

Explanatory Memorandum to the Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Welsh Treasury and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Mark Drakeford MS
Cabinet Secretary for Finance and Welsh Language

22 October 2024

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 These legislative amendments to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA 2017”) provide a relief from land transaction tax (“LTT”) for qualifying transactions of land within a designated Welsh special tax site for a fixed period of time. This will include qualifying transactions within a designated freeport(s) and, potentially in future, any designated investment zone(s) (“IZ(s)”) in Wales. If the LTT relief applying to IZs is to be different to that provided for freeports, further policy development and consultation may be required and additional regulations prepared to further amend the LTTA 2017. Even if the IZ relief is not to differ, additional sets of regulations will need to be made to include the IZ designated areas.
- 1.2 In 2021, the UK government established the UK Freeports Programme, as part of its Levelling Up Agenda. Eight freeports were originally selected in England and in 2023, following an initial bidding opportunity, the Welsh Government and UK government agreed to jointly deliver two additional freeports in Wales – the Ynys Mon and Celtic Freeports.
- 1.3 In 2023, Welsh Government and UK government also agreed to support two investment zones; one in south-east Wales and one in north-east Wales. These reflect specific sectoral strengths and existing clusters in each region, including compound semi-conductors in south-east Wales, and high-value advanced manufacturing in north-east Wales.
- 1.4 The tax incentives relating to special tax sites include targeted relief from employer national insurance contributions, enhanced structures and buildings allowances, and enhanced capital allowances. These particular tax incentives relate to UK government reserved taxes. Tax incentives in England are also provided for business rates (non-domestic rates (“NDR”) in Wales) and stamp duty land tax (“SDLT”). Both are devolved matters for the Welsh Ministers and the Senedd. SDLT was devolved to Wales in 2018 and replaced with LTT.
- 1.5 The tax incentives relating to special tax sites, including the LTT relief, are key drivers of the Freeport Programme and have been designed with the intention of helping sites attract private investment and to deliver the policy objectives of both the Freeports and Investment Zones programmes in Wales.
- 1.6 To provide for consistency across the UK, the LTT relief offered in Welsh special tax sites will broadly be equivalent to that offered in special tax sites in England and Scotland.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 Section 113 of the Finance Act 2021 provides the UK government with a power to designate a special tax site for the purposes of Parts 2 and 2A of the Capital Allowances Act 2001 and, in relation to England, SDLT. Section 113 does not, however, allow the UK government to designate an area for the purpose of LTT relief as LTT is a devolved tax for which the Welsh Government and the Senedd have responsibility. Consequently, these Regulations specify the area(s) to which the LTT relief will apply and therefore ensure that the decision on the area(s) to which the relief applies ultimately rests with the Senedd.
- 2.2 The Regulations achieve this by defining a “special tax site” by reference to the UK government’s designation regulations (and the associated mapping) on the date they are made. The Welsh Government consider it important that the areas designated for the reserved taxes are the same as those to which the LTT and NDR tax incentives will apply, hence why this drafting approach has been selected. Any future amendments made to the areas designated as special tax sites by the UK government’s designation regulations will not, however, carry through and be effective in relation to the LTT relief for special tax sites that applies in Wales.
- 2.3 At this time only the Celtic Freeport special tax site has been designated by the UK government, with the designation taking effect on the 26 November. In order to apply this LTT relief to any new special tax sites in the future (whether they be freeports or investment zones) or make any amendments to existing special tax site areas, further amendments will be required to paragraphs 2 and 5 of Schedule 21A to the LTTA 2017 via further regulations. Such regulations would also require the approval of the Senedd.

3. Legislative Background

- 3.1 Section 30 of the LTTA 2017 introduces Schedules 9 – 22 which make provision about reliefs that can be claimed in respect of certain transactions normally liable to LTT. Under section 30(6)(a), the Welsh Ministers may amend the LTTA 2017 by regulations to add a relief to LTT. Under section 78 of the LTTA 2017, the Welsh Ministers may also by regulations make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purposes of, or in connection with, or for giving full effect to, any provision made by or under this Act.
- 3.2 These Regulations introduce a new Schedule to the LTTA 2017 which will be referenced in section 30(1) of the LTTA 2017 and provide for relief in the case of transactions relating to land within a special tax site. As the relief will provide both full and partial relief it has been necessary for appropriate cross references to the relevant paragraphs to be provided in both sections 30(2) and 30(3). A number of other amendments are made by the Regulations under the power within section 78 of the LTTA 2017 which are consequential on the new relief

and/or give full effect to it.

- 3.3 These Regulations are subject to the Senedd's draft affirmative procedure.
- 3.4 The relief is a subsidy in the form of a geographically limited relief provided to those businesses buying land and meeting the qualifying conditions within the designated special tax site for a limited period of time. A proposed Subsidy Control Scheme for Welsh Freeports has been produced and has been submitted to the Competition and Markets Authority ("CMA"), in accordance with section 31 of the Subsidy Control Act 2022, with a report from CMA on that proposed scheme expected on or before 1 November 2024 (this follows a pre-referral process that was followed with CMA earlier in the year). Following a mandatory 'cooling-off' period and an opportunity to consider the CMA's report (and if needed, make amendments to the proposed scheme in light of that), it is anticipated that this scheme will be registered on the UK subsidy Transparency database as required under the Subsidy Control Act 2022. That registration will have occurred before the Senedd debate and vote on the making of the Regulations.

4. Purpose and Intended Effect of the Legislation

- 4.1 The new Schedule 21A (Relief for Special Tax Sites) provides for a new relief for the acquisition of chargeable interests in land located in special tax sites during a fixed period of time. This will include qualifying transactions within the proposed Welsh freeports and, where appropriate, for IZs in Wales in future.
- 4.2 The availability of full or partial LTT special tax site relief will require a number of conditions to be met at the effective date of the transaction. Full or partial relief from LTT will be available if a buyer enters into a land transaction in the period the relief is provided and the land, the chargeable interest in which is the subject matter of the land transaction, is situated within a special tax site and is intended to be used in a qualifying manner.
- 4.3 For the purposes of the relief, land is used in a "qualifying manner" if it is used in one or more of the following ways:
- (a) used by the buyer or a connected person in the course of a commercial trade or profession;
 - (b) developed or redeveloped by the buyer or a connected person for use (by any person) in the course of a commercial trade or profession;
 - (c) exploited by the buyer or a connected person, in the course of a commercial trade or profession, as a source of rents or other receipts (other than excluded rents and other receipts).
- 4.4 There are a number of specific exclusions from the meaning of qualifying manner that are intended to, generally, exclude activity related to residential property from being relieved.

- 4.5 Land that is used in an ancillary manner to land that is both within a special tax site and is being used in a commercial trade or profession qualifies for the relief. Ancillary use could, for example, include roads, car parks, and landscaping. In addition, caretaker or security staff accommodation, despite being residential property, is not excluded from qualifying for relief.
- 4.6 As with nearly all LTT reliefs, the special tax sites relief must be claimed in an LTT return or an amendment to that return within the permitted statutory time limits.
- 4.7 The Welsh Ministers have agreed to extend the window to claim freeport tax reliefs, including the LTT relief, from 5 to 10 years, until 30 September 2034. The extension is subject to a review in 2028 to provide assurance that sufficient progress is being made by each freeport. If the Welsh Ministers decide to extend the LTT relief for freeports for an additional 5 years, to September 2034, then further regulations will need to be laid and approved by the Senedd to effect that extension. Therefore, these Regulations only provide relief to 30 September 2029, the initial period before the review.

5. Consultation

- 5.1 An eight-week public consultation began on 19 December 2023 and ended on 18 February 2024. The consultation document, which included a draft of the Regulations, was published on the consultation pages of the Welsh Government's website. Respondents were able to submit their views and comments on paper, by email or online. Details of the consultation and draft Regulations were discussed and emailed to key stakeholders, including the freeport bidders. The consultation applied to Wales only.
- 5.2 The consultation received a total of 5 responses from professional bodies, the public sector, business and one individual responding in a private capacity. The responses to the consultation have been summarised in the "Consultation – summary of responses" document.
- <https://www.gov.wales/land-transaction-tax-special-tax-sites-relief>
- 5.3 The responses to the consultation have been used to refine the legislative amendments to the LTTA 2017. For example, respondents raised concerns regarding the definition of "excluded rents" in the draft regulations, with specific reference to dividends from real estate investment trusts ("REITs"). As a consequence of the engagement, the definition has been amended with dividends from REITs not being treated as excluded rents. Respondents also highlighted possible tax avoidance routes in the draft legislation, which are addressed.
- 5.4 During the consultation, officials from Welsh Treasury met with stakeholders, including representatives of the Ynys Mon and Celtic Freeports and tax experts, to discuss the proposed legislative amendments and allow them to raise any

associated issues or concerns. Prior to the start of the public consultation, officials also held an “LTT Teach-in” session with the representatives of the Ynys Mon and Celtic Freeports. This was to outline the proposed legislative amendments and process.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

The RIA has been prepared for the Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024. While the Regulations currently only apply to the Celtic Freeport special tax site, it is anticipated the UK government will also designate the Ynys Mon Freeport special tax site in the coming months. This RIA has therefore been prepared to cover both of these sites. Should the LTT special tax sites relief be extended to cover any further special tax sites in the future (whether they be freeports or investment zones), a new RIA will be prepared.

6. Options

Option 1 – Do not provide LTT special tax sites relief – No Change

- 6.1 The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA 2017”) would not be amended.
- 6.2 **Advantages** - Simplicity and familiarity of rules retained and no reduction in amount of LTT collected.
- 6.3 **Disadvantages** - There would be an inconsistency in the approach in Wales compared with England and Scotland, which could cause disadvantages in terms of implementation and operation of a freeport(s) and / or investment zone(s) (“IZ(s)”) in Wales. This could result in a loss of regeneration, investment and high-quality job opportunities, thereby diminishing the impact of Welsh freeports.

Option 2 – Make new regulations for LTT special tax sites relief

- 6.4 Amend the LTTA 2017 to provide a relief from land transaction tax (“LTT”) for qualifying transactions of land within a designated Welsh special tax site for a fixed period of time.
- 6.5 **Advantages** - The LTT special tax sites relief, is one of the key drivers for the freeport and investment zone programmes, which have been designed with the intention of helping sites attract private investment to deliver the policy objectives of the freeports and investment zones including promoting regeneration and high-quality job creation. This approach would be consistent with that in England and Scotland.
- 6.6 **Disadvantages** - This option may involve changes to WRA operations, and taxpayers and external advisers will need to familiarise themselves with the new rules. There are also anticipated to be reductions in Welsh Government LTT revenues.

Options Summary

- 6.7 Option 2 is preferred.

7. Costs and Benefits

Option 1 – Do not provide LTT special tax sites relief – No Change

7.1 **Costs** - As with any of the options, while future costs are not fully known, with Option 1, the costs framework and categories would remain unchanged.

Option 2 – Make new regulations for LTT special tax sites relief

7.2 **Costs** - Cost categories are likely to be the following:

- Special tax sites relief - cost to the Welsh Government;
- WRA administrative costs;
- Tribunal and appeals costs; and
- Costs to taxpayers, conveyancers and other advisers.

Costs – Welsh Government

7.3 The cost of the provision of an LTT relief for special tax sites is highly uncertain. This is because:

- a. the land transactions that will occur are unknown;
- b. all of the areas to which the special tax site status may ultimately apply are not yet designated; and
- c. the nature of the transactions (grant of a lease for rent only, grant for premium and rents, assignment of lease or freehold transactions) will all have differing tax consequences because of different treatment, calculation methods and rates applied to the consideration given.

7.4 In respect of IZs, the financial offer from UK government means that the costs to Welsh Government of the LTT relief in those areas should be fully recoverable as Welsh Government can extract costs from the funding provided by HMT.

7.5 In terms of freeports, as the relief provided in Wales will broadly be the same as that SDLT relief available to the English freeports the calculation of the block grant adjustment should take into account the relief available in England. It is therefore possible that the cost, in terms of foregone LTT revenues, may at least partly, be offset through the block grant adjustment.

7.6 It is also possible that the transactions would not have occurred without the LTT relief being available or without the areas having freeport status. As such the costings related to transactions that would not occur without the freeport being designated might, in some regards, potentially be seen as revenue neutral (although that assumes no displacement of transactions from outside the special tax site to within the special tax site).

- 7.7 The LTT freeport costings¹, set out below, are for the anticipated relief amount that will be claimed during the first 5 years. This has been based on the amounts detailed in the outline business cases (OBCs) for both the Ynys Mon and Celtic Freeports:

LTT Relief Cost Estimates

Financial year	LTT Relief Claimed	
2024-25	£800,000	
2025-26	£1,600,000	
2026-27	£2,300,000	
2027-28	£2,500,000	
2028-29	£2,900,000	£10,100,000 - 5 year total

- 7.8 The Welsh Ministers have agreed to extend the window to claim freeport tax reliefs, including the LTT relief, from 5 to 10 years until 30 September 2034. The extension is subject to a review in 2028 to provide assurance that sufficient progress is being made by each freeport. If the Welsh Ministers decide to extend the LTT relief for freeports for an additional 5 years, to 2034, then further regulations, with accompanying EM/RIA, will need to be laid and approved by the Senedd.

Cost -Welsh Revenue Authority

- 7.9 The associated costs to the WRA of introducing the LTT relief, including system changes and guidance, alongside operational needs will be met within their existing budgets. It is expected that the number of claims for relief will be low, given the specific nature of the relief and type of transactions expected in special tax sites.

- 7.10 The WRA’s approach is risk based, so the addition of a new relief will naturally fall within their current operational framework; only once the relief is implemented and claims are made, will they be able to consider risk and their overall approach. However, as outlined above, given the number of claims expected for the new relief being low, they expect it will be a minor part of their tax risk and recovery work, sitting alongside their other activities.

Costs - Tribunal and appeals activity

- 7.11 It is possible some claims for the LTT relief may be challenged by the WRA. In such cases taxpayers could ultimately seek recourse from the First Tier Tribunal (Tax Chamber) and, if necessary, the Upper Tribunal (Tax and Chancery Chamber), which are reserved tribunals that fall under the jurisdiction of the Lady Chief Justice and Ministry of Justice.

- 7.12 The LTT relief will apply to very tightly defined areas of Wales (i.e. Welsh freeports and IZs) as opposed to Wales wide and for a restricted period of time.

¹ The costings presented over the 5 year period are in nominal (cash) terms, rather than discounted present values.

It is expected that there will be a limited number of transactions within those areas, and for the majority of claims to be correct. Most enquiries into the correct amount of LTT payable, and disagreements that may arise between a taxpayer and the WRA, are settled without recourse to the Tribunals. Therefore, we anticipate that there will be a very small number of potential claims, a minority of those will likely be enquired into, with an even smaller number resulting in appeals to the tribunal.

- 7.13 The Ministry of Justice have advised that there will be a financial impact on the Tribunal system due to potential appeals. The estimated cost per appeal is £3,400, based on Financial Year 2024/25 costs.

Costs - Taxpayers, conveyancers and other advisers

- 7.14 There will be costs for solicitors, conveyancers and other tax advisers to familiarise themselves with the LTT rules, when acting for a business seeking to buy land within a Welsh special tax site. That will mean that only a relatively small number of taxpayers and advisers will be impacted by the introduction of the new relief. As there are a number of differences between the SDLT and the LTT reliefs, it will be especially important that these differences are clearly understood. The WRA will produce detailed technical guidance and provide support to solicitors, conveyancers and other tax advisers, which will assist them in understanding the LTT rules and reduce any associated costs.
- 7.15 It is anticipated that some of these costs will be passed onto clients through fees charged. Therefore, the taxpayers will incur costs in order to claim the relief (as they would when undertaking any land transaction, and especially those where they wish to claim a relief). Whilst the taxpayer will incur this cost, they will benefit from paying no, or a reduced amount of, tax on their land transaction.
- 7.16 **Benefits** - The LTT special tax sites relief is one of the key drivers of the freeport and IZ programmes, which have been designed with the intention of helping sites attract private investment and deliver regeneration and high quality jobs. The LTT relief forms part of a wider package of incentives to help areas facing difficult economic challenges and support targeted investment with a commitment to the principles of fair work, sustainability and supporting the industries of the future.
- 7.17 **Option 2 Summary** - The benefits justify the likely costs.

Costs and Benefits Summary.

- 7.18 Option 2 is preferred on the grounds of cost and benefit.

8. Integrated Impact Assessment

- 8.1 The Freeport Programme for Wales Integrated Impact Assessment (IIA), which includes the LTT relief and the wider package of tax incentives relating to special tax sites, can be found here:

[Freeport Programme for Wales: integrated impact assessment | GOV.WALES](#)

- 8.2 As outlined in the explanatory memorandum, if the LTT relief applying to IZs is to be different to that provided for freeports, further policy development and consultation may be required and additional regulations prepared to further amend the LTTA 2017. This would include undertaking another IIA. For subsequent regulations that extend the special tax sites to other freeports or expand the area of the freeport this IIA should apply equally, although for each set of regulations to extend the provision of special tax site relief consideration will be given to whether additional information is required.

9. Competition Assessment

- 9.1 The Welsh and UK governments have worked together to develop a Welsh freeports model with the following specific public policy objective: to promote regeneration and high-quality job creation in economically disadvantaged port geographies. In a similar manner the Welsh and UK governments have worked together on the development of two potential IZs. IZs have the objective to incentivise investment in high-potential clusters linked to strong research capabilities leading to wider productivity and economic growth.
- 9.2 The Welsh freeports programme and IZs programme have been carefully designed to ensure that interventions are targeted only at locations that exhibit the kind of economic disadvantage the policy aims to address. The programmes aim to address economic disadvantage in places that currently are comparatively uncompetitive and experience low levels of private investment.
- 9.3 The Welsh freeport subsidies, including the LTT special tax sites relief, are firmly focused on improving the commercial attractiveness, from a business' perspective, of locations that are not currently commercially viable; they do not aim to improve the commercial attractiveness of already viable locations (which might increase profitability for businesses, potentially reducing incentives to innovate and invest). By increasing the number of commercially viable locations/sites, Welsh freeports are likely in the medium term to increase competition in sectors that are already well established in the UK.
- 9.4 A key risk is that by increasing the commercial attractiveness of specific locations, Welsh special tax sites incentivise the relocation of businesses from elsewhere in Wales or the rest of the UK, negatively affecting other locations and leading to resources being wasted on relocation. However, the potential negative impacts of displacement have been minimised in the following ways:
- The Welsh special tax sites reliefs have been designed to support initial setup costs (in particular, capital costs), rather than business as usual costs. It is unlikely to make commercial sense for a business to make the considerable investment needed in order to benefit materially from

the reliefs purely to relocate existing operations (rather than establishing new operations or expanding existing ones).

- Through the competitive selection process for Welsh freeport locations, and the subsequent business case process, Welsh freeports are required to model displacement and demonstrate net economic benefit to the Welsh and the UK economy.
- Welsh freeport subsidies aim to address an equity rationale and are focused on economically disadvantaged locations. Where displacement does occur, then, it may nonetheless be on balance acceptable to the extent that it reduces inequality. Moreover, there is strong evidence that spatial inequalities hamper economic performance, suggesting that displacement of this nature may also be on balance a net positive at the national level.

9.5 Given the focus of the Welsh freeports programme on supporting decarbonisation, many of the sectors targeted by Welsh freeports are emerging sectors that are not currently well-established in the UK meaning the scope for displacing activity from elsewhere in the country is significantly reduced. Therefore, it is not considered that the changes made by these Regulations will affect competition.

10. Post-Implementation Review

10.1 Post-implementation monitoring to assess the effectiveness of the legislation will include analysis of data reflecting interest in and take-up of the relief. Claims will be monitored by the WRA on an ongoing basis.