

# 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 2 - Pre-completion transactions*

114. Where “person A” sells land to “person B” and as a result of a further transaction, “person C” becomes entitled to call for a transfer of the land, a “pre-completion transaction” takes place. This Schedule sets out the rules relating to the treatment of these types of intermediate transactions or “pre-completion transactions” under this Act, so that the end buyer (person C) is liable for LTT and relief may be claimed by person B to prevent a double charge to LTT.

#### **Part 1 – Introduction and key concepts**

##### **Application of the Schedule**

115. This Schedule applies where there is an acquisition of a chargeable interest that is to be completed by a transfer; and there is a pre-completion transaction. Where a pre-completion transaction is an assignment of rights in respect of another contract, then it cannot be the “original contract” (as defined in paragraph 2(1)(a)), for the purposes of pre-completion transactions. This Schedule does not apply where there is an assignment of agreement for lease (paragraph 21, Schedule 6).
116. Under this Schedule, joint original buyers for any one contract for the acquisition of a chargeable interest are to be treated as one original buyer.

##### **Meaning of pre-completion transaction**

117. [Paragraph 3](#) defines what is meant by a “pre-completion transaction” and sets out where certain transactions are not pre-completion transactions. Sub-paragraph (4) allows for a transaction which discharges the original contract to be a pre-completion transaction. The definitions of other key terms referred to in this Schedule are set out in paragraph 4.

##### **Tax not charged on transferee by reason of the pre-completion transaction**

118. [Paragraph 5](#) provides that entering into a pre-completion transaction does not in itself incur a charge to LTT. However, the provisions of section 10 (contract and transfer) and the rest of this Schedule still need to be applied where a pre-completion transaction takes place.

## **Part 2 - Pre-completion transactions which are assignments of rights**

### **Pre-completion transactions which are assignment of rights**

119. [Part 2](#) of the Schedule deals with the treatment of pre-completion transactions that are assignments of rights, (as defined in paragraph 6) and in which case the provisions of paragraph 7 apply.

### **Assignment of rights: application of rules about completion and consideration**

120. [Paragraph 7\(2\)](#) provides that where the original contract is completed by a transfer to the transferee, that transfer is taken to be the completion of the original contract and the provisions of section 10(10)(a) are disregarded.
121. Sub-paragraph (3) provides for the amount of chargeable consideration for the transferee's acquisition where either of the conditions at sub-paragraph (3) applies. The consideration includes any amount given by the transferee (or a connected person in accordance with the provisions in sub-paragraph (8)), whether in acquiring the chargeable interest or for the assignment of rights.
122. Sub-paragraph (9) sets out the circumstances in which the transferee is to be regarded as having substantially performed the original contract. The meaning of "substantial performance" and references to "possession" and "substantial amount of consideration" are to be read in accordance with the meanings provided in section 14.

### **Assignment of rights: transferor treated as making separate acquisition**

123. [Paragraph 8](#) deems the transferor as making a separate acquisition, referred to as a "notional land transaction", where there is an assignment of rights. The notional land transaction is "associated with" the assignment of rights under which the original buyer is the transferor.
124. Where there is an assignment of rights and the original contract is either substantially performed or transferred to the transferee, the effective date of that land transaction is the date of the notional land transaction, and the original buyer is deemed to be the buyer under that notional land transaction.
125. In cases involving preceding assignments of rights to the "implemented assignment of rights" mentioned in paragraph 7(1), prior to substantial performance or completion by transfer of the original contract, there is deemed to be an additional notional land transaction for each of the preceding assignment of rights, with a deemed amount of chargeable consideration for each of these transactions.
126. Sub-paragraphs (6) – (9) are to be read together for the rules on how to determine the chargeable consideration (in accordance with the provisions at paragraph 1(1) of Schedule 4 chargeable consideration) for:
- a notional land transaction (which does not form part of a chain of transactions that are pre-completion transactions); and
  - any additional notional land transactions.

### **Notional land transaction: effect of rescission etc. following substantial performance**

127. [Paragraph 9](#) provides for the situation where there is a notional land transaction by virtue of the original contract being substantially performed and the original contract is subsequently rescinded or annulled (to any extent). Although the transferee's position is provided for by the normal provisions in section 10 (contract and transfer), this paragraph is required to ensure the transferor can claim back an appropriate amount

of LTT from WRA. Any repayment must be claimed through an amendment to the relevant land transaction return.

### **Assignment of rights relating to part only of original contract**

128. [Paragraph 10](#) provides for the treatment of assignments of rights relating to only part of the subject-matter of the original contract.

### **Assignment of rights: references to “the seller”**

129. [Paragraph 11](#) applies where there is an assignment of rights and the subject-matter of the original contract is transferred to the transferee; or there is substantial performance of the original contract.
130. Sub-paragraph (3) provides the general rule that references in this Act to the seller where there is an assignment of rights are to be read as the seller under the original contract.
131. Sub-paragraph (4) provides that references to the seller where the original contract was substantially performed before the transferee was entitled to call for a transfer, should be read as the buyer under the original contract, when that contract was substantially performed.
132. Sub-paragraph (5) provides that in the specified provisions listed at (a)–(e), references to the seller will be read as including the seller under the original contract and the transferor under any relevant assignment of rights.
133. Sub-paragraph (6) provides the definition of “relevant land transactions” for the purposes of paragraph 11. These are land transactions that are effected by a transfer to the transferee or substantially performed by that transferee or a notional land transaction as provided for in paragraph 8(1) or additional notional land transaction referred to in paragraph 8(3).
134. Sub-paragraph (7) provides that for the purposes of determining whether the linked transaction rules in section 28 apply, references to the seller will be read as the seller under the original contract or the transferor under any relevant assignment of rights. “Relevant assignment of rights” is defined in sub-paragraph (8).

### **Part 3 - Pre-completion transactions which are free-standing transfers**

135. [Part 3](#) of this Schedule sets out the treatment of pre-completion transactions that are free-standing transfers (such as a novation). [Paragraph 12](#) defines a free-standing transfer for the purposes of this Schedule as a pre-completion transaction that is not an assignment of rights.

### **Free-standing transfers: consideration and substantial performance**

136. [Paragraph 13\(2\)](#) provides that where the transferee acquires the subject-matter of the free-standing transfer, the consideration provided for the acquisition includes any consideration given for the free-standing transfer.
137. Sub-paragraph (3) provides that any acquisition under sub-paragraph (2) includes any acquisition deemed to take place as a result of substantial performance of a contract without completion (in accordance with section 10(4)). Sub-paragraph (4) provides that where the transferee (or its assignee) takes any action that would constitute substantial performance without completion (in accordance with section 14(1)), that is deemed to effect the substantial performance of the original contract.
138. The treatment of successive free-standing transfers is provided for at sub-paragraph (5), which clarifies that each successive free-standing transfer is to be treated as a separate contract to which section 10 applies. Accordingly, the rules at sub-paragraph (4) in respect of substantial performance also apply to each successive free-standing transfer.

## **References to “the seller” in cases involving free-standing transfers**

139. Paragraph 14 sets out various provisions relating to the identity of the seller in free-standing transfers and where there is a mixture of free-standing transfers and assignments of rights (except where the original contract itself is a free-standing transfer). For the purposes of this paragraph the “relevant land transaction” is that referred to in sub-paragraph (1)(a) and (b).
140. The general rule (sub-paragraph (2)) is that references to the seller in the relevant land transaction will be read as the seller or transferor under the “first appropriate transaction”, which is the original contract (except where the first appropriate transaction comprises a pre-completion transaction, that meets the conditions listed at sub-paragraph (8)).
141. Sub-paragraph (3) sets out that in the specified provisions (listed at sub-paragraph (4)) references to the seller in a free-standing transfer will be read as:
- the seller under the original contract;
  - the transferor under the final transaction (defined in sub-paragraph (6)(b)); and
  - the transferor under any relevant pre-completion transaction.
142. Sub-paragraph (5) provides that for the purposes of the linked transaction rules in section 8, references to the seller will be read as that provided for in sub-paragraph (5) (a) to (c).
143. Sub-paragraph (10) clarifies that where the final transaction in a series of two or more contracts is a pre-completion transaction the original contract is the first contract in that series.

## **Part 4 - The minimum consideration rule**

### **The minimum consideration rule**

144. Paragraph 15 provides for a minimum consideration rule for pre-completion transactions where there is a relevant connection between the parties. The meaning of “relevant connection between the parties” includes where there are a series of pre-completion transactions, and is provided at sub-paragraph (3). In this Part of the Schedule, references to “the implemented transaction” are to be read as references to pre-completion transactions referred to in paragraphs 7(1) or 13(1).
145. Sub-paragraph (2) provides that where there is a relevant connection between the parties in a pre-completion transaction, the amount of consideration for the final acquisition is to comprise the highest of:
- the consideration it would normally be in the absence of this sub-paragraph;
  - the first minimum amount (paragraph 16); or
  - the second minimum amount (paragraph 17).
146. Sub-paragraph (4) provides that references to the “original contract” in this Part of the Schedule, where the implemented transaction forms part of a series of contracts relating to the same subject-matter, shall be read as a reference to the first contract in that series. References to the “original buyer” are also to be read accordingly.

### **The first minimum amount**

147. Paragraph 16 provides the meaning of first minimum amount and sets out how this is calculated for the purposes of paragraph 15.

148. The “first minimum amount” (see paragraph 15(2)(b)) in respect of a chargeable interest acquired under a land transaction referred to in paragraphs 7(4) or 13(2) is:
- the amount of consideration for the subject matter of the original contract (if the whole of the subject matter of that contract is acquired); or
  - the amount of consideration just and reasonably apportioned (if a part of the subject-matter of the original contract is acquired).
149. Sub-paragraph (3) sets out conditions A – C, which if satisfied provide that the first minimum amount is the total of any consideration required to be given by the transferor (the first T – see sub-paragraph (4)(a)) under the terms of the contract for the first T’s acquisition (see sub-paragraph (4)(b)) of the subject matter of that contract and, if not included, any consideration required to be given by the first T under any pre-completion transaction where the first T is a transferee.
150. For the purposes of paragraph 16, the meaning of “the first T” is provided at sub-paragraph (4) (a) and (4) (b) provides that “the transfer to the first T” is the pre-completion transaction where the first T is a transferee or the original contract (if T (see Condition B in sub-paragraph (3)) is the original buyer).

### **The second minimum amount**

151. [Paragraph 17](#) sets out how the second minimum amount is calculated for the purposes of paragraph 15. The second minimum amount is the total amount of consideration given by relevant parties (see sub-paragraph (3)).
152. The formula for determining the net amount of consideration given by a relevant party is set out at sub-paragraph (2). This and the provisions of sub-paragraph (4) require that the calculation is carried out for each relevant party.
153. The relevant parties (subject to sub-paragraph (4)) for the purposes of the calculation of the second minimum amount are the original buyer and the transferee. Where there are successive pre-completion transactions, this includes all the transferees in the chain of transactions.
154. Sub-paragraph (4) identifies the relevant parties in a pre-completion transaction (an “implemented transaction”) which is part of a chain of pre-completion transactions in respect of an original contract (see paragraph 15(4)). A “preceding transaction” is defined as a pre-completion transaction that precedes the implemented transaction in a chain.
155. Sub-paragraph (5) provides that any amounts given by connected parties are treated as given by the relevant party for the purposes of sub-paragraph (2).
156. Sub-paragraph (6) provides that amounts given in respect of an implemented transaction where that transaction relates to part of the subject-matter of the original contract are to be adjusted and determined on a just and reasonable basis. This includes any transactions involving part of the subject-matter of the original contract, which precede any implemented transaction.

## **Part 5 - Reliefs**

### **Relief for transferor: assignment of rights**

157. [Paragraph 18](#) sets out the conditions for full relief (sub-paragraph 2) from LTT where there is an assignment of rights. Relief is available if:
- there is an assignment of rights and a person is liable to LTT in respect of the notional land transaction (see paragraph 8(1)) or any additional land transaction (see paragraph 8(3)); and

*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*

- the original contract had not been substantially performed when the assignment of rights (paragraph 7(1)) was entered into.
158. However, relief is not available if the land transaction under paragraph 7(4) is relieved from LTT by virtue of Schedule 10 (alternative property finance reliefs).

**Relief for original buyer: qualifying subsales**

159. [Paragraph 19](#) sets out the conditions for relief from LTT where there is a qualifying subsale (as defined at sub-paragraph (6)). This provides that relief is available where the pre-completion transaction is:
- a qualifying subsale;
  - the original buyer would (apart from this paragraph) be liable to LTT on the land transaction effected by completion or substantial performance of the original contract;
  - the qualifying subsale is performed at the same time as and in connection with the original contract; and
  - relief is claimed in a land transaction return for the land transaction provided for at (the second bullet point above).
160. Where the qualifying subsale is for the whole of the subject-matter of the original contract, the transaction is relieved from LTT.
161. Sub-paragraph (3) sets out how to determine the amount of consideration where the qualifying subsale relates to part of the subject-matter of the original contract. In this situation full relief is not available but the amount of the consideration is reduced accordingly. More than one qualifying subsale may result in more than one reduction in LTT.
162. Relief is not available if the original contract was substantially performed before the qualifying subsale was entered into; or the transaction effected by the qualifying subsale is relieved by virtue of Schedule 10 (alternative property finance reliefs).
163. Where there are successive subsales, the conditions for relief set out in this paragraph apply separately to each successive subsale.