

**Changes to legislation:** There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 2. (See end of Document for details)

## SCHEDULE 2 **E+W**

(as introduced by section 13)

### PRE-COMPLETION TRANSACTIONS

#### PART 1 **E+W**

##### INTRODUCTION AND KEY CONCEPTS

###### *Overview*

- 1 (1) This Schedule makes provision about the application of this Act (in particular section 10 (contract and transfer)) to pre-completion transactions (the meaning of which is set out in paragraph 3).
- (2) The Schedule is arranged as follows—
  - (a) this Part makes introductory provisions setting out the circumstances where this Schedule applies (paragraph 2) and explaining the meaning of “pre-completion transaction” and other key terms referred to in the Schedule;
  - (b) Part 2 sets out how this Act applies in cases where the pre-completion transaction is an assignment of rights (the meaning of which is set out in paragraph 6);
  - (c) Part 3 sets out how this Act applies in cases involving free-standing transfers (the meaning of which is set out in paragraph 12);
  - (d) Part 4 provides for a special rule (“the minimum consideration rule”) which applies to determine the consideration given in cases where the parties in relation to a pre-completion transaction are connected or are otherwise not acting at arm's length;
  - (e) Part 5 provides for relief to be available to certain buyers in cases where certain pre-completion transactions are entered into;
  - (f) Part 6 makes some general interpretative provisions.

###### Commencement Information

**II** Sch. 2 para. 1 in force at 1.4.2018 by S.I. 2018/34, art. 3

###### *Application of this Schedule*

- 2 (1) This Schedule applies where—
  - (a) a person (“the original buyer”) enters into a contract (“the original contract”) for the acquisition by the original buyer of a chargeable interest under which the acquisition is to be completed by a transfer, and
  - (b) there is a pre-completion transaction.
- (2) The reference in sub-paragraph (1)(a) to a contract does not include a contract that is an assignment of rights in relation to another contract.
- (3) For any one contract for the acquisition of a chargeable interest there is only one original buyer (and for the purposes of this Schedule joint original buyers are to be treated as one original buyer).

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- (4) This Schedule does not apply where paragraph 21 of Schedule 6 (assignment of agreement for lease) applies (and accordingly, despite paragraph 3, the assignment of an agreement for lease is not a pre-completion transaction).

#### **Commencement Information**

**I2** [Sch. 2 para. 2](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

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

- 3 (1) A transaction is a pre-completion transaction if—
- (a) as a result of the transaction a person other than the original buyer (“the transferee”) becomes entitled to call for a transfer to the transferee of the whole or part of the subject-matter of the original contract, and
  - (b) immediately before the transaction took place a person (other than the transferee but not necessarily the original buyer) was entitled under the original contract to call for a transfer of the whole or that part of that subject-matter.
- (2) A transaction that gives effect to a person's acquisition of the whole or part of the subject-matter of the original contract is not a pre-completion transaction.
- (3) The grant or assignment of an option is not a pre-completion transaction.
- (4) The fact that a transaction has the effect of discharging the original contract does not prevent that transaction from being a pre-completion transaction.

#### **Commencement Information**

**I3** [Sch. 2 para. 3](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

#### *Other key terms*

- 4 (1) In this Schedule, references to part of the subject-matter of the original contract—
- (a) are to a chargeable interest that is the same as the chargeable interest referred to in paragraph 2(1)(a) except that it relates to part only of the land concerned, and
  - (b) also include, so far as is appropriate, interests or rights appurtenant or pertaining to the chargeable interest.
- (2) In this Schedule, “the transferor”, in relation to a pre-completion transaction, means a party to the pre-completion transaction who immediately before the pre-completion transaction took place was entitled to call for a transfer of (what became) the subject-matter of the pre-completion transaction.
- (3) References in this Schedule to the “subject-matter” of a pre-completion transaction—
- (a) are to the chargeable interest the transfer of which the transferee is entitled to call for as a result of the pre-completion transaction, and
  - (b) also include, so far as is appropriate, interests or rights appurtenant or pertaining to the chargeable interest.

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**Commencement Information**

**I4** Sch. 2 para. 4 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 5 The transferee is not regarded as entering into a land transaction only by reason of the pre-completion transaction.

**Commencement Information**

**I5** Sch. 2 para. 5 in force at 1.4.2018 by S.I. 2018/34, art. 3

**PART 2 E+W**

**PRE-COMPLETION TRANSACTIONS WHICH ARE ASSIGNMENTS OF RIGHTS**

*Pre-completion transactions which are assignments of rights*

- 6 A pre-completion transaction is an “assignment of rights” if the entitlement of the transferee referred to in paragraph 3(1)(a) is an entitlement to exercise rights under the original contract.

**Commencement Information**

**I6** Sch. 2 para. 6 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Assignments of rights: application of rules about completion and consideration*

- 7 (1) This paragraph applies if the pre-completion transaction is an assignment of rights.
- (2) If the subject-matter of the original contract is transferred to the transferee, the transfer is taken to be the completion of the original contract (despite section 10 and in particular subsection (10)(a) of that section).
- (3) Sub-paragraphs (4) to (8) apply if—
- (a) the subject-matter of the original contract is transferred to the transferee, or
  - (b) the original contract is substantially performed by the transferee.
- (4) The transferee is taken to be the buyer in the land transaction effected as mentioned in section 10(3), or treated as effected under section 10(4).
- (5) For the purpose of determining the chargeable consideration for that land transaction, the land transaction is taken to give effect to a contract the consideration under which is the consideration paid or provided by the transferee or a person connected with the transferee—
- (a) for the subject-matter of the original contract, and
  - (b) for the assignment of rights.

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- (6) Paragraph 1 of Schedule 4 (chargeable consideration: money or money's worth) has effect accordingly but subject to sub-paragraphs (7) and (8) of this paragraph.
- (7) This paragraph does not allow any amount of consideration given by a person to be counted twice in determining the chargeable consideration.
- (8) In any case where there is a relevant connection between the parties as mentioned in paragraph 15(2) (minimum consideration rule), the chargeable consideration for the land transaction mentioned in sub-paragraph (4) of this paragraph is calculated (regardless of whether the consideration is taken to be the amount in paragraph (a), (b) or (c) of paragraph 15(2)) as if in paragraph 1 of Schedule 4 the words ““or a person connected with the buyer”” were omitted.
- (9) The original contract is to be taken to be ““substantially performed by the transferee”” where a land transaction is treated as effected under section 10(4) by reason of—
  - (a) the transferee under the assignment of rights, or a person connected with the transferee, taking possession of the whole, or substantially the whole, of the subject-matter of the original contract,
  - (b) a substantial amount of the consideration being paid or provided by the transferee or a person connected with the transferee, or
  - (c) consideration paid or provided by the transferee, or a person connected with the transferee, amounting, when taken together with consideration paid or provided by another person, to a substantial amount of the consideration.
- (10) References in sub-paragraph (9) to possession and to the payment or provision of a substantial amount of the consideration are to be read in accordance with subsections (2) and (3) of section 14 (meaning of substantial performance).
- (11) In sub-paragraph (9), ““the consideration”” —
  - (a) in relation to the land transaction, means (what is taken to be) the consideration for the acquisition of the subject-matter of the land transaction;
  - (b) in relation to the original contract, means the consideration for the transferee's acquisition of the subject-matter of that contract;
  - (c) in relation to the assignment of rights, means the consideration for the transferee's acquisition of the rights to which that contract relates.

#### **Commencement Information**

**I7**    [Sch. 2 para. 7](#) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

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

- 8    (1) Where paragraph 7(4) to (8) applies (assignment of rights: original contract completed or substantially performed) this Act has effect as if—
  - (a) the effective date of the land transaction mentioned in paragraph 7(4) (““the transferee's land transaction””) were also the effective date of another land transaction (a ““notional land transaction””), and
  - (b) the original buyer were the buyer in that notional land transaction.
- (2) The notional land transaction is referred to in this paragraph as being ““associated with”” the assignment of rights under which the original buyer is the transferor.

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- (3) Where sub-paragraph (1) applies and the assignment of rights mentioned in paragraph 7(1) (“the implemented assignment of rights”) was preceded by one or more related assignments of rights, then for the purposes of this Act there is taken to be, for each assignment of rights (other than the first) in the chain formed by the implemented assignment of rights and those preceding assignments of rights, an additional notional land transaction—
- (a) the effective date of which is the effective date of the transferee's land transaction, and
  - (b) where the buyer is the transferor under that assignment of rights.
- (4) In sub-paragraph (3), “related assignment of rights” means a transaction that is an assignment of rights in relation to the original contract and has some subject-matter in common with the implemented assignment of rights.
- (5) The additional notional land transaction is referred to in this paragraph as being “associated with” the assignment of rights.
- (6) For the purpose of determining the chargeable consideration—
- (a) for the notional land transaction, Schedule 4 has effect as if paragraph 1 of that Schedule provided that the chargeable consideration is (except as otherwise provided) the sum of A and B;
  - (b) for any additional notional land transaction, that Schedule has effect as if paragraph 1 of it provided that the chargeable consideration is (except as otherwise provided) the sum of A, B and C.
- (7) A is the total amount of any consideration in money or money's worth given (whether directly or indirectly) by any of the following as consideration under the original contract—
- (a) the transferee under the assignment of rights with which the notional land transaction or the additional notional land transaction is associated;
  - (b) where the assignment of rights is one in a chain of successive transactions that are pre-completion transactions in relation to the original contract (all having at least part of their subject-matter in common), the transferee under any subsequent pre-completion transaction in that chain;
  - (c) a person connected with a person falling within paragraph (a) or (b).
- (8) B is the total amount of any other consideration in money or money's worth given as consideration under the original contract (directly or indirectly) by—
- (a) the buyer (under the notional land transaction or the additional notional land transaction), or
  - (b) a person connected with the buyer.
- (9) C is the amount of any consideration in money or money's worth given for the preceding assignment of rights by—
- (a) the buyer (under the additional notional land transaction), or
  - (b) a person connected with the buyer.
- (10) In sub-paragraph (9), “the preceding assignment of rights” means the assignment of rights as a result of which the buyer became entitled to call for a transfer of (what became) the subject-matter of the assignment of rights associated with the additional notional land transaction.

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#### Commencement Information

**I8** Sch. 2 para. 8 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 9 (1) This paragraph applies where paragraph 8(1) (transferor treated as making separate acquisition) applies by virtue of the substantial performance by the transferee of the original contract.
- (2) If the original contract is (to any extent) subsequently rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of paragraph 8(1), and any tax paid by virtue of paragraph 8(3), must (to that extent) be repaid by WRA.
- (3) 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 in respect of the notional or additional notional land transaction.

#### Commencement Information

**I9** Sch. 2 para. 9 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 10 Where the transferee under the assignment of rights referred to in paragraph 7(1) is entitled to call for the transfer of part, but not the whole, of the subject-matter of the original contract—
- (a) paragraph 7 applies as if the original contract, so far as relating to that part of its subject-matter, were a separate contract, and
  - (b) the references in paragraph 8 to the original contract are to be read accordingly.

#### Commencement Information

**I10** Sch. 2 para. 10 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 11 (1) This paragraph applies where—
- (a) the pre-completion transaction is an assignment of rights, and
  - (b) either the subject-matter of the original contract is transferred to the transferee or the original contract is substantially performed by the transferee.
- (2) This paragraph does not apply if the original contract is itself a free-standing transfer (see Part 3 of this Schedule for the treatment of such cases).
- (3) The general rule is that in relation to a relevant land transaction, references in this Act to the seller are to be read as references to the seller under the original contract (but see sub-paragraphs (4) and (5)).

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- (4) In cases where the original contract was substantially performed before the transferee became entitled to call for a transfer of the whole or part of the subject-matter of the original contract, references in this Act to the seller are to be read as references to the person who was the buyer under the original contract when it was substantially performed.
- (5) In relation to a relevant land transaction, references to the seller in any of the following provisions are to be read as including the seller under the original contract and the transferor under any relevant assignment of rights—
- (a) paragraph 8(1)(a) of Schedule 4 (debt as consideration);
  - (b) paragraph 11(2)(c) of that Schedule (carrying out of works);
  - (c) paragraph 14 of that Schedule (indemnity given by buyer);
  - (d) paragraph 1(1) and (2) of Schedule 20 (transfers involving public bodies);
  - (e) paragraph 2(1)(a) of Schedule 21 (compliance with planning obligations: conditions for relief).
- (6) The following are ““relevant land transactions””—
- (a) the land transaction given effect by the transfer mentioned in sub-paragraph (1)(b) or treated as having been given effect by the substantial performance mentioned in that sub-paragraph;
  - (b) the notional land transaction mentioned in paragraph 8(1) and any additional notional land transaction under paragraph 8(3).
- (7) In determining under section 8(1) whether or not a relevant land transaction such as is mentioned in sub-paragraph (6)(a) is linked to another transaction, it may be assumed that any of the following is the seller in the relevant land transaction—
- (a) the seller (determined in accordance with sub-paragraph (3)), or
  - (b) the transferor under any relevant assignment of rights.
- (8) The following are ““relevant assignments of rights”” in relation to a relevant land transaction—
- (a) the assignment of rights mentioned in sub-paragraph (1)(a);
  - (b) any other transaction that is an assignment of rights in relation to the original contract and has some subject-matter in common with the assignment of rights mentioned in paragraph (a).

#### Commencement Information

**III** Sch. 2 para. 11 in force at 1.4.2018 by S.I. 2018/34, art. 3

### PART 3 E+W

#### PRE-COMPLETION TRANSACTIONS WHICH ARE FREE-STANDING TRANSFERS

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

- 12 A pre-completion transaction which is not an assignment of rights is referred to in this Schedule as a ““free-standing transfer””.

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#### Commencement Information

**I12** Sch. 2 para. 12 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 13 (1) This paragraph applies where the pre-completion transaction is a free-standing transfer.
- (2) If the transferee acquires the subject-matter of the free-standing transfer, the consideration for the transaction giving effect to that acquisition is taken to include the consideration given for the free-standing transfer (if that would not otherwise be the case).
- (3) References in sub-paragraph (2) to an acquisition include an acquisition treated as having taken place by virtue of section 10(4) (and the reference to the transaction giving effect to that acquisition is to be read accordingly).
- (4) An action taken by the transferee (or an assignee of the transferee) that would, if taken by the original buyer, constitute (for the purposes of section 14(1)) the taking of possession of the whole or substantially the whole of the subject-matter of the original contract is treated as being the substantial performance of the original contract.
- (5) If a transaction that is a free-standing transfer in relation to a contract is also a free-standing transfer in relation to another contract (in particular, where there have been successive free-standing transfers), each of those contracts is to be regarded as “the original contract” for the purposes of separate applications of sub-paragraph (4).
- (6) In sub-paragraph (4)—
- (a) the reference to the transferee includes a person connected with the transferee, and
  - (b) the reference to an assignee of the transferee—
    - (i) is to a person who, as a result of a transaction that is an assignment of rights in relation to the free-standing transfer, is entitled to call for a transfer of the whole or part of the subject-matter of the free-standing transfer, and
    - (ii) includes a person connected with such a person.

#### Commencement Information

**I13** Sch. 2 para. 13 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 14 (1) This paragraph applies where—
- (a) the pre-completion transaction is a free-standing transfer and the transferee acquires the subject-matter of the free-standing transfer as mentioned in paragraph 13(2) (read with paragraph 13(3)), or
  - (b) the pre-completion transaction is an assignment of rights and either—



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- (i) the subject-matter of the original contract is transferred to the transferee, or
  - (ii) the original contract is substantially performed by the transferee, but paragraph 11(1) (references to the seller where transferee is assignee under an assignment of rights) does not apply because the original contract is a free-standing transfer (see paragraph 11(2)).
- (2) The general rule is that in relation to the relevant land transaction, references in this Act to the seller are to be read as references to the seller under the first appropriate transaction (but see sub-paragraph (3)).
- (3) In relation to the relevant land transaction, references to the seller in the specified provisions (see sub-paragraph (4)) are to be read as including—
  - (a) the seller in the first appropriate transaction,
  - (b) the transferor under the final transaction, and
  - (c) the transferor under any other pre-completion transaction relating to, and which has some subject-matter in common with, the transactions mentioned in paragraphs (a) and (b).
- (4) The specified provisions are—
  - (a) paragraph 8(1)(a) of Schedule 4 (debt as consideration);
  - (b) paragraph 11(2)(c) of that Schedule (carrying out of works);
  - (c) paragraph 14 of that Schedule (indemnity given by buyer);
  - (d) paragraph 1(1) and (2) of Schedule 20 (transfers involving public bodies);
  - (e) paragraph 2(1)(a) of Schedule 21 (compliance with planning obligations: conditions for relief).
- (5) In determining under section 8(1) whether or not the relevant land transaction is linked to another transaction, it may be assumed that any of the following is the seller in the relevant land transaction—
  - (a) the seller in the first appropriate transaction,
  - (b) the transferor under the final transaction, and
  - (c) the transferor under any other pre-completion transaction relating to, and which has some subject-matter in common with, the transactions mentioned in paragraphs (a) and (b).
- (6) In this paragraph—
  - (a) “the relevant land transaction” means—
    - (i) the land transaction mentioned in sub-paragraph (1)(a), or
    - (ii) in a case falling within sub-paragraph (1)(b), the land transaction given effect by the transfer to the transferee of the subject-matter of the original contract or the substantial performance by the transferee of the original contract;
  - (b) “the final transaction” means—
    - (i) in a case falling within sub-paragraph (1)(a), the transaction giving effect to the acquisition by the transferee of the subject-matter of the free standing transfer;
    - (ii) in a case falling within sub-paragraph (1)(b), the transaction giving effect to the acquisition by the transferee of the subject-matter of the assignment of rights (whether by the transfer of the subject-matter

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- of the original contract to the transferee, the substantial performance of the original contract by the transferee or otherwise);
- (c) “the first appropriate transaction” means the original contract, unless sub-paragraph (7) applies.
- (7) In applying this paragraph to a case where the original contract is not performed at the same time as, and in connection with the performance of the final transaction, “the first appropriate transaction” means a transaction that is a pre-completion transaction in relation to the original contract and meets the following conditions.
- (8) The conditions are that the pre-completion transaction—
- (a) is performed at the time when the final transaction is performed and (if it is not itself that final transaction) is performed in connection with the performance of the final transaction,
  - (b) is a transaction on which the entitlement of the transferee to call for the transfer of the subject-matter of the final transaction depends, and
  - (c) is not preceded by another pre-completion transaction meeting the conditions in paragraphs (a) and (b).
- (9) For the purposes of sub-paragraphs (7) and (8)—
- (a) a contract for a land transaction is taken to be “performed” when it is substantially performed or completed (whichever is earlier);
  - (b) a free-standing transfer other than a contract is taken to be “performed” when the transferee under that free-standing transfer (or an assignee of that transferee, as defined in paragraph 13(6)(b)) acquires the subject-matter of that free-standing transfer.
- (10) Where the final transaction is a pre-completion transaction in relation to each of two or more contracts such as are mentioned in paragraph 2(1)(a) that together form a series of such contracts (each having some subject-matter in common with all the others), references in this paragraph to the “original contract” are to be read as references to the first contract in that series.

#### Commencement Information

**I14** Sch. 2 para. 14 in force at 1.4.2018 by S.I. 2018/34, art. 3

## PART 4 E+W

### THE MINIMUM CONSIDERATION RULE

#### *The minimum consideration rule*

- 15 (1) This paragraph applies where paragraph 7(3) or 13(2) (pre-completion transactions: chargeable interest acquired, or treated as acquired, by transferee) applies.
- (2) If there is a relevant connection between parties, then for the purposes of paragraph 1 of Schedule 4 the consideration given by the buyer for the subject-matter of the land transaction referred to in paragraph 7(4) or 13(2) is taken to be the highest of—
- (a) the amount it would be apart from this sub-paragraph,
  - (b) the first minimum amount (see paragraph 16), or

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- (c) the second minimum amount (see paragraph 17).
- (3) There is a ““relevant connection between parties”” if the transferee in relation to the pre-completion transaction mentioned in paragraph 7(1) or 13(1) (““the implemented transaction””) is connected with, or is not acting at arm's length in relation to—
  - (a) the transferor in relation to the implemented transaction, or
  - (b) a transferor in relation to a pre-completion transaction—
    - (i) which is one in a chain of successive pre-completion transactions (all having at least part of their subject-matter in common and including the implemented transaction) in relation to the original contract, and
    - (ii) which precedes the implemented transaction in the chain.
- (4) Where the implemented transaction is a pre-completion transaction in relation to—
  - (a) a contract for a land transaction that is not itself a free-standing transfer in relation to any other contract, and
  - (b) a contract, or two or more successive contracts, that are themselves free-standing transfers in relation to the contract mentioned in paragraph (a),references in this Part of this Schedule to the ““original contract”” are to the contract mentioned in paragraph (a) only (and references to the ““original buyer”” are to be read accordingly).

#### Commencement Information

**I15** Sch. 2 para. 15 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *The first minimum amount*

- 16 (1) The ““first minimum amount”” is to be determined in accordance with sub-paragraph (2) unless conditions A to C in sub-paragraph (3) are met, in which case it is to be determined in accordance with that sub-paragraph.
- (2) The ““first minimum amount”” is—
  - (a) if the chargeable interest acquired (or treated as acquired) under the land transaction referred to in paragraph 7(4) or 13(2) is the whole subject-matter of the original contract, the amount of any consideration (in money or money's worth) agreed to be given, under the terms of the original contract, for the acquisition of that subject-matter, or
  - (b) if paragraph (a) does not apply, so much of the amount mentioned in that paragraph as is referable, on a just and reasonable apportionment, to the chargeable interest acquired (or treated as acquired) under the land transaction referred to in paragraph 7(4) or 13(2).
- (3) If conditions A to C are met, the ““first minimum amount”” is the amount of any consideration (in money or money's worth) agreed, under the terms of the transfer to the first T, to be given in respect of the subject-matter of that transaction (including any consideration relating to an obligation of the transferor under the transfer to the first T).
- Condition A* That the pre-completion transaction referred to in paragraph 7(4) or 13(2) is one of a chain of successive transactions (all having at least part of

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their subject-matter in common) that are pre-completion transactions in relation to the original contract.

*Condition B* That a person (“T”) is the transferor under a pre-completion transaction that forms part of the chain and T is connected with, or not acting at arm's length in relation to—

- (a) the transferee under that transaction, or
- (b) the transferee under a subsequent transaction in the chain (including the pre-completion transaction referred to in paragraph 7(4) or 13(2)).

*Condition C* That, having regard to all the circumstances, the obtaining of a tax advantage (for any person) was not the main purpose, or one of the main purposes, of T entering into any pre-completion transaction in the chain or any arrangement of which such a transaction was part.

(4) In this paragraph—

- (a) “the first T” means—
  - (i) if condition B is met in relation to only one pre-completion transaction, T, or
  - (ii) if condition B is met in relation to more than one pre-completion transaction in the chain, the transferor in relation to the first of the pre-completion transactions in relation to which condition B is met;
- (b) “the transfer to the first T” means—
  - (i) the pre-completion transaction under which the first T is the transferee, or
  - (ii) the original contract (if T is the original buyer);
- (c) “tax advantage” has the same meaning as in section 31(3).

#### **Commencement Information**

**I16** Sch. 2 para. 16 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *The second minimum amount*

- 17 (1) The “second minimum amount” is the total of the net amounts of consideration given by the relevant parties.
- (2) The net amount of consideration given by any relevant party is—

$$CP - CR$$

Figure 1 where—

CP is the total amount of consideration given by the party for the acquisition of the chargeable interest or as consideration for a pre-completion transaction;

CR is the total of any amounts of consideration given to the party by another relevant party (or other relevant parties) as consideration for the acquisition of the chargeable interest or as consideration for the pre-completion transaction,

and if CR is greater than CP then the net amount of consideration given by the relevant party is taken to be zero.

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**Changes to legislation:** There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 2. (See end of Document for details)

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- (3) The relevant parties are—
- (a) the original buyer, and
  - (b) the transferee,
- unless sub-paragraph (4) applies.
- (4) If the pre-completion transaction mentioned in paragraph 7(1) or 13(1) (“the implemented transaction”) is one in a chain of successive transactions (all having at least part of their subject-matter in common) that are pre-completion transactions in relation to the original contract, only the following are relevant parties—
- (a) the transferor and the transferee in relation to the implemented transaction;
  - (b) a transferor in relation to a preceding transaction, if that transferor is connected with, or is not acting at arm's length in relation to, the transferee under the implemented transaction;
  - (c) the transferee under a pre-completion transaction where the transferor is a relevant party (whether by virtue of this paragraph (c) or otherwise),
- and in this sub-paragraph and sub-paragraph (6) “preceding transaction” means a pre-completion transaction that precedes the implemented transaction in the chain.
- (5) For the purposes of sub-paragraph (2)—
- (a) amounts given by a person connected with a relevant party are treated as given by the relevant party;
  - (b) amounts given to a person connected with a relevant party are treated as given to the relevant party,
- but a person who is a relevant party is not to be treated, for the purposes of this paragraph, as connected with another relevant party (even if, apart from this sub-paragraph, that would be the case).
- (6) If the subject-matter of the implemented transaction is not the whole subject-matter of the original contract—
- (a) the amounts that are taken for the purposes of sub-paragraph (2) to be given “for the acquisition of the chargeable interest” are to be determined on a just and reasonable basis, and
  - (b) only so much of the consideration for a preceding transaction as is referable, on a just and reasonable basis, to the subject-matter of the implemented transaction is to be taken into account under sub-paragraph (2).

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**Commencement Information**

**I17** Sch. 2 para. 17 in force at 1.4.2018 by S.I. 2018/34, art. 3

**PART 5** **E+W**

**RELIEFS**

*Relief for transferor: assignment of rights*

- 18 (1) This paragraph applies where—
- (a) a person would, in the absence of this paragraph, be liable to pay tax in respect of a notional land transaction deemed to take place under paragraph

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- 8(1) or an additional notional land transaction deemed to take place under paragraph 8(3), and
- (b) the original contract had not been substantially performed when the assignment of rights mentioned in paragraph 7(1) was entered into.
- (2) If the buyer in respect of the notional land transaction, or additional notional land transaction, claims relief under this paragraph, the buyer is relieved from tax in respect of that transaction.
- (3) But no relief is available under this paragraph if the land transaction mentioned in paragraph 7(4) is relieved from tax by virtue of Schedule 10 (alternative property finance reliefs).

#### Commencement Information

**I18** Sch. 2 para. 18 in force at 1.4.2018 by S.I. 2018/34, art. 3

#### *Relief for original buyer: qualifying subsales*

- 19 (1) This paragraph applies if—
- (a) the pre-completion transaction is a qualifying subsale (see sub-paragraph (6)),
  - (b) the original buyer would, in the absence of this paragraph, be liable to pay tax in respect of the land transaction given effect by the completion of the original contract or treated as having been given effect by the substantial performance of the original contract,
  - (c) the performance of the qualifying subsale takes place at the same time as, and in connection with, the performance of the original contract, and
  - (d) relief is claimed in respect of the land transaction mentioned in paragraph (b).
- (2) If the subject-matter of the qualifying subsale is the whole of the subject-matter of the original contract, the original buyer is relieved from tax in respect of the land transaction mentioned in sub-paragraph (1)(b).
- (3) If the subject-matter of the qualifying subsale is part of the subject-matter of the original contract, the amount of consideration for the land transaction mentioned in sub-paragraph (1)(b) is taken to be—

$$OC - QS$$

Figure 2 where—

OC is the amount that the consideration would be apart from this sub-paragraph, and  
 QS is so much of OC as is referable to the subject-matter of the qualifying subsale,  
 and OC may be reduced more than once if there is more than one qualifying subsale.

- (4) But no relief is available under this paragraph if—
- (a) the original contract had been substantially performed when the qualifying subsale was entered into, or

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- (b) the transaction effected, or treated as effected, by the performance of the qualifying subsale is relieved from tax by virtue of Schedule 10 (alternative property finance reliefs).
- (5) For the purposes of this paragraph, a contract for a land transaction is taken to be “performed” when it is substantially performed or completed (whichever is earlier).
- (6) A pre-completion transaction is a “qualifying subsale” if it is a contract under which the original buyer contracts to sell the whole or part of the subject-matter of the original contract to the transferee.
- (7) If a transaction is a qualifying subsale in relation to more than one contract such as is mentioned in paragraph 2(1)(a), this paragraph applies separately in relation to each such original contract for the purpose of determining what relief, if any, may be available with respect to the land transaction in question.

**Commencement Information**  
I19 Sch. 2 para. 19 in force at 1.4.2018 by S.I. 2018/34, art. 3

PART 6 E+W

INTERPRETATION AND INDEX

Interpretation

- 20
- In this Schedule—

“contract” (“contract”) includes any agreement;

“transfer” (“trosglwyddiad”) includes any instrument.

**Commencement Information**  
I20 Sch. 2 para. 20 in force at 1.4.2018 by S.I. 2018/34, art. 3

Index of expressions defined in this Schedule

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- The following Table lists expressions defined or otherwise explained in this Schedule.

Table 1

Expression	Paragraph
“additional notional land transaction” (“trafodiad tir tybiannol ychwanegol”)	Paragraph 8(3)
“assignment of rights” (“aseinio hawliau”)	Paragraph 6
“contract” (“contract”)	Paragraph 20

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“free-standing transfer” (“ <i>trosglwyddiad annibynnol</i> ”)	Paragraph 12
“notional land transaction” (“ <i>trafodiad tir tybiannol</i> ”)	Paragraph 8(1)
“original buyer” (“ <i>prynwr gwreiddiol</i> ”) and “original contract” (“ <i>contract gwreiddiol</i> ”)	Paragraph 2(1)(a) (but see also paragraph 15(4))
“part of the subject-matter of the original contract” (“ <i>rhan o destun y contract gwreiddiol</i> ”)	Paragraph 4(1)
“pre-completion transaction” (“ <i>trafodiad cyngwblhau</i> ”)	Paragraph 3
“qualifying subsale” (“ <i>is-werthiant cymwys</i> ”)	Paragraph 19(6)
“subject-matter” (“ <i>testun</i> ”) (of a precompletion transaction)	Paragraph 4(3)
“transfer” (“ <i>trosglwyddiad</i> ”)	Paragraph 20
“the transferee” (“ <i>y trosglwyddai</i> ”) (in relation to a pre-completion transaction)	Paragraph 3(1)(a)
“the transferor” (“ <i>y trosglwyddwr</i> ”) (in relation to a pre-completion transaction)	Paragraph 4(2)

#### Commencement Information

**I21** Sch. 2 para. 21 in force at 1.4.2018 by S.I. 2018/34, art. 3



**Changes to legislation:**

There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 2.