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Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
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Llywodraeth Cymru
Welsh Government

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Dear colleague

LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL

I very much look forward to bringing forward the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ('LTTA Bill') for your scrutiny during Stage 3 proceedings on Tuesday 28 March. You will be aware of the government amendments I tabled to the Bill on 16 March, which will be considered during those proceedings. This includes amendments related to the LTT surcharge; in particular on major interests, undivided shares and beneficial interests under certain types of trust arrangements.

During Stage 2, Government amendments were agreed which inserted a new Schedule 5 regarding the LTT surcharge. My intention was that these provisions should mirror those in SDLT legislation, given my previous commitments to maintain consistency where appropriate. However, I also sought to add clarity and make improvements to the legislation where there were opportunities to do so, and at Stage 3 I am keen to address a number of outstanding issues where I consider some minor revisions would be appropriate.

I have previously written to the Finance Committee on 15 February 2017 to inform them of my intention to table an amendment at Stage 3 which seeks to modify the effect of the LTT surcharge on the acquisition and ownership of a dwelling that is acquired and held by a deputy on behalf of a minor who lacks mental capacity in accordance with the Mental Capacity Act 2005 (MCA 2005). The letter can be found on the National Assembly for Wales' webpage at:

<http://www.senedd.assembly.wales/documents/s59811/Letter%20from%20the%20Cabinet%20Secretary%20for%20Finance%20and%20Government%20Business%20-%2015%20February%202017.pdf>

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Amendments **14** and **21** fulfil my intentions.

I would like to provide Members with information related to further proposed amendments to Schedule 5: amendments **7**, **8**, and **12** which seek to clarify that the transfer or assignment of undivided shares in particular, as well as beneficial interests under certain types of trust arrangements, are liable to the higher rates rules.

I am mindful of the complexity of this legislation, and have therefore set out at **Annex 1** a detailed explanation of these amendments ahead of consideration during the proceedings on 28 March.

Given the technical nature of much of the Bill I would be very happy to provide supplementary information to any Member on the practical application of the Bill, should that be helpful.

Please let me know, therefore, if there is anything that needs further clarification. I will be happy to respond as required ahead of Stage 3 proceedings.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government

Annex 1

Background

Schedule 5 to the LTTA Bill provides that a transaction is a higher rates transaction where the main subject-matter of the transaction consists of a major interest in a dwelling.

In turn, a major interest is defined (at section 68) as being an estate in fee simple absolute (freehold) or a term of years absolute (leasehold) subsisting at law or in equity (although leases granted for a term of less than 7 years are exempted).

Where land is held in Wales, the legal interest in the land is separated from the beneficial interest, which is also known as the economic benefit of the property.

In order to be a higher rates residential property transaction sub-paragraphs 3(2), 11(2) and 20(1) of Schedule 5 provide that the main subject-matter of that transaction must consist of a major interest. Not every transaction involving the transfer of a beneficial interest in residential property would be a transaction, the main subject-matter of which consists of a major interest (except as provided for in the Bill for the purposes of the Bill).

The vast majority of transactions involving residential dwellings are likely to involve the transfer of both the legal and beneficial interests. However, the legal ownership is separate from the beneficial ownership and the legal owner or owners will not necessarily be the same as the beneficial owner or owners.

The legal owner holds the beneficial interest in the property on trust for the beneficial owner. **The beneficial owner** will have a right to the income from the property or a share in it, and a right to the proceeds of sale of the property or part of the proceeds. The value therefore lies in the beneficial interest.

Where a property is purchased in joint names there is a trust of land. In such cases the buyers hold the legal estate as joint tenants and hold the beneficial interest in the property as either joint tenants or tenants in common.

Joint tenants are entitled to an equal share of the property. A key feature of a joint tenancy is the right of survivorship which means that upon the death of one co-owner, that co-owner's interest in the property will pass to the surviving co-owner by law.

Tenants in common hold the property in either equal or unequal shares which are known as undivided shares. An undivided share may be transferred to a third party. A transaction effecting the transfer of an undivided share may also involve a change in ownership of the legal estate, or it could relate to the beneficial interest alone.

Due to the possibility of beneficial interests being transferred separately from the legal interest, the policy intention is that transactions involving such transfers should be caught by the higher rates provisions, if the other conditions apply.

Amendments 7 and 8 - Jointly owned property

Where a transaction meets the various conditions set out in Schedule 5, it is a higher rates transaction. One of these conditions is that a buyer who is an individual already has a major interest in another dwelling. Paragraphs 5 and 15 of Schedule 5 refer to the buyer having a major interest in another dwelling, and that interest having a market value of £40,000 or more. The buyer may hold that other dwelling jointly with another person.

Amendments 7 and 8 provide that when assessing whether this condition is met, the market value of the interest in the other dwelling is based on the buyer's individual beneficial interest (as a proportion of the total value of the dwelling) rather than being based on the whole of the major interest.

Where the buyer is married or in a civil partnership, their interest will be combined with that of their spouse or civil partner to assess whether the £40,000 threshold has been met unless they are no longer living together (as defined by paragraph 25(3) of Schedule 5 LTTA Bill) at the effective date of the transaction concerned.

Amendment 12 - Deeming provisions

Paragraph 3(1) of Schedule 8 to the LTTA Bill provides that where a trustee acquires a chargeable interest as a bare trustee, the LTTA Bill will apply as if the interest were vested in, and the acts of the trustee in relation to it, were the acts of the beneficiary or beneficiaries.

Similar provision is made in paragraphs 27 and 28 of Schedule 5 to the LTTA Bill in respect of certain settlements which entitle the beneficiary to occupy the dwelling for life or to income earned in respect of the dwelling, and also in respect of bare trusts involving leaseholds.

The effect of these "deeming provisions" is that it is the beneficiary rather than the trustee who is treated as the buyer (or as holding, or disposing of, an interest in a dwelling). The deeming provisions mean that it is necessary to look through the trust (be that a bare trust or the specific type of settlement trust specified in the paragraph above) to the beneficiary to determine whether the higher rates apply. This ensures that the right person is liable for the tax (i.e. the person who has the economic benefit of the property).

The aim of this amendment is to put it beyond doubt that residential transactions involving the types of beneficial interest mentioned above will be caught by the higher rates provisions, even where there is no change in the owners of the legal estate.

It does this by treating the subject matter of that type of transaction as one consisting of a major interest where, immediately prior to the transaction, the seller was deemed to own a major interest by virtue of the deeming provisions, and immediately after the transaction, the buyer is likewise deemed to own the major interest.

This will mean, for example, that where a person acquires only an undivided share in a dwelling (under a tenants in common arrangement), but the legal owners and other tenants in common retain their interest in the dwelling, then the acquisition will still be treated as an acquisition of a major interest. It will be subject to the higher rates (provided the other conditions are met).