



# Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017

2017 anaw 1

## PART 2

### THE TAX AND KEY CONCEPTS

## CHAPTER 3

### PARTICULAR TRANSACTIONS

#### *Contracts and transfers: general provision*

#### **10 Contract and transfer**

- (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a transfer.
- (2) A person is not regarded as entering into a land transaction by reason of entering into the contract (but see subsection (4)).
- (3) If the transaction is completed without previously having been substantially performed—
  - (a) the contract and the transaction effected on completion are treated as parts of a single land transaction, and
  - (b) the effective date of the transaction is the date of completion.
- (4) But if the contract is substantially performed without having been completed—
  - (a) the contract is treated as if it were itself the transaction provided for in the contract, and
  - (b) the effective date of that transaction is when the contract is substantially performed.

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- (5) Where subsection (4) applies and the contract is subsequently completed by a transfer—
  - (a) both the contract and the transaction effected on completion are notifiable transactions for the purposes of this Act, and
  - (b) tax is chargeable on the latter transaction to the extent (if any) that the amount mentioned in subsection (6) is greater than the amount of tax chargeable on the contract.
- (6) The amount is the tax that would have been chargeable on the latter transaction if it had been completed without previously having been substantially performed.
- (7) Where subsection (4) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection must (to that extent) be repaid by WRA.
- (8) But repayment of tax is due only if a claim for it is made by amendment, in accordance with section 41 of TCMA, of the return made in respect of the contract.
- (9) Where paragraph 20 of Schedule 6 applies (agreement for lease), it applies in place of subsections (4) to (8).
- (10) In this section—
  - (a) references to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract;
  - (b) “contract” includes any agreement and “transfer” includes any instrument.

*Contracts and transfers: particular cases*

## **11 Contract providing for transfer to third party**

- (1) This section applies where a contract is entered into under which a chargeable interest is to be transferred by one party to the contract (“P1”) at the direction or request of the other (“P2”)—
  - (a) to a person (“P3”) who is not a party to the contract, or
  - (b) either to such a person or to P2.
- (2) P2 is not regarded as entering into a land transaction by reason of entering into the contract.
- (3) But if the contract is substantially performed without having been completed—
  - (a) P2 is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction, and
  - (b) the effective date of that transaction is when the contract is substantially performed.
- (4) Where subsection (3) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection must (to that extent) be repaid by WRA.
- (5) But repayment of tax is due only if a claim for it is made by amendment, in accordance with section 41 of TCMA, of the return made in respect of the contract.

- (6) Subject to subsection (7), section 10 (contract and transfer) does not apply in relation to the contract.
- (7) Where—
- (a) this section applies by virtue of subsection (1)(b), and
  - (b) by reason of P2’s direction or request, P1 becomes obliged to transfer a chargeable interest to P2,
- section 10 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a transfer.
- (8) Section 10 applies in relation to any contract between P2 and P3, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a transfer.
- (9) References to completion in that section, as it so applies, include references to transfer by P1 to P3 of the subject-matter of the contract between P2 and P3.
- (10) In this section, “contract” includes any agreement and “transfer” includes any instrument.

## **12 Contract providing for transfer to third party: effect of transfer of rights**

- (1) This section applies where—
- (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be transferred by one party to the contract (“P1”) at the direction or request of the other (“P2”)—
    - (i) to a person (“P3”) who is not a party to the contract, or
    - (ii) either to such a person or to P2, and
  - (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (“P4”) becomes entitled to exercise any of P2’s rights under the original contract in place of P2.
- (2) References in the following provisions of this section to a transfer of rights are to any such assignment or other transaction.
- (3) P4 is not regarded as entering into a land transaction by reason of the transfer of rights, but section 11 (contract providing for transfer to third party) has effect in accordance with the following provisions.
- (4) That section applies as if—
- (a) P4 had entered into a contract (a “secondary contract”) in the same terms as the original contract except with P4 as a party instead of P2, and
  - (b) the consideration due from P4 under the secondary contract were—
    - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by P4 or a person connected with P4, and
    - (ii) the consideration given for the transfer of rights.
- (5) The substantial performance of the original contract is to be disregarded if it occurs—
- (a) at the same time as, and in connection with, the substantial performance of the secondary contract, or
  - (b) after the transfer of rights.

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- (6) Where there are successive transfers of rights, subsection (4) has effect in relation to each of them.
- (7) The substantial performance of the secondary contract arising from an earlier transfer of rights is to be disregarded if it occurs—
  - (a) at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or
  - (b) after that subsequent transfer.
- (8) Where a transfer of rights relates to only part of the subject-matter of the original contract, or to only some of the rights under that contract—
  - (a) a reference in subsection (4)(a) or (5) to the original contract, or a reference in subsection (7) to the secondary contract arising from an earlier transfer, is to that contract so far as relating to that part or those rights, and
  - (b) that contract so far as not relating to that part or those rights is to be treated as a separate contract.
- (9) The effective date of a land transaction treated as entered into by virtue of subsection (4) is not earlier than the date of the transfer of rights.
- (10) In relation to a such a transaction—
  - (a) references in Schedule 16 (group relief) to the seller are to be read as references to P1;
  - (b) other references in this Act to the seller are to be read, where the context permits, as referring to either P1 or P2.
- (11) In this section, “contract” includes any agreement.

### **13 Pre-completion transactions**

Schedule 2 makes—

- (a) provision about the application of section 10 (contract and transfer) in certain cases where an assignment of rights, subsale or other transaction is entered into without the contract having been completed, and
- (b) other provision about such cases.

#### *Substantial performance*

### **14 Meaning of substantial performance**

- (1) A contract is substantially performed for the purposes of this Act when—
  - (a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract, or
  - (b) a substantial amount of the consideration is paid or provided.
- (2) For the purposes of subsection (1)(a)—
  - (a) possession includes receipt of rents and profits or the right to receive them, and
  - (b) it is immaterial whether possession is taken under the contract or under a licence or lease of a temporary character or a tenancy at will.
- (3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—

- (a) if none of the consideration is rent, when the whole or substantially the whole of the consideration is paid or provided;
- (b) if the only consideration is rent, when the first payment of rent is made;
- (c) if the consideration includes both rent and other consideration, when the first of the following events occurs—
  - (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
  - (ii) the first payment of rent is made.

*Options etc.*

## 15 Options and rights of pre-emption

- (1) The acquisition of—
  - (a) an option binding the grantor to enter into a land transaction, or
  - (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,is a land transaction distinct from any land transaction resulting from the exercise of the option or right.
- (2) They may be “linked transactions” (see section 8).
- (3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor’s obligations under the option in some other way.
- (4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).
- (5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

*Exchanges*

## 16 Exchanges

- (1) This Act applies in a case within subsection (2) in relation to each transaction described in that subsection as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 8).
- (2) A case is within this subsection where a land transaction is entered into by a person (alone or jointly) as buyer wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller.
- (3) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in a case within subsection (4).

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- (4) A case is within this subsection where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.
- (5) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
  - (a) paragraphs 5 and 6 of Schedule 4 (exchanges, partition etc.);
  - (b) paragraph 18 of that Schedule (arrangements involving public or educational bodies).