

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 11 - Relief for alternative finance investment bonds

311. This Schedule makes provision for relief from LTT for land transactions connected to the issue of alternative finance investment bonds. As with alternative property finance these arrangements are primarily designed to be compatible with Shari'a law, which prohibits the payment and receipt of interest.
312. In a conventional securitisation the investor does not have direct ownership of the underlying asset but holds an interest-bearing certificate. However, in the case of alternative finance investment bonds, the investors own part of the underlying asset and derive their reward from the profits or rents generated by that asset. In order to structure the issuance of the bonds it is necessary to (temporarily) change the ownership of the underlying asset on which the bond's income is to be based, to normally, a special purpose vehicle bond issuer. The bonds can then be issued to the bond-holder and the money raised passed to the person seeking the finance. Once the cancellation date for the bonds is reached the underlying asset must be returned to the person who originally sought the finance. If the asset used to back the bonds and generate the return for the bond-holders is land in Wales, then the arrangement will involve land transactions that in the absence of this relief would be chargeable to LTT, when a conventional bond arrangement would not attract similar LTT charges.

Part 2 - Issue, transfer and redemption of rights under bond not to be treated as chargeable consideration

313. The bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets (and so can trade the bonds without giving rise to a charge to LTT), unless they acquire control of the underlying assets. Where the bond-holder has no interest in the bond asset (the land), the bonds can be traded between holders without giving rise to a charge to LTT. The bond-holder has control over the assets if they have the right to manage and control the assets under the bond, or where a bond-holder (including a group of bond holders acting jointly) acquires sufficient rights to enable them to exercise management and control of the bond assets to the exclusion of any other bond-holders. The bond-holder will not, however, be treated as acquiring control in the following circumstances:

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- the bond-holder did not know (and had no reason to suspect) that they were acquiring such right to control and (on becoming aware of it) takes steps to remove sufficient rights for the exercise to no longer be possible); and
- the bond-holder underwrites a public offer of rights under the bond and does not exercise the right of control and management.

Part 3 - Conditions for operation of reliefs etc.

314. **Part 3** sets out the conditions referred to in Part 4 to be met for the relevant reliefs to apply. They are as follows:

- a person (A) transfers an interest in land to the bond-issuer (B) (“the first transaction”), with that interest to be transferred back to A when the arrangement comes to an end;
- B enters into an alternative finance investment bond arrangement with bond-holders, with the interest in A’s land held as a bond asset;
- B leases (or sub-leases) the land back to A (the rent paid being the return on the bond-holders’ investment);
- B registers a first charge on its land interest in favour of WRA (before the end of 120 days beginning with the effective date of the transaction), which would satisfy any LTT that would have been chargeable but for the reliefs, together with penalties and interest;
- the payments of capital made by A to B are for not less than 60% of the market value of the interest in land on the effective date of the first transaction;
- the arrangement lasts no longer than 10 years from the first transaction, during which time B must hold the interest in the land as a bond asset until the termination of the bond. When the bond terminates B must transfer the interest to A before the end of 30 days beginning with the date on which the interest is no longer held as a bond asset.

Part 4 - Relief for certain transactions

315. The first and second transactions are relieved from LTT in accordance with the conditions set out in Part 4, namely:

- the first transaction is relieved if the leaseback from B to A is granted before the end of 30 days from the effective date of the first transaction (i.e. the first three conditions in Part 3); and
- for the second transaction, all of the conditions in Part 3 have been met and the provisions of this Act and TCMA have been complied with in relation to the first transaction.

316. **Paragraph 14** sets out the circumstances under which relief for the first transaction is withdrawn.

317. Under paragraph 17, relief is not available, or can be withdrawn, in circumstances where the bond-holders acquire control or management of the bond asset (in the same way as applies under paragraph 4, see above).

Replacement of asset

318. The provisions at paragraph 18 allow the replacement of the original land as bond asset by another land interest, without disturbing the entitlement to relief, by dis-applying the requirement that B holds the original interest as a bond asset until the termination of the arrangements (as long as all the other conditions in the paragraph are complied with).

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Where the replacement land is in Wales, it will be subject to a new charge in favour of WRA (and the charge on the original land discharged, subject to compliance with the conditions). Where the replacement land is outside Wales, WRA will not take a charge over it (but must nevertheless be satisfied that the conditions in relation to the original land are met before discharging that charge).