

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8 – Interpretation and Final Provisions**

##### *Schedule 7– Partnerships*

278. This Schedule makes provision for the application of LTT rules to a range of land transactions involving partners or partnerships. The Welsh Ministers may by regulations amend this Schedule.
279. The Schedule contains an overview of its contents; provides for the rules governing ordinary partnership transactions; transactions involving transfers of interests from, or to, partners; transactions between partnerships; and transactions involving corporate bodies. The treatment of property investment partnerships and the situation where the chargeable consideration for transactions includes rent is also considered. Part 10 of the Schedule provides for interpretation and sets out the meanings of key terms referred to in the Schedule.

#### **Part 2 - General provisions**

280. For the purposes of this Act, the term “partnership” is defined at paragraph 3 of the Schedule to include general, limited and limited liability partnerships and any non-UK entity that resembles these types of UK partnerships. Partnerships are, broadly, treated as transparent so that a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners. Accordingly, a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners. This is the case even when the partnership has a separate legal personality.
281. A partnership is deemed to be the same partnership, notwithstanding a change in its membership so long as there is at least one partner in common before and after the change in membership. A partnership is not treated as a unit trust scheme or open-ended investment company.

#### **Part 3 – Ordinary partnership transactions**

282. Provisions relating to the treatment of ordinary partnership transactions (i.e. an acquisition by a partnership from a seller who is unconnected to the partnership or its partners, and who does not become a partner by virtue of the transaction) are set out in Part 3 of the Schedule. Ordinary partnership transactions are treated in the same way as any other transaction for the purposes of LTT.

283. **Paragraphs 9 to 11** sets out the responsibilities of partners under the Act. The responsible partners are those persons who are partners at the effective date of the transaction, and any partner who becomes a member of the partnership after the effective date. A representative partner, nominated by a majority of the partners can represent the partnership. However, for the nomination, or revocation of such a nomination, to be effective, notice must be provided to WRA.
284. Under this Act, each of the partners in a partnership is jointly and severally liable for any LTT, late payment interest, or penalties. However, no interest or unpaid tax can be recovered from a person who did not become a responsible partner until after the effective dates of the transaction.

#### **Part 4 - Transactions involving transfers to a partnership**

285. **Part 4** provides that the transfer of an interest in land to a partnership by a partner, a person who becomes a partner in return for the interest (a “prospective partner”), or someone connected to either such person, is a chargeable transaction. The chargeable consideration for such a transfer is determined as being a proportion of the market value of the interest transferred. That proportion is a function of the ownership share in the transferred interest in land held by the transferee(s), and the partnership share(s) of the partner(s) or prospective partner(s) immediately after the transfer. In brief, this takes account of the extent to which a person is transferring the interest to themselves in this scenario. The formula used to calculate the chargeable consideration is set out in paragraphs 13 and 14.
286. **Part 4** also contains anti-avoidance provisions to prevent a person purporting to transfer property into a partnership in a way which enjoys a tax discount under this Part, in circumstances where the person subsequently exits the partnership, or otherwise reduces their partnership interest or extracts capital from the partnership.

#### **Part 5 - Transactions involving transfers from a partnership**

287. **Part 5** provides that where an interest in land is transferred from a partnership to a partner or former partner (or someone connected with such a person), this is a chargeable transaction. It defines those situations where there is a transfer of an interest in land out of a partnership and provides that the chargeable consideration is a proportion of the market value transferred. Like under Part 4, that proportion is a function of the ownership share in the transferred interest in land held by the recipient partner(s) (etc.), and the partnership share of that/those person(s) or persons connected to them held immediately before the transfer (paragraphs 21 and 22). Again, this takes account of the extent to which the partner or former partner already owned a proportion of the interest transferred to them.

#### **Part 6 - Other partnership transactions**

288. **Part 6** of the Schedule makes separate provision for the transfer of a chargeable interest from a partnership to a partnership (paragraph 29). It makes special provision for how Parts 4 (transfer to a partnership) and 5 (transfer from a partnership) of this Schedule apply in this scenario.
289. Where property is transferred from a partnership consisting wholly of bodies corporate to one of the partners, and the sum of the lower proportions (as determined by paragraph 22) is 75 or more, the chargeable consideration is deemed to be equal to the market value of the interest transferred (paragraph 30).

#### **Part 7 - Application of Parts 5 and 6 in relation to leases**

290. **Part 7** of this Schedule makes provision for the application of Parts 5 and 6 to leases, and as such modifies Schedule 6 accordingly. Where rent forms all or part of the consideration for a transaction under paragraphs 13 or 21, the chargeable consideration

for the transaction shall be a proportion of the net present value of the rent as determined by Part 5 of Schedule 6 (leases: calculation of tax chargeable).

## **Part 8 - Transfers involving property-investment partnerships**

291. [Part 8](#) of the Schedule makes provision for the transfer of interests in property-investment partnerships (paragraph 34) whose sole or main activity is holding or investing in land. When there is a transfer of an interest in a property-investment partnership there is no legal transfer of land except indirectly through a change of members in the partnership. The transfer of an interest in a property-investment partnership results in a charge to LTT for the person who acquires an increased or new partnership share. The chargeable consideration for the transfer of the partnership interest is taken to be equal to a proportion of the market value of the “relevant partnership property” (see paragraph 34(6) and (7)).
292. [Paragraph 35](#) excludes certain leases from the definition of relevant partnership property. These are leases which only have a market value because of changes in market rent and which satisfy certain other conditions.
293. [Paragraph 36](#) allows for a property-investment partnership to dis-apply paragraph 13 of this Schedule, which provides for transactions involving a transfer of chargeable interest to a partnership. Where such an election is made LTT is calculated on the market value of the chargeable interest transferred. Such an election is irrevocable and cannot at a later date be withdrawn or amended after the election has been submitted.

## **Part 9 - Application of exemptions, reliefs, provisions of TCMA and notification provisions**

294. [Part 9](#) makes provision for the application of exemptions and reliefs, and sets out the notification requirements in respect of transactions to which this Schedule applies.
295. [Paragraphs 40 and 41](#) modify group relief as set out in Schedule 16 for the purposes of partnership transactions. [Paragraph 42](#) modifies charities relief (Schedule 18) for the purposes of partnership transactions.
296. [Paragraph 44](#) provides that a chargeable transaction (as provided for under paragraph 18 or 34) is a notifiable transaction when the consideration exceeds the threshold for the zero rate tax band.