

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

2017 anaw 1

PART 2

THE TAX AND KEY CONCEPTS

CHAPTER 1

LAND TRANSACTION TAX

2 Land transaction tax

- (1) A tax (to be known as “land transaction tax”) is to be charged on land transactions.
- (2) The tax is chargeable—
 - (a) whether or not there is an instrument effecting the transaction,
 - (b) if there is such an instrument, regardless of where it is executed, and
 - (c) regardless of where any party to the transaction is or is resident.
- (3) The Welsh Revenue Authority (“WRA”) is to be responsible for the collection and management of the tax.

Commencement Information

II S. 2 in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

Changes to legislation: Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, PART 2 is up to date with all changes known to be in force on or before 25 August 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

CHAPTER 2

LAND TRANSACTIONS

3 Land transaction

- (1) In this Act, a ““land transaction”” means an acquisition of a chargeable interest.
- (2) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any enactment or by operation of law.
- (3) See section 15 as to when the acquisition of an option or right of pre-emption is a land transaction.

Commencement Information

I2 [S. 3](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

4 Chargeable interest

- (1) A chargeable interest is—
 - (a) an estate, interest, right or power in or over land in Wales, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power, other than an exempt interest.
- (2) In this Act, ““land in Wales”” does not include land below mean low water mark.
- (3) See section 9 as to land partly in Wales and partly in England.

Commencement Information

I3 [S. 4](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

5 Exempt interest

- (1) The following are exempt interests—
 - (a) a security interest;
 - (b) a licence to use or occupy land;
 - (c) a tenancy at will;
 - (d) a franchise or manor.
- (2) In subsection (1)—
 - (a) ““security interest”” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any other obligation;
 - (b) ““franchise”” means a grant from the Crown such as the right to hold a market or fair, or the right to take tolls.

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- (3) See also paragraph 7 of Schedule 10 (which makes additional provision about exempt interests in relation to alternative financial arrangements).
- (4) The Welsh Ministers may by regulations amend this section so as to—
 - (a) provide that any other description of interest or right in relation to land in Wales is an exempt interest;
 - (b) provide that a description of interest or right in relation to land in Wales is no longer an exempt interest;
 - (c) vary a description of an exempt interest.

Commencement Information

I4 S. 5 in force at 1.4.2018 by S.I. 2018/34, art. 3

6 Acquisition and disposal of chargeable interest

- (1) For the purposes of this Act, each of the following is an acquisition and a disposal of a chargeable interest—
 - (a) the creation of the interest;
 - (b) the surrender or release of the interest;
 - (c) the variation of the interest.
- (2) But the variation of a lease is an acquisition and disposal of a chargeable interest only where—
 - (a) it takes effect, or is treated for the purposes of this Act, as the grant of a new lease, or
 - (b) paragraph 24 of Schedule 6 (reduction of rent or term or other variation of lease) applies.
- (3) A person acquires a chargeable interest where—
 - (a) the person becomes entitled to the interest on its creation,
 - (b) the person's interest or right is benefited or enlarged by the surrender or release of the interest, or
 - (c) the person benefits from the variation of the interest.
- (4) A person disposes of a chargeable interest where—
 - (a) the person's interest or right becomes subject to the interest on its creation,
 - (b) the person ceases to be entitled to the interest on its being surrendered or released, or
 - (c) the person's interest or right is subject to or limited by the variation of the interest.
- (5) This section has effect subject to section 10(4) (substantial performance without completion), section 11(3) (substantial performance of contract providing for transfer to third party) and paragraphs 20 and 24 of Schedule 6 (agreement for lease and reduction of rent or term or other variation of lease).

Commencement Information

I5 S. 6 in force at 1.4.2018 by S.I. 2018/34, art. 3

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7 Buyer and seller

- (1) The buyer in a land transaction is the person acquiring the subject-matter of the transaction.
- (2) The seller in a land transaction is the person disposing of the subject-matter of the transaction.
- (3) These expressions apply even if there is no consideration given for the transaction.

Commencement Information

I6 S. 7 in force at 1.4.2018 by S.I. 2018/34, art. 3

8 Linked transactions

- (1) For the purposes of this Act, a land transaction is a linked transaction if it is one of a number of land transactions forming part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.
- (2) This section is subject to section 16 (exchanges; in particular see subsection (1) of that section which provides for transactions forming an exchange not to be treated as linked transactions).

Commencement Information

I7 S. 8 in force at 1.4.2018 by S.I. 2018/34, art. 3

9 Land partly in Wales and partly in England

- (1) This section sets out how this Act applies to a transaction which is the acquisition of—
 - (a) an estate, interest, right or power in or over land, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,
 where the land is partly in Wales and partly in England.
- (2) The transaction is to be treated as if it were two transactions, one relating to the land in Wales (“the Welsh transaction”) and the other relating to the land in England (“the English transaction”).
- (3) The consideration for the transaction is to be apportioned between those two transactions on a just and reasonable basis.
- (4) Accordingly, the Welsh transaction is to be treated as a land transaction within the meaning of this Act (being the acquisition of a chargeable interest relating to the land in Wales).
- (5) But subsection (4) does not apply in the case of an exempt interest.
- (6) WRA must publish guidance about transactions to which subsection (1) applies, including guidance about identifying the location of the border between Wales and England.

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- (7) WRA may revise guidance published under subsection (6) and must publish the revised guidance.
- (8) See section 48A of the Finance Act 2003 (c. 14) as to the application of Part 4 of that Act (stamp duty land tax) to the English transaction.
- (9) In section 48A of the Finance Act 2003 (c. 14), after subsection (5) insert—
- “(6) See section 9 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 0) as to the application of that Act to the transaction relating to the land in Wales.”

Commencement Information

I8 S. 9(1)-(5)(7)-(9) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

I9 S. 9(6) in force at 18.10.2017 by [S.I. 2017/953](#), [art. 2\(a\)](#)

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.
- (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.

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- (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.

Modifications etc. (not altering text)

- C1** S. 10 applied (with modifications) (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), **3**
- C2** S. 10 applied (with modifications) (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), **4**
- C3** S. 10(5)(b) excluded (temp.) (27.7.2020) by [The Land Transaction Tax \(Temporary Variation of Rates and Bands for Residential Property Transactions\) \(Wales\) Regulations 2020 \(S.I. 2020/794\)](#), regs. 1(2), **2(3)** (with reg. 2)

Commencement Information

- I10** S. 10 in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

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.

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- (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.

Commencement Information

III S. 11 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

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- (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.
- (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.

Commencement Information

I12 S. 12 in force at 1.4.2018 by S.I. 2018/34, art. 3

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.

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Commencement Information

I13 S. 13 in force at 1.4.2018 by S.I. 2018/34, art. 3

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.

Commencement Information

I14 S. 14 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

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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.

Commencement Information

I15 S. 15 in force at 1.4.2018 by S.I. 2018/34, art. 3

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).
- (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).

Commencement Information

I16 S. 16 in force at 1.4.2018 by S.I. 2018/34, art. 3

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CHAPTER 4

CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transactions

17 Chargeable transaction

A land transaction is a chargeable transaction unless—

- (a) it is a transaction that is exempt from charge as provided for in Schedule 3, or
- (b) it is a transaction that is relieved from tax by virtue of a provision listed in section 30(2) and in respect of which relief from tax is claimed.

Commencement Information

I17 S. 17 in force at 1.4.2018 by S.I. 2018/34, art. 3

Chargeable consideration

18 Chargeable consideration

- (1) Schedule 4 makes provision as to the chargeable consideration for a transaction.
- (2) The Welsh Ministers may by regulations amend or repeal the provisions of this Act relating to—
 - (a) what is to count as chargeable consideration, or
 - (b) the determination of the amount of chargeable consideration.

Commencement Information

I18 S. 18 in force at 1.4.2018 by S.I. 2018/34, art. 3

19 Contingent consideration

- (1) Where the whole or part of the chargeable consideration for a transaction is contingent, the amount or value of the consideration is to be determined for the purposes of this Act on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
- (2) In this Act, “contingent”, in relation to consideration, means—
 - (a) that it is to be paid or provided only if some uncertain future event occurs, or
 - (b) that it is to cease to be paid or provided if some uncertain future event occurs.

Commencement Information

I19 S. 19 in force at 1.4.2018 by S.I. 2018/34, art. 3

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20 Uncertain or unascertained consideration

- (1) Where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, its amount or value is to be determined for the purposes of this Act on the basis of a reasonable estimate.
- (2) In this Act, “uncertain”, in relation to consideration, means that its amount or value depends on uncertain future events.

Commencement Information

I20 S. 20 in force at 1.4.2018 by S.I. 2018/34, art. 3

21 Annuities

- (1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—
 - (a) for life,
 - (b) in perpetuity,
 - (c) for an indefinite period, or
 - (d) for a definite period exceeding 12 years.
- (2) The consideration to be taken into account is limited to 12 years' annual payments.
- (3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.
- (4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail prices index, the consumer prices index or any other similar index used to express a rate of inflation.
- (5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.
- (6) For the purposes of this section, the amount or value of any payment is to be determined (if necessary) in accordance with section 19 (contingent consideration) or 20 (uncertain or unascertained consideration).
- (7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically; and references to payment are to be read accordingly.

Commencement Information

I21 S. 21 in force at 1.4.2018 by S.I. 2018/34, art. 3

22 Deemed market value

- (1) This section applies where the buyer is a company and—
 - (a) the seller is connected with the buyer, or
 - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.

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- (2) The chargeable consideration for the transaction is to be taken to be—
 - (a) the amount determined under subsection (3) in respect of the transaction, or
 - (b) if greater, the amount which would be the chargeable consideration for the transaction ignoring this section.
- (3) The amount mentioned in subsection (2)(a) is—
 - (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
 - (b) if the acquisition is the grant of a lease at a rent, that rent.
- (4) In this section—
 - ““company”” (“*cwmni*”) means any body corporate;
 - ““shares”” (“*cyfranddaliadau*”) includes stock and the reference to shares in a company includes a reference to securities issued by a company.
- (5) Where this section applies paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (6) This section has effect subject to—
 - (a) the exceptions provided for in section 23, and
 - (b) any other provision affording exemption or relief from tax.

Commencement Information

I22 S. 22 in force at 1.4.2018 by S.I. 2018/34, art. 3

23 Exceptions

- (1) Section 22 (deemed market value) does not apply in the following cases.
- (2) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.
- (3) Case 2 is where—
 - (a) immediately after the transaction the company holds the property as trustee, and
 - (b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c. 4).
- (4) Case 3 is where—
 - (a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
 - (b) it is not the case that—
 - (i) the subject-matter of the transaction, or
 - (ii) an interest from which that interest is derived,has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief under Schedule 16 was claimed by the seller.

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(5) In this section, “the company” means the company that is the buyer in relation to the transaction in question.

Commencement Information

I23 S. 23 in force at 1.4.2018 by S.I. 2018/34, art. 3

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 18 para. 1(aa) inserted by [S.I. 2019/833 reg. 3\(2\)](#)
- Sch. 18 para. 2A-2D inserted by [S.I. 2019/833 reg. 3\(4\)](#)