

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – the Tax and Key Concepts

Section 2 - Land transaction tax

10. **Section 2** provides that a tax, to be called Land Transaction Tax (LTT), is to be charged on land transactions in Wales, irrespective of how and where the transaction is documented, or where the parties to the transaction are resident. The concept of land transaction is defined in sections 3 to 5. WRA will be responsible for collecting and managing LTT.

Sections 3–5 - Land transaction, chargeable interest and exempt interest

11. A “land transaction” is defined as an acquisition of a chargeable interest (section 3). A “chargeable interest” is any estate, interest, right or power in or over land in Wales or the benefit of an obligation under any restriction that affects such an estate, interest, right or power in or over land in Wales (section 4). Land in Wales does not include land below mean water mark.
12. **Section 5** provides that chargeable interests do not include exempt interests. For the purposes of LTT exempt interests include (amongst others):
- a security interest (e.g. a mortgage);
 - a licence to use or occupy land;
 - a tenancy at will; a franchise or a manor. The term “manor” relates only to a Lordship of the manor or seignory. A seignory may be accompanied by chargeable interests such as profits à prendre which will not be exempt interests.
13. Further provision for exempt interests in relation to alternative financial arrangements is made in paragraph 7 of Schedule 10.
14. The Welsh Ministers may vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure.

Section 6 - Acquisition and disposal of chargeable interest

15. **Section 6** defines the acquisition and disposal of a chargeable interest, namely the creation, surrender, release or variation of the interest, although the variation of a lease is treated as an acquisition and disposal of a chargeable interest only where it takes effect as the grant of a new lease (or it is treated by this Act as the grant of a new lease)

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

or paragraph 24 of Schedule 6 (reduction of rent or term or other variation of a lease) applies.

16. The provisions in this section apply subject to the provisions in section 10(4) (substantial performance without completion), section 11(3) (substantial performance of contract providing for transfer to third party) and paragraphs 20 and 24 of Schedule 6 (agreement for lease and reduction of rent, term or other variation of lease).

Section 7 - Buyer and seller

17. **Section 7** provides that for the purposes of LTT the “buyer” is the person acquiring the subject-matter (i.e. the chargeable interest and related interests and rights) and the “seller” is the person disposing of the subject-matter of the transaction. These terms apply even where there is no consideration provided.

Section 8 - Linked transactions

18. This section sets out when a number of different transactions may be treated as “linked transactions” for the purposes of this Act. It is subject to section 16. The concept of a linked transaction is then used elsewhere.

Section 9 - Land partly in Wales and partly in England

19. This section determines that land transactions involving the acquisition of a chargeable interest where the land is partly in Wales and partly in England, shall be treated as comprising two separate transactions, one relating to land in Wales and the other relating to land in England. The consideration for the transaction is to be apportioned on a just and reasonable basis between the Welsh transaction and the English transaction, with the Welsh transaction giving rise to a charge to LTT and the English transaction giving rise to a charge to SDLT under the Finance Act 2003. This section also provides that there is a requirement for WRA to publish guidance on land transactions where the land is partly in Wales and partly in England, including guidance about identifying the location of the border between Wales and England.

Section 10 - Contract and transfer

20. **Section 10** provides that where a person enters into a contract for a land transaction, the effective date of the transaction is the date of the completion of the contract.
21. Where the contract is substantially performed (see section 14) before its completion, the effective date of the transaction is the date of that substantial performance and both the contract and the transaction actually effecting completion are notifiable transactions. Additional tax may be payable on completion if the amount chargeable is greater than that previously paid on the contract. If a contract which has been substantially performed but not completed is (in whole or in part) rescinded, annulled or for any other reason not brought into effect then WRA will, on receipt of a claim (made by amendment), repay tax overpaid.

Section 11 - Contract providing for transfer to third party

22. When a contract provides that the buyer of a chargeable interest (P2) may direct the seller (P1) to transfer that interest to a third person (P3) or to P2, P2 is not regarded as having entered into a land transaction, unless P2 substantially performs the contract before that transfer. In that case, P2 is treated as having entered into a land transaction, effective from the date of the substantial performance, and where the contract is (in whole or in part) rescinded, annulled or for any other reason not brought into effect then WRA will, on receipt of a claim, repay tax overpaid.

Section 12 - Contract providing for transfer to third party: effect of transfer of rights

23. **Section 12** applies to situations such as those described above, and where P2's rights become exercisable by another party (P4) because of an assignment or other transaction relating to the whole, or part, of the original contract (the P1 to P2 contract). Each such transfer of rights is treated as a separate (or "secondary") contract. Section 11 applies as though P4 were the buyer under the original contract instead of P2 and as though the consideration for the secondary contract were the amount that is to be paid under the original contract relating to subject-matter of the transfer of rights, together with the amount of consideration given for the transfer of rights.
24. Where the transfer of rights relates to only part of the subject-matter or some of the rights under the original contract then references to original contract and secondary contract are limited to the part or rights being transferred. The remaining subject-matter or rights not being transferred are to be treated as a separate contract.

Section 13 - Pre-completion transactions

25. This section introduces Schedule 2, which provides rules relating to the application of section 10 (contract and transfer) in situations where, because of an assignment of rights under a contract, a sub-sale or any other transaction is entered into without the contract being completed.

Section 14 - Meaning of substantial performance

26. A contract is to be treated as "substantially performed" either when the buyer or anyone connected with them takes possession of the whole of (or substantially the whole of) the property, or when a substantial amount of the consideration has been paid or provided. Taking possession includes receiving any rents or profits (or the right to receive them) that ownership of the property generates, regardless of how that possession is effected i.e. under the contract, licence or lease agreement. A substantial amount of the consideration is provided when, where the consideration does not include rent, the whole or substantially the whole of the consideration is paid or provided; or where rent is the only consideration, when the first payment of rent is made. Where the consideration includes both rent and any other consideration, a substantial amount of consideration is paid when either (i) the whole or substantially the whole of that other consideration is paid, or (ii) the first payment of rent is made – which ever happens first.

Section 15 - Options and rights of pre-emption

27. The treatment of options and rights of pre-emption (i.e. the rights of first refusal) are set out in this section. The acquisition of an option binding the grantor to enter into a land transaction, or right of pre-emption preventing the grantor from entering into a land transaction constitutes a land transaction which is distinct from any land transaction that results from the exercise of the option or right. As such, that acquisition may be chargeable to LTT (in addition to any subsequent land transaction resulting from the exercise of the right).

Section 16 - Exchanges

28. **Section 16** establishes that a land transaction is entered into in exchange for another, each land transactions is treated as two separate land transactions that are not linked. This provision applies regardless of how the exchange is structured. Therefore, a land transaction where the consideration is discharged by the buyer, either in full or in part by entering into a separate transaction as seller, is still chargeable to LTT (on each leg of the exchange).

Sections 17-18 - Chargeable transaction and chargeable consideration

29. Land transactions are chargeable transactions (i.e. liable to LTT) unless they are exempt from charge (see Schedule 3) or unless they are relieved from charge and that relief is claimed (section 30(2)). Section 18 and Schedule 4 make provision as to the calculation of chargeable consideration. Regulations may amend or repeal the provisions of the Act relating to chargeable consideration.

Sections 19-20 - Contingent, uncertain or unascertained consideration

30. **Section 19** provides that where all or part of the chargeable consideration is contingent (dependent upon some future event occurring) the amount of consideration includes the amount related to the contingency (regardless of whether the event occurs).
31. **Section 20** further stipulates that where the amount of the consideration is uncertain or unascertained then the amount or value is to be determined on a basis of a reasonable estimate.
32. The rules in sections 19 and 20 are subject to section 47 and 48 (adjustment where contingency ceases or consideration is ascertained) and section 58 (application to defer payment in case of contingent or uncertain consideration).

Section 21 - Annuities

33. Where chargeable consideration consists of an annuity, payable for life, in perpetuity, for an indefinite period or for a period exceeding 12 years, the chargeable consideration is limited to twelve annual payments or, where the annual payments vary, the twelve highest payments, starting from the effective date of the transaction. Subsection (5) defines “annual payments”. No account is taken of any provision adjusting the amounts in line with inflation. Where the amounts payable under the annuity are contingent, the uncertain or unascertained rules in sections 19 and 20 apply.

Sections 22–23 - Deemed market value and Exceptions

34. When a company purchases land from a connected person, or the consideration comprises the issue or transfer of shares in any company with whom the person is connected, the chargeable consideration will be calculated according to the market value of the land and if applicable, any rent paid under the grant of a lease if that amount is greater than what would be the chargeable consideration for the transaction under the other rules of this Act. Such transactions are not to be treated as though there is no chargeable consideration. Section 22 does not apply where:
- the buyer holds the land or property as a trustee in the course of a business consisting of the management of trusts;
 - the buyer holds the land or property as trustee and is not “connected” to the seller other than as provided for in section 1122(6) Corporation Tax Act 2010, for example because the seller is a settlor of the settlement; or,
 - the seller is a company and the transaction is as a result of the distribution of the assets of the company (including distribution on liquidation) and the seller has not claimed group relief in relation to that interest in the 3 years before the transaction.