

# 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 16 - Group relief*

366. [Part 2](#) of the Schedule provides relief from LTT for the intra-group transfer of property held by companies where relevant conditions are met. The relief provides that the movement of property within a group (as defined and subject to conditions) does not incur a charge to LTT, so long as the conditions set out in the Schedule are met. [Part 3](#) outlines restrictions on the availability of group relief; [Part 4](#) provides for the withdrawal of the relief; and [Part 5](#) makes provision for the recovery of unpaid tax.

##### **Part 2 - The relief**

367. [Paragraph 2](#) of the Schedule provides that a transaction is relieved from LTT where it involves a land transfer between companies within the same group. This is referred to as “group relief”. Group relief allows companies to transfer property within a corporate group structure without incurring a LTT charge, as such transfers do not result in the effective economic interest changing hands.
368. In this Schedule a company is defined as a “body corporate”, and companies are defined as members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company. [Paragraph 3](#) explains the meaning of a 75% subsidiary by reference to ordinary share capital and profits and assets available for distribution. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

##### **Part 3 - Restrictions on the availability of relief**

369. [Part 3](#) of the Schedule sets out specific anti-avoidance rules (with exceptions set out at [paragraph 4\(2\)](#) and [\(7\)](#)) which restrict the availability of group relief. This Part applies where different types of arrangements are entered into whereby the acquiring company may become controlled from outside the group, where consideration may be provided from outside the group, or where the seller and buyer are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available.
370. However, the availability of group relief is not restricted where agreements which govern a joint venture company, are arrangements described in [paragraph 5\(2\)](#) and none of the contingencies specified at [paragraph 5\(3\)](#) have happened. Certain mortgage arrangements are also not caught by the rule restricting the availability of group

relief provided the shares or securities in a company are used as a security under a mortgage, which on default or other event occurring allows the mortgagee to exercise its rights against the mortgagor and the mortgagee has not exercised its rights against the mortgagor. But this is subject to exceptions in paragraph 6.

#### **Part 4 - Withdrawal of relief**

371. Group relief is withdrawn where the buyer ceases to be a member of the same group as the seller within 3 years of the effective date of the transaction (or under arrangements made during the three year period), and, broadly, at that time the relevant chargeable interest is still held by the buyer or a company it controls.
372. Exceptions from the withdrawal of group relief are provided for in paragraphs 9 to 11. These include:
- where the de-grouping arises because of anything done in the course of winding up the seller (or another company that is above the seller on the group structure);
  - the seller or another company that is above the seller in the group structure ceases to exist in another way;
  - where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 applies (subject to exceptions) and the buyer leaves the group as a result (an anti-avoidance provision applies);
  - where the seller leaves the group; and
  - certain cases where the buyer leaves the group as a result of the transfer of business or engagement by a “mutual society” or similar.
373. [Paragraph 12](#) further provides for the withdrawal of group relief in certain cases involving successive transactions, subject to the exceptions provided for in [paragraph 12\(6\)](#).

#### **Part 5 - Recovery of relief from certain persons**

374. [Part 5](#) identifies the persons who may be responsible for paying any unpaid tax following the withdrawal of group relief under [paragraph 8](#). If the tax chargeable under [paragraph 8](#) is not paid within 6 months after the date it became due, and there is no possible way for that tax chargeable to be varied (whether by way of appeal or otherwise), it can be recovered from the seller or, another group company or a controlling director (subject to that group company being in the same group as the buyer at the relevant time, or the controlling director being a controlling director of the buyer at the relevant time – see [paragraph 13\(3\)](#)). WRA can serve notice on any of these persons requiring the payment of any unpaid amount before the end of 30 days beginning with the day on which the notice is served. The notice must be issued before the end of the 3 year period beginning with the date of the final determination of the tax chargeable and it must state the amount payable by the person served the notice.