

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/MD/0181/18

Elin Jones AM
Presiding Officer
National Assembly for Wales

23 March 2018

Dear Elin,

The Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations 2018

In accordance with guidance, I am writing to notify you that section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will, unfortunately but unavoidable, be breached for the introduction of the above amending regulation.

The Cabinet Secretary for Finance has been clear that it is his intention that the transition from stamp duty land tax to land transaction tax should not result in a taxpayer being unfairly disadvantaged. A set of transitional regulations have already been made that address a number of such issues. It has, however, come to his attention late in the day that there is another situation where the transition to land transaction tax could result in double taxation. These new regulations will remove that unfairness from the date that land transaction tax commences.

The Land Transaction Tax (Transitional Provisions) (Wales) (Amendment) Regulations provide for a further transitional rule in relation to certain lease transactions where the start of the lease is backdated to a date when the taxpayer was 'holding over' a previous lease that was chargeable to stamp duty land tax.

The regulations amend the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018 to include a rule similar to the transitional rule already provided which deals with a similar situation where the first lease was chargeable to stamp duty land tax and the second to land transaction tax in relation to overlapping leases.

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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.

The new regulation addresses the potential for a taxpayer incurring both a charge to stamp duty land tax and to land transaction tax on the same amount of rent payable to the landlord by the tenant (the taxpayer). This situation arises if the lease has reached the end of its contractual term but is then held over (as a result of the tenant continuing to occupy) on the same terms as set out in the 'old' lease until a new lease is granted. In cases where the 'old' lease was granted under stamp duty land tax, the taxpayer will be required to pay stamp duty land tax on rent paid during that holdover period (if the rents are chargeable).

When a new lease is granted, that lease will be subject to land transaction tax. In many cases, the new lease will be granted and commence from a date following the ending of the holdover period. In such cases there will be no double taxation arising as a result of the transition from stamp duty land tax to land transaction tax. However, there will be some cases where the new lease will be backdated to a date between the end date of the old lease and the date on which the new lease is granted. It is in these cases where a taxpayer would, without the transitional rule included in these regulations, be chargeable to land transaction tax on rents which have already been chargeable to stamp duty land tax.

My officials became aware of this issue only recently and have sought to take action to address the issue as quickly as possible thereby preventing the risk of taxpayers being subject to paying double taxation in these circumstances. The Cabinet Secretary for Finance has decided to lay the statutory instrument so it comes into force on 1 April 2018 – the commencement date for land transaction tax. This decision is driven by the need to protect taxpayers from double taxation and maintain the policy that land transaction tax should operate in a fair and consistent manner for taxpayers.

I recognise that breaching the 21-day rule is far from ideal and I regret to inform you that in order to bring these regulations into force in time to ensure the transitional rule is effective from the commencement of land transaction tax, we are unable to allow 21 days before this instrument comes into force.

The Explanatory Memorandum is attached for your information; a Regulatory Impact Assessment has been prepared for these regulations and is also included as part of the Explanatory Memorandum. Both are being laid, together with the regulations, in the Table Office.

A copy of this letter is being sent to Mick Antoniw AM, chair of the Constitutional and Legislative Affairs Committee; to Simon Thomas AM, chair of the Finance Committee and to Chris Warner, head of the Assembly Commission's Policy and Legislation Committee Service.

Yours sincerely,



Julie James AC/AM
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