

# SL(5)710 – The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020

## Background and Purpose

These Regulations amend the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 so as to insert revised tax bands and percentage tax rates for higher rates residential property transactions, non-residential property transactions and chargeable consideration which consists of rent.

The tables below set out the previous rates/bands and the new rates/bands.

<b>Higher rates residential property transactions</b>		<i>Previous Percentage tax rate</i>	<i>New Percentage tax rate</i>
<i>Tax band</i>	<i>Relevant consideration</i>		
First tax band	Not more than £180,000	3%	4%
Second tax band	More than £180,000 but not more than £250,000	6.5%	7.5%
Third tax band	More than £250,000 but not more than £400,000	8%	9%
Fourth tax band	More than £400,000 but not more than £750,000	10.5%	11.5%
Fifth tax band	More than £750,000 but not more than 1,500,000	13%	14%
Sixth tax band	More than £1,500,000	15%	16%



<b>Non-residential property transactions</b> <i>Tax band</i>	<i>Previous Relevant consideration</i>	<i>New Relevant consideration</i>	<i>Percentage tax rate</i>
Zero rate band	Not more than £150,000	Not more than £225,000	0%
First tax band	More than £150,000 but not more than £250,000	More than £225,000 but not more than £250,000	1%
Second tax band	More than £250,000 but not more than £1,000,000	More than £250,000 but not more than £1,000,000	5%
Third tax band	More than £1,000,000	More than £1,000,000	6%

<b>Chargeable consideration which consists of rent</b> <i>Tax band</i>	<i>Previous Relevant consideration</i>	<i>New Relevant consideration</i>	<i>Percentage tax rate</i>
NRL Zero rate band	Not more than £150,000	Not more than £225,000	0%
First tax band	More than £150,000 but not more than £2,000,000	More than £225,000 but not more than £2,000,000	1%
Second tax band	More than £2,000,000	More than £2,000,000	2%

## Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

## Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.



### **1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires**

Paragraph 28(1) of Schedule 6 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 confers a power on the Welsh Ministers to specify the tax bands and the percentage rates in the case of chargeable consideration which consists of rent (in cases of the acquisition of a non-residential lease or mixed lease). This provision is not cited as an enabling power in the preamble to these Regulations.

We refer to paragraph 21 of the decision of the Court of Appeal in Vibixa Ltd and another v Komori UK Ltd and others<sup>1</sup> which states:

*Until the contrary is shown, the court must proceed on the basis that the preamble to an S.I. sets out all the statutory enabling powers that are necessary for its validity.*

### **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulations 4 and 5 cross-refer to regulation 3(1), however there is no regulation 3(1) in these Regulations. We assume the references should be to regulation 3(a).

### **3. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

The numbering in regulation 2 is not consistent between the English and Welsh texts.

## **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The changes made by these Regulations were announced by the Minister for Finance and Trefnydd on 21 December 2020 in the draft Budget, and these Regulations came into force the next day. There have been a number of reports in the media criticising the short notice and highlighting the impact on solicitors and their clients.

David Greene, President of the Law Society of England and Wales, is quoted in [Legal News Wales](#) as saying:

*“Solicitors in Wales and their counterparts in England who have clients purchasing homes in Wales are dismayed by the combination of the timing of today’s Welsh Government announcement of changes to the land transaction tax (LTT) and the short notice of those changes, which will commence tomorrow (22 December).”*

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<sup>1</sup> [2006] EWCA Civ 536



*“These last-minute changes come at a time when solicitors are under enormous pressure, facing the challenge of operating in a pandemic – with Wales just having adopted stricter measures – and working all hours dealing with the usual Christmas rush, clients wishing to move before the 31 March LTT holiday deadline and record numbers of transactions, which are being hit by delays in searches.”*

*“They now have clients who face paying thousands of pounds more if they are unable to proceed with their transaction within the very short notice period given.”*

**2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment**

Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund. These Regulations revise tax bands and percentage tax rates for certain transactions subject to land transaction tax collected by the WRA.

## Implications arising from exiting the European Union

None.

## Welsh Government response

### Technical Scrutiny: Reporting Point 1

The Government acknowledges that paragraph 28(1) of Schedule 6 to the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 is not cited. The specific regulations within the instrument which rely upon paragraph 28(1) of Schedule 6 confer a benefit on the Welsh taxpayer. These are regulations 3(c) and 6(4) which are not interconnected with any other provision within the Regulations.

The Government does not believe that this alters the effect of the instrument, which remains *intra vires*. The Government relies upon the principles set out in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586 in support of their view. The Welsh Ministers have the powers to make these Regulations and it is clear from the operative provisions of the SI (and the principal SI which it is amending which cites all relevant powers) that paragraph 28(1) of Schedule 6 was intended to be specified in the preamble.

The Government have liaised with Welsh Revenue Authority officials to ensure that the benefit will be conferred on relevant Welsh taxpayers.

Notwithstanding this, for the sake of legal clarity, we will make the any necessary amendments at the next available opportunity.



## **Technical Scrutiny: Reporting Point 2**

Reporting Point 2 relates to a reference to regulation 3(1) instead of regulation 3(a) in regulations 4 and 5. The Government acknowledges this error and proposes to rectify this by means of a correction slip.

## **Technical Scrutiny: Reporting Point 3**

Reporting Point 3 relates to an inconsistency between the numbering in the English and Welsh texts of regulation 2. The Government acknowledges this error and proposes to rectify this by means of a correction slip.

## **Merits Scrutiny: Reporting Point 1**

The Welsh Government recognises that the changes to the rates were brought into effect very shortly after they were announced and that will have had implications for the work of solicitors and others involved in conveying property. The changes are introduced shortly after they are announced so as to limit the opportunities of taxpayers to bring forward transactions so as to avoid the increase in the rates and pay the former, lower, rates.

While these changes have resulted in an increase to the higher rate tax paid from 22 December (excluding those covered by the transitional rules) it also introduced an immediate reduction in most cases for non-residential property transactions.

There are examples across the UKs property transaction taxes (stamp duty land tax (SDLT), land and buildings transaction tax (LBTT) and our land transaction tax) where a tax increase is announced and there is a delay in that change coming into effect with the result that behaviours are adapted to bring the transactions forward to make tax savings. This includes the introduction of the higher residential rates themselves (albeit that was a new charge as well as rate) and the transition from SDLT to LBTT in Scotland and LTT in Wales. In both cases there was evidence that higher priced residential transactions were brought forward to complete under SLDT to benefit from a lower tax charge (it was especially evident in the £1million plus residential market in Scotland). Equally, there was some evidence that lower priced property transactions were delayed so that they completed (in particular in LTT) once the new devolved tax came into effect to benefit from the lower amount of tax charged. For these reasons it is unusual for consultations in advance of budget rate changes to be undertaken because of the risks of forestalling.

The increase in the rates last month was accompanied by transitional rules which ensured that those taxpayers who had increased liabilities but had entered into a contract on or before 21 December 2020 (the date the change was announced) but completed their transaction on 22 December or thereafter would, in the main be able to pay LTT based on the rates in force at the time the contracts for purchase were exchanged. Taxpayers who will pay less under the new rates are not obliged to pay tax based on the rates in force at the time contracts were exchanged, rather they can benefit from the tax reductions immediately.



These transitional rules are a relatively standard feature of legislation that increases a taxpayer's liability when the rates charged for a property transaction tax are increased, and is the first time that we have used these rules with devolved taxes. Following the announcement, officials spoke to Law Society Wales officials to ensure they were aware of the transitional rules. Equally, there is precedent in SDLT of changes being announced at budget and the effect of those changes coming into force with immediate effect the next day.

For example, the changes from the slab to the marginal method of calculation in SDLT for both the residential rates and non-residential rates came into effect the day after they were announced. Some taxpayers paid less tax as a result of the changes but some paid more (these changes were legislated in the Stamp Duty Land Tax Act 2015 and in the Finance Act 2016 respectively with the changes being brought into effect through a Provisional Collection of Taxes Act 1968 (PCTA) resolution). Similarly, when a new charging band was introduced in the Finance Act 2012 it was again announced on budget day and brought into effect the following day (again through a PCTA resolution).

## Committee Consideration

The Committee considered the instrument and Government response at its meeting on 11 January 2021 and reports to the Senedd in line with the reporting points above.

