

*Changes to legislation: Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, PART 5 is up to date with all changes known to be in force on or before 27 July 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## SCHEDULE 5

### HIGHER RATES RESIDENTIAL PROPERTY TRANSACTIONS

#### Modifications etc. (not altering text)

- C1** Sch. 5 applied (with modifications) (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), **12**

## PART 5

### SUPPLEMENTARY PROVISIONS

#### *Further provision in connection with replacement of main residence exception*

- 23 (1) This paragraph applies where by reason of paragraph 8(4) or 17(4) a chargeable transaction (“the transaction concerned”) ceases to be a higher rates residential property transaction for the purpose of regulations under section 24(1)(b).
- (2) The land transaction (“the subsequent transaction”) by reference to which the condition in paragraph 8(4)(b) or 17(4)(b) was met may not be taken into account for the purposes of paragraph 8(2)(b) or 17(2)(b) in determining whether any other chargeable transaction is a higher rates residential property transaction.
- (3) Sub-paragraph (4) applies where—
- (a) the effective date of the subsequent transaction falls on or before the filing date for the return in respect of the transaction concerned, and
  - (b) the return has not been made.
- (4) The buyer may, when making the return in respect of the transaction concerned, treat the purchased dwelling referred to in paragraph 8(4) or 17(4) as though it had been a replacement for the buyer's only or main residence on the effective date of the transaction concerned; and in such a case the transaction concerned is to be treated as if it had never been a higher rates residential property transaction.
- (5) Sub-paragraph (6) applies where the effect of the transaction concerned ceasing to be a higher rates residential property transaction is that less tax is payable in respect of it than the buyer has already paid in accordance with a return made for that transaction.
- (6) In order to obtain repayment of the amount of tax overpaid, the buyer may—
- (a) within the period allowed for amendment of the return, amend it accordingly (see section 41 of TCMA);
  - (b) after the end of that period (if that return is not so amended), make a claim for repayment of the amount overpaid in accordance with Chapter 7 of Part 3 of TCMA.

#### Commencement Information

- II** [Sch. 5 para. 23](#) in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

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*Further provision in connection with transactions being treated as higher rates residential property transactions*

- 24 (1) This paragraph applies where by reason of the application of paragraph 9 or 18 a chargeable transaction (“the intermediate transaction”) is treated as a higher rates residential property transaction.
- (2) The intermediate transaction is treated as a higher rates residential property transaction for the purposes of this Act as from the end of the interim period that applies in accordance with paragraph 9(5) or 18(5).
- (3) The buyer in the intermediate transaction must make a return to WRA in respect of that transaction.
- (4) A return made under this paragraph must—
- (a) be made before the end of the period of 30 days beginning with the day after the end of the interim period that applies in accordance with paragraph 9(5) or 18(5), and
  - (b) include a self-assessment.

**Commencement Information**

**I2** [Sch. 5 para. 24](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

*Spouses and civil partners purchasing alone*

- 25 (1) Sub-paragraph (2) applies in relation to a chargeable transaction if—
- (a) the buyer (or one of them) is married or in a civil partnership on the effective date,
  - (b) the buyer and the buyer's spouse or civil partner are living together on that date, and
  - (c) the buyer's spouse or civil partner is not a buyer in the transaction.
- (2) The transaction is to be treated as being a higher rates residential property transaction if it would have been a higher rates residential property transaction had the buyer's spouse or civil partner been a buyer.
- (3) Individuals who are married to, or are civil partners of, each other are treated for the purposes of this Schedule as living together unless—
- (a) they are separated under an order of a court of competent jurisdiction,
  - (b) they are separated by a deed of separation, or
  - (c) they are in fact separated in circumstances in which the separation is likely to be permanent.

**Commencement Information**

**I3** [Sch. 5 para. 25](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

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*Property adjustment on divorce, dissolution of civil partnership etc.*

- 26 (1) For the purpose of determining whether paragraph 5 or 15 applies to a chargeable transaction, the buyer is not to be treated as having a major interest in another dwelling to which sub-paragraphs (2) and (3) apply.
- (2) This sub-paragraph applies to a dwelling the interest in which is held by the buyer as a tenant in common in consequence of—
- (a) an order under section 24(1)(b) of the Matrimonial Causes Act 1973 (c. 18) (property adjustments orders in connection with matrimonial proceedings),
  - (b) an order under section 17(1)(a)(ii) of the Matrimonial and Family Proceedings Act 1984 (c. 42) (property adjustment orders after overseas divorce) corresponding to such an order as is mentioned in paragraph (a),
  - (c) an order under paragraph 7(1)(b) of Schedule 5 to the Civil Partnership Act 2004 (c. 33) (property adjustment orders in connection with dissolution etc. of civil partnership), or
  - (d) an order under paragraph 9 of Schedule 7 to the Civil Partnership Act 2004 (c. 33) (property adjustment orders in connection with overseas dissolution etc. of civil partnership) corresponding to such an order as is mentioned in paragraph (c).
- (3) This sub-paragraph applies to a dwelling that is the only or main residence of a person for the benefit of whom an order referred to in sub-paragraph (2) is made.

**Commencement Information**

**I4** Sch. 5 para. 26 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Settlements and bare trusts*

- 27 (1) Sub-paragraph (3) applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
  - (b) the buyer (or one of them) is acting as trustee of a settlement, and
  - (c) under the terms of the settlement a beneficiary will be entitled to—
    - (i) occupy the dwelling or dwellings for life, or
    - (ii) income earned in respect of the dwelling or dwellings.
- (2) Sub-paragraph (3) also applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a term of years absolute in a dwelling, and
  - (b) the buyer (or one of them) is acting as a trustee of a bare trust (within the meaning given by paragraph 2(1) and (2) of Schedule 8).
- (3) Where this sub-paragraph applies in relation to a land transaction the beneficiary of the settlement or bare trust (rather than the trustee) is to be treated for the purposes of this Schedule as the buyer (or as one of them).
- (4) Paragraphs 3(3) and 4 of Schedule 8 (trustees to be treated as the buyer) have effect subject to sub-paragraph (3).

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**Commencement Information**

**I5** Sch. 5 para. 27 in force at 1.4.2018 by S.I. 2018/34, art. 3

- 28 (1) Sub-paragraph (3) applies where—
- (a) a person is a beneficiary under a settlement,
  - (b) a major interest in a dwelling forms part of the trust property, and
  - (c) under the terms of the settlement, the beneficiary is entitled to—
    - (i) occupy the dwelling for life, or
    - (ii) income earned in respect of the dwelling.
- (2) Sub-paragraph (3) also applies where—
- (a) a person is a beneficiary under a bare trust (within the meaning given by paragraph 2(1) and (2) of Schedule 8), and
  - (b) a term of years absolute in a dwelling forms part of the trust property.
- (3) Where this sub-paragraph applies—
- (a) the beneficiary is to be treated for the purposes of this Schedule as holding the interest in the dwelling, and
  - (b) if the trustee of the settlement or bare trust disposes of the interest, the beneficiary is to be treated for the purposes of this Schedule as having disposed of it.

**Commencement Information**

**I6** Sch. 5 para. 28 in force at 1.4.2018 by S.I. 2018/34, art. 3

- 29 (1) Where—
- (a) the main subject-matter of a land transaction consists of an interest other than a major interest in a dwelling, and
  - (b) sub-paragraph (2) or (3) applies in relation to the transaction,
- then, for the avoidance of doubt, the effect of paragraph 28 of this Schedule or, as the case may be, paragraph 3(1) of Schedule 8, is that the main subject-matter of the transaction is to be treated for the purposes of this Schedule as consisting of a major interest in a dwelling.
- (2) This sub-paragraph applies in relation to a transaction where—
- (a) a major interest in the dwelling is held on a bare trust for a beneficiary (“B”),
  - (b) there is a disposal of the whole or part of B's interest in the dwelling,
  - (c) immediately before the effective date of the transaction—
    - (i) the major interest is, by virtue of paragraph 3(1) of Schedule 8, treated as if it were vested in B, or
    - (ii) B is, by virtue of paragraph 28, treated as holding the major interest in the dwelling, and
  - (d) immediately after the effective date of the transaction—
    - (i) the major interest is, by virtue of paragraph 3(1) of Schedule 8, treated as if it were vested in the buyer, or

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- (ii) the buyer is, by virtue of paragraph 28, treated as holding the major interest.
- (3) This sub-paragraph applies in relation to a transaction where—
- (a) a person (“B”) is a beneficiary under a settlement where a major interest in the dwelling forms part of the trust property,
  - (b) under the terms of the settlement B is entitled to—
    - (i) occupy the dwelling for life, or
    - (ii) income earned in respect of the dwelling,
  - (c) there is a disposal of the whole or part of B's interest in the dwelling,
  - (d) immediately before the effective date of the transaction B is, by virtue of paragraph 28, treated as holding the major interest in the dwelling, and
  - (e) immediately after the effective date of the transaction the buyer is, by virtue of that paragraph, treated as holding the major interest.
- (4) In determining whether sub-paragraph (2) or (3) applies to a transaction, ignore paragraphs 30 and 35(5).

**Commencement Information**

**I7** Sch. 5 para. 29 in force at 1.4.2018 by S.I. 2018/34, art. 3

- 30 (1) This paragraph applies where, by reason of paragraph 27 or 28 or paragraph 3(1) of Schedule 8 (bare trusts), the child of a person (“P”) would (but for this paragraph) be treated for the purposes of this Schedule as—
- (a) being the buyer in relation to a land transaction,
  - (b) holding an interest in a dwelling, or
  - (c) having disposed of an interest in a dwelling.
- (2) Where this paragraph applies—
- (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as being the buyer, holding the interest or (as the case may be) having disposed of the interest, and
  - (b) the child is not to be so treated.
- (3) Sub-paragraph (2)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together (for the meaning of which, see paragraph 25(3)).
- (4) This paragraph does not apply where—
- (a) a person (“D”) acquires, holds or disposes of, a major interest in a dwelling in a child's name or on the child's behalf,
  - (b) D does so in the exercise of powers conferred on D as the deputy of the child, and
  - (c) D holds or, in the case of a disposal, held, that interest on trust for the child.
- (5) In sub-paragraph (4), “deputy” means—
- (a) a person appointed under section 16 of the Mental Capacity Act 2005 (c. 9), or
  - (b) a person appointed to an equivalent position under the law of a country or territory outside England and Wales (and accordingly the reference to

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an interest being held on trust by such a person is to its being held on an equivalent basis under that law).

**Commencement Information**

**I8** Sch. 5 para. 30 in force at 1.4.2018 by S.I. 2018/34, art. 3

- 31 (1) This paragraph applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
  - (b) the buyer (or one of them) is acting as trustee of a settlement,
  - (c) that buyer is an individual, and
  - (d) under the terms of the settlement a beneficiary is not entitled to—
    - (i) occupy the dwelling or dwellings for life, or
    - (ii) income earned in respect of the dwelling or dwellings.
- (2) In determining whether paragraph 20 or 21 applies to the transaction—
- (a) if the buyer mentioned in sub-paragraph (1) is the only buyer, ignore sub-paragraph (1)(a) of those paragraphs, and
  - (b) if that buyer is not the only buyer, ignore sub-paragraph (1)(a) of those paragraphs when having regard to that buyer.

**Commencement Information**

**I9** Sch. 5 para. 31 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Partnerships*

- 32 (1) Sub-paragraph (2) applies in relation to a chargeable transaction, the subject-matter of which consists of a major interest in one or more dwellings if—
- (a) the buyer (or one of them) is a partner in a partnership, but
  - (b) the buyer does not enter into the transaction for the purposes of the partnership.
- (2) For the purposes of determining whether paragraph 5 or 15 applies to the transaction, any major interest in any other dwelling that is held by or on behalf of the partnership for the purposes of a trade carried on by the partnership is not to be treated as held by or on behalf of the buyer.
- (3) Paragraph 4(1)(a) of Schedule 7 (chargeable interests held by partnerships treated as held by the partners) has effect subject to sub-paragraph (2).

**Commencement Information**

**I10** Sch. 5 para. 32 in force at 1.4.2018 by S.I. 2018/34, art. 3

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### *Alternative finance arrangements*

- 33 (1) This paragraph applies in relation to a chargeable transaction which is the first transaction under an alternative finance arrangement entered into between a person and a financial institution.
- (2) The person (rather than the institution) is to be treated for the purposes of this Schedule as the buyer in relation to the transaction.
- (3) In this paragraph—
- “alternative finance arrangement” (“*trefniant cyllid arall*”) means an arrangement of a kind mentioned in paragraph 2(1) or 3(1) of Schedule 10 (alternative property finance reliefs);
  - “financial institution” (“*sefydliad ariannol*”) has the meaning given by paragraph 8 of that Schedule;
  - “first transaction” (“*trafodiad cyntaf*”), in relation to an alternative finance arrangement, has the meaning given by paragraph 2(1)(a) or 3(1)(a) of that Schedule.

#### **Commencement Information**

**III** Sch. 5 para. 33 in force at 1.4.2018 by S.I. 2018/34, art. 3

### *Major interests in dwellings inherited jointly*

- 34 (1) This paragraph applies where by virtue of an inheritance—
- (a) a person (“P”) becomes jointly entitled with one or more other persons to a major interest in a dwelling, and
  - (b) P's beneficial share in the interest does not exceed 50% (see sub-paragraph (4)).
- (2) P is not to be treated for the purposes of paragraph 5(1)(a) or 15(1)(b) as having the major interest at any time during the period of 3 years beginning with the date of the inheritance.
- (3) But if at any time during that period of 3 years P becomes the only person beneficially entitled to the whole of the interest or P's beneficial share in the interest exceeds 50% P is, from that time, to be treated as having the major interest for the purposes of the application of paragraphs 5(1)(a) and 15(1)(b) (subject to any disposal by P).
- (4) P's share in the interest exceeds 50% if—
- (a) P is beneficially entitled as a tenant in common or coparcener to more than half the interest,
  - (b) P and P's spouse or civil partner taken together are beneficially entitled as tenants in common or coparceners to more than half the interest, or
  - (c) P and P's spouse or civil partner are beneficially entitled as joint tenants to the interest and there is no more than one other joint tenant who is so entitled.
- (5) Sub-paragraph (4)(b) and (c) do not apply if, on the effective date of the transaction referred to in paragraph 5 or 15, P and P's spouse or civil partner are not living together (for the meaning of “living together”, see paragraph 25(3)).

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- (6) In this paragraph “inheritance” means the acquisition of an interest in or towards satisfaction of an entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person.
- (7) This paragraph applies in relation to an interest acquired following a person's death as a result of a variation of a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property comprised in that person's estate made within the period of 2 years after the person's death, as it applies in relation to an inheritance; and in such a case the reference in sub-paragraph (2) to the date of the inheritance means the date of the acquisition of the interest in accordance with the variation.

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**Commencement Information**

**I12** Sch. 5 para. 34 in force at 1.4.2018 by S.I. 2018/34, art. 3



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 18 para. 1(aa) inserted by [S.I. 2019/833 reg. 3\(2\)](#)
- Sch. 18 para. 2A-2D inserted by [S.I. 2019/833 reg. 3\(4\)](#)