

LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 2 - Pre-completion transactions

Part 3 - Pre-completion transactions which are free-standing transfers

135. [Part 3](#) of this Schedule sets out the treatment of pre-completion transactions that are free-standing transfers (such as a novation). Paragraph 12 defines a free-standing transfer for the purposes of this Schedule as a pre-completion transaction that is not an assignment of rights.

Free-standing transfers: consideration and substantial performance

136. [Paragraph 13\(2\)](#) provides that where the transferee acquires the subject-matter of the free-standing transfer, the consideration provided for the acquisition includes any consideration given for the free-standing transfer.
137. Sub-paragraph (3) provides that any acquisition under sub-paragraph (2) includes any acquisition deemed to take place as a result of substantial performance of a contract without completion (in accordance with section 10(4)). Sub-paragraph (4) provides that where the transferee (or its assignee) takes any action that would constitute substantial performance without completion (in accordance with section 14(1)), that is deemed to effect the substantial performance of the original contract.
138. The treatment of successive free-standing transfers is provided for at sub-paragraph (5), which clarifies that each successive free-standing transfer is to be treated as a separate contract to which section 10 applies. Accordingly, the rules at sub-paragraph (4) in respect of substantial performance also apply to each successive free-standing transfer.

References to “the seller” in cases involving free-standing transfers

139. [Paragraph 14](#) sets out various provisions relating to the identity of the seller in free-standing transfers and where there is a mixture of free-standing transfers and assignments of rights (except where the original contract itself is a free-standing transfer). For the purposes of this paragraph the “relevant land transaction” is that referred to in sub-paragraph (1)(a) and (b).
140. The general rule (sub-paragraph (2)) is that references to the seller in the relevant land transaction will be read as the seller or transferor under the “first appropriate transaction”, which is the original contract (except where the first appropriate

These notes refer to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (c.1) which received Royal Assent on 24 May 2017

transaction comprises a pre-completion transaction, that meets the conditions listed at sub-paragraph (8)).

141. Sub-paragraph (3) sets out that in the specified provisions (listed at sub-paragraph (4)) references to the seller in a free-standing transfer will be read as:
 - the seller under the original contract;
 - the transferor under the final transaction (defined in sub-paragraph (6)(b)); and
 - the transferor under any relevant pre-completion transaction.
142. Sub-paragraph (5) provides that for the purposes of the linked transaction rules in section 8, references to the seller will be read as that provided for in sub-paragraph (5) (a) to (c).
143. Sub-paragraph (10) clarifies that where the final transaction in a series of two or more contracts is a pre-completion transaction the original contract is the first contract in that series.