

Explanatory Memorandum to The Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Permanent Secretary's Group of the Welsh Government 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 (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) (Amendment) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Trefnydd

4 March 2021

1. Description

- 1.1 The purpose of this instrument is to specify an extension to the current temporary variation to the land transaction tax (“LTT”) rates and bands that will apply to purchases of certain residential property transactions. This extension commences on 1 April 2021 and ends on 30 June 2021; providing a continuous temporary change period from 27 July 2020 to 30 June 2021, with the rates and bands reverting back to those in force prior to 27 July 2020, after that date.

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

- 2.1 This instrument contains regulations made under the provisional affirmative procedure set out in section 25(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the 2017 Act”). These Regulations are therefore made without a draft having been laid before, and approved by the Senedd. Further details about this procedure can be found in paragraph 3.2 below.
- 2.2 This instrument will amend the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020 (“the 2020 Regulations”). This instrument contains regulations made under section 78(1) of the 2017 Act to maintain transitional provision in connection with certain transactions where substantial performance takes place before 1 July 2021, but completion takes place on or after that date. Section 79(3) of the 2017 Act provides that regulations made under section 78(1) are subject to the negative procedure, unless the Welsh Ministers consider the regulations have the effect of imposing or increasing liability to tax. The transitional rule made under section 78(1) does not have the effect described in section 79(3) on the basis that it reduces the amount of tax that will otherwise be chargeable on those specified transactions. However, as a result of section 40 of the Legislation (Wales) Act 2019, this instrument is subject to the provisional affirmative procedure.

3. Legislative background

- 3.1 Section 24 of 2017 Act provides the Welsh Ministers with powers to vary the tax rates and tax bands for LTT through regulations.
- 3.2 Regulations made under this section are subject to a provisional affirmative procedure, which means the regulations are made (signed) by the Ministers and can come into force immediately. Once the Regulations have been made, they must be laid before the Senedd and will have temporary effect until they are voted on by the Senedd. That vote must happen within 28 calendar days of the regulations being made, not counting days when the Senedd is in recess. If the

vote does not occur, or is lost, the former tax rates and tax bands again apply and any taxpayer who paid a higher amount of tax under the regulations that failed to achieve Senedd approval can reclaim the difference between that payable under those regulations and the rates previously in force. This means that the risk of the regulations failing to achieve Senedd approval will rest with the Welsh Government and not Welsh taxpayers.

3.3 The 28 day period commences on Wednesday 3 March 2021 and the vote to approve the Regulations must occur by Saturday 8 May 2021 (due to recess and Senedd elections).

3.4 If approved, the regulations will have effect until 30 June 2021.

4. Purpose & intended effect of the legislation

4.1 The purpose of these regulations is to amend the 2020 Regulations so as to extend the current temporary variation to the tax bands and percentage tax rates of LTT applicable to certain residential property transactions with an effective date¹ on or after 27 July 2020 and before 1 April 2021, to on or after 27 July 2020 and before 1 July 2021. The original period for the temporary variation was announced by the Minister for Finance and Trefnydd on 14 July 2020. This will be used to calculate the amount of LTT chargeable in respect of a residential land transaction and is restricted to those paying the main rates only. The tax bands and percentage tax rates applicable to residential property transactions will revert back to those in force before 27 July 2020 on 1 July 2021.

4.2 The effect of the 2020 Regulations is to increase the threshold between the zero rate band and first tax band applicable to residential property transactions. The temporary rates introduced in the 2020 regulations increased the zero rate band from £180,000 to £250,000 from 27 July 2020, and these latest regulations provide for those rates to continue until 30 June 2021. The temporary threshold is £70,000 higher than the permanent starting threshold for residential property transactions subject to the main rates and it will effectively remove the permanent first band, charging 3.5% on consideration of more than £180,000 but not more than £250,000. It will also mean that in terms of price, only around the top 25% of those liable to the main LTT rates will pay any tax at all. Those buying properties costing more than £250,000 will make a saving of £2,450 over that which would be payable under the permanent rates.

4.3 These Regulations do not make any changes to the tax bands and percentage tax rates applicable to higher rates residential property transactions, non-residential property transactions, or transactions where the chargeable consideration consists of rent². The higher rates and thresholds for buyers of

¹ The 'effective date' is, broadly, the date of completion of the contract to purchase the property.

² The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018 (S.I. 2018/128 (W. 32)) makes provision as to the rates and bands of LTT applicable to higher rates residential property transactions, non-residential property transactions, and transactions where chargeable consideration consists of rent. These rates were most recently amended with effect from 22 December 2020 by the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020.

properties such as buy to let or as a second home therefore remain unchanged. This targeted tax reduction will support taxpayers who are paying the main rates of LTT (broadly, those buying their homes) and who may need additional support in deciding to buy their homes as a result of the uncertainty as we move from the peak of the pandemic and towards our economic recovery.

4.4 As a result of the amendments made by this instrument, the LTT residential property main rates for transactions completed on or after 27 July 2020 until 30 June 2021, will temporarily be:

Table 1: Residential Property Transactions - Rates and Bands from 27 July 2020 until 30 June 2021

Main rates Residential property transactions		
<u>Tax band</u>	<u>Relevant consideration</u>	<u>Percentage tax rate</u>
Zero rate band	Not more than £250,000	0%
First tax band	More than £250,000 but not more than £400,000	5%
Second tax band	More than £400,000 but not more than £750,000	7.5%
Third tax band	More than £750,000 but not more than £1,500,000	10%
Fourth tax band	More than £1,500,000	12%

5. Consultation

- 5.1 There is no statutory requirement to consult on this instrument. The extension of the temporary variation period was announced by the Minister for Finance and Trefnydd on 3 March 2021. The timing takes account of calls from certain stakeholders and taxpayers for the temporary rates and bands to apply for a further three months. However, the setting of rates and thresholds for taxes is not an area of policy where consultation is 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. The intention is to continue to provide a temporary economic stimulus to support the housing market and broader economy in Wales. It also recognises that some homebuyers in Wales seeking to benefit from the original temporary tax reduction period have encountered difficulties in completing transactions during this time and this extension will provide support to many of those Welsh taxpayers impacted.

6. Regulatory Impact Assessment

- 6.1 The revenue impact of these changes will be provided by the Office for Budget Responsibility and included as part of its next forecast of LTT revenues for the Welsh Government.
- 6.2 The Welsh Government considered a number of options in relation to an extension to the temporary LTT rates. This assessment covers a no change option and the policy within these regulations.
- 6.3 Recent data suggests the outlook for the property market is now more favourable than was expected at the time the original measure was announced. Residential transactions in Wales have returned to previous years' levels. House prices have also been rising recently, annually up 10.7% in Wales in December – higher than in England (8.5%), and are expected to continue to rise over the next few months. However, the economy is still in a fragile state and with lockdowns over the winter months, this is likely to have negatively impacted the smooth completion of transactions and delayed some.
- 6.4 This suggests appropriate action at this stage is to either end the temporary reduction on 31 March or provide a short term extension to the current policy.

No change

- 6.5 The no change option would return the main residential rates from 1 April to those which applied before 27 July 2020. These rates and thresholds mean that, in relation to the main residential rates, just over half of homebuyers do not pay any tax when buying their home, including the vast majority of first time buyers.

- 6.6 Following the extension of the temporary increase to £500,000 for the zero rate threshold for stamp duty land tax (“SDLT”) introduced from 8 July 2020, not matching the extension to 30 June 2021 with a similar one for LTT would result in some relatively large differences in tax between England and Wales. This is particularly the case for very high priced property in Wales. This may affect some local property markets which straddle the England and Wales border, creating market distortion in those areas. In the period August to January, around a quarter of properties liable to the main rates for residential properties in Wales were transacted for £250,000 or more. At that price without the extension, the difference in tax between SDLT and LTT will be £2,450. During the same period, around 5% of properties liable to the main rates residential rates in Wales were transacted for £400,000 or more. At that price the difference in tax would be around £9,950 without the LTT extension.
- 6.7 There would be no cost to the Welsh Government from this option in terms of changes to LTT revenues compared to those published by the Office for Budget Responsibility in its Welsh Taxes Outlook, which included the temporary reduction to LTT until 1 April 2021.

Three month extension to the temporary £250,000 threshold which is applied only to the main rates

- 6.8 This option is an extension to the period in which the increase to the residential main rate threshold from £180,000 to £250,000 applies in Wales. It would apply to transactions before 1 July 2021 instead of before 1 April 2021.
- 6.9 The option to extend the existing temporary relief will result in more transactions being subject to the tax reduction. Some of these transactions may have been planned for completion ahead of 1 April, but have been subject to delays in the conveyancing process, or the construction of new builds which have occurred as a result of Covid. This option creates a fairer temporary reduction, as it looks to cover those transactions which have been delayed and would miss out on the tax reduction otherwise.
- 6.10 As a result of this change around 75% of Welsh homebuyers will continue to pay no LTT until 1 July 2021. For properties costing £250,000 or more, there will continue to be a tax reduction of £2,450 until 1 July.
- 6.11 As with the current policy, this option does not provide a temporary tax reduction for those properties which are subject to the higher residential rates LTT. 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.
- 6.12 This option is expected to benefit around 4,000 transactions in Wales subject to the main rates of LTT. However, the number of transactions this year which will benefit from the extended tax reduction period is particularly uncertain due to the effects of the pandemic on the property market and the wider economy.

These transactions are expected to receive an average tax reduction of £2,000. The reduction in tax may then be used to increase household spending, which in turn may have positive economic effects. However, the evidence on this and how it may apply to the current economic and policy situation is relatively uncertain. The extension of the tax decrease may also slightly increase house prices.

- 6.13 The extension of the tax reduction is expected to have a very slight effect on transactions overall from that which would otherwise have occurred. It is also likely that some transactions will be brought forward from the period after 30 June 2021 to take advantage of the extended temporary tax reduction.
- 6.14 Even with the extension to the temporary changes introduced to LTT, there will continue to be some relatively large tax differences in tax between England and Wales for some very high priced property in Wales. This may affect some local property markets which straddle the England-Wales border, creating a degree of property market distortion in those areas.
- 6.15 With this option, around 75% of properties in Wales which are liable to the main residential rates will pay no tax. Only for homes bought for more than £250,000 will there be differences in tax payable between SDLT and LTT. In the period August to January, around 5% of properties transacted for £400,000 or more. At that price with the extension to LTT, the difference in tax between SDLT and LTT will be £7,500, £2,450 less than without the extension in LTT. As this option reduces the difference in tax between SDLT and LTT compared to the no change option, it should result in less local market distortion between England and Wales than that option.
- 6.16 Whilst reductions to residential property transaction taxes generally increase the number of transactions overall, as this is a three month extension, the effect is expected to be small.
- 6.17 There will be little additional administrative cost to the Welsh Revenue Authority ("WRA") as a result of updating its online tax calculators and responding to taxpayer queries about the change. These costs will be met within its current budget. Businesses involved in the various stages of house purchases, especially estate agents and conveyancers and solicitors have dealt with many rate (and method of calculation) changes before through SDLT and the introduction of LTT in Wales. As this is an extension of an existing policy, there should be few issues with adapting or integrating the change to existing systems and process. There has been clear communication of the changes and the WRA has provided a revised LTT calculator to establish liability. The additional costs to these businesses should therefore be minimal.
- 6.18 Extending the temporary rates for a further three months matches the SDLT extension in England and Northern Ireland. This should also support the

messaging and awareness of how long the temporary rates will now apply for in Wales.

7. Post Implementation review

- 7.1 Section 77 of the 2017 Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within six years of the day after the day of the 2017 Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the 2017 Act.