

Finance Committee Report: The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020

January 2021

1. The Finance Committee (the Committee) took evidence from the Minister for Finance and Trefnydd (the Minister) on 8 January 2021.
2. This Statutory Instrument was considered by the Finance Committee under Standing Order 27.8A.

Background and Purpose

3. 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.
4. The tables below set out the previous rates/bands and the new rates/bands.

| Non-residential property transactions | <i>Previous</i> | <i>New</i> | <i>Percentage tax rate</i> |
|--|--------------------------------------|--------------------------------------|----------------------------|
| <u>Tax band</u> | <u>Relevant consideration</u> | <u>Relevant consideration</u> | |
| 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 | More than £225,000 but not more than | 1% |



| | | | |
|-----------------|---|---|----|
| | £250,000 | £250,000 | |
| 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% |

| Chargeable consideration which consists of rent | | | |
|--|---|---|----------------------------|
| <u>Tax band</u> | <u>Previous Relevant consideration</u> | <u>New Relevant consideration</u> | <u>Percentage tax rate</u> |
| 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

5. Made Affirmative.

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

7. 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.

Merits Scrutiny

8. Three points are identified for reporting in respect of this instrument.

1. 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).”

“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. Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority (“WRA”) 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 WRA.
3. 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.

Paragraph 21 of the decision of the Court of Appeal in Vibixa Ltd and another v Komori UK Ltd and others¹ 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.”

Policy objectives

9. As set out at point 1 above there has been criticism of the short notice of the changes made by these Regulations. Paragraph 5.1 of the Welsh Government’s Explanatory Memorandum sets out why there was no consultation, and short notice of the changes:

“The setting of rates and thresholds for taxes is not an area of policy where consultation is generally undertaken, as any such consultation with a ‘live’ tax is highly likely to have a distortive effect on behaviours and, in relation to transaction taxes, the timing of those transactions.”

10. The Welsh Government considers that the changes made by these Regulations follow their tax policy principles for a progressive regime by providing a tax saving to some non-residential transactions as businesses seek to recover from the impact of the COVID-19 pandemic, as well as increasing LTT revenues overall to provide additional revenue to finance Welsh Government policy priorities.

11. Specifically in relation to higher rates residential property transactions paragraphs 6.6 and 6.8 of the Welsh Government’s Explanatory Memorandum explains why the Government has increased these rates:

“The higher residential rates apply to companies buying any dwellings and to individuals, broadly, who are buying residential properties when they, or an individual they are buying with, already own an interest in another dwelling. This is most likely to apply to the purchases of second homes and buy-to-let properties. The tax change effectively increases

¹ [2006] EWCA Civ 536

the additional tax these properties pay from 3% to 4% relative to a main rates residential property...

This option ensures the increase in tax burden is restricted to those with the resources to purchase additional residential properties and therefore provides for a more progressive regime, in line with the Welsh Government's tax policy principles."

12. In relation to non-residential property transactions, the Minister said in her written statement on 21 December 2020:

"I am also lifting the starting threshold on the Land Transaction Tax paid on non-residential property purchases by 50%. Businesses will now, in the main, pay no tax on purchases costing up to £225,000. This will provide a small but material amount of additional support to businesses.

The changes will result in fewer businesses having to pay tax on the acquisition of commercial property or when entering a new lease. Businesses buying properties that are required to still pay tax, will see a reduction in the tax cost, providing more significant savings to those lower-priced property purchases. The changes mean that Wales will have the highest thresholds at which tax starts to be payable on non-residential property transactions in the UK. As we emerge from the pandemic, these changes underline the Welsh Government's support for businesses which operate in our foundational economy. It will also provide some support for those businesses wishing to start, or expand, and may also help those that need to dispose of commercial property as a result of the impacts of the pandemic."

Government Response

Merits Scrutiny Point 1

13. 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.

14. 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.

15. There are examples across the UK's 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 SDLT 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.

16. 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.

17. 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.

18. 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).

Merits Scrutiny Point 3

19. 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.

20. 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.

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

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

Committee View

23. The Committee notes merit point 3, relating to Paragraph 28(1) of Schedule 6 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 not being cited as an enabling power in the preamble to these Regulations.

24. The Committee notes the Welsh Government's response to this point. The Committee is content with the Regulations.