

# 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 15 - Treatment of certain transactions relating to social housing*

344. This Schedule makes provision for relief from LTT for a variety of social housing related transactions. Paragraphs 2 to 18 provide special rules relating to the purchase of dwellings under a number of arrangements designed to provide access to home ownership. Paragraph 19 provides for relief from LTT for certain acquisitions by registered social landlords.

#### **Part 2 - Right to buy relief**

##### **Relief for right to buy transaction**

345. Part 2 of the Schedule makes provision for relief from LTT in relation to certain right to buy transactions. A right to buy transaction is a transaction where a “relevant public sector body” disposes a dwelling or grants a lease of a dwelling to an existing tenant at a discounted price, or a transaction which is a sale of a dwelling or a grant of a lease of a dwelling pursuant to a preserved right to buy. The circumstance in which a transfer of a dwelling or grant of a lease of a dwelling is made in pursuance of the preserved right to buy is described at paragraph 2(4). A list of relevant public sector bodies for the purposes of this paragraph is provided at sub-paragraph (3). Where there is a right to buy transaction, sub-paragraph (1) provides that section 19(1) (relating to the treatment of contingent consideration) does not apply. Sub-paragraph (5) excludes from the chargeable consideration a grant made by the Welsh Ministers under section 20 or 21 of the Housing Act 1996 for certain transactions.

#### **Part 3 - Shared ownership leases**

##### **Shared ownership lease relief: election for market value treatment**

346. **Part 3** of the Schedule makes provision for the treatment of shared ownership leases for the purposes of LTT. A shared ownership lease is intended to cover any lease which is granted by a “qualifying body”; or in pursuance of the preserved right to buy. (Paragraph 9 provides for interpretation and defines key terms referred to in this part of the Schedule.)
347. **Paragraph 3** makes provision for a buyer to make an election for LTT to be calculated by reference to the market value of the dwelling rather than the consideration given on the

grant of the shared ownership lease, subject to the conditions at sub-paragraph (2) being satisfied. Sub-paragraph (3) provides that the election is irrevocable and therefore, the buyer cannot at a later date amend the return to withdraw the election after it has been submitted.

348. [Paragraph 4](#) provides that the transfer of the reversion to the tenant under the terms of a lease to which paragraph 3 applies, is relieved from LTT where an election was made under that paragraph and LTT paid accordingly.
349. [Paragraph 5](#) provides for the treatment of LTT in relation to certain types of shared ownership leases where staircasing provisions are included in the lease, which allow the estate or interest (such as the freehold) to be purchased in stages. The provisions here allow for an irrevocable election to be made for LTT to be calculated by reference to the minimum rent and the premium obtainable on the open market, subject to the conditions specified at sub-paragraph (2) being met.
350. [Paragraph 6](#) ensures that when a shared ownership lease is granted and an election was made under paragraph 3 or paragraph 5 of this Schedule, if the tenant acquires any additional interest, that acquisition is relieved from tax provided all LTT has been paid. In addition, paragraph 6 relieves a transaction where the acquisition does not result in the tenant's share of the dwelling exceeding 80%.
351. [Paragraph 7](#) provides that the grant of a shared ownership lease is not linked to any additional acquisition which the tenant may make to which paragraph 6 applies. A transfer of the reversion to the tenant is also not linked to the grant of a shared ownership lease.

#### **Rent to shared ownership lease: charge to tax**

352. [Paragraph 8](#) sets out how to determine the chargeable consideration for transactions involving "rent to shared ownership lease" schemes. A "rent to shared ownership lease scheme" is defined at sub-paragraph (2) as one in which a qualifying body grants an occupation contract to a tenant(s) and subsequently grants a shared ownership lease of the dwelling to one or more of them. Sub-paragraph (3) provides that transactions in connection with the scheme are not treated as linked to each other. Sub-paragraph (4) provides that the tenant's possession of the dwelling under an occupation contract is disregarded in determining the effective date of the grant of the shared ownership lease. Sub-paragraph (5) defines occupation contract in accordance with the meaning attributed to it in Part 2 of the Renting Homes (Wales) Act 2016.

#### **Part 4 - Shared ownership trusts**

##### **Shared ownership trusts: meaning of shared ownership trust and other key terms**

353. [Part 4](#) of this Schedule provides that shared ownership trusts are treated in a similar manner to shared ownership leases for the purposes of LTT. Paragraph 10 defines what is meant by a "shared ownership trust" by reference to section 1 of the Trusts of Land and Appointment of Trustees Act 1996 and specific conditions which have to be satisfied for the trust to be recognised as a shared ownership trust.

##### **Shared ownership trust: the buyer**

354. [Paragraph 11](#) identifies the buyer in transactions involving shared ownership trusts, for the purposes of LTT.

### **Shared ownership trust: election for market value treatment**

355. Paragraph 12 makes provision for the buyer to elect for market value treatment. An election for market value treatment cannot at a later date be withdrawn or amended after the election has been submitted.
356. The chargeable consideration for the declaration of the shared ownership trust is taken to be the amount relating to the market value of the dwelling by reference to which the premium is calculated. Sub-paragraph (3)(b) provides that no account must be taken of rent-equivalent payments.

### **Shared ownership trust transfer upon termination**

357. Paragraph 13 provides that where the transaction transfers the interest in the trust property upon the termination of the trust, and an election has been made under paragraph 12, the transaction will be relieved from LTT. This is subject to any LTT chargeable in respect of the declaration of the shared ownership trust being paid.

### **Shared ownership trust: staircasing transactions**

358. Paragraph 14 deals with the treatment of equity-acquisition payments made by the buyer under a shared ownership trust for the purposes of LTT. It provides that where an election under paragraph 12 is made an equity-acquisition payment by the buyer under a shared ownership trust, the increase in the buyer's beneficial interest is relieved from LTT, provided any tax chargeable in respect of the declaration of trust has been paid. However, if an election under paragraph 12 is not made, then the equity-acquisition payment and corresponding increase in the buyer's beneficial interest is only relieved from LTT if following the increase the buyer's beneficial interest does not exceed 80% of the total beneficial interest in the property.

### **Shared ownership trust: treatment of additional payments where not election made**

359. Paragraph 15 clarifies how the chargeable consideration for LTT is determined when the buyer has not made an election under paragraph 12. This paragraph provides that in these circumstances the initial capital is to be treated as chargeable consideration other than rent; and any rent-equivalent payment made by the buyer is to be treated as rent.

### **Shared ownership trust: declaration not linked with staircasing etc.**

360. Paragraph 16 provides that where a declaration of trust giving the buyer a beneficial share in the property is made, the declaration is not to be treated as if it were linked to either:
- an equity-acquisition payment under the trust or any corresponding increase in the buyer's beneficial interest in the trust property; or
  - a transfer to the buyer of an interest in the trust property on the termination of the trust.

### **Rent to shared ownership trust: charge to tax**

361. The rules for determining the chargeable consideration for transactions involving part of a rent to shared ownership trust scheme are provided for in paragraph 17.

## **Part 5 - Rent to mortgage**

### **Rent to mortgage: chargeable consideration**

362. Part 5 of the Schedule provides for the treatment of LTT for transactions involving rent to mortgage schemes. Paragraph 18 provides the rules that determine the consideration

*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*

for transactions that take place under a rent to mortgage scheme. Sub-paragraph (2) defines a “rent to mortgage scheme” as the transfer of a dwelling, or grant of a lease of a dwelling, to a person under the Housing Act 1985. This paragraph provides that for a rent to mortgage transaction, LTT is chargeable on the price that would have been payable on a purchase of a dwelling if the tenant had been paying for it all at once or the grant of a lease of the dwelling to the person.

## **Part 6 - Relief for certain acquisition by registered social landlords**

363. [Part 6](#) sets out the provisions under which land transactions involving social housing providers can be relieved from the LTT charge where qualifying conditions are met.
364. A registered social landlord can claim relief from LTT where they are entering into a land transaction as a buyer, and:
- the registered social landlord is controlled by its tenants (i.e. the majority of the board members are tenants occupying properties owned or managed by it);
  - the seller is a qualifying body; or
  - the transaction is funded with the assistance of a public subsidy.
365. [Paragraph 19\(3\)](#) provides for interpretation and sets out the meanings of the terms “board member”, “public subsidy” and “qualifying body” for the purposes of this Part. A “registered social landlord” is defined as a body registered as a social landlord in a register maintained under section 1(1) of the Housing Act 1996.