any other person.
Progressive tax	A progressive tax is a tax in which the tax rate increases as the taxable amount increases.
Provisional Affirmative Procedure	This procedure enables regulations to have effect from the date they are laid in the National Assembly. However, the regulations must be approved by the Assembly within 28 days of being laid if they are to have permanent effect.
Registered social landlord	A non-profit registered provider of social housing.
Residential property	A property designed or suitable to be used as a dwelling.
Reverse premium	A reverse premium on granting a lease is where the landlord pays a sum to the tenant. A reverse premium on surrendering a lease is where the tenant pays the landlord for being able to terminate the lease.

Revenue Scotland (RS)	The tax authority for Scotland.
Stamp Duty Land Tax (SDLT)	The tax applied to land transactions in the England and Wales and Northern Ireland (it will cease to operate in Wales once the LTT comes into force).
Settlements	Trusts which are not 'bare trusts' and where the liability for LTT is placed on the trustees.
Substantial performance	The date of substantial performance of a contract relating to property is the date when a buyer or connected person takes possession of the property (or substantially all of it), or pays a substantial amount of consideration. It is relevant for certain LTT provisions, including anti-avoidance rules.
Targeted anti-avoidance rule (TAAR)	Anti-tax avoidance provision which applies to a specific piece of legislation.
Tax band	A monetary range in which a specified percentage tax rate applies.
Tax Collection and Management (Wales) Act 2016	The Act puts in place the legal framework for the <i>collection and management</i> of devolved <i>taxes</i> in <i>Wales</i> .
Temporal Discount Rate	The temporal discount rate is the percentage rate which reduces future rental payments to calculate the net present value of those rental payments. The percentage rate can be varied by the Welsh Ministers through regulations.
Tenancies at will	An interest or right in or over land which can be terminated by notice at any time.
Uncertain or unascertained consideration	Where the chargeable consideration is uncertain because its value or amount depends on uncertain future events or its value is unascertained (e.g. value is based on projected turnover or on profits in accounts which have not been finalised).
Unit Trust Schemes	A trust arrangement comprising an open ended fund whose objective is typically to enable an investor to acquire a small stake in a large portfolio of investments and spread the risk across a large number of assets.
Welsh Revenue Authority (WRA)	The tax authority for Wales.

## Annex 2

### Index of Standing Order requirements

Table 8

Standing order		Section	pages/ paragraphs
26.6(i)	State that in his or her view the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	Pg. 2
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	The policy objectives are set out at Pg 7-9 para 3.1-3.11
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – impact assessment	Alternate options are set out at Pg 53 para 7.13-7.15
26.6(iv)	Set out the consultation, if any, which was undertaken on: <ul style="list-style-type: none"> <li>(a) the policy objectives of the Bill and the ways of meeting them;</li> <li>(b) the detail of the Bill, and</li> <li>(c) a draft Bill, either in full or in part (and if in part, which parts)</li> </ul>	Chapter 4 – Consultation	A summary of the LTT consultation is set out at Pg 30-32 para 4.1-4.10

26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	A summary of the outcome of the LTT consultation is set out at Pg 31, para 4.4-4.5
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	Pg 31, para 4.5 sets out that a draft of the Bill was published.
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	A summary of provisions is set out in the Explanatory Notes Pg 88-151
26.6(viii)	Set out the best estimates of:  (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;  (b) the administrative savings arising from the Bill;  (c) net administrative costs of the Bill’s provisions;  (d) the timescales over which such costs and savings would be expected to arise; and  (e) on whom the costs would fall	Part 2 – impact assessment	A summary table of costs is included at Pg 48-50 and the details of how these costs were calculated is set out at Pg 60-66, paras 8.27-8.48.
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – impact assessment	A summary of benefits is set out at Pg 66-68 para 8.50-8.51

26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure)</p>	Chapter 5 - Power to make subordinate legislation	A summary table of powers to make subordinate legislation is set out at pgs 34-46 Table 6.
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	Chapter 6 – Regulatory Impact Assessment	Pg 47, para 6.2 sets out that the Bill does not charge expenditure on the Welsh Consolidated Fund

26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	The requirement is Standing Order 26.6C for a Schedule of Amendments is not applicable to this Bill as the Bill does not propose to significantly amend existing primary legislation.	