



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

2017 anaw 1

## PART 7

### GENERAL ANTI-AVOIDANCE RULE

#### 66 General anti-avoidance rule

After section 81 of TCMA (contract settlements), insert—

#### “PART 3A

#### GENERAL ANTI-AVOIDANCE RULE

#### *Overview*

#### **81A Meaning of “general anti-avoidance rule” and overview**

- (1) This Part makes provision for counteracting tax advantages arising from artificial tax avoidance arrangements, including provision—
  - (a) about the meaning of “tax avoidance arrangement”, “artificial” and “tax advantage” (sections 81B to 81D);
  - (b) about WRA’s power to make adjustments to counteract tax advantages and the steps to be taken by WRA in connection with such adjustments (sections 81E to 81G).
- (2) The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

### *Artificial tax avoidance arrangements*

#### **81B Tax avoidance arrangements**

- (1) For the purposes of this Part, an arrangement is a “tax avoidance arrangement” if the obtaining of a tax advantage for any person is the main purpose, or one of the main purposes, of a taxpayer entering into the arrangement.
- (2) In determining whether the main purpose, or one of the main purposes, of an arrangement is the obtaining of a tax advantage regard may in particular be had to the amount of devolved tax that would have been chargeable in the absence of the arrangement.
- (3) In this Part—
  - (a) an “arrangement” includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking, event or any series of any of those things (whether legally enforceable or not);
  - (b) references to an arrangement are to be read as including—
    - (i) a series of arrangements, and
    - (ii) any part or stage of an arrangement comprised of more than one part or stage;
  - (c) “taxpayer” means a person liable to devolved tax or who would be liable but for the tax avoidance arrangement in question.

#### **81C Artificial tax avoidance arrangements**

- (1) For the purposes of this Part, a tax avoidance arrangement is “artificial” if the entering into or carrying out of it is not a reasonable course of action in relation to the provisions of Welsh tax legislation applying to the arrangements.
- (2) In determining whether the tax avoidance arrangement is artificial, regard may in particular be had—
  - (a) to any genuine economic or commercial substance to the arrangement (other than the obtaining of a tax advantage);
  - (b) as to whether the arrangement results in an amount of tax chargeable that it is reasonable to assume was not the anticipated result when the relevant provision of Welsh tax legislation was enacted.
- (3) But an arrangement is not artificial if, at the time it was entered into or carried out—
  - (a) the arrangement was consistent with generally prevailing practice, and
  - (b) WRA had indicated its acceptance of that practice.
- (4) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements in determining whether the tax avoidance arrangement is artificial.
- (5) In this section, “Welsh tax legislation” means—
  - (a) the Welsh Tax Acts, and
  - (b) any subordinate legislation (within the meaning of section 21 of the [Interpretation Act 1978 \(c. 30\)](#)) made under those Acts.

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### **81D Meaning of “tax” and “tax advantage**

For the purposes of this Part—

“tax” (“*treth*”) means any devolved tax;

“tax advantage” (“*mantais drethiannol*”) means—

- (a) relief or increased relief from tax,
- (b) repayment or increased repayment of tax,
- (c) avoidance or reduction of a charge to tax,
- (d) deferral of a payment of tax or advancement of a repayment of tax,  
and
- (e) avoidance of an obligation to deduct or account for tax.

#### *Counteracting tax advantages*

### **81E Adjustments to counteract tax advantages**

- (1) WRA may make such adjustments as it considers just and reasonable to counteract a tax advantage that would (ignoring this Part) arise from an artificial tax avoidance arrangement.
- (2) An adjustment may be made in respect of the devolved tax in question or any other devolved tax.
- (3) An adjustment must be made—
  - (a) where the adjustment relates to a tax return in respect of which an enquiry is in progress, by amending the return in a closure notice issued under section 50;
  - (b) otherwise by means of a WRA assessment.
- (4) WRA may not make an adjustment unless it has complied with the requirements of sections 81F and 81G.

### **81F Notice of proposed counteraction**

- (1) WRA may issue a notice (a “proposed counteraction notice”) to a taxpayer if WRA considers—
  - (a) that a tax advantage has arisen to a person from an artificial tax avoidance arrangement, and
  - (b) that the tax advantage should be counteracted by means of an adjustment under section 81E.
- (2) A proposed counteraction notice must—
  - (a) specify the tax avoidance arrangement and the tax advantage,
  - (b) explain why WRA considers that a tax advantage has arisen from an artificial tax avoidance arrangement,
  - (c) set out the adjustment that WRA proposes to make in order to counteract the tax advantage,
  - (d) specify any amount that the taxpayer will be required to pay in accordance with the proposed WRA assessment, and

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- (e) inform the taxpayer—
  - (i) that a final counteraction notice is to be issued after the expiry of the period of 45 days beginning with the day on which the proposed counteraction notice is issued,
  - (ii) that the taxpayer may request that WRA extend that 45 day period, and
  - (iii) that the taxpayer may make written representations to WRA at any time before the final counteraction notice is issued.

### **81G Final counteraction notice**

- (1) WRA must, after the expiry of the 45 day period mentioned in section 81F(2) (e)(i) or such longer period as WRA has agreed to, issue a notice (a “final counteraction notice”) to the taxpayer.
- (2) A final counteraction notice must state whether the tax advantage arising from the tax avoidance arrangement is to be counteracted by means of an adjustment under section 81E.
- (3) In determining whether the tax advantage is to be counteracted WRA must have regard to any written representations made by the taxpayer.
- (4) If a final counteraction notice states that a tax advantage is to be counteracted by means of an adjustment the notice must also—
  - (a) specify the adjustment required to give effect to the counteraction,
  - (b) where the adjustment relates to a tax return in respect of which an enquiry is in progress, specify the amendment of the return which is to be included in the closure notice issued under section 50 when WRA reaches its conclusions in the enquiry,
  - (c) where paragraph (b) does not apply—
    - (i) be accompanied by the WRA assessment which gives effect to the adjustment, or
    - (ii) where a WRA assessment giving effect to the adjustment has been made, specify that assessment, and
  - (d) specify any amount that the taxpayer—
    - (i) will be required to pay as a result of the amendment specified under paragraph (b), or
    - (ii) is required to pay in accordance with the WRA assessment mentioned in paragraph (c).
- (5) If a final counteraction notice states that a tax advantage is not to be counteracted it must state the reasons for WRA’s decision.

### *Proceedings before a court or tribunal*

### **81H Proceedings in connection with the general anti-avoidance rule**

In proceedings before a court or the tribunal in connection with the general anti-avoidance rule, it is for WRA to show—

- (a) that there is an artificial tax avoidance arrangement, and

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- (b) that the adjustments made (or to be made) to counteract the tax advantage arising from the arrangement are just and reasonable.

*Commencement and transitional provision*

**81I General anti-avoidance rule: commencement and transitional provision**

- (1) The general anti-avoidance rule has effect in relation to any tax avoidance arrangement entered into on or after the date on which this Part comes into force.
- (2) Where a tax avoidance arrangement forms part of any other arrangements entered into before that day, those other arrangements are to be ignored for the purposes of section 81C(4) unless the result of having regard to those other arrangements would be to determine that the tax avoidance arrangement was not artificial.”