

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 17 - Reconstruction and acquisition reliefs

375. This Schedule makes provision about of reconstruction relief, acquisition relief, and related anti-avoidance rules.

Part 2 - Reconstruction relief

376. **Part 2** of the Schedule provides for “reconstruction relief” so that, where the specified conditions are met, a scheme for reconstruction of a company (the “target company”) does not attract a charge to LTT. Reconstruction relief is provided for land transactions connected to the transfer of the whole or part of an undertaking from a target company (“T”) to an acquiring company (“A”), which form part of a scheme for the reconstruction of T. The consideration for the acquisition must be wholly or partly non-redeemable shares issued in A to T’s shareholders, and where the consideration is only partly non-redeemable shares, the rest of the consideration must only consist of the assumption or discharge by A of T’s liabilities. ‘Non-redeemable shares’ are shares that are not redeemable; they may be traded or held to maturity but cannot be bought back by the issuing company at a future date. A key condition of reconstruction relief is that, following the acquisition, a shareholder of T must also be a shareholder of A, and vice versa. Further, any shareholder must hold the same proportion of shares in T and A (or as close as possible). As with group relief, the reconstruction must be for genuine commercial reasons and must not form part of any arrangement to avoid the payment of LTT.

Part 3 - Acquisition relief

377. **Part 3** of the Schedule provides for “acquisition relief” where a land transaction forms part of the transfer of an undertaking from a company (a “target company”) to another company (an “acquiring company”), but not in pursuance of a scheme for the reconstruction of the target company. Acquisition relief is a partial relief from LTT. Where a transaction is eligible for acquisition relief and meets the conditions specified in paragraph 3, the amount of LTT chargeable is reduced to a fixed tax rate of 0.5% of the relevant consideration given. The rate of LTT chargeable under acquisition relief may be changed by regulations made by the Welsh Ministers.

Part 4 - Withdrawal of reconstruction and acquisition relief

378. **Part 4** of the Schedule provides for the withdrawal of reconstruction or acquisition relief where control of the acquiring company changes before the end of 3 years beginning with the effective date of the transaction (or there are arrangements under which control will change after 3 years, which are entered into within the 3 year period), and, broadly, at that time the relevant chargeable interest is still held by the acquiring company or a company it controls.

Cases in which reconstruction or acquisition relief not withdrawn

379. Exceptions from the withdrawal of reconstruction or acquisition relief are provided for at paragraph 6. These include where control changes:

- due to a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons;
- due to a share transaction in connection with transactions which vary dispositions following death;
- due to an exempt intra-group transfer of shares (as defined in paragraph 6(5)), but note this is subject to paragraph 7;
- due to a transfer to another company to which share acquisition relief applies (as defined in paragraph 6(8)) but note this is subject to paragraph 7; and
- where control changes due to a loan creditor becoming or ceasing to be treated as having control and other persons who were previously treated as controlling the company continue to be treated as such.

Withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer

380. **Paragraph 7** provides anti-avoidance rules for the withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer. These apply to the exceptions from withdrawal of relief under paragraph 6(5) and (8). They turn off these exceptions, so that relief is withdrawn. They apply where there is a specified change in control and, broadly, at that time the relevant chargeable interest is still held by the acquiring company or a company it controls.

Part 5 - Recovery of reconstruction or acquisition relief

381. **Part 5** makes provision for the recovery of tax following the withdrawal of reconstruction relief or acquisition relief. This Part provides that if the tax chargeable under paragraph 5 or 7 of the Schedule is not paid within 6 months of the date it is 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 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 8(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 issued. The notice must be issued before the end of the 3 year period beginning with the final determination of the tax chargeable and it must state the amount payable by the person served with the notice.