

SL(5)170 – The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018

Background and Purpose

These Regulations specify the first tax bands and percentage tax rates for land transaction tax (“LTT”) which is introduced by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

The tax bands and percentage tax rates in these Regulations have effect in relation to chargeable transactions with an effective date on or after 1 April 2018.

Separate tax bands and percentage tax rates apply to:

- Residential property transactions;
- Higher rates residential property transactions;
- Non-residential property transactions and
- Chargeable consideration which consists of rent.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Following the setting of the tax bands and percentage tax rates in these Regulations, the Welsh Ministers have the power to change or introduce new bands and new rates for LTT with immediate effect (provisional affirmative procedure - Section 25 the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017).

[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 Assembly]

2. The tax bands and percentage tax rates will apply to transactions liable to LTT. There will be some transactions which will have an effective date after the go-live dates that may remain liable to Stamp Duty Land Tax ‘SDLT’ in accordance with the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018 and the Wales Act 2014.

[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 Assembly]

3. Under the Schedule in these Regulations, Table 4, ‘NRL zero rate band’ is not defined. It is however, defined under Para 28, Schedule 6 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017. Whilst expressions used in subordinate legislation, have the meaning they bear in the parent Act (unless there appears to be contrary intention) a cross-reference to the



definition of 'NRL zero rate band' in the 2017 Act would be helpful from a clarity and accessibility perspective.

[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 Assembly]

Implications arising from exiting the European Union

There are none.

Government Response

The Welsh Government notes the first two points made in the 'merits scrutiny' element of the report.

As for the third merits point, in our view the expression referred to in the report does not, as a matter of law, need to be defined in the instrument. Section 11 of the Interpretation Act 1978, which applies to subordinate legislation made in England and Wales, provides that "Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in an Act". Since the expression referred to in the report is defined in the parent Act, the Interpretation Act 1978 automatically carries the definition forward into the instrument. No further provision is therefore needed to secure this effect.

We also consider that the nature of this particular instrument is uniquely intertwined with the parent Act. As Members will note, these Regulations provide for one element of the formula (the rates and bands) which will be used to calculate the amount of tax chargeable, with the remaining elements of that formula contained in the parent Act. For this reason, we consider that this instrument will be read alongside the parent Act, and the absence of an additional definition of NRL does not therefore risk the clarity or accessibility of this instrument."

Committee consideration

The Committee considered the instrument along with the Government response at its meeting on 22 January 2018 and reports to the Assembly in line with the merits points above.

