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Changes to legislation: There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 16. (See end of Document for details)

VALID FROM 01/04/2018

SCHEDULE 16 (as introduced by section 30(1))

GROUP RELIEF

PART 1

INTRODUCTORY

Overview

- 1 (1) This Schedule makes provision about the relief available for certain transactions where the seller and the buyer are companies that are members of the same group.
- (2) This Schedule is arranged as follows—
- (a) Part 2 describes the relief available and makes provision about the interpretation of this Schedule,
 - (b) Part 3 restricts the availability of the relief,
 - (c) Part 4 makes provision about the withdrawal of the relief, and
 - (d) Part 5 makes provision about recovery of unpaid tax from certain persons.

PART 2

THE RELIEF

Group relief

- 2 (1) A land transaction is relieved from tax if the seller and the buyer are companies that are members of the same group at the effective date of the transaction.
- (2) Relief under this paragraph is referred to in this Schedule as “group relief”.
- (3) This paragraph is subject to paragraph 4 (restrictions on availability of group relief) and paragraphs 8 and 12 (withdrawal of group relief).

Group relief: interpretation

- 3 (1) The following provisions apply for the purposes of group relief.
- (2) “Company” means a body corporate.
- (3) Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.
- (4) A company (“company A”) is the 75% subsidiary of another company (“company B”) if company B—
- (a) is beneficial owner of not less than 75% of the ordinary share capital of company A,

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- (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of company A, and
 - (c) would be beneficially entitled to not less than 75% of any assets of company A available for distribution to its equity holders on a winding-up.
- (5) For the purposes of sub-paragraph (4)(a)—
- (a) the ownership referred to is ownership either directly or through another company or companies, and
 - (b) the amount of ordinary share capital of company A owned by company B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c. 4).
- (6) In sub-paragraphs (4)(a) and (5)(b), “ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- (7) Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c. 4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (4)(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.
- (8) But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Act are to be treated as omitted for the purposes of sub-paragraph (4)(b) and (c).

PART 3

RESTRICTIONS ON AVAILABILITY OF RELIEF

Restrictions on availability of group relief

- 4 (1) Group relief is not available if, at the effective date of the transaction, there are arrangements in existence by virtue of which—
- (a) a person has or could obtain, at that or some later time, control of the buyer but not of the seller, or
 - (b) any persons together have or could obtain, at that time or some time later, control of the buyer but not of the seller.
- (2) Sub-paragraph (1) does not apply to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”)—
- (a) in relation to which section 75 of the Finance Act 1986 (c. 41) (stamp duty: acquisition relief) will apply,
 - (b) in relation to which the conditions for relief under that section will be met, and
 - (c) as a result of which the buyer will be a member of the same group as the acquiring company.
- (3) Group relief is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—
- (a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or

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- (b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.
- (4) Arrangements are within sub-paragraph (3)(a) if under them—
- (a) the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions, and
- (b) the transaction or transactions, or any of them, involve a payment or other disposition by a person other than a group company.
- (5) In sub-paragraphs (3)(a) and (b), a “group company” means a company that at the effective date of the transaction is a member of the same group as the seller or the buyer.
- (6) In this paragraph—
- “arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;
- “control” (“*rheolaeth*”) has the meaning given by section 1124 of the Corporation Tax Act 2010 (c. 4).
- (7) This paragraph has effect subject to paragraphs 5 and 6 (certain arrangements not within paragraph 4).

Certain arrangements not within paragraph 4: joint venture companies

- 5 (1) Arrangements entered into by a joint venture company which, apart from this paragraph, would be arrangements to which paragraph 4 applies are not to be treated as such arrangements if and so long as—
- (a) the arrangements fall within sub-paragraph (2), and
- (b) none of the contingencies mentioned in sub-paragraph (3) to which the arrangements relate has occurred.
- (2) Arrangements fall within this sub-paragraph if they are—
- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in sub-paragraph (3) occurring, or
- (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in sub-paragraphs (1)(b) and (2) are—
- (a) the voluntary departure of a member,
- (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I.1989/2405 (N.I.19)) or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
- (c) a serious deterioration in the financial condition of a member,
- (d) a change of control of a member,

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- (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
- (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
- (g) an unresolved disagreement between the members, and
- (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question were entered into.
- (4) This paragraph does not apply if a member could, alone or together with connected persons, dictate the terms or timing of—
- (a) the transfer of shares or securities, or
- (b) the suspension of a member's voting rights,
- in advance of one or more of the contingencies occurring.
- (5) For the purposes of sub-paragraph (4), members are not connected with each other by reason only of their membership of the joint venture company.
- (6) In this paragraph—
- “constitutional document” (“*dogfen gyfansoddiadol*”) means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;
- “joint venture company” (“*cwmni cyd-fenter*”) means a company which—
- (a) has two or more member companies, and
- (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;
- “member” (“*aelod*”) means a holder of shares or securities in the joint venture company.
- Certain mortgage arrangements not within paragraph 4*
- 6 (1) Arrangements entered into by a company which, apart from this paragraph, would be arrangements to which paragraph 4 applies are not to be treated as such arrangements if and so long as—
- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
- (b) the mortgagee has not exercised its rights against the mortgagor.
- (2) This paragraph does not apply if the mortgagee—
- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
- (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any event which allows it to exercise its rights against the mortgagor.

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(3) For the purposes of sub-paragraph (2)(b), a mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.

(4) In this paragraph, “mortgage” means—

- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
- (b) in Scotland, any right in security.

PART 4

WITHDRAWAL OF RELIEF

Interpretation: relieved transaction

7 In this Part of this Schedule, a transaction that is relieved from tax by virtue of paragraph 2 (group relief) is referred to as a “relieved transaction”.

Withdrawal of group relief

8 (1) Where sub-paragraph (2) applies, group relief in relation to a relieved transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.

(2) This sub-paragraph applies where, in the case of a relieved transaction—

- (a) the buyer ceases to be a member of the same group as the seller—
 - (i) before the end of the period of 3 years beginning with the effective date of the transaction, or
 - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
- (b) at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—
 - (i) that was acquired by the buyer in the relieved transaction, or
 - (ii) that is derived from an interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.

(3) The amount chargeable is the tax that would have been chargeable in respect of the relieved transaction but for group relief if the chargeable consideration for that transaction had been an amount equal to—

- (a) the market value of the subject-matter of the transaction, and
- (b) if the acquisition was the grant of a lease at a rent, that rent,

or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(4) In sub-paragraphs (1) and (3), “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relieved transaction and what

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is held at the relevant time by the transferee company or, as the case may be, by that company and its relevant associated companies.

(5) In this paragraph—

“arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;

“relevant associated company” (“*cwmni cyswllt perthnasol*”), in relation to the buyer, means a company that—

- (a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and
- (b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.

(6) This paragraph has effect subject to paragraphs 9 and 10 (cases in which group relief not withdrawn) and paragraph 12 (withdrawal of group relief in certain cases involving successive transactions).

Cases in which group relief not withdrawn

9

(1) Group relief is not withdrawn under paragraph 8 in the following cases.

(2) The first case is where the buyer ceases to be a member of the same group as the seller by reason of—

- (a) anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure, or
- (b) the seller or another company that is above the seller in the group structure otherwise ceasing to exist.

(3) For the purposes of sub-paragraph (2), a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.

(4) The second case is where—

- (a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—
 - (i) section 75 of the Finance Act 1986 (c. 41) applies (stamp duty: acquisition relief), and
 - (ii) the conditions for relief under that section are met, and
- (b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.

(5) But in a case within sub-paragraph (4), sub-paragraph (6) applies if—

- (a) the buyer ceases to be a member of the same group as the acquiring company—
 - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
 - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
- (b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest—

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(i) that was acquired by the buyer in the relieved transaction, or
(ii) that is derived from an interest so acquired,
and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.

(6) The provisions of this Schedule apply as if the buyer had then ceased to be a member of the same group as the seller.

(7) In sub-paragraph (5)—

“arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;

“relevant associated company” (“*cwmni cyswllt perthnasol*”), in relation to the buyer, means a company that is a member of the same group as the buyer that ceases to be a member of the same group as the acquiring company in consequence of the buyer so ceasing.

Group relief not withdrawn where seller leaves group

10 (1) Group relief is not withdrawn under paragraph 8 where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

(2) The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

(a) the seller, or

(b) another company that—

(i) is above the seller in the group structure, and

(ii) as a result of the transaction ceases to be a member of the same group as the buyer.

(3) For the purpose of sub-paragraph (2), a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.

(4) But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 8, 9(4) and (6), 13 and 14 have effect as if the buyer had then ceased to be a member of the same group as the seller (but see sub-paragraph (7)).

(5) For the purposes of this paragraph, there is a change in the control of the buyer if—

(a) a person who controls the buyer (alone or with others) ceases to do so,

(b) a person obtains control of the buyer (alone or with others), or

(c) the buyer is wound up.

(6) For the purposes of sub-paragraph (5), a person (“P”) does not control, or obtain control of, the buyer if P is under the control of another person or other persons.

(7) Sub-paragraph (4) does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c. 4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before that change continue to do so.

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- (8) In this paragraph, references to “control” are to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c. 4) (subject to sub-paragraph (6)).

Group relief not withdrawn as a result of certain transfers of business etc. by mutual societies

- 11 (1) Group relief is not withdrawn under paragraph 8 where—
- (a) there is a relevant transfer of business or engagement,
 - (b) before the date of the relevant transfer there had been a relieved transaction, and
 - (c) as a result of that transfer, the buyer in the relieved transaction ceases to be a member of the same group as the seller—
 - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
 - (ii) in pursuance of, or in connection with, arrangements made before the end of that period.
- (2) In this paragraph, a “relevant transfer of business or engagement” means—
- (a) a transfer of business described in paragraph 10(1)(a) and (b) of Schedule 22 (transactions entered into by building societies);
 - (b) a transfer of business described in paragraph 11(1) of that Schedule (transactions entered into by friendly societies);
 - (c) a transfer of business described in paragraph 12(1) of that Schedule (transactions entered into by co-operative and community benefit societies or credit unions).

Withdrawal of group relief in certain cases involving successive transactions

- 12 (1) Where in the case of a relieved transaction—
- (a) there is a change in the control of the buyer,
 - (b) that change occurs—
 - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
 - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,
 - (c) apart from this paragraph, group relief in relation to the relieved transaction would not be withdrawn under paragraph 8, and
 - (d) any previous transaction falls within sub-paragraph (3),
- paragraphs 8, 9 and 10 have effect in relation to the relieved transaction as if the seller in the earliest previous transaction falling within sub-paragraph (3) were the seller in the relieved transaction.
- (2) Sub-paragraph (1) has effect subject to sub-paragraph (6).
- (3) A previous transaction falls within this sub-paragraph if—
- (a) the previous transaction is a relieved transaction or is relieved from tax by virtue of Schedule 17 (reconstruction and acquisition reliefs),
 - (b) the effective date of the previous transaction is less than 3 years before the date of the event falling within sub-paragraph (1)(a),

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- (c) the chargeable interest acquired under the relieved transaction by the buyer in that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in the previous transaction, and
 - (d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person in a transaction that is not a relieved transaction nor is relieved from tax by virtue of Schedule 17 (reconstruction and acquisition reliefs).
- (4) For the purposes of this paragraph, there is a change in the control of a company if—
- (a) any person who controls the company (alone or with others) ceases to do so,
 - (b) a person obtains control of the company (alone or with others), or
 - (c) the company is wound up.
- (5) References to “control” in this paragraph are to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c. 4).
- (6) Sub-paragraph (1) does not apply where—
- (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c. 4)) obtains control of, or ceases to control, the buyer, and
 - (b) the other persons who controlled the buyer before that change continue to do so.
- (7) If two or more transactions effected at the same time are the earliest previous transactions falling within sub-paragraph (3), the reference in sub-paragraph (1) to the seller in the earliest previous transaction is a reference to the persons who are the sellers in the earliest previous transactions.
- (8) In this paragraph, “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

PART 5

RECOVERY OF RELIEF FROM CERTAIN PERSONS

Recovery of group relief from another group company or controlling director

- 13 (1) This paragraph applies where—
- (a) tax is chargeable under paragraph 8 (withdrawal of group relief),
 - (b) the amount so chargeable has been finally determined, and
 - (c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 14, be required to pay the unpaid tax (together with any interest payable)—
- (a) the seller;
 - (b) any company that at any relevant time was a member of the same group as the buyer and was above it in the group structure;
 - (c) any person who at any relevant time was a controlling director of the buyer or a company having control of the buyer.

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- (3) For the purposes of sub-paragraph (2)(b)—
- (a) a “relevant time” means any time between the effective date of the relieved transaction and the buyer ceasing to be a member of the same group as the seller;
 - (b) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.
- (4) In sub-paragraph (2)(c)—
- “director” (“*cyfarwyddwr*”), in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (read with subsection (2) of that section) and includes any person falling within section 452(1) of the Corporation Tax Act 2010 (c. 4);
- “controlling director” (“*cyfarwyddwr â rheolaeth*”), in relation to a company, means a director of the company who has control of it (construing control in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c. 4)).
- (5) For the purposes of this paragraph, a claim is not finally determined until—
- (a) the claim, or
 - (b) the amount to which it relates,
- can no longer be varied (whether on review, appeal or otherwise).

Recovery of group relief: supplementary

- 14 (1) WRA may issue a notice to a person within paragraph 13(2) requiring the person to pay the amount that remains unpaid before the end of the period of 30 days beginning with the day on which the notice is issued.
- (2) A notice under sub-paragraph (1) must be issued before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 13(1)(b).
- (3) The notice must state the amount required to be paid by the person to whom the notice is issued.
- (4) That amount is a “relevant amount” payable by the person to whom the notice is issued for the purposes of Part 7 of TCMA (payment and enforcement).
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the buyer.

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