

# 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

A Welsh Government response is required to all points except the second merits point.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**5 January 2021**

