

# **LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) ACT 2017**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the Act”) which was passed by the National Assembly for Wales on 4 April 2017 and received Royal Assent on 24 May 2017. They have been prepared by the Department of the First Minister and Cabinet Office of the Welsh Government in order to assist the reader of the Act.
2. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act. Where a section or part of a section of the Act is self-explanatory and does not seem to require any further explanation or comment, none is given.
3. The National Assembly for Wales has the power to make this Act by virtue of the provisions contained in Parts 4 and 4A of, and paragraph 16A of Schedule 7 to, the Government of Wales Act 2006 (“GoWA 2006”). These provisions give the National Assembly for Wales the legislative competence to make provision in relation to devolved taxes (which are defined as taxes specified in Part 4A of GoWA 2006).

### **BACKGROUND TO THE ACT**

4. The Wales Act 2014 provides for the disapplication of the UK Stamp Duty Land Tax (SDLT) in Wales, and confers powers on the National Assembly for Wales to replace it with a Welsh tax on transactions involving interests in land. This Act provides for the Land Transaction Tax (LTT) to replace SDLT in Wales from April 2018. The Tax Collection and Management (Wales) Act 2016 (TCMA) was the first piece of tax legislation passed by the National Assembly for Wales and set out the legal framework necessary for the devolved tax regime in Wales including establishment of the Welsh Revenue Authority (WRA), whose main function will be to collect and manage devolved Welsh taxes. The provisions of this Act are relevant to, and will need to be read alongside, the TCMA.
5. The SDLT legislation was first introduced in 2003 and since then has been amended and added to on a regular basis to take account of how the UK property market operates and as a result has been gradually transformed since being introduced. SDLT influences behaviour - affecting the nature and execution of the transactions to which it applies. It is important to ensure that stakeholders who have worked with the SDLT legislation can easily understand and operate the LTT regime as provided for by this Act. As such, many of the fundamental principles of SDLT and the procedural rules governing the range of transactions, and transaction structures, at the time they were dis-applied in Wales have been adopted in LTT.

## **APPLICATION OF THE ACT**

6. LTT is a tax on land transactions in Wales. Where such a transaction is “notifiable” to WRA (broadly, the transaction is not exempt and the amount of consideration is above a minimum threshold), then a land transaction return must be submitted, and any tax due paid. The tax charged is calculated by reference to the consideration paid but this is subject to special rules for certain cases and the availability of relief for certain types of transactions.
7. At its most basic level of operation this Act will affect the majority of people when they purchase a residential property to live in, or any person (e.g. as part of a business) who acquires non-residential property.

## **GENERAL OVERVIEW OF THE ACT**

8. The Act comprises 82 sections and 23 Schedules and is divided into eight Parts as follows:

### **Part 1 – Overview**

This Part sets out how the Act is structured.

### **Part 2 – The Tax and Key Concepts**

Part 2 establishes LTT and sets out the fundamental concepts that underpin the operation of the tax. This Part also introduces the schedules on pre-completion transactions, transactions exempt from charge and chargeable consideration.

### **Part 3 – Calculation of Tax and Reliefs**

This Part makes provision for how the tax is to be calculated and provides that the Welsh Ministers can by regulations set and subsequently change the tax rates and tax bands for LTT. In addition, this Part introduces the majority of the schedules which govern the operation of the reliefs available, and the schedule on higher rates residential property transactions. It also establishes the anti-avoidance provisions related to the reliefs to ensure reliefs cannot be claimed where they form or contribute to “tax avoidance arrangements”.

### **Part 4 – Leases**

This Part introduces the Schedule on leases, which makes provision for the application of this Act to leases.

### **Part 5 – Application of Act and TCMA to Certain Persons and Bodies**

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including partnerships, companies and trusts and introduces the relevant schedules.

### **Part 6 – Returns and Payments**

Part 6 sets out the framework for making land transaction returns and for the payment of the tax.

### **Part 7 – General Anti-avoidance Rule**

Part 7 amends TCMA to make provision for a general anti-avoidance rule (GAAR) to apply to devolved taxes in Wales. The GAAR introduces certain tests by virtue of which WRA is able to intervene to counteract any “tax advantages” arising from artificial “tax avoidance arrangements”.

### **Part 8 – Interpretation and Final Provisions**

This Part contains provisions on subordinate legislation powers and commencement as well as other final and ancillary provisions. It also introduces Schedule 23 which sets out amendments that this Act makes to TCMA.

## **COMMENTARY ON SECTIONS**

### **Part 1 – Overview**

9. This Part sets out how the Act is arranged and provides a brief summary of each of the Parts.

### **Part 2 – the Tax and Key Concepts**

#### ***Section 2 - Land transaction tax***

10. **Section 2** provides that a tax, to be called Land Transaction Tax (LTT), is to be charged on land transactions in Wales, irrespective of how and where the transaction is documented, or where the parties to the transaction are resident. The concept of land transaction is defined in sections 3 to 5. WRA will be responsible for collecting and managing LTT.

#### ***Sections 3–5 - Land transaction, chargeable interest and exempt interest***

11. A “land transaction” is defined as an acquisition of a chargeable interest (section 3). A “chargeable interest” is any estate, interest, right or power in or over land in Wales or the benefit of an obligation under any restriction that affects such an estate, interest, right or power in or over land in Wales (section 4). Land in Wales does not include land below mean water mark.
12. **Section 5** provides that chargeable interests do not include exempt interests. For the purposes of LTT exempt interests include (amongst others):
- a security interest (e.g. a mortgage);
  - a licence to use or occupy land;
  - a tenancy at will; a franchise or a manor. The term “manor” relates only to a Lordship of the manor or seignory. A seignory may be accompanied by chargeable interests such as profits à prendre which will not be exempt interests.
13. Further provision for exempt interests in relation to alternative financial arrangements is made in paragraph 7 of Schedule 10.
14. The Welsh Ministers may vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure.

#### ***Section 6 - Acquisition and disposal of chargeable interest***

15. **Section 6** defines the acquisition and disposal of a chargeable interest, namely the creation, surrender, release or variation of the interest, although the variation of a lease is treated as an acquisition and disposal of a chargeable interest only where it takes effect as the grant of a new lease (or it is treated by this Act as the grant of a new lease) or paragraph 24 of Schedule 6 (reduction of rent or term or other variation of a lease) applies.
16. The provisions in this section apply subject to the provisions in 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, term or other variation of lease).

#### ***Section 7 - Buyer and seller***

17. **Section 7** provides that for the purposes of LTT the “buyer” is the person acquiring the subject-matter (i.e. the chargeable interest and related interests and rights) and the “seller” is the person disposing of the subject-matter of the transaction. These terms apply even where there is no consideration provided.

### ***Section 8 - Linked transactions***

18. This section sets out when a number of different transactions may be treated as "linked transactions" for the purposes of this Act. It is subject to section 16. The concept of a linked transaction is then used elsewhere.

### ***Section 9 - Land partly in Wales and partly in England***

19. This section determines that land transactions involving the acquisition of a chargeable interest where the land is partly in Wales and partly in England, shall be treated as comprising two separate transactions, one relating to land in Wales and the other relating to land in England. The consideration for the transaction is to be apportioned on a just and reasonable basis between the Welsh transaction and the English transaction, with the Welsh transaction giving rise to a charge to LTT and the English transaction giving rise to a charge to SDLT under the Finance Act 2003. This section also provides that there is a requirement for WRA to publish guidance on land transactions where the land is partly in Wales and partly in England, including guidance about identifying the location of the border between Wales and England.

### ***Section 10 - Contract and transfer***

20. **Section 10** provides that where a person enters into a contract for a land transaction, the effective date of the transaction is the date of the completion of the contract.
21. Where the contract is substantially performed (see section 14) before its completion, the effective date of the transaction is the date of that substantial performance and both the contract and the transaction actually effecting completion are notifiable transactions. Additional tax may be payable on completion if the amount chargeable is greater than that previously paid on the contract. If a contract which has been substantially performed but not completed is (in whole or in part) rescinded, annulled or for any other reason not brought into effect then WRA will, on receipt of a claim (made by amendment), repay tax overpaid.

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

22. When a contract provides that the buyer of a chargeable interest (P2) may direct the seller (P1) to transfer that interest to a third person (P3) or to P2, P2 is not regarded as having entered into a land transaction, unless P2 substantially performs the contract before that transfer. In that case, P2 is treated as having entered into a land transaction, effective from the date of the substantial performance, and where the contract is (in whole or in part) rescinded, annulled or for any other reason not brought into effect then WRA will, on receipt of a claim, repay tax overpaid.

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

23. **Section 12** applies to situations such as those described above, and where P2's rights become exercisable by another party (P4) because of an assignment or other transaction relating to the whole, or part, of the original contract (the P1 to P2 contract). Each such transfer of rights is treated as a separate (or "secondary") contract. Section 11 applies as though P4 were the buyer under the original contract instead of P2 and as though the consideration for the secondary contract were the amount that is to be paid under the original contract relating to subject-matter of the transfer of rights, together with the amount of consideration given for the transfer of rights.
24. Where the transfer of rights relates to only part of the subject-matter or some of the rights under the original contract then references to original contract and secondary contract are limited to the part or rights being transferred. The remaining subject-matter or rights not being transferred are to be treated as a separate contract.

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

25. This section introduces Schedule 2, which provides rules relating to the application of section 10 (contract and transfer) in situations where, because of an assignment of rights under a contract, a sub-sale or any other transaction is entered into without the contract being completed.

### ***Section 14 - Meaning of substantial performance***

26. A contract is to be treated as "substantially performed" either when the buyer or anyone connected with them takes possession of the whole of (or substantially the whole of) the property, or when a substantial amount of the consideration has been paid or provided. Taking possession includes receiving any rents or profits (or the right to receive them) that ownership of the property generates, regardless of how that possession is effected i.e. under the contract, licence or lease agreement. A substantial amount of the consideration is provided when, where the consideration does not include rent, the whole or substantially the whole of the consideration is paid or provided; or where rent is the only consideration, when the first payment of rent is made. Where the consideration includes both rent and any other consideration, a substantial amount of consideration is paid when either (i) the whole or substantially the whole of that other consideration is paid, or (ii) the first payment of rent is made – which ever happens first.

### ***Section 15 - Options and rights of pre-emption***

27. The treatment of options and rights of pre-emption (i.e. the rights of first refusal) are set out in this section. The acquisition of an option binding the grantor to enter into a land transaction, or right of pre-emption preventing the grantor from entering into a land transaction constitutes a land transaction which is distinct from any land transaction that results from the exercise of the option or right. As such, that acquisition may be chargeable to LTT (in addition to any subsequent land transaction resulting from the exercise of the right).

### ***Section 16 - Exchanges***

28. **Section 16** establishes that a land transaction is entered into in exchange for another, each land transactions is treated as two separate land transactions that are not linked. This provision applies regardless of how the exchange is structured. Therefore, a land transaction where the consideration is discharged by the buyer, either in full or in part by entering into a separate transaction as seller, is still chargeable to LTT (on each leg of the exchange).

### ***Sections 17-18 - Chargeable transaction and chargeable consideration***

29. Land transactions are chargeable transactions (i.e. liable to LTT) unless they are exempt from charge (see Schedule 3) or unless they are relieved from charge and that relief is claimed (section 30(2)). Section 18 and Schedule 4 make provision as to the calculation of chargeable consideration. Regulations may amend or repeal the provisions of the Act relating to chargeable consideration.

### ***Sections 19-20 - Contingent, uncertain or unascertained consideration***

30. **Section 19** provides that where all or part of the chargeable consideration is contingent (dependent upon some future event occurring) the amount of consideration includes the amount related to the contingency (regardless of whether the event occurs).
31. **Section 20** further stipulates that where the amount of the consideration is uncertain or unascertained then the amount or value is to be determined on a basis of a reasonable estimate.

*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*

32. The rules in sections 19 and 20 are subject to section 47 and 48 (adjustment where contingency ceases or consideration is ascertained) and section 58 (application to defer payment in case of contingent or uncertain consideration).

### ***Section 21 - Annuities***

33. Where chargeable consideration consists of an annuity, payable for life, in perpetuity, for an indefinite period or for a period exceeding 12 years, the chargeable consideration is limited to twelve annual payments or, where the annual payments vary, the twelve highest payments, starting from the effective date of the transaction. Subsection (5) defines “annual payments”. No account is taken of any provision adjusting the amounts in line with inflation. Where the amounts payable under the annuity are contingent, the uncertain or unascertained rules in sections 19 and 20 apply.

### ***Sections 22–23 - Deemed market value and Exceptions***

34. When a company purchases land from a connected person, or the consideration comprises the issue or transfer of shares in any company with whom the person is connected, the chargeable consideration will be calculated according to the market value of the land and if applicable, any rent paid under the grant of a lease if that amount is greater than what would be the chargeable consideration for the transaction under the other rules of this Act. Such transactions are not to be treated as though there is no chargeable consideration. Section 22 does not apply where:
- the buyer holds the land or property as a trustee in the course of a business consisting of the management of trusts;
  - the buyer holds the land or property as trustee and is not “connected” to the seller other than as provided for in section 1122(6) Corporation Tax Act 2010, for example because the seller is a settlor of the settlement; or,
  - the seller is a company and the transaction is as a result of the distribution of the assets of the company (including distribution on liquidation) and the seller has not claimed group relief in relation to that interest in the 3 years before the transaction.

## **Part 3 – Calculation of Tax and Reliefs**

### ***Sections 24–29 - Calculation of tax***

35. This Act does not set out the tax rates and tax bands for LTT but makes provision for the Welsh Ministers to specify tax bands and the percentage tax rate for each band through regulations. Regulations must specify the tax bands and tax rates for residential and non-residential property transactions, and higher rates residential property transactions. The regulations must specify a zero rate band and at least two tax bands above the zero rate band, together with the tax rate for each such band for residential and non-residential property transactions. The regulations must also specify, in relation to higher rates residential property transactions, three or more tax bands which must be progressive in nature and higher than would be applicable were the transaction a residential property transaction.
36. The first set of regulations made under section 24 are subject to the affirmative procedure. Subsequent changes to the rates and bands are given effect through further regulations, which are subject to the provisional affirmative procedure. Changes which are made to tax rates and tax bands by those regulations will only have effect for 28 days (as defined by section 25(2)) unless the regulations are approved by a resolution of the National Assembly for Wales within that period. If the National Assembly for Wales resolves to disapprove those regulations within that period, the regulations will cease to have effect on the day on which the National Assembly for Wales resolves to disapprove them.

37. The regulations setting the rates and bands for residential, higher rates residential and non-residential property transactions may be used to set different rates and bands in relation to different categories of transaction, and different rates and bands for different types of buyer (for example, companies). These rules provide the Welsh Ministers with the power to use rates and bands in a flexible manner to respond to changes in the property market and behaviours of buyers, subject to compliance with other legal obligations.
38. [Section 24](#) also introduces Schedule 5 which contains the rules for higher rates residential property transactions.
39. [Section 26](#) deals with the consequences of regulations ceasing to have effect as a result of section 25(2) or (3). In these cases, subsection (2) provides the general rule that the rates and bands applicable to transactions where the effective date falls within the period between the regulations taking effect and subsequently falling are those specified in the regulations that fall (the “interim regulations”). If this results in the buyer paying more LTT than under the original tax bands and rates then a claim for repayment may be submitted under section 63A of TCMA (inserted by Schedule 23 of this Act - see paragraph 426 of these explanatory notes). However, the general rule provided by subsection (2) does not apply where the transaction falls within subsection (4), (5) or (6). These include cases where the effective date falls within the interim period, but the buyer fails to submit a return, or submits a late return after the interim regulations have fallen, or where a further or later return is required after the interim regulations have fallen. In these cases, the rates and bands applicable are those specified in the regulations that would have been in force had the interim regulations not been laid.
40. [Section 27](#) sets out how to calculate the amount of tax chargeable for a land transaction which is not one of a number of “linked transactions” so that each rate of tax is payable on the portion of the chargeable consideration falling within the relevant tax band.
41. If the transaction is one of a number of linked transactions, section 28 applies. In these cases, the amount of tax due for a transaction is calculated by applying each rate of tax to the aggregate chargeable consideration for all the linked transactions, and then dividing the resulting amount to the transaction in proportion to its share of the relevant consideration.
42. In any case where the amount of tax chargeable relates to rent, the provisions of Schedule 6 apply.
43. [Section 29](#) identifies certain relief provisions to which the general calculation of LTT provisions are subject.

### ***Sections 30–31 - Reliefs***

44. [Section 30](#) introduces Schedules 9 – 22 which make provision about reliefs that can be claimed in respect of certain transactions normally liable to LTT. The section is divided into those reliefs that provide 100% relief from charge to LTT and those where partial relief is provided or where relief is provided by LTT being calculated in a different manner or at a different rate to that which normally applies. Reliefs are not applied automatically but must be claimed through a tax return or amendment to such a return. The Welsh Ministers may by regulations add, modify or remove reliefs and also may amend section 31.
45. [Section 31](#) provides a targeted anti-avoidance rule that applies to all claims for relief made by a buyer. The rule operates so that a buyer cannot claim relief where the transaction is, or is part of, a “tax avoidance arrangement”. A tax avoidance arrangement is defined as an arrangement where the obtaining of a “tax advantage” by any person was the main or one of the main purposes of the arrangement, and the arrangement lacks a genuine economic or commercial main purpose (other than the obtaining of a tax advantage).

46. “Arrangements” has been defined by subsection (3) to include any transaction, scheme, agreement, understanding, promise or any series of such arrangements. Subsection (3) also defines “tax advantage” to capture (among other things) situations where a person gains a financial advantage through the claim to relief. This is intended to apply to cases where relief is claimed in circumstances where it is not the intention of the National Assembly for Wales that relief should be given. Therefore, in situations where a transaction is structured in a manner that complies with generally prevailing practice and the buyer claims relief as intended then that claim will not fall within the scope of this anti-avoidance rule. However, where additional arrangements or steps are entered into solely to create a situation in which the conditions for claiming a relief are met then the claim will fall within these provisions and should not be made. Whether an arrangement has a genuine economic or commercial main purpose will, ultimately, depend on the facts of the transaction. However, the rule should not prohibit a claim for relief by a charity where it acquires a property for charitable purposes (for example housing people in accordance with the charity’s charitable purposes) as, whilst there may not be a commercial reason to the acquisition, there is an economic purpose as the charity has exchanged cash for a physical asset – the property – with which to further its charitable purposes.
47. “Tax” for the purposes this section is wider than just LTT, and includes some taxes imposed at a UK level as well (e.g. corporation tax). This ensures that where a Welsh land transaction is entered into (and for which relief would otherwise be allowable) relief from LTT cannot be claimed if the land transaction forms part of arrangements to avoid that other tax, or taxes. Prohibiting the claim for relief from LTT in these circumstances is without prejudice to any action HMRC might take to recover the non-devolved tax that has been avoided.
48. The Welsh Ministers are provided with the power to amend this section (as part of the powers provided by section 30(6)) so as to change the operation and scope of the anti-avoidance rule.

## **Part 4 – Leases**

### **Section 32 - Leases**

49. This section defines “lease” for the purposes of this Act and introduces Schedule 6, which makes further provision for the treatment of leases under the LTT regime.

## **Part 5 – Application of Act and Tcma to Certain Persons and Bodies**

### **Section 33 - Companies**

50. This section defines a “company” as any body corporate or unincorporated association (but not partnerships), states how the Act and TCMA apply to companies. It specifies that a company should act through the “proper officer” (subsection (2)) of the company or the person authorised to act for the company, except in cases of liquidation where the liquidator or administrator (subsection (6)) is the proper officer.

### **Section 34 - Unit trust schemes**

51. Section 34 provides that a unit trust scheme is treated for the purposes of LTT as if the trustees were a company, and the rights of the unit holders were shares in the company, except in relation to group, reconstruction, or acquisition relief.
52. A power is conferred on the Welsh Ministers to make, by regulations (subject to the affirmative procedure), further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act and TCMA.



### ***Section 35 - Open-ended investment companies***

53. This section confers a regulation making power on the Welsh Ministers, to ensure that the provisions of this Act and TCMA apply to open-ended investment companies in the same way as they apply to unit trust schemes (subject to any modification the Welsh Ministers consider appropriate).

### ***Section 36 - Co-ownership authorised contractual schemes***

54. **Section 36** provides that a co-ownership authorised contractual scheme ("CoACS") is treated for the purposes of LTT as if the scheme were a company, and the rights of the participants were shares in the company, except in relation to group, reconstruction, or acquisition relief. A CoACS must be constituted in accordance with the relevant UK financial services legislation, or under the law of an EEA state other than the UK.
55. A power is conferred on the Welsh Ministers to make, by regulations (subject to the affirmative procedure), further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a CoACS for the purposes of this Act and TCMA.

### ***Section 37 – 40 - Joint buyers***

56. **Sections 37 - 40** set out how the provisions of this Act and TCMA apply to joint buyers (other than partners and trustees). Joint buyers are jointly and severally liable to comply with the obligations imposed on the buyer by this Act and TCMA. This includes compliance with making returns, and paying any tax due. However, declarations must be made by all the buyers.

### ***Sections 41-42 - Partnerships and Trusts***

57. **Section 41** introduces Schedule 7 which provides for the application of this Act and TCMA to partnerships and provides that the Welsh Ministers may by regulations amend this Schedule.
58. **Section 42** introduces Schedule 8 on Trusts which makes provision about the application of this Act and TCMA to trusts, and provides that the Welsh Ministers may by regulations amend this Schedule.

### ***Section 43 - Persons acting in a representative capacity***

59. This section deals with how the provisions of this Act and TCMA apply to a person acting in a representative capacity, such as where a person is acting on behalf of someone whose assets are under the direction and control of a court, or the executor of the estate of a deceased person. In this situation, the person acting in a representative capacity is responsible for complying with the requirements of this Act (such as making a return and paying any tax due). This section also makes provision about receivers.

## **Part 6 – Returns and Payments**

### ***Section 44 - Duty to make a return***

60. This section places the buyer under an obligation to make a return to WRA of every notifiable transaction before the end of 30 days beginning with the day after the effective date of the transaction. If the transaction is a chargeable transaction then the buyer must include in the return a self-assessment.

### ***Sections 45-46 - Notifiable transactions***

61. **Section 45** defines a notifiable land transaction as the acquisition of a major interest in land that is not covered by one of the exceptions in section 46, the acquisition of certain chargeable interests in land that are not major interests, an acquisition treated

as an acquisition of a chargeable interest because the contract has been substantially performed, and certain notifiable land transactions.

62. **Section 46** sets out the exceptions to the rules in section 45. The section provides a list of those transactions which, whilst being the acquisition of a major interest in land, are not notifiable land transactions. The list includes:
- exempt transactions, where the consideration given (other than for the grant, assignment or surrender of a lease) is less than £40,000;
  - the grant of a lease for less than 7 years where the chargeable consideration is not more than the zero rate threshold.
63. The Welsh Ministers have the power to amend by regulations any of the amounts (such as £40,000 consideration) in this section.

### **Sections 47 - 52 - Adjustments**

64. **Section 47** provides for cases where a contingency ceases or the consideration is ascertained and the buyer must make a return. Where the consideration for a transaction is unascertained or contingent upon a future event happening or not happening, then the buyer must make a return before the end of 30 days beginning with the day after the day:
- an unascertained or uncertain amount becomes ascertained, or
  - the contingency happens or it becomes clear that it will not happen.
65. If the event means that the transaction becomes notifiable, additional tax is chargeable, or tax is now chargeable when none was previously chargeable, interest begins to run from the day after the end of 30 days beginning with the day after the effective date of the transaction.
66. **Section 48** provides the rules for cases where a contingency ceases or the consideration is ascertained and the buyer has overpaid tax. The buyer can make a claim to obtain a repayment of tax by amending their return (if within the time limits) or, if those time limits have expired, the buyer may make a claim to WRA for repayment either before the end of 4 years beginning with the day after the filing date for the tax return which relates to the overpayment of LTT or, if later, 12 months beginning with the event leading to the repayment arising. However, where the transaction is the grant or assignment of a lease, no claim is allowed if the repayment arises from the repayment of a deposit or loan that was treated as consideration, or any consideration refunded under arrangements made in connection with such assignment or grant of lease that are contingent on the ending or assignment of the lease or the grant of a chargeable interest out of the lease.
67. **Section 49** provides rules where a buyer must make a return where relief has been withdrawn. A number of reliefs may be withdrawn (for example group relief) if a future action or event occurs (known as a 'disqualifying event'). Where there is a disqualifying event the buyer must make a further return before the end of 30 days beginning on the day after the day the disqualifying event and pay any additional tax within the same period. Interest generally runs on any tax payable under the further return from the day after the day that tax is payable. However, where relief under Schedule 11 (alternative finance investment bonds) is withdrawn, interest exceptionally runs from the day after the end of 30 days beginning with the day after the effective date of the first land transaction.
68. **Sections 50 and 51** provide rules in relation to making returns where there are linked transactions. For linked transactions that have the same effective date, a single return may be made for all the transactions. Where a return needs to be made as a result of a later linked transaction so that an earlier transaction becomes notifiable, or tax or additional tax is payable on the earlier transaction, then a return in relation to that earlier

transaction must be made before the end of 30 days beginning with the day after the effective date of the later transaction.

69. [Section 52](#) provides the Welsh Ministers with the power to amend the time limits in which a return must be made.

### ***Sections 53–55 - Declarations***

70. [Section 53](#) provides that any return sent to WRA must include a declaration that the return is to the best of the buyer's knowledge correct and complete. However, where an agent has been appointed to act for the buyer special rules apply in relation to the declaration.
71. [Sections 54](#) and [55](#) provide further rules in relation to declarations where the Official Solicitor or another person has been appointed to act for the buyer.

### ***Sections 56-57 - Liability for tax and payment of tax***

72. [Section 56](#) states that the buyer must pay any LTT due and therefore the provisions of TCMA apply to the chargeable amounts. The section also signposts special rules that apply to joint buyers, partnerships and trusts.
73. [Section 57](#) provides that where a return is made the buyer must make payment of the amount of tax self-assessed in that return no later than the filing date for the return. In the event that the buyer amends their return, if the amendment is made before the filing date, they must pay any additional tax arising from that amendment no later than that filing date. If they make the amendment later, they must pay at the same time they make the amendment. However, these rules do not apply to any LTT which WRA has agreed can be deferred.

### ***Section 58 - Deferral requests in cases of contingent or uncertain consideration***

74. [Section 58](#) makes provision for buyers to ask WRA to agree to defer payment of LTT where the consideration is contingent or uncertain. WRA must agree to the deferral request if the buyer meets a number of conditions in their request, including; the request is made within the same time limit as the period for filing the return (and that return must also have been made before the filing date), the request specifies the amount of tax to be deferred and provides a calculation of the deferral amount etc. If the request does not conform to the conditions set out in this section WRA must refuse the request, although if it believes that a smaller amount should be deferred WRA can grant a deferral of that smaller amount. Importantly, a deferral request cannot be made if there are any tax avoidance arrangements in relation to the transaction. Tax avoidance arrangements are defined by section 31. When making a request to defer tax under this section, the buyer must state the proposed expected end date of the deferral period. If the buyer is not able to predict a date, the fifth anniversary of the effective date of the transaction will be used as the end date for the deferral period. This will enable WRA to monitor and check whether additional tax is payable in such cases as it will for cases where a date can be predicted. This rule allows for the imposition of a number of different payment dates for different amounts of deferred tax so that, for example, contracts providing for deferred payments related to the provision of works and services can also be agreed.

### ***Section 59 - Calculation of deferrable amount***

75. [Section 59](#) provides the method for calculating the amount of deferrable tax. The amount is calculated by following the four steps set out in the section; firstly, calculate the amount of tax chargeable in respect of the land transaction in question by using the normal rules, secondly, establish the amount of deferred consideration (as defined in the section), thirdly, calculate the tax chargeable for that land transaction had the chargeable consideration for the transaction been reduced by the amount of the deferred consideration (established under step 2), and finally, take the amount calculated under

step 3 away from the amount calculated under step 1 and the result is the amount that may be deferred. Importantly, step 2 only allows amounts of deferred consideration that are expected, at least in part, to be paid more than 6 months after the effective date of the transaction to be included in the calculation.

### ***Section 60 - Deferral requests: notices of WRA decisions***

76. **Section 60** provides the rules for the notices that WRA must issue on deciding a deferral request. WRA must issue a notice of its decision to the buyer specifying the deferred amount, the expected end date of the deferral period, any conditions, and, if the deferred amount is lower than the request, the reason for WRA deciding to agree to that different deferred amount. If the request is refused WRA must issue a notice informing the buyer of the refusal and the reasons for that refusal.

### ***Section 61 - Deferral requests: effect of WRA's decision***

77. **Section 61** sets out the effect of WRA's decision of a deferral request. Where a request is agreed the deferred amount must be paid before the end of the day following the date which the deferral period ends, and late payment interest and late payment penalties do not accrue during the deferral period. Where WRA refuses, or only partly agrees to, the deferral request, then the amount not agreed by WRA to be deferred must be paid by the later of the day on which the buyer receives notice of the refusal, or the filing date for the return. Late payment interest will accrue on an unpaid amount from the later of either the day after the date of WRA's notice of decision, or the day after the filing date for the return (as specified by section 157(3) TCMA).

### ***Section 62 - Variation of deferral requests***

78. **Section 62** provides for situations where the buyer may need, following a WRA agreement to a deferral request, to vary the expected end date (see section 58(8)(b)), or to adjust or remove one of the conditions for the deferral. WRA may agree the variation request in full or agree to a different expected end date or a different variation of a condition. Where WRA makes a decision on a variation request it must issue a notice of the decision with reasons to the buyer. WRA may not vary the terms of a deferral decision unilaterally, nor request that the buyer agree a variation. However, section 64 provides Welsh Ministers with the power to make regulations to enable WRA to make variations to the deferral agreement.

### ***Section 63 - Failure to comply with WRA's agreement to defer***

79. **Section 63** provides that where WRA considers that a buyer has failed to comply with the terms of the deferral or variation, or has provided false or misleading information or has withheld information, then the deferral request is to be treated as though it had never been made. If WRA takes this action it must issue a notice to the buyer informing them of this decision and setting out the consequences of that decision.

### ***Section 64 - Regulations about deferral of LTT***

80. **Section 64** provides the Welsh Ministers with the power to make, by regulation, further provisions about deferral of payment of LTT; including provisions relating to rent (which is not subject to the deferral rules), rules relating to contracts for works or services, and amendments to section 62 to enable WRA to agree or impose variations to deferral agreements previously made.

### ***Section 65 - Registration of land transactions***

81. **Section 65** provides for the rules relating to amending the register of title maintained by the Chief Land Registrar ("Registrar"). Unless the buyer of a notifiable transaction provides a WRA certificate to the Registrar then the Registrar must not reflect the land transaction in their register. A WRA certificate is provided to the buyer when a return for

a notifiable transaction is made, subject to a number of exceptions. The Welsh Ministers may make regulations about the issuing of WRA certificates. This section also enables the Registrar to enter into arrangements with WRA to provide information and facilities which may enable WRA to verify that the requirements of this Act have been complied with.

## **Part 7 – General Anti-Avoidance Rule**

### **Section 66 - General anti-avoidance rule**

82. This section amends TCMA by inserting Part 3A, General anti-avoidance rule.

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

83. This Part enables WRA to counteract tax advantages in relation to the devolved taxes that arise from artificial tax avoidance arrangements. Subsection (2) provides that the rules in this Part, taken together, are to be known as the general anti-avoidance rule (GAAR).

84. The term “avoidance” refers to a spectrum of activities designed to reduce tax charge in a manner which is contrary to the intention of the National Assembly for Wales when passing tax legislation. Subsequent sections in Part 7 define the terms used and provide more detail about how the provisions as a whole are to work.

85. The GAAR is intended to operate in tandem with targeted anti-avoidance rules (TAARs).

### **Section 81B TCMA - Tax avoidance arrangements**

86. This section sets out the definition of a “tax avoidance arrangement”. Subsection (1) defines a “tax avoidance arrangement” as an arrangement which has as its main purpose or one of its main purposes, the obtaining of a “tax advantage” for any person entering into the arrangement. In determining whether or not an arrangement has such a purpose, WRA may take account of the amount of tax that would have been chargeable in the absence of the arrangement.

87. Subsection (3) gives a broad definition of an “arrangement”, which includes transactions, schemes, actions, operations, agreements etc. The definition includes any such element taken individually, or taken as a series of elements or stages. As such, a wide range of arrangements can be considered to determine whether they constitute tax avoidance arrangements.

### **Section 81C TCMA - Artificial tax avoidance arrangements**

88. This section sets out the tests for deciding whether a tax avoidance arrangement is artificial. Subsection (1) provides that an arrangement is artificial if the entering into or carrying out of it is not a reasonable course of action in relation to the tax legislation in question.

89. Subsections (2)(a) and (2)(b) make further provision to assist in determining the question. In subsection (2)(a) regard may be had to whether the arrangement lacks economic or commercial substance (other than obtaining a tax advantage). In subsection (2)(b) regard may be had to whether the arrangement resulted in a different amount of tax chargeable than what was anticipated when the tax legislation was enacted.

90. Subsection (3) provides for a particular case where an arrangement is not artificial. This is where the arrangement was consistent with generally prevailing practice at the time it was entered into and WRA had indicated its acceptance of that practice.

*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*

91. Subsection (4) provides that, where a tax avoidance arrangement forms part of any other arrangements, then, in determining whether it is artificial or not, these other arrangements must also be considered.
92. Subsection (5) provides the meaning of “Welsh tax legislation” being the Welsh Tax Acts (as defined by section 192(2) TCMA) and any subordinate legislation made under those Acts.

### **Section 81D TCMA - Meaning of “tax” and “tax advantage”**

93. This section gives the meaning of “tax” for this Part as being any devolved tax and the meaning of tax advantage as being:
  - relief or increased relief from tax;
  - repayment or increased repayment of tax;
  - avoidance or reduction of a charge to tax;
  - deferral of a payment of tax or advancement of a repayment of tax; and
  - avoidance of an obligation to deduct or account for tax.

### **Section 81E TCMA - Adjustments to counteract tax advantages**

94. This section provides WRA with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes arising from an artificial tax avoidance arrangement. Subsection (1) provides that WRA may make any adjustments that it considers to be just and reasonable in order to counteract such a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the devolved tax in relation to which a tax advantage has been gained, or in respect of any other devolved tax.
95. Subsection (3) requires that, where the adjustment relates to a tax return in respect of which there is an open enquiry, that adjustment is to be made by a closure notice. In all other cases, the adjustment is to be made by means of a WRA assessment (issued at any time). Before making any adjustment WRA must issue a notice of proposed counteraction, and then a final counteraction notice – this process, in particular, allows the relevant taxpayer to make written representations before any adjustment is made.

### **Section 81F TCMA - Notice of proposed counteraction**

96. This section provides for WRA to issue a proposed counteraction notice to notify a taxpayer when it is intending to counteract a tax advantage that has arisen from an artificial tax avoidance arrangement in relation to a devolved tax.
97. Where a counteraction notice is issued by WRA it must:
  - specify the tax avoidance arrangement and the tax advantage;
  - provide an explanation of why WRA considers that a tax advantage has arisen to the taxpayer from an artificial tax avoidance arrangement;
  - set out the adjustment that WRA proposes to make to counteract the tax advantage; and,
  - specify any amount that the taxpayer will be required to pay.
98. The proposed counteraction notice must also inform the taxpayer that a final counteraction notice (section 81G) will be issued after the expiry of a 45 day period from when the proposed counteraction notice is issued. It must also state that the taxpayer may request an extension to the 45 day period, and that they may make representations to WRA before the final counteraction notice is issued.

### **Section 81G TCMA - Final counteraction notice**

99. Subsection (1) provides that where a taxpayer has been sent a notice under section 81F, after the period for making representations about the notice has expired, WRA must issue the taxpayer with a “final counteraction notice”.
100. Under subsection (2) any final counteraction notice issued by WRA must state whether the tax advantage is to be counteracted by an adjustment under section 81E. In determining whether the tax advantage is to be counteracted, WRA must under subsection (3) have regard to any representations made by the taxpayer.
101. If a final counteraction notice states that a tax advantage is to be counteracted by means of an adjustment the notice must also—
- specify the adjustment required to give effect to the counteraction,
  - 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,
  - if the adjustment is not going to be given effect by amending the return, identify or be accompanied by WRA assessment which gives effect to the adjustment,
  - specify any amount that the taxpayer is required to pay where WRA has reached a conclusion to an enquiry, or is required to pay in accordance with an assessment made by WRA.
102. Under subsection (5) where a tax advantage is not to be counteracted, the final counteraction notice must state the reasons for WRA’s decision.

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

103. This section makes provision in relation to court or tribunal proceedings arising from the operation of the GAAR in relation to the devolved taxes. Where WRA has made (or is to make) an adjustment to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.
104. In determining any issues in connection with the GAAR, a court or tribunal may take account of guidance published by WRA about the GAAR which was extant when the tax avoidance arrangement was entered into. They may also take account of any other guidance, statements or other material (whether published or made by WRA or any other person) that was in the public domain at the time when the tax avoidance arrangement was entered into. They may also take account of evidence of practice generally prevailing at that time.

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

105. This section makes provision relating to when the GAAR comes into effect and for transitional arrangements. Subsection (1) provides that the GAAR has effect in relation to a tax avoidance arrangement entered into on or after the date that the GAAR provisions come into force. Subsection (2) provides that where the tax avoidance arrangement forms part of other arrangements that were entered into before the GAAR came into force, such other arrangements are to be ignored for the purpose of section 81C(4) unless having regard to them would be to determine that the tax avoidance arrangement was not artificial.

## **Part 8 – Interpretation and Final Provisions**

### ***Sections 67–75 - Interpretation***

106. This Part sets out the meaning of key terms referred to throughout the Act. It includes final provisions and provides for subordinate legislation powers and commencement.
107. **Sections 72 and 73** provide the meaning of “residential property” and “dwelling”. LTT, like SDLT and Land and Buildings Transaction Tax (LBTT), and contains a definition of residential property. Residential property includes a building or part of a building used or suitable for use as a dwelling. It also includes the garden and grounds of the building or any other land that subsists for the benefit of the building. There are a number of buildings that are expressly included within the definition of residential property (for example residential accommodation for school pupils) and others which are excluded (for example a prison). There is also a rule providing that where 6 or more dwellings are acquired in a single transaction then, for the purposes of that transaction, those properties are to be treated as non-residential property. The Welsh Ministers may, by regulations subject to the affirmative procedure, amend the meaning of residential property (and accordingly non-residential property).
108. Non-residential property is defined in the negative as being property which is not residential property.
109. **Section 74** provides how connected persons are to be established (by use of section 1122 of the Corporation Tax Act 2010 subject to certain adjustments). **Section 75** provides other definitions, including “land” and “retail prices index”.

### ***Section 76 - Amendments to TCMA***

110. **Section 76** introduces Schedule 23 which contains amendments to TCMA

### ***Section 77 - Independent review of land transaction tax***

111. **Section 77** makes arrangements for an independent review of LTT to be completed within 6 years of the tax coming into operation, and for the completed review to be published.

### ***Sections 78–82 - Final provisions***

112. **Section 78** confers powers on the Welsh Ministers to make further provision by regulation to give full effect to any provision of this Act. **Section 80** sets out the application of this Act to the Crown. Commencement of the Act is provided for at **section 81** and **section 82** sets out the short title will be the “Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017”.

### ***Schedule 1 - Overview of Schedules***

113. This Schedule contains an overview of the Schedules to this Act.

### ***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
  - 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

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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.

### ***Schedule 3 - Transactions exempt from charge***

164. This Schedule sets out that certain persons or land transactions are exempt from LTT. A transaction that is exempt from charge is outside the scope of the tax and does not need to be notified to the Welsh Revenue Authority (WRA). Other land transactions may be relieved from charge under different provisions provided for in this Act. However, they are still within the scope of the tax and therefore, any such transactions must comply with the rules set out in the legislation regarding notification. Where a land transaction is exempt under this Schedule no land transaction return is required.

### **No chargeable consideration**

165. [Paragraph 1](#) provides that land transactions for which there is no chargeable consideration are exempt from LTT. However, this is subject to provisions across the Act which deem the consideration for certain transactions to have been its market value. (See for example section 23 which states that transactions under that section are not to be treated as though there is no chargeable consideration.)

### **Acquisitions by the Crown**

166. [Paragraph 2](#) lists those Crown bodies that are exempt from charge under LTT, they include; the Welsh Ministers, Ministers of the Crown and other central and devolved government bodies.

### **Transactions in connection with divorce or the dissolution of civil partnership etc.**

167. [Paragraphs 3 and 4](#) respectively provide that transactions effected in pursuance of divorce proceedings, proceedings for dissolution of a civil partnership, or in other similar proceedings or in connection with such proceedings are exempt from charge.

### **Assents and appropriations by personal representatives and variation of testamentary dispositions etc.**

168. [Paragraphs 5 and 6](#) exempt from LTT a transaction if it is effected in accordance with any entitlement under or in relation to a will, or the variation of testamentary dispositions, but subject to the additional conditions listed.

### **Power to add, remove or vary exemptions**

169. [Paragraph 7](#) provides that regulations may amend this Schedule, so as to add to the list of exemptions, remove any exemption or modify any exemption.

### ***Schedule 4 – Chargeable consideration***

170. LTT will be calculated by reference to the chargeable consideration given for the acquisition of the chargeable interest. This Schedule, introduced by section 18, sets out rules relating to determining the amount of the chargeable consideration.

### **Money or money's worth**

171. [Paragraph 1](#) provides that unless expressly provided otherwise, the chargeable consideration for a land transaction is defined as any consideration given in money or money's worth for the subject-matter of the transaction, directly or indirectly by the buyer or a person connected to the buyer.

### **Value added tax**

172. [Paragraph 2](#) provides that any VAT chargeable in respect of the transaction constitutes chargeable consideration, unless the seller has the option to charge VAT (for example, in the case of a new lease) but has not done so by the effective date of the transaction.

### **Postponed consideration**

173. [Paragraph 3](#) provides that the chargeable consideration is to be determined with no discount for any postponement of the right of the seller to receive it (or any part of it).

### **Just and reasonable apportionment**

174. [Paragraph 4](#) provides that where consideration is given in an agreement that comprises more than one land transaction or a land transaction and another matter, that consideration is to be apportioned to the (or each) relevant land transaction on a just and reasonable basis, and LTT will be assessed on the value of the consideration so apportioned. This would be relevant where, for example:
- a buyer pays for the land and building and another amount to cover moveable items (such as white goods, curtains etc.); and
  - a contract covers the sale of land and an agreement for construction of buildings on the land.

### **Exchanges**

175. [Paragraph 5](#) provides that in cases where consideration in a land transaction is partly or entirely in the form of another land transaction (e.g. part-exchange of properties), each transaction is treated separately. This paragraph determines how the consideration is to be valued.
176. When the interest is a major interest in land (as defined in section 68), such as a freehold, the value of the consideration is the market value of the interest acquired (including rent, where the interest is a lease) and any VAT actually chargeable in respect of the acquisition. No regard is to be had to any reduction in market value resulting from anything done, the main purpose (or one of the main purposes) of which is to avoid LTT. This targeted anti-avoidance rule is to stop buyers manipulating the market value of the land to be exchanged so as to pay no, or a lower amount of, LTT.
177. Where the interest is not a major interest in land (such as an easement), it is only the actual consideration given that is relevant (and not the market value of the interest). Where there are two or more relevant acquisitions in one transaction, the chargeable consideration is to be apportioned appropriately to each transaction, by reference to the market value of each interest.
178. These provisions are subject to the rules on partition and do not apply to cases to which paragraph 18 applies (arrangements involving public or educational bodies).

### **Partition etc.: disregard of existing interest**

179. [Paragraph 6](#) provides that where land is partitioned, the share of that land held by the buyer immediately before the partition does not comprise chargeable consideration.

### **Valuation of non-monetary consideration**

180. [Paragraph 7](#) provides that non-monetary consideration (which comprises all consideration except money and debt) is to be valued at its market value, unless provided otherwise.

### **Debt as consideration**

181. [Paragraph 8](#) provides that the rules for the calculation of chargeable consideration for a transaction where there is an assumption, satisfaction or release of debt.

### **Cases where conditions for exemption not fully met**

182. [Paragraph 9](#) provides that where not all of the conditions for exemption are met under Schedule 3 paragraph 5 (assents and appropriations by personal representatives) and paragraph 6 (variation of testamentary dispositions etc.) in relation to a transaction, chargeable consideration for that transaction does not include any secured debt assumed (Schedule 3 paragraph 5(2)) or the making of a variation (Schedule 3 paragraph 6 (2) (b)) (as the case may be).

### **Conversion of amounts in foreign currency**

183. [Paragraph 10](#) provides that the amount or value of chargeable consideration is the amount in sterling and the sterling equivalent of an amount expressed in any other currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction.

### **Carrying out of works**

184. [Paragraph 11](#) provides that where the whole or part of the consideration consists of construction, improvement, repair or other works to enhance the value of the land, the value of the works counts as chargeable consideration. However, such works will not count as chargeable consideration if they are carried out after the effective date of the transaction, on the land acquired (or some other land held by the buyer or somebody connected with the buyer), and are not required to be carried out by the seller under the transaction. This is subject to paragraph 18 (arrangements involving public or educational bodies).

### **Provision of services**

185. [Paragraph 12](#) provides that where the consideration consists of the provision of services (other than works of construction, improvement or repair of a building or other structure), its value is to be taken as open market value (including VAT) as at the effective date of the transaction. This is subject to paragraph 18 (arrangements involving public or educational bodies).

### **Land transaction entered into by reason of employment**

186. [Paragraph 13](#) provides that where the buyer is an employee whose rent is paid (wholly or partly) by their employer and the value of that rent is liable to income tax (as part of the employee's income), the cash equivalent of that amount is to be taken as the rent payable by the buyer for the purposes of valuing chargeable consideration. Where the accommodation is provided for the performance of the employee's duties (and so not liable to income tax), the value of the rent will not be taken to be chargeable consideration. In other cases, the chargeable consideration is the market value of the subject matter of the transaction.



### **Indemnity given by employer**

187. [Paragraph 14](#) provides that where an indemnity is given by the buyer to the seller in respect of certain third party liabilities that indemnity does not count as chargeable consideration.

### **Buyer bearing inheritance tax liability capital gains tax liability**

188. [Paragraph 15](#) provides that where the buyer pays the inheritance tax due on an interest acquired under the conditions set out, that amount of inheritance tax does not count as chargeable consideration.

### **Buyer bearing capital gains tax liability**

189. [Paragraph 16](#) provides that where the buyer pays capital gains tax due on an interest bought (and there is no other consideration), that amount does not count as chargeable consideration.

### **Costs of enfranchisement**

190. [Paragraph 17](#) provides that the costs of enfranchisement, as defined, borne by the buyer do not count as chargeable consideration.

### **Arrangements involving public or educational bodies**

191. [Paragraph 18](#) provides that where certain qualifying public or educational bodies (“A”) transfer an interest to another party (“B”), which is then leased back from B to A, the following does not count as chargeable consideration:
- (for the main transfer) the lease-back, building works or the provision of services by B); or,
  - (for the lease-back) the main transfer, the transfer of surplus land or money paid to B for building works or provision of services.

### ***Schedule 5 - Higher rates residential property transactions***

192. This Schedule applies to higher rates residential property transactions and provides the rules identifying when the acquisition of a major interest (or an interest that is deemed to be a major interest) is subject to the higher rates. The charge is charged differently to individuals and buyers who are not individuals, for example companies or other bodies corporate. Fundamentally, when an individual maintains a major interest in a residential property and purchases a major interest in an additional residential property then they must consider if the rules on higher rates residential property transactions apply to the acquisition. Where the buyer, or one of the buyers, is not an individual then the higher rates rules apply to all residential property transactions they enter, regardless of whether they already own residential property or not.
193. [Part 1](#) of the Schedule provides an overview of its contents and [Part 6](#) provides for interpretation of key terms referred to throughout the Schedule. The Welsh Ministers may amend this Schedule by regulations which will be subject to the affirmative procedure

### **Part 2: Buyer is an individual: single dwelling transactions**

#### **Higher rates residential property transactions**

194. [Part 2](#) sets out when a chargeable transaction undertaken by an individual and involving a single dwelling is a “higher rates residential property transaction”. For a transaction to be a “higher rates residential property transaction” it must be within [paragraph 3\(2\)](#) and within [paragraph 5](#).

195. **Paragraph 3** specifies that a transaction is a higher rates residential property transaction when the buyer is an individual; the main subject-matter of the transaction consists of a major interest in a dwelling; and the chargeable consideration for the transaction is £40,000 or more. However, a transaction which meets the criteria in this paragraph is not a higher rates residential property transaction, if at the end of the day of the effective date of the transaction, the dwelling acquired is subject to a lease (which is held by someone unconnected to the buyer and which has an unexpired term of more than 21 years) and the main subject matter of the transaction is reversionary on that lease, namely that the interest acquired by the buyer will be held subject to that lease. Further exceptions to what comprises a higher rates residential property transaction are listed at paragraph 3(5), namely the “interest in same dwelling exception” and the “replacement of main residence exception” which are set out in paragraphs 7 and 8 of the schedule respectively.
196. **Paragraph 4** specifies that “intermediate transactions” (set out in paragraph 9) are also higher rates residential property transactions.

### **Buyer has a major interest in other dwelling**

197. **Paragraph 5** states that where a buyer already owns a dwelling and this dwelling has a market value of £40,000 or more, it is to be taken into account for determining whether the new transaction is a higher rates residential property transaction. However, paragraph 5 is to be disregarded where the interest is reversionary on a lease which is held by an unconnected person to the buyer and has an unexpired term of more than 21 years.
198. **Paragraphs 5(3)-(6)** set out how the values of the respective beneficial shares of a dwelling already owned by a buyer are to be determined where the property is held jointly and consequently there is more than one person with a beneficial interest. It clarifies that the value of the buyer’s interest is based on their individual beneficial interest rather than the value of the whole of the major interest in any residential properties already owned. If the buyer is married or in a civil partnership their beneficial interest will be aggregated with that of their spouse or civil partner unless they are not living together as defined by paragraph 25(3).

### **Two or more buyers**

199. **Paragraph 6** sets out that where the transaction involves more than one buyer, all of whom are individuals, the transaction is a higher rates residential property transaction if the transaction meets the conditions set out in paragraph 3 in respect of any one of the buyers. Intermediate transactions (see paragraph 9) are also higher rates residential property transactions where the conditions set out in paragraph 9 apply in respect of any one of the buyers.

### **Interest in same main residence exception**

200. **Paragraph 7** provides for an exception where the buyer is acquiring an additional interest in their only or main residence. This will include situations relating to a main residence such as collective enfranchisement transactions, lease extensions granted as a successor lease rather than a surrender and re-grant, and a transfer of equity where a buyer acquires the interest of their co-owner in the dwelling.

### **Replacement of main residence exception**

201. **Paragraph 8** sets out that where the dwelling purchased is intended to be a replacement for the buyer’s only or main residence then that transaction is not a higher rates residential property transaction if it meets the conditions listed in paragraph 8. These include that the buyer intends the new dwelling to be their only residence, the buyer or the buyer’s spouse or civil partner sell another dwelling during the period of 3 years before the effective date of the transaction of the new dwelling, that the buyer or their

spouse or civil partner must not retain a major interest in that sold dwelling, that sold dwelling was also the buyer's only or main residence during that 3 year period and at no time during the time between selling their old property and acquiring the new property has the buyer or spouse of civil partner acquired another dwelling with the intention of it being their only or main residence.

202. A similar set of rules apply where the new main residence is acquired before the old main residence is sold. In these cases the buyer may reclaim the element of the higher rates charge once their former main residence is sold (so long as that sale takes place within 3 years from the effective date of the transaction involving the new main residence). However, the condition which requires the buyer or their spouse or civil partner not to retain a major interest in their previous only or main residence does not apply to the spouse or civil partner if they are not living together as defined in paragraph 25(3) on the effective date of the transaction concerned.

### **Replacement of main residence: transactions during interim period**

203. [Paragraph 9](#) sets out the rules for “intermediate transactions”. These are transactions involving the acquisition of a dwelling which takes place during the “interim period”. The interim period is, broadly, the period between a buyer selling their only or main residence and replacing their previous only or main residence. The rules provide that any intermediate transactions that occur between the buyer selling their former main residence and acquiring their new main residence are higher rates residential property transactions. Where the intermediate transaction was not liable to be taxed as a higher rates residential property transaction because the buyer did not own any other residential property, but subsequently acquires a second residential property to which conditions relating to replacement of main residence apply as set out in the respective legislation governing these transactions in other parts of the UK, then the intermediate transaction undertaken in Wales will need to be re-assessed to determine if that intermediate transaction is now liable to be taxed as a higher rates residential property transaction. Where the intermediate transaction is a higher rates property transaction as a result of these rules, then the buyer must submit a return (see [paragraph 24](#)) to WRA for that transaction. This return must include a self-assessment and be submitted before the end of 30 days beginning with the day after the interim period ending.

### **Part 3: Buyer is an individual: multiple dwelling transactions**

204. [Paragraphs 10 to 18](#) provide the rules that apply where the buyer acquires a number of residential dwellings in a single transaction. In the main, the buyer will be required to pay the tax rates which apply to higher rates residential property transactions on all of the dwellings acquired even where one is a replacement of a main residence. Where the transaction is structured so that the replacement of the main residence is effected separately from the other acquisition then each transaction, for the purposes of establishing whether the transaction is a higher rates residential property transaction is considered separately although they may still be regarded as linked transactions. Where the transaction is structured as an acquisition of two dwellings, one of which is the replacement of a main residence then the higher rates will apply to both transactions.
205. There is an exception to this basic rule and that is where the second (or further additional) dwelling acquired through the single transactions meet the conditions in [paragraph 14](#); the subsidiary dwelling exception. The rules in [paragraph 14](#) operate so that where two or more dwellings are acquired in a single transaction, for example a house with a cottage within the grounds or a house converted into two flats, then if the second (or all of the additional dwellings) are subsidiary to the main dwelling then the higher rates will not apply to the transaction, unless the buyer already owns a dwelling and is not replacing their only or main residence. The acquisition will not be a higher rates residential property transaction where the consideration given for the main dwelling is equal to, or greater than two thirds of the total consideration given for the transaction. If there is more than one subsidiary dwelling then the total consideration

allocated to all subsidiary dwellings must be less than one third of the total consideration for the transaction in order for it to not be a higher rates residential property transaction.

206. Paragraphs 15(3)-(6) set out how the values of the respective beneficial shares of a dwelling already owned by a buyer are to be determined where the property is held jointly and consequently there is more than one person with a beneficial interest. The value of the buyer's interest is based on their individual beneficial interest rather than the value of the whole of the major interest in any residential properties already owned. If the buyer is married or in a civil partnership their beneficial interest will be aggregated with that of their spouse or civil partner unless they are not living together as defined by paragraph 25(3).

#### **Part 4 - Buyer is not an individual**

207. Part 4 sets out the rules for transactions undertaken by a buyer who is not an individual. These rules will cover purchases made by entities such as companies or other bodies corporate (sometimes called "non-natural persons"). Paragraph 22 stipulates that where there are two or more buyers in a transaction and that transaction is either a transaction involving a dwelling (see paragraph 20 below) or a transaction involving multiple dwellings (paragraph 21 below), the transaction will be a higher rates residential property transaction if any one of the buyers is not an individual.
208. Paragraph 20 applies when a chargeable transaction entered into by a buyer who is not an individual purchases a single dwelling is a higher rates residential property transaction. The effect of these provisions is that the first purchase of a residential property by a non-natural person will be a higher rates residential property transaction. But there are other rules relating to the purchase of a lease.
209. Paragraph 21 identifies when a chargeable transaction involving more than one dwelling where the buyer is not an individual is a higher rates residential property transaction and sets out the rules which apply to such a transaction.

#### **Part 5 - Supplementary provisions**

210. Part 5 provides supplementary rules in relation to the higher rates residential property transactions.

#### **Further provision in connection with replacement of main residence exception**

211. Paragraph 23 makes further provision in respect of the rules on "replacement of main residence exception". The higher rates will not normally apply to the purchase of a residential property where it is intended to replace the buyer's or buyers' only or main residence provided the purchase of the new residence and disposal of the previous main residence occurs within a 36 month period. Where a return has been submitted for the replacement of the main residence and the buyer has paid the LTT applicable to higher rates residential property transactions but has subsequently disposed of the previous main residence within the timescales allowed, the buyer may claim a repayment of the amount of tax overpaid from WRA. They can do this by either making an amendment to their return (subject to meeting the timescales allowed for making an amendment to the return in accordance with the conditions set out in section 41 of TCMA); or where they are unable to amend the return, the buyer can make a claim for repayment of the overpaid tax (see chapter 7, part 3 of TCMA).
212. A special rule at paragraph 23(4) allows a buyer who is replacing their main residence to submit the return in respect of the purchase of the new main residence as though it had never fallen into the category of a higher rates residential property transaction. The buyer is able to do this provided that the sale of the previous main residence has occurred within the 30 day period for submitting a return to WRA in relation to the purchase of the new dwelling and a return has not already been submitted in respect of that new main residence.

### **Spouses and civil partners purchasing alone**

213. [Paragraph 25](#) sets out how the higher rates residential property transaction rules apply to spouses and civil partners purchasing alone. These provisions provide that such transactions are to be treated as being higher rates residential property transactions if this would be the case had the buyer's spouse or civil partner been a buyer also. Paragraph 25(3) sets out the exceptions to this rule (broadly where the couple are separated).

### **Property adjustment on divorce, dissolution of civil partnership etc.**

214. [Paragraph 26](#) provides for a further exception to the higher rates residential property transaction rules. A buyer does not need to take into account when acquiring a new residential dwelling a major interest held in a former matrimonial residence where that interest is retained as a result of an order made in relation to divorce or dissolution of a civil partnership. That interest must be the only or main residence of the person for the benefit of whom the order is made. Any other dwellings owned will, however, need to be taken into account.

### **Settlements and bare trusts**

215. [Paragraphs 27 to 30](#) provide rules about the application of the rules about higher rates residential property transactions in relation to bare trusts and trusts that are settlements for the purposes of the Act (to the extent that they entitle the beneficiary to occupy the dwelling for life or to the income earned). In such situations the beneficiary of the bare trust, or the settlement, is to be treated as the buyer, or the owner of an interest held in the dwelling for the purpose of determining whether the higher rates residential property transaction rules apply to another purchase.
216. [Paragraph 29](#) clarifies that the transfer of beneficial interests (for example undivided shares) arising under a trust in a residential property will be treated in the same way as a transfer of a major interest where the seller of the beneficial interest was, immediately prior to the transaction, deemed to own the major interest in the dwelling and immediately after the transaction the buyer is deemed to own the major interest.
217. [Paragraph 30](#) provides that where a child (i.e. a child under the age of 18) is to be treated as the buyer or holder of an interest, as a result of the trust rules in this Act then the parent (and any spouse or civil partner of the parent unless they are not living together) is to be treated as the buyer or holder of the interest.
218. [Paragraph 30\(4\)](#) dis-applies the effect of paragraph 30(2) in circumstances where an incapacitated child's interest is acquired, held on trust, or disposed of, by a deputy appointed under the Mental Capacity Act 2005 (or a person acting in an equivalent capacity outside Wales and England).
219. [Paragraph 31](#) provides rules in relation to settlements where the beneficiaries of the settlement are not entitled to occupy the dwelling for life or to the income earned in respect of the dwelling or dwellings. In such circumstances the trustee or trustees are to be taxed under the same rules as relate to buyers who are not individuals.

### **Partnerships**

220. [Paragraph 32](#) sets out the rules for deciding whether the higher rates residential property transactions apply to purchases made by a partner in a partnership. Where a partner acquires a property but not for the purpose of the partnership, any major interest in a dwelling held by or on behalf of the partnership for the purposes of a trade carried on by the partnership is not to be treated as held by or on behalf of an individual buyer purchasing a residential property in a transaction unrelated and unconnected to the operation of the partnership.

## **Alternative finance arrangements**

221. [Paragraph 33](#) states how the rules for higher rates residential property transactions apply where alternative finance arrangements are entered into by a person and a financial institution for the purposes of the acquisition of a major interest in a dwelling. These provisions have the effect of ensuring that the financial institution does not enter into a residential property transaction by virtue of being party to a transaction. Instead the person who enters the alternative finance arrangement with the financial institution in order to ultimately own the property is to be treated as the buyer and it is their circumstances that will be relevant in establishing if the higher rates apply.

## **Major interests in dwellings inherited jointly**

222. [Paragraph 34](#) makes provision in respect of higher rates residential property transactions where major interests in dwellings are inherited jointly. These provisions set out that where a buyer inherits a share of 50% or less in a property which has been inherited within 3 years of the buyer purchasing a residential property, the inherited property is not taken into account for the purposes of establishing whether the higher rates residential property transaction rules of this Act apply. However, if at any time during that 3 year period the buyer's beneficial share of the interest in the inherited property exceeds 50%, then the major interest in the inherited property is taken into account for the purposes of the buyer's purchase of their residential property.
223. [Paragraph 34\(5\)](#) provides that spouses and civil partners who are no longer living together as defined by [paragraph 25\(3\)](#) should not have their respective interests combined for the purposes of establishing whether the £40,000 threshold is met for the higher rates residential property transaction rules.
224. [Paragraph 34\(7\)](#) makes further provision in respect of a major interest inherited as a result of a variation of a will. This sub-paragraph clarifies that where a major interest in a dwelling is acquired as a result of a variation of a will it is to be treated as inherited property for the purposes of establishing if a buyer holds interests in other property. Where the interest acquired does not exceed 50% the buyer is not to be treated as owning a major interest in that property for 3 years from the date of the variation of the will for the purposes of this Schedule.

## **Part 6 - Interpretation**

225. [Paragraph 35](#) sets out the rules that apply in establishing whether a buyer holds a major interest in a dwelling located outside Wales. This will include any such dwelling that would be a dwelling for SDLT purposes in England. Outside England and Wales it will be any dwelling that meets equivalent ownership rules. Where it is a child that owns the major interest in a dwelling outside Wales then that child's parent (and their spouse or civil partner) are deemed to own the interest (unless they are not living together).
226. [Paragraph 35\(7\)](#) dis-applies the effect of [paragraph 35\(5\)](#) in circumstances where an incapacitated child's interest is acquired, held on trust, or disposed of, by a deputy appointed under the Mental Capacity Act 2005 (or a person acting in an equivalent capacity outside Wales and England), in relation to interests held outside Wales.
227. [Paragraph 36](#) sets out what is a dwelling for the purposes of the Schedule. It includes a building or part of a building that is used or suitable for use as a dwelling or is in the process of being constructed or adapted for use as a dwelling. It will also include any dwelling to be constructed or adapted under contract for use as a dwelling.
228. [Paragraph 37](#) makes it clear that a major interest for the purposes of this schedule does not include a lease granted for less than 7 years.

## **Schedule 6 - Leases**

229. [Schedule 6](#) contains the rules for how the rents paid on the grant of a lease are to be taxed.
230. There are a number of changes from the SDLT rules to improve the operation of the rules and to provide consistency of treatment for the different situations that can arise for tenants. These provisions, unlike SDLT, do not tax the rent paid on the grant of a residential lease. However, the Welsh Ministers do have a power to introduce a tax on rent paid on these types of leases in the future if they consider it necessary (see paragraph 27 of Schedule 6).

## **Part 2 - Duration of lease and treatment of overlapping leases**

### **Leases for a fixed term**

231. [Paragraph 2](#) provides that the Act applies to a lease for a fixed term so that any clause in that lease which might mean it is terminated early is ignored.

### **Leases that continue after a fixed period**

232. [Paragraph 3](#) provides that when a lease for a fixed term reaches its contractual termination date (“CTD”) and the tenant remains in occupation that the lease is treated as though it was for a year longer than the original fixed term. The buyer must make a return for this additional year, in the event that there is more tax payable or that tax becomes payable, before the end of 30 days beginning with the day after the end of that additional 12 month period.
233. In the event that there is a further extension then the original lease is to be treated as extended by another year (so, 2 years) and so on. The filing date for the return is, again, before the end of 30 days beginning with the day after the end of that two year extension period. However, if the lease terminates early during any deemed extension, it’s treated accordingly for LTT (again, with a further return obligation arising if more tax is due).
234. These rules are subject to paragraphs 4 and 8 of this Schedule which provide for specific rules in specific circumstances.

### **Leases that continue after a fixed term: grant of a new lease**

235. [Paragraph 4](#) applies where a lease (the “original lease”) is deemed to have continued after the CTD for another year (or subsequent additional year) and that during that period a new lease is granted to the tenant of the same (or substantially the same) premises, and the new lease begins during that period (and is not backdated).
236. In these circumstances the rules in paragraph 3 do not apply to the final additional term. Instead, the term of the new lease is treated as commencing on the day after the CTD of the original lease (or its anniversary, if the extension was for more than one year).
237. Any rent that was payable under the original lease for this period is to be treated as rent payable under the new lease.

### **Leases for an indefinite term**

238. [Paragraph 5](#) contains the rules for the treatment of leases that are granted for an indefinite term. When initially granted the lease is to be treated as though it had been granted for a fixed term of a year, and a return is due accordingly 30 days later. If the tenant is still in occupation after the end of that year then they are to be treated as though the lease is for a fixed period of 2 years and so on.
239. If (more) tax becomes payable, a return must be made before the end of 30 days beginning with the day after the end of each deemed longer fixed period. However,

if the lease for an indefinite period terminates in the first year then the buyer can, exceptionally, amend their return to reflect rent which was actually paid or payable for the period (sub-paragraph 5(6)). The return can only be amended within the normal time limit for making an amendment, i.e. within 12 months of the filing date of the original return.

240. Where the lease terminates in the second, or subsequent, year then the rules similar to those for leases that continue after a fixed term apply. A return will be required to be made before the end of 30 days beginning with the day after the date that the lease terminates (sub-paragraphs 5(2) and 5(5)).

### **Successive linked leases**

241. [Paragraph 6](#) provides that a series of linked leases are treated as a single lease for LTT purposes. This will ensure that LTT cannot be avoided by a buyer entering into a series of short leases, where the commercial reality is that a single, longer lease has been agreed from the outset. However, where a lease is renewed on terms that would be available to a third party then that lease will not, normally, to be treated as linked for these purposes.

### **Rent for overlap period in case of grant of further lease**

242. [Paragraph 7](#) applies where a tenant surrenders a lease (the “old lease”) and the landlord grants the tenant a new lease for the same or substantially the same property, or in other specified, similar circumstances the tenant obtains a new lease of the same or substantially the same property.
243. In these cases the rent payable under the new lease is treated as reduced by the rent that would have been payable under the old lease. This rule is provided so as to ensure that a buyer does not pay tax on the same amounts of rent under both the old and the new leases.

### **Tenant holding over: new lease backdated to previous year**

244. [Paragraph 8](#) provides rules for a specific case where a renewed lease is backdated, and gives “overlap relief”. When a fixed term lease continues after its CTD (this period is known as “holdover”), is renewed, and the new lease backdated to a date within the final year of holdover, paragraph 4 will apply. However, where holdover lasts more than one year, and the new lease is backdated to a day during holdover other than in its final year (i.e. during the “whole years of holdover”) paragraph 8 will apply.
245. Where the conditions in sub-paragraph 8(1) are met then the new lease is treated as though it commenced on the date that it is expressed to have commenced (i.e. the date stated in the lease). However, the rent payable under the new lease in respect of the “whole years of holdover” is reduced by the amount of rent payable for that same period under the old lease (as extended during holdover, and described as the “holdover tenancy” in this provision). This reduction cannot, though, create a negative amount.

## **Part 3 - Rent and other consideration**

### **Rent**

246. [Paragraph 9](#) defines rent for the purposes of the Act so that a sum payable in respect of rent is treated as such even if it is said to include other matters (such as service charges) unless these are separately identified. “Rent” does not include any amount that is paid for the grant of the lease.



### **Variable or uncertain rent**

247. Where rent is variable or uncertain, paragraph 10 applies. The rules provide that the buyer must make their return with the amount of rents based on an estimate as to what the amount of rent will be during the first 5 years of the lease. For the subsequent years of the lease (if it has been granted for a period of longer than five years) the rent payable is assumed to equal the highest amount paid in any period of 12 consecutive months in the first 5 years. No account is taken for changes in rent which are purely in line with inflation.

### **First rent review in final quarter of fifth year**

248. [Paragraph 11](#) provides that where the lease provides for a review of the rents to be carried out but that review commences in the final three months of the first 5 years of the lease, the review is ignored for LTT purposes.

### **Adjustment of tax where rent determined on reconsideration date**

249. [Paragraph 12](#) provides that a buyer must reassess their LTT liability on the "reconsideration date" if their original return was made on the basis of contingent, uncertain or unascertained rents for the first 5 years of the lease.
250. The reconsideration date is defined as a date falling at the end of the fifth year of the lease or any earlier date at which the rents become certain. The rents become certain when either the contingency occurs (or it is clear that it will not occur) or the amount of rent becomes ascertained.

### **Underpayment of tax where rent determined on reconsideration date**

251. [Paragraph 13](#) provides the rules for when reconsideration under paragraph 12 results in an underpayment, or makes the transaction notifiable. The buyer must make any return before the end of 30 days beginning with the reconsideration date.
252. However, where the rent remains uncertain at the end of the fifth year, then the buyer must make a return to their best judgement, and if within 12 months of that date the rents cease to be uncertain then the buyer must amend that return accordingly.

### **Overpayment of tax where rent determined on reconsideration date**

253. [Paragraph 14](#) provides for where the reconsideration under paragraph 12 establishes that there has been an overpayment of tax. Where this occurs the buyer can amend their return, if they are within the normal 12 month period. Otherwise, the buyer can make a repayment claim from WRA.

### **Reverse premiums**

254. [Paragraph 15](#) provides that a reverse premium is not treated as chargeable consideration. A reverse premium is defined as one where the premium is paid by the landlord or the assignor, or on the surrender of a lease by the tenant.

### **Tenant's obligations etc. that do not count as chargeable consideration**

255. [Paragraph 16](#) provides that a number of obligations, for example an undertaking by the tenant to repair and maintain the property subject to the lease, are not to be treated as consideration given for the granting of the lease. Additionally, where the tenant pays an amount to discharge such an obligation then that payment is similarly not treated as chargeable consideration.

### **Surrender of existing lease in return for new lease**

256. [Paragraph 17](#) applies where a tenant surrenders an old lease as consideration for a new lease, and the parties remain the same. The surrender is not treated as chargeable consideration for the grant, and vice versa.

### **Assignment of lease: assumption of obligation by assignee**

257. [Paragraph 18](#) provides that where a lease is assigned the assumption of the obligation to make rent payments or comply with any other obligations of the lease do not count as consideration for the assignment.

### **Loan or deposit in connection with grant or assignment of lease**

258. [Paragraph 19](#) applies where a tenant (or a person connected to them) pays a deposit or loan to any person, and the tenant has some control over whether repayment will occur (or repayment is contingent on the tenant's death). In such a case, the deposit or loan is treated as consideration other than rent given for the lease. The same rule also applies where the deposit or loan is paid for the assignment of a lease.
259. However, a deposit that equals no more than twice the maximum amount of rent payable in any 12 month period in the first 5 years on the grant of the lease, or the highest amount in any 12 month period in the first 5 years of the remaining years of the lease in the case of an assignment does not count as consideration.

## **Part 4 - Agreements for lease, assignments and variations**

### **Agreement to lease**

260. [Paragraph 20](#) provides the rules for where there has been an agreement to lease and that agreement has been substantially performed without the lease having been executed.
261. Where the agreement to lease has been substantially performed the agreement is treated as a notional lease with the effective date of the transaction being the date of substantial performance. If an actual lease is subsequently granted then the notional lease and the actual lease are treated as forming a single lease, with the consideration given for both charged to tax accordingly.
262. The actual grant of the lease is disregarded except for its effect under the linked transaction rules.

### **Assignment of agreement for lease**

263. [Paragraph 21](#) makes special provision to ensure paragraph 20 still gives the right effect where an interest as tenant under an agreement for lease is assigned.

### **Cases where assignment of lease treated as grant of lease**

264. [Paragraph 22](#) provides for cases where the assignment of a lease is to be treated as a grant, to address possible tax avoidance activity. Where a lease has been granted and specified reliefs applied, then (unless those reliefs had already been withdrawn) the first assignment to which the specified reliefs do not apply is treated as a grant of a lease. The lease is treated as granted for a period that represents the remaining unexpired term of the lease at the date of assignment.

### **Assignment of lease**

265. [Paragraph 23](#) applies where a lease is assigned. Where specified obligations would require the person initially granted the lease to make a return or further return, those obligations pass to the assignee.

### **Reduction of rent or term or other variation of lease**

266. [Paragraph 24](#) provides for cases where a lease is varied so that the amount of rent reduces, or the lease is otherwise varied (other than an extension of the term or an increase in the rent payable). In such cases the variation is treated as a land transaction on which LTT is potentially payable by the tenant. Where the variation is that the term of the lease is reduced this is treated as an acquisition of a chargeable interest by the landlord and LTT may be payable.

### **Increase of rent treated as grant of new lease: variation of lease in first 5 years**

267. [Paragraph 25](#) provides for situations where the lease is varied so as to increase the rents payable, and that variation occurs before the end of the fifth year of the lease. The variation is treated as the grant of a lease in consideration for the additional rents. However, this does not apply if the variation is under the original terms of the lease, or by virtue of specified statutory rules.

## **Part 5 - Calculation of tax chargeable**

### **Residential leases, non-residential leases and mixed leases**

268. [Paragraph 26](#) defines an acquisition of residential, non-residential and mixed leases.

### **No tax chargeable in respect of rent: residential leases**

269. [Paragraph 27](#) provides that the rents paid under a residential lease are not chargeable to LTT. Any other consideration that is not rent remains chargeable under the normal rules. A regulation making power is provided so that the Welsh Ministers can make such rents chargeable to the tax. Further powers are provided so that the Welsh Ministers can set the initial and subsequent rates and bands which would apply should they bring such rents within the tax.

### **Tax rates and bands: rent element of non-residential and mixed leases**

270. [Paragraph 28](#) provides the Welsh Ministers with regulation making powers so that they can set the initial and subsequent rates of tax and the bands that are to apply to rents paid under non-residential and mixed leases. The rates and bands must include a zero rate band, the other bands and rates above the zero rate band, and also the date on which those rates and bands are to apply.

### **Calculation of tax chargeable in respect of rent: non-residential and mixed leases**

271. [Paragraph 29](#) provides the steps to be taken to calculate the charge to tax by applying the rate of tax to the amount of consideration that falls within a particular tax band, and then adding those different amounts together.

### **Calculation of tax chargeable in respect of rent: linked transactions**

272. [Paragraph 30](#) provides calculation rules where the transaction is linked to one or more other transactions.

### **Net present value**

273. [Paragraph 31](#) provides the formula for establishing the net present value of future years rent payments. This ensures that rent payments for future years are taxed at an amount that represents the value of that payment at the effective date of the transaction.

### **Temporal discount rate**

274. [Paragraph 32](#) sets the temporal discount rate to be used in the net present value formula. It is set at 3.5% and can be varied by the Welsh Ministers through regulations.

### **Tax chargeable in respect of consideration other than rent: general**

275. [Paragraph 33](#) confirms that consideration other than rent is taxed under the provisions of the Act, and that tax charged under this Schedule is in addition to the tax calculated under the other provisions.

### **Tax chargeable in respect of consideration other than rent: mixed leases**

276. [Paragraph 35](#) provides for consideration other than rent for a mixed lease to be split on a just and reasonable basis between residential and non-residential property and that those two notional transactions are to be treated as linked transactions.

### **Relevant rent**

277. [Paragraph 36](#) provides definitions for “the relevant rent”, “the specified amount” and “annual rent”. The Welsh Ministers are able to make regulations to amend or repeal paragraphs 34 to 36 of this Schedule. Any regulations made under this paragraph will be subject to the affirmative procedure.

### **Schedule 7– Partnerships**

278. This Schedule makes provision for the application of LTT rules to a range of land transactions involving partners or partnerships. The Welsh Ministers may by regulations amend this Schedule.
279. The Schedule contains an overview of its contents; provides for the rules governing ordinary partnership transactions; transactions involving transfers of interests from, or to, partners; transactions between partnerships; and transactions involving corporate bodies. The treatment of property investment partnerships and the situation where the chargeable consideration for transactions includes rent is also considered. Part 10 of the Schedule provides for interpretation and sets out the meanings of key terms referred to in the Schedule.

### **Part 2 - General provisions**

280. For the purposes of this Act, the term “partnership” is defined at paragraph 3 of the Schedule to include general, limited and limited liability partnerships and any non-UK entity that resembles these types of UK partnerships. Partnerships are, broadly, treated as transparent so that a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners. Accordingly, a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners. This is the case even when the partnership has a separate legal personality.
281. A partnership is deemed to be the same partnership, notwithstanding a change in its membership so long as there is at least one partner in common before and after the change in membership. A partnership is not treated as a unit trust scheme or open-ended investment company.

### **Part 3 – Ordinary partnership transactions**

282. Provisions relating to the treatment of ordinary partnership transactions (i.e. an acquisition by a partnership from a seller who is unconnected to the partnership or its partners, and who does not become a partner by virtue of the transaction) are set out in Part 3 of the Schedule. Ordinary partnership transactions are treated in the same way as any other transaction for the purposes of LTT.
283. [Paragraphs 9 to 11](#) sets out the responsibilities of partners under the Act. The responsible partners are those persons who are partners at the effective date of the transaction, and any partner who becomes a member of the partnership after the effective date. A representative partner, nominated by a majority of the partners can represent the

partnership. However, for the nomination, or revocation of such a nomination, to be effective, notice must be provided to WRA.

284. Under this Act, each of the partners in a partnership is jointly and severally liable for any LTT, late payment interest, or penalties. However, no interest or unpaid tax can be recovered from a person who did not become a responsible partner until after the effective dates of the transaction.

#### **Part 4 - Transactions involving transfers to a partnership**

285. **Part 4** provides that the transfer of an interest in land to a partnership by a partner, a person who becomes a partner in return for the interest (a “prospective partner”), or someone connected to either such person, is a chargeable transaction. The chargeable consideration for such a transfer is determined as being a proportion of the market value of the interest transferred. That proportion is a function of the ownership share in the transferred interest in land held by the transferee(s), and the partnership share(s) of the partner(s) or prospective partner(s) immediately after the transfer. In brief, this takes account of the extent to which a person is transferring the interest to themselves in this scenario. The formula used to calculate the chargeable consideration is set out in paragraphs 13 and 14.
286. **Part 4** also contains anti-avoidance provisions to prevent a person purporting to transfer property into a partnership in a way which enjoys a tax discount under this Part, in circumstances where the person subsequently exits the partnership, or otherwise reduces their partnership interest or extracts capital from the partnership.

#### **Part 5 - Transactions involving transfers from a partnership**

287. **Part 5** provides that where an interest in land is transferred from a partnership to a partner or former partner (or someone connected with such a person), this is a chargeable transaction. It defines those situations where there is a transfer of an interest in land out of a partnership and provides that the chargeable consideration is a proportion of the market value transferred. Like under Part 4, that proportion is a function of the ownership share in the transferred interest in land held by the recipient partner(s) (etc.), and the partnership share of that/those person(s) or persons connected to them held immediately before the transfer (paragraphs 21 and 22). Again, this takes account of the extent to which the partner or former partner already owned a proportion of the interest transferred to them.

#### **Part 6 - Other partnership transactions**

288. **Part 6** of the Schedule makes separate provision for the transfer of a chargeable interest from a partnership to a partnership (paragraph 29). It makes special provision for how Parts 4 (transfer to a partnership) and 5 (transfer from a partnership) of this Schedule apply in this scenario.
289. Where property is transferred from a partnership consisting wholly of bodies corporate to one of the partners, and the sum of the lower proportions (as determined by paragraph 22) is 75 or more, the chargeable consideration is deemed to be equal to the market value of the interest transferred (paragraph 30).

#### **Part 7 - Application of Parts 5 and 6 in relation to leases**

290. **Part 7** of this Schedule makes provision for the application of Parts 5 and 6 to leases, and as such modifies Schedule 6 accordingly. Where rent forms all or part of the consideration for a transaction under paragraphs 13 or 21, the chargeable consideration for the transaction shall be a proportion of the net present value of the rent as determined by Part 5 of Schedule 6 (leases: calculation of tax chargeable).

## **Part 8 - Transfers involving property-investment partnerships**

291. **Part 8** of the Schedule makes provision for the transfer of interests in property-investment partnerships (paragraph 34) whose sole or main activity is holding or investing in land. When there is a transfer of an interest in a property-investment partnership there is no legal transfer of land except indirectly through a change of members in the partnership. The transfer of an interest in a property-investment partnership results in a charge to LTT for the person who acquires an increased or new partnership share. The chargeable consideration for the transfer of the partnership interest is taken to be equal to a proportion of the market value of the “relevant partnership property” (see paragraph 34(6) and (7)).
292. **Paragraph 35** excludes certain leases from the definition of relevant partnership property. These are leases which only have a market value because of changes in market rent and which satisfy certain other conditions.
293. **Paragraph 36** allows for a property-investment partnership to dis-apply paragraph 13 of this Schedule, which provides for transactions involving a transfer of chargeable interest to a partnership. Where such an election is made LTT is calculated on the market value of the chargeable interest transferred. Such an election is irrevocable and cannot at a later date be withdrawn or amended after the election has been submitted.

## **Part 9 - Application of exemptions, reliefs, provisions of TCMA and notification provisions**

294. **Part 9** makes provision for the application of exemptions and reliefs, and sets out the notification requirements in respect of transactions to which this Schedule applies.
295. **Paragraphs 40 and 41** modify group relief as set out in Schedule 16 for the purposes of partnership transactions. Paragraph 42 modifies charities relief (Schedule 18) for the purposes of partnership transactions.
296. **Paragraph 44** provides that a chargeable transaction (as provided for under paragraph 18 or 34) is a notifiable transaction when the consideration exceeds the threshold for the zero rate tax band.

## **Schedule 8 - Trusts**

297. This Schedule provides for the treatment of trusts for the purposes of LTT. Trusts are divided into “bare trusts” and “settlements” with settlements defined as trusts which are not bare trusts. Bare trusts are trusts where the beneficiary is absolutely entitled to the property and the bare trustee holds the property as nominee. Here, the beneficiary is liable for any LTT. For other types of trusts the LTT liability is imposed on the trustees, and the tax can be recovered from any one of them.
298. In addition, the Schedule sets out the responsibilities of trustees of a settlement in relation to providing the land transaction return and declaration, procedure for notification of a WRA enquiry to trustees and for appeals and reviews. It also provides that any consideration given by a person in whose favour a power of appointment or discretion is exercised constitutes the consideration for the acquisition of a chargeable interest which occurs by virtue of the exercise of the power or discretion.
299. The Schedule accounts for the laws of different territories governing trusts so that beneficiaries of trusts in Scotland, or other countries or territories outside the UK, are treated as having an equitable interest in trust property if that would be the result under the law of England and Wales.

## **Schedule 9 - Sale and Leaseback Relief**

300. This Schedule sets out the conditions under which the leaseback element of a sale and leaseback transaction may be relieved from LTT. The relief provides that only a

single charge to LTT will arise where transactions are effected as part of financing arrangements through a sale and leaseback. The arrangements involve the seller in a land transaction (“A”) transferring or granting a major interest in land to the buyer (“B”) and out of that interest B grants a lease to A. There will be a charge to LTT on the first transaction (A to B). The second transaction (the grant of a lease from B to A) will attract relief if the qualifying conditions are met. Both transactions will be notifiable.

301. The following conditions have to be met in order to qualify for the relief:
- the interest leased back must be an interest out of the original interest;
  - the transaction from A to B must be given wholly or partly in consideration of the leaseback transaction being entered into;
  - the only other consideration for the sale element, other than the leaseback is the payment of money or release from a debt;
  - the sale must not comprise a transfer of rights under section 12 (contract providing for transfer to third party: effect of transfer of rights) or a pre-completion transaction as defined in Schedule 2 on pre-completion transactions; and
  - where the seller and buyer are both companies at the effective date of the leaseback transaction, they are not members of the same group for the purposes of group relief (see Schedule 16).

### ***Schedule 10 - Alternative Property Finance Reliefs***

302. This Schedule makes provision for relief from LTT for certain land transactions connected to alternative property finance arrangements, which are structured so that rent or some other profit or gain, rather interest, is paid. Such alternative finance arrangements are designed to comply with Islamic (or Shari’a) law. Financing a property purchase in such a way would ordinarily involve more than one LTT charge. These provisions ensure that buyers who finance property acquisitions through these alternative methods pay the same amount of LTT, at the same time, as those who use conventional mortgage and re-mortgage products.

## **Part 2 - The reliefs**

### **Land sold to financial institution and leased to a person**

303. The provisions at paragraph 2 cover situations where a financial institution:
- purchases a major interest in land from a person (“P”) or from another financial institution which has purchased the interests under the types of arrangements discussed in paragraph 2(1) entered into between it and P (“the first transaction”);
  - leases the land back to P; and
  - enters into an agreement under which P has a right to require that the financial institution transfers the major interest back to P. Subject to the conditions set out in the paragraph, those transactions are relieved from LTT.
304. Relief is also available where a financial institution purchases a major interest from another financial institution that has entered into such arrangements with a person.

### **Land sold to financial institution and re-sold to a person**

305. The provisions at paragraph 3 cover situations where:
- a financial institution purchases a major interest in land (“the first transaction”);
  - sells it to a person (“P”); 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*

- in return, P grants the financial institution a legal mortgage over the land.
306. Subject to the conditions set out in the paragraph, the institution's purchase is relieved from LTT if the major interest was purchased from P or another financial institution which has purchased a major interest under arrangements mentioned in paragraph 2(1) between it and P.
307. The sale by the financial institution is relieved from tax if the conditions in paragraph 3(3) are complied with.

### **Part 3 - Circumstances where arrangements not relieved**

#### **No relief where group, acquisition or reconstruction reliefs available**

308. Relief is not available under paragraphs 2 or 3 when the first transaction could be relieved under group, reconstruction or acquisition relief (even where that relief is subsequently withdrawn). Relief is not available under paragraph 2 where the arrangements allow for a person to acquire control of the financial institution.

#### **Land sold to financial institution but arrangements in place to transfer control of the institution**

309. Relief is not available under paragraph 2 where the arrangements include arrangements for a person to acquire control of the relevant financial institution.

### **Part 4 - Exempt interest**

#### **Interest held by financial institution an exempt interest**

310. Other than for the purposes of the acquisition of the major interest and its transfer back to the person (under paragraph 2), the interest held by the financial institution as a result of the first transaction is an "exempt interest" until the lease (or sub-lease) or the right of the person to regain the major interest under paragraph 2 ceases to have effect. This is not the case if group, reconstruction or acquisition relief is available on the first transaction.

### **Schedule 11 - Relief for alternative finance investment bonds**

311. This Schedule makes provision for relief from LTT for land transactions connected to the issue of alternative finance investment bonds. As with alternative property finance these arrangements are primarily designed to be compatible with Shari'a law, which prohibits the payment and receipt of interest.
312. In a conventional securitisation the investor does not have direct ownership of the underlying asset but holds an interest-bearing certificate. However, in the case of alternative finance investment bonds, the investors own part of the underlying asset and derive their reward from the profits or rents generated by that asset. In order to structure the issuance of the bonds it is necessary to (temporarily) change the ownership of the underlying asset on which the bond's income is to be based, to normally, a special purpose vehicle bond issuer. The bonds can then be issued to the bond-holder and the money raised passed to the person seeking the finance. Once the cancellation date for the bonds is reached the underlying asset must be returned to the person who originally sought the finance. If the asset used to back the bonds and generate the return for the bond-holders is land in Wales, then the arrangement will involve land transactions that in the absence of this relief would be chargeable to LTT, when a conventional bond arrangement would not attract similar LTT charges.



## **Part 2 - Issue, transfer and redemption of rights under bond not to be treated as chargeable consideration**

313. The bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets (and so can trade the bonds without giving rise to a charge to LTT), unless they acquire control of the underlying assets. Where the bond-holder has no interest in the bond asset (the land), the bonds can be traded between holders without giving rise to a charge to LTT. The bond-holder has control over the assets if they have the right to manage and control the assets under the bond, or where a bond-holder (including a group of bond holders acting jointly) acquires sufficient rights to enable them to exercise management and control of the bond assets to the exclusion of any other bond-holders. The bond-holder will not, however, be treated as acquiring control in the following circumstances:

- the bond-holder did not know (and had no reason to suspect) that they were acquiring such right to control and (on becoming aware of it) takes steps to remove sufficient rights for the exercise to no longer be possible); and
- the bond-holder underwrites a public offer of rights under the bond and does not exercise the right of control and management.

## **Part 3 - Conditions for operation of reliefs etc.**

314. **Part 3** sets out the conditions referred to in **Part 4** to be met for the relevant reliefs to apply. They are as follows:

- a person (A) transfers an interest in land to the bond-issuer (B) (“the first transaction”), with that interest to be transferred back to A when the arrangement comes to an end;
- B enters into an alternative finance investment bond arrangement with bond-holders, with the interest in A’s land held as a bond asset;
- B leases (or sub-leases) the land back to A (the rent paid being the return on the bond-holders’ investment);
- B registers a first charge on its land interest in favour of WRA (before the end of 120 days beginning with the effective date of the transaction), which would satisfy any LTT that would have been chargeable but for the reliefs, together with penalties and interest;
- the payments of capital made by A to B are for not less than 60% of the market value of the interest in land on the effective date of the first transaction;
- the arrangement lasts no longer than 10 years from the first transaction, during which time B must hold the interest in the land as a bond asset until the termination of the bond. When the bond terminates B must transfer the interest to A before the end of 30 days beginning with the date on which the interest is no longer held as a bond asset.

## **Part 4 - Relief for certain transactions**

315. The first and second transactions are relieved from LTT in accordance with the conditions set out in **Part 4**, namely:

- the first transaction is relieved if the leaseback from B to A is granted before the end of 30 days from the effective date of the first transaction (i.e. the first three conditions in **Part 3**); and
- for the second transaction, all of the conditions in **Part 3** have been met and the provisions of this Act and TCMA have been complied with in relation to the first transaction.

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316. [Paragraph 14](#) sets out the circumstances under which relief for the first transaction is withdrawn.
317. Under paragraph 17, relief is not available, or can be withdrawn, in circumstances where the bond-holders acquire control or management of the bond asset (in the same way as applies under paragraph 4, see above).

### **Replacement of asset**

318. The provisions at paragraph 18 allow the replacement of the original land as bond asset by another land interest, without disturbing the entitlement to relief, by dis-applying the requirement that B holds the original interest as a bond asset until the termination of the arrangements (as long as all the other conditions in the paragraph are complied with). Where the replacement land is in Wales, it will be subject to a new charge in favour of WRA (and the charge on the original land discharged, subject to compliance with the conditions). Where the replacement land is outside Wales, WRA will not take a charge over it (but must nevertheless be satisfied that the conditions in relation to the original land are met before discharging that charge).

### ***Schedule 12 - Relief for incorporation of limited liability partnership***

319. The introduction of limited liability partnerships (LLPs) under the Limited Liability Partnerships Act 2000 created a new business vehicle into the UK providing partners in a LLP with limited liability. Relief, subject to the conditions specified, is provided to enable existing partnerships to incorporate as an LLP without incurring LTT charges on land transactions effected as part of that incorporation.
320. This Schedule sets out the three conditions which must be satisfied for land transferred in connection with the incorporation of an LLP to be relieved from LTT. The conditions to be satisfied are:
- the effective date of the transaction cannot be more than one year after the date of the incorporation of the LLP;
  - at the relevant time (which is defined by paragraph 5(1)) the transferor:
    - is a partner in a partnership comprised of all the persons who are (or who are to be) members of the LLP (and no other person); or
    - holds the interest on bare trust for one or more of the partners; and
  - the proportions of the interests held by the partners are the same before and after the transaction or, where they are different, the differences are not as a result of entering a tax avoidance arrangement to avoid LTT or other tax.

### ***Schedule 13 - Relief for acquisitions involving multiple dwellings***

321. This Schedule makes provision for relief from LTT for single transactions involving multiple dwellings and multiple linked transactions, which, taken together, involve multiple dwellings. The provisions in this Schedule provide that the total amount of tax chargeable in respect of a particular transaction or transactions involving a number of dwellings reflects more closely the tax that would have been chargeable had each dwelling been purchased through single (unrelated) transactions.

### **Transactions to which this Schedule applies**

322. [Paragraph 3](#) sets out the transactions to which this Schedule applies, which are defined as “relevant transactions”. Sub-paragraph (3) provides that a transaction is a “relevant transaction” if the subject-matter consists of interests in more than one dwelling or interests in more than one dwelling and other property. Sub-paragraph (4) also provides that a “relevant transaction” is a transaction whose the main subject-matter is a single

dwelling which is linked to at least one other transaction, where the main subject-matter of the other transaction consists of an interest in some other dwelling. Sub-paragraph (5) excludes certain transactions where other reliefs apply. Where the interest in the dwelling is a lease granted initially for more than 21 years, sub-paragraph (7) excludes any superior interest in that lease in determining whether a transaction is a “relevant transaction”, but this is subject to the circumstances provided for at sub-paragraph (8).

323. Key terms used in the Schedule are defined in paragraph 4.

### **Determining the amount of tax chargeable**

324. Paragraphs 5, 6 and 7 set out how the amount of tax chargeable is to be calculated. Paragraph 5 requires the amount of tax chargeable to be determined by calculating the sum of the tax related to the consideration attributable to dwellings, and the tax related to the remaining consideration. The appropriate rates and bands should be used to establish the charge to tax, including, where relevant, those that relate to higher rates residential property transactions.
325. The calculation of the tax related to the consideration attributable to dwellings is provided for by paragraph 6. This involves calculating an average price for each dwelling and determining the amount of tax that would be charged on that average price. This amount of tax is then multiplied by the number of dwellings included in the relevant transaction to give the tax related to the consideration attributable to dwellings. For linked transactions, the amount of tax is then apportioned to each transaction in proportion to its share of the total dwellings consideration.
326. Sub-paragraph (2) introduces a “tax floor” to ensure that the amount of tax determined as a result of the above calculation leads to a figure of at least 1% of the total consideration attributable to dwellings. This might occur where the average price for the dwellings falls in the zero rate tax band, leading to the buyer in the relevant transaction being fully relieved from LTT.
327. Sub-paragraph (7) provides that Welsh Ministers may by regulations substitute the current minimum 1% for a different percentage.
328. Paragraph 7(1) provides that the tax related to the remaining consideration is the appropriate fraction of the amount of tax that would be due if this Schedule did not apply. Sub-paragraph (2) sets out the calculation for determining the “appropriate fraction” of the relevant transaction and sub-paragraph (3) defines what is meant by “the total remaining consideration” for the purposes of this Schedule.

### **Certain buildings not yet constructed or adapted to count as dwelling**

329. Paragraph 8 extends the meaning of a “dwelling” to include cases where a contract being substantially performed constitutes the effective date of the transaction, the contract includes an interest in a building or part of a building which is to be constructed or adapted for use as a single dwelling, and where construction or adaptation has not yet commenced.

### ***Schedule 14 – Relief for certain acquisitions of dwellings***

330. This Schedule is introduced by section 30 and makes provision for a range of reliefs in relation to certain transactions where a housebuilder, property trader, or employer acquires a dwelling, provided certain conditions are met. The relief is provided to the housebuilder, property trader or employer, subject to the relevant conditions, to provide liquidity in the property market in cases where a sale of a dwelling is necessary for individuals to move. The dwelling that is subject to the relief should not be acquired by the housebuilder, property trader, or employer with the intention to hold as an investment.

331. In addition, Part 3 of the Schedule provides relief for transactions entered into by persons exercising collective rights.

## **Part 2 - Relief for certain acquisitions of dwellings**

332. [Paragraph 2](#) makes provision for full and partial relief from LTT for an acquisition by a housebuilder of an individual's old dwelling where the individual is also acquiring a new dwelling from the housebuilder.
333. [Paragraph 3](#) of the Schedule provides for full and partial relief from LTT for the acquisition of an individual's old dwelling by a property trader where that individual acquires a new dwelling from a housebuilder.
334. [Paragraph 4](#) makes provision for full and partial relief from LTT in respect of acquisitions by a property trader (who is in business to make such acquisitions) of an individual's old dwelling where a chain of transactions involving the individual selling their old dwelling and acquiring a new one breaks down.
335. [Paragraph 5](#) makes provision for full and partial relief for the acquisition by a property trader of a dwelling from the personal representatives of a deceased individual.
336. [Paragraph 6](#) sets out the rules for the provision of full and partial relief for the acquisition by a property trader of an individual's dwelling in connection with a change of residence by the individual due to relocating for employment purposes.
337. [Paragraph 7](#) provides for full and partial relief where an acquisition is made by an individual's employer of the individual's dwelling in connection with a change of residence by the individual resulting from their relocation of employment.
338. In each the above cases, to qualify for the relief certain conditions have to be met. Land must be within the "permitted area" to qualify for full relief. Where the area of land acquired exceeds the permitted area, partial relief may be claimed. This is calculated by determining the chargeable consideration relating to the "excessive area", by deducting the market value of the permitted area from the market value of the dwelling.
339. [Paragraph 8](#) sets out the circumstances under which the reliefs provided for in this Schedule are withdrawn. Broadly, these are where the conditions for claiming the relief are no longer satisfied. Where relief is withdrawn, the amount of LTT chargeable is the amount that would have been chargeable in the absence of the relief.
340. [Paragraph 9](#) defines the key terms used in this Schedule. In particular, a "property trader" must be a company or limited liability partnership ("LLP") or a partnership all of whose members are companies or LLPs that carries on the business of buying and selling dwellings.

## **Part 3 - Relief for transactions entered into by persons exercising collective rights**

341. [Paragraph 10](#) provides relief from LTT for transactions entered into by persons exercising collective rights. This is where tenants in flats exercise certain statutory rights to acquire an estate or interest (such as the freehold) in the premises containing their flats. The statutory rights relate to a right of first refusal under Part 1 of the Landlord and Tenant Act 1987; and a right to collective enfranchisement under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. The acquisitions referred to in this paragraph are undertaken by nominees or appointees on behalf of the participating tenants. The relief is provided so that the amount of tax payable will be the averaged amount due from each participating leaseholder had it been possible for that leaseholder to purchase their (averaged) interest in the estate or interest in question separately from the other tenants.

342. Sub-paragraph (2) sets out the calculation for determining the amount of LTT chargeable. This amount is to be determined by dividing the consideration given for the estate or interest in question (for example, the freehold) by the number of qualifying flats, then calculating the amount of tax due on that sum and multiplying the result by the number of qualifying flats contained in the premises.
343. A “qualifying flat” is that held by a tenant who is participating in the exercise of the collective right.

### ***Schedule 15 - Treatment of certain transactions relating to social housing***

344. This Schedule makes provision for relief from LTT for a variety of social housing related transactions. Paragraphs 2 to 18 provide special rules relating to the purchase of dwellings under a number of arrangements designed to provide access to home ownership. Paragraph 19 provides for relief from LTT for certain acquisitions by registered social landlords.

## **Part 2 - Right to buy relief**

### **Relief for right to buy transaction**

345. Part 2 of the Schedule makes provision for relief from LTT in relation to certain right to buy transactions. A right to buy transaction is a transaction where a “relevant public sector body” disposes a dwelling or grants a lease of a dwelling to an existing tenant at a discounted price, or a transaction which is a sale of a dwelling or a grant of a lease of a dwelling pursuant to a preserved right to buy. The circumstance in which a transfer of a dwelling or grant of a lease of a dwelling is made in pursuance of the preserved right to buy is described at paragraph 2(4). A list of relevant public sector bodies for the purposes of this paragraph is provided at sub-paragraph (3). Where there is a right to buy transaction, sub-paragraph (1) provides that section 19(1) (relating to the treatment of contingent consideration) does not apply. Sub-paragraph (5) excludes from the chargeable consideration a grant made by the Welsh Ministers under section 20 or 21 of the Housing Act 1996 for certain transactions.

## **Part 3 - Shared ownership leases**

### **Shared ownership lease relief: election for market value treatment**

346. **Part 3** of the Schedule makes provision for the treatment of shared ownership leases for the purposes of LTT. A shared ownership lease is intended to cover any lease which is granted by a “qualifying body”; or in pursuance of the preserved right to buy. (Paragraph 9 provides for interpretation and defines key terms referred to in this part of the Schedule.)
347. **Paragraph 3** makes provision for a buyer to make an election for LTT to be calculated by reference to the market value of the dwelling rather than the consideration given on the grant of the shared ownership lease, subject to the conditions at sub-paragraph (2) being satisfied. Sub-paragraph (3) provides that the election is irrevocable and therefore, the buyer cannot at a later date amend the return to withdraw the election after it has been submitted.
348. **Paragraph 4** provides that the transfer of the reversion to the tenant under the terms of a lease to which paragraph 3 applies, is relieved from LTT where an election was made under that paragraph and LTT paid accordingly.
349. **Paragraph 5** provides for the treatment of LTT in relation to certain types of shared ownership leases where staircasing provisions are included in the lease, which allow the estate or interest (such as the freehold) to be purchased in stages. The provisions here allow for an irrevocable election to be made for LTT to be calculated by reference

to the minimum rent and the premium obtainable on the open market, subject to the conditions specified at sub-paragraph (2) being met.

350. [Paragraph 6](#) ensures that when a shared ownership lease is granted and an election was made under paragraph 3 or paragraph 5 of this Schedule, if the tenant acquires any additional interest, that acquisition is relieved from tax provided all LTT has been paid. In addition, paragraph 6 relieves a transaction where the acquisition does not result in the tenant's share of the dwelling exceeding 80%.
351. [Paragraph 7](#) provides that the grant of a shared ownership lease is not linked to any additional acquisition which the tenant may make to which paragraph 6 applies. A transfer of the reversion to the tenant is also not linked to the grant of a shared ownership lease.

### **Rent to shared ownership lease: charge to tax**

352. [Paragraph 8](#) sets out how to determine the chargeable consideration for transactions involving "rent to shared ownership lease" schemes. A "rent to shared ownership lease scheme" is defined at sub-paragraph (2) as one in which a qualifying body grants an occupation contract to a tenant(s) and subsequently grants a shared ownership lease of the dwelling to one or more of them. Sub-paragraph (3) provides that transactions in connection with the scheme are not treated as linked to each other. Sub-paragraph (4) provides that the tenant's possession of the dwelling under an occupation contract is disregarded in determining the effective date of the grant of the shared ownership lease. Sub-paragraph (5) defines occupation contract in accordance with the meaning attributed to it in Part 2 of the Renting Homes (Wales) Act 2016.

## **Part 4 - Shared ownership trusts**

### **Shared ownership trusts: meaning of shared ownership trust and other key terms**

353. [Part 4](#) of this Schedule provides that shared ownership trusts are treated in a similar manner to shared ownership leases for the purposes of LTT. Paragraph 10 defines what is meant by a "shared ownership trust" by reference to section 1 of the Trusts of Land and Appointment of Trustees Act 1996 and specific conditions which have to be satisfied for the trust to be recognised as a shared ownership trust.

### **Shared ownership trust: the buyer**

354. [Paragraph 11](#) identifies the buyer in transactions involving shared ownership trusts, for the purposes of LTT.

### **Shared ownership trust: election for market value treatment**

355. [Paragraph 12](#) makes provision for the buyer to elect for market value treatment. An election for market value treatment cannot at a later date be withdrawn or amended after the election has been submitted.
356. The chargeable consideration for the declaration of the shared ownership trust is taken to be the amount relating to the market value of the dwelling by reference to which the premium is calculated. Sub-paragraph (3)(b) provides that no account must be taken of rent-equivalent payments.

### **Shared ownership trust transfer upon termination**

357. [Paragraph 13](#) provides that where the transaction transfers the interest in the trust property upon the termination of the trust, and an election has been made under paragraph 12, the transaction will be relieved from LTT. This is subject to any LTT chargeable in respect of the declaration of the shared ownership trust being paid.

### **Shared ownership trust: staircasing transactions**

358. [Paragraph 14](#) deals with the treatment of equity-acquisition payments made by the buyer under a shared ownership trust for the purposes of LTT. It provides that where an election under paragraph 12 is made an equity-acquisition payment by the buyer under a shared ownership trust, the increase in the buyer's beneficial interest is relieved from LTT, provided any tax chargeable in respect of the declaration of trust has been paid. However, if an election under paragraph 12 is not made, then the equity-acquisition payment and corresponding increase in the buyer's beneficial interest is only relieved from LTT if following the increase the buyer's beneficial interest does not exceed 80% of the total beneficial interest in the property.

### **Shared ownership trust: treatment of additional payments where not election made**

359. [Paragraph 15](#) clarifies how the chargeable consideration for LTT is determined when the buyer has not made an election under paragraph 12. This paragraph provides that in these circumstances the initial capital is to be treated as chargeable consideration other than rent; and any rent-equivalent payment made by the buyer is to be treated as rent.

### **Shared ownership trust: declaration not linked with staircasing etc.**

360. [Paragraph 16](#) provides that where a declaration of trust giving the buyer a beneficial share in the property is made, the declaration is not to be treated as if it were linked to either:
- an equity-acquisition payment under the trust or any corresponding increase in the buyer's beneficial interest in the trust property; or
  - a transfer to the buyer of an interest in the trust property on the termination of the trust.

### **Rent to shared ownership trust: charge to tax**

361. The rules for determining the chargeable consideration for transactions involving part of a rent to shared ownership trust scheme are provided for in paragraph 17.

## **Part 5 - Rent to mortgage**

### **Rent to mortgage: chargeable consideration**

362. Part 5 of the Schedule provides for the treatment of LTT for transactions involving rent to mortgage schemes. Paragraph 18 provides the rules that determine the consideration for transactions that take place under a rent to mortgage scheme. Sub-paragraph (2) defines a "rent to mortgage scheme" as the transfer of a dwelling, or grant of a lease of a dwelling, to a person under the Housing Act 1985. This paragraph provides that for a rent to mortgage transaction, LTT is chargeable on the price that would have been payable on a purchase of a dwelling if the tenant had been paying for it all at once or the grant of a lease of the dwelling to the person.

## **Part 6 - Relief for certain acquisition by registered social landlords**

363. [Part 6](#) sets out the provisions under which land transactions involving social housing providers can be relieved from the LTT charge where qualifying conditions are met.
364. A registered social landlord can claim relief from LTT where they are entering into a land transaction as a buyer, and:
- the registered social landlord is controlled by its tenants (i.e. the majority of the board members are tenants occupying properties owned or managed by it);

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- the seller is a qualifying body; or
  - the transaction is funded with the assistance of a public subsidy.
365. Paragraph 19(3) provides for interpretation and sets out the meanings of the terms “board member”, “public subsidy” and “qualifying body” for the purposes of this Part. A “registered social landlord” is defined as a body registered as a social landlord in a register maintained under section 1(1) of the Housing Act 1996.

### **Schedule 16 - Group relief**

366. Part 2 of the Schedule provides relief from LTT for the intra-group transfer of property held by companies where relevant conditions are met. The relief provides that the movement of property within a group (as defined and subject to conditions) does not incur a charge to LTT, so long as the conditions set out in the Schedule are met. Part 3 outlines restrictions on the availability of group relief; Part 4 provides for the withdrawal of the relief; and Part 5 makes provision for the recovery of unpaid tax.

#### **Part 2 - The relief**

367. Paragraph 2 of the Schedule provides that a transaction is relieved from LTT where it involves a land transfer between companies within the same group. This is referred to as “group relief”. Group relief allows companies to transfer property within a corporate group structure without incurring a LTT charge, as such transfers do not result in the effective economic interest changing hands.
368. In this Schedule a company is defined as a “body corporate”, and companies are defined as members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company. Paragraph 3 explains the meaning of a 75% subsidiary by reference to ordinary share capital and profits and assets available for distribution. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

#### **Part 3 - Restrictions on the availability of relief**

369. Part 3 of the Schedule sets out specific anti-avoidance rules (with exceptions set out at paragraph 4(2) and (7)) which restrict the availability of group relief. This Part applies where different types of arrangements are entered into whereby the acquiring company may become controlled from outside the group, where consideration may be provided from outside the group, or where the seller and buyer are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available.
370. However, the availability of group relief is not restricted where agreements which govern a joint venture company, are arrangements described in paragraph 5(2) and none of the contingencies specified at paragraph 5(3) have happened. Certain mortgage arrangements are also not caught by the rule restricting the availability of group relief provided the shares or securities in a company are used as a security under a mortgage, which on default or other event occurring allows the mortgagee to exercise its rights against the mortgagor and the mortgagee has not exercised its rights against the mortgagor. But this is subject to exceptions in paragraph 6.

#### **Part 4 - Withdrawal of relief**

371. Group relief is withdrawn where the buyer ceases to be a member of the same group as the seller within 3 years of the effective date of the transaction (or under arrangements made during the three year period), and, broadly, at that time the relevant chargeable interest is still held by the buyer or a company it controls.



372. Exceptions from the withdrawal of group relief are provided for in paragraphs 9 to 11. These include:
- where the de-grouping arises because of anything done in the course of winding up the seller (or another company that is above the seller on the group structure);
  - the seller or another company that is above the seller in the group structure ceases to exist in another way;
  - where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 applies (subject to exceptions) and the buyer leaves the group as a result (an anti-avoidance provision applies);
  - where the seller leaves the group; and
  - certain cases where the buyer leaves the group as a result of the transfer of business or engagement by a “mutual society” or similar.
373. [Paragraph 12](#) further provides for the withdrawal of group relief in certain cases involving successive transactions, subject to the exceptions provided for in paragraph 12(6).

### **Part 5 - Recovery of relief from certain persons**

374. [Part 5](#) identifies the persons who may be responsible for paying any unpaid tax following the withdrawal of group relief under paragraph 8. If the tax chargeable under paragraph 8 is not paid within 6 months after the date it became due, and there is no possible way for that tax chargeable to be varied (whether by way of appeal or otherwise), it can be recovered from the seller or, another group company or a controlling director (subject to that group company being in the same group as the buyer at the relevant time, or the controlling director being a controlling director of the buyer at the relevant time – see paragraph 13(3)). WRA can serve notice on any of these persons requiring the payment of any unpaid amount before the end of 30 days beginning with the day on which the notice is served. The notice must be issued before the end of the 3 year period beginning with the date of the final determination of the tax chargeable and it must state the amount payable by the person served the notice.

### **Schedule 17 - Reconstruction and acquisition reliefs**

375. This Schedule makes provision about of reconstruction relief, acquisition relief, and related anti-avoidance rules.

### **Part 2 - Reconstruction relief**

376. [Part 2](#) of the Schedule provides for “reconstruction relief” so that, where the specified conditions are met, a scheme for reconstruction of a company (the “target company”) does not attract a charge to LTT. Reconstruction relief is provided for land transactions connected to the transfer of the whole or part of an undertaking from a target company (“T”) to an acquiring company (“A”), which form part of a scheme for the reconstruction of T. The consideration for the acquisition must be wholly or partly non-redeemable shares issued in A to T’s shareholders, and where the consideration is only partly non-redeemable shares, the rest of the consideration must only consist of the assumption or discharge by A of T’s liabilities. ‘Non-redeemable shares’ are shares that are not redeemable; they may be traded or held to maturity but cannot be bought back by the issuing company at a future date. A key condition of reconstruction relief is that, following the acquisition, a shareholder of T must also be a shareholder of A, and vice versa. Further, any shareholder must hold the same proportion of shares in T and A (or as close as possible). As with group relief, the reconstruction must be for genuine commercial reasons and must not form part of any arrangement to avoid the payment of LTT.

### **Part 3 - Acquisition relief**

377. **Part 3** of the Schedule provides for “acquisition relief” where a land transaction forms part of the transfer of an undertaking from a company (a “target company”) to another company (an “acquiring company”), but not in pursuance of a scheme for the reconstruction of the target company. Acquisition relief is a partial relief from LTT. Where a transaction is eligible for acquisition relief and meets the conditions specified in paragraph 3, the amount of LTT chargeable is reduced to a fixed tax rate of 0.5% of the relevant consideration given. The rate of LTT chargeable under acquisition relief may be changed by regulations made by the Welsh Ministers.

### **Part 4 - Withdrawal of reconstruction and acquisition relief**

378. **Part 4** of the Schedule provides for the withdrawal of reconstruction or acquisition relief where control of the acquiring company changes before the end of 3 years beginning with the effective date of the transaction (or there are arrangements under which control will change after 3 years, which are entered into within the 3 year period), and, broadly, at that time the relevant chargeable interest is still held by the acquiring company or a company it controls.

### **Cases in which reconstruction or acquisition relief not withdrawn**

379. Exceptions from the withdrawal of reconstruction or acquisition relief are provided for at paragraph 6. These include where control changes:
- due to a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons;
  - due to a share transaction in connection with transactions which vary dispositions following death;
  - due to an exempt intra-group transfer of shares (as defined in paragraph 6(5)), but note this is subject to paragraph 7;
  - due to a transfer to another company to which share acquisition relief applies (as defined in paragraph 6(8)) but note this is subject to paragraph 7; and
  - where control changes due to a loan creditor becoming or ceasing to be treated as having control and other persons who were previously treated as controlling the company continue to be treated as such.

### **Withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer**

380. **Paragraph 7** provides anti-avoidance rules for the withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer. These apply to the exceptions from withdrawal of relief under paragraph 6(5) and (8). They turn off these exceptions, so that relief is withdrawn. They apply where there is a specified change in control and, broadly, at that time the relevant chargeable interest is still held by the acquiring company or a company it controls.

### **Part 5 - Recovery of reconstruction or acquisition relief**

381. **Part 5** makes provision for the recovery of tax following the withdrawal of reconstruction relief or acquisition relief. This Part provides that if the tax chargeable under paragraph 5 or 7 of the Schedule is not paid within 6 months of the date it is due, and there is no possible way for that tax chargeable to be varied (whether by way of appeal or otherwise), it can be recovered from another group company or a controlling director (subject to that group company being in the same group as the buyer at the relevant time, or the controlling director being a controlling director of the buyer at the relevant time – see paragraph 8(3)). WRA can serve notice on any of these persons

requiring the payment of any unpaid amount before the end of 30 days beginning with the day on which the notice is issued. The notice must be issued before the end of the 3 year period beginning with the final determination of the tax chargeable and it must state the amount payable by the person served with the notice.

### **Schedule 18 - Charities relief**

382. This Schedule provides relief (referred to as “charities relief”) from LTT where the buyer, or one of the buyers, in a land transaction is a qualifying charity, subject to certain conditions being met. Charities relief is provided so that the resources of the charity can be used for furthering the charitable purposes of the charity rather than payment of LTT.

#### **Transactions eligible for relief**

383. A charity (“C”) which is a buyer in a land transaction is a “qualifying charity” if it intends to hold the whole of the subject-matter of the transaction for “qualifying charitable purposes”.
384. However, where C is a buyer in the land transaction with one or more buyers, C is a “qualifying charity” and can claim partial relief from LTT *if* C intends to hold its undivided share of the subject-matter of the transaction for qualifying charitable purposes.
385. The subject-matter of the transaction is held by a charity for “qualifying charitable purposes” if it is used by that charity or another charity for charitable purposes; or as an investment from which the profits are used to further the charitable purposes of the buyer. For the purposes of this relief, “charitable purpose” has the meaning given by section 2 of the Charities Act 2011, and “charity” is defined in accordance with Part 1 of Schedule 6 to the Finance Act 2010.

#### **Withdrawal of charities relief**

386. Charities relief is withdrawn, or partially withdrawn in the following circumstances:
- If –
    - a disqualifying event occurs before the end of 3 years beginning with the effective date of the transaction for which charities relief was claimed (“the relieved transaction”), or
    - if the disqualifying event occurs due to or in relation to an arrangement put in place during that 3 year period,and
  - in each case, at the time the disqualifying event occurs, C holds a chargeable interest that it acquired under the relieved transaction or holds a chargeable interest derived from the interest acquired under the relieved transaction.
387. A “disqualifying event” is defined by paragraph 2(4) as when C ceases to be established for charitable purposes only, or the whole or any part of the subject-matter acquired under the relevant transaction (or any interest or right derived from it) is used or held for purposes other than qualifying charitable purposes.
388. Where the relieved transaction becomes liable for LTT the amount chargeable is the amount of tax that would have been chargeable, or an appropriate proportion of that amount, had the transaction not been originally relieved from LTT. An “appropriate proportion” in this context is determined by taking into account what was acquired in the relieved transaction and is still held by C, and what is being used by C for non-charitable purposes.

### **Charity not a qualifying charity**

389. Paragraph 5 makes provision for charities relief to be available where a charity (“C”) is a buyer but not a qualifying charity but still intends to hold the greater part of its share of the subject-matter for qualifying charitable purposes. In this situation C is eligible for charities relief, and the rules relating to disqualifying events (paragraph 4) apply as already outlined (subject to the modifications at paragraph 5(4)) but includes that relief may be wholly or partially withdrawn if -
- C transfers a major interest in the whole or part of the subject-matter of the relieved transaction; or
  - C grants a low rental lease at a premium for reasons other than C’s charitable purposes.
390. In this Schedule, a lease is granted at a premium if there is consideration other than rent and a lease is a “low rental” lease if the annual rent is less than £1000 a year.

### **Joint purchase by qualifying charity and another person: partial relief**

391. Paragraph 6 of this Schedule makes provision for partial relief for joint buyers where:
- there are two or more buyers under a land transaction;
  - the buyers acquire the land as tenants in common;
  - at least one of the buyers is a qualifying charity and at least one of the buyers is another person who is not; and
  - the transaction is not entered into to avoid the LTT charge.
392. Partial relief is calculated by reducing the tax due on the transaction by the amount of relief provided for under sub-paragraph (3). This states that the relief available is equal to the “relevant proportion” of the tax that would otherwise have been chargeable on the transaction.
393. Relevant proportion is defined as the lower of the proportion of the subject-matter acquired by all the qualifying charities (P1) and the proportion of the chargeable consideration for the transaction that is given by the qualifying charities (P2).

### **Withdrawal of partial relief**

394. Paragraph 7 of the Schedule provides for the withdrawal of partial relief where charities relief is provided under paragraph 6 but a disqualifying event occurs. The disqualifying event must occur before the end of 3 years from the effective date of the transaction or in pursuance of, or in connection with, arrangements that were made before the end of that 3 year period. In addition, at the time of the disqualifying event, the charity (“C”) must hold a chargeable interest in, or an interest derived from, the subject-matter acquired under the relevant transaction.
395. Sub-paragraph (5) provides that the amount of tax chargeable is the amount of relief given under paragraph 6, or an appropriate proportion of that relief. The proportion of the relief is calculated by sub-paragraph (7) or (8); the precise calculation charged will depend on whether P1 or P2 was the lower amount in the calculation under paragraph 6.
396. Sub-paragraph (9) provides that in determining the appropriate proportions, account must be taken of what C acquired and what it held at the time of the disqualifying event, and the extent to which what is held by C at the time of the disqualifying event is used or held for non-charitable purposes.

### **Partial relief: charity not a qualifying charity**

397. Paragraph 8(1) provides the conditions under which a charity (“C”) which is not a qualifying charity is eligible for partial relief under paragraphs 6 and 7. These are where:
- C is acquiring land jointly as tenants in common with a non-charity;
  - C is not a qualifying charity;
  - the partial relief provisions would apply if C were a qualifying charity; and
  - C intends to hold the greater part of its share in the property for qualifying charitable purposes.
398. Where paragraph 7 (withdrawal of partial relief) applies, sub-paragraph (2) provides that a disqualifying event includes:
- any transfer by C of a major interest in the whole or any part of the subject-matter of the relevant transaction; and
  - any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter.
399. Paragraph 7 is subject to modifications.

### **Application of this Schedule to certain trusts**

400. Charities relief is available to charitable trusts in the same way that it applies to charities. A charitable trust is a trust of which all the beneficiaries are charities or a unit trust scheme in which all the unit holders are charities.

### ***Schedule 19 - Open-ended investment company reliefs***

401. The two reliefs for open-ended investment companies are provided to enable authorised unit trusts to be reorganised either through conversion to an open-ended investment company or amalgamation with an open-ended investment company.

### **Relief from land transaction tax: conversion of an authorised unit trust to an open-ended investment company**

402. Paragraph 1 of this Schedule outlines the conditions under which relief from LTT may be claimed where there is a land transaction transferring property subject to the trusts of an authorised unit trust to an open-ended investment company. The conditions provide that relief is restricted to those cases where:
- the authorised unit trust is converted into an open-ended investment company; and the whole of the property available is transferred and becomes the whole of the property of the open-ended investment company;
  - as part of the transaction all the units in the authorised unit trust are extinguished;
  - the consideration under the arrangements consists of or includes the issue of shares in the open-ended investment company to the persons who held the extinguished units;
  - the shares are issued in the same proportion as the extinguished units held; and
  - the consideration only comprises the assumption or discharge of liabilities of the trustees of the authorised unit trust.

### **Relief from land transaction tax: amalgamation of an authorised unit trust with an open-ended investment company**

403. Paragraph 2 of this Schedule outlines the conditions under which relief from LTT may be available where there is a land transaction transferring property subject to the trusts of an authorised unit trust to an open-ended investment company where there is a merger between the two. The conditions provide that relief is restricted to those cases where:
- the whole of the property of the authorised unit trust becomes a part (but not all) of the property of the open-ended investment company;
  - as part of the arrangements for the amalgamation all the units in the authorised unit trust are extinguished;
  - the consideration under the arrangements consists of or includes the issue of shares in the open-ended investment company to the persons who held the extinguished units;
  - the shares are issued in the same proportion as the extinguished units held; and
  - the consideration only comprises the assumption or discharge of liabilities of the trustees of the authorised unit trust.
404. For the purposes of this Schedule, “the whole of the available property of the target trust” does not include any property retained for the purpose of discharging liabilities of the trustees.

### ***Schedule 20 – Relief for acquisitions by public bodies and health bodies***

#### **Relief for certain acquisitions involving public bodies**

405. Paragraph 1 of this Schedule provides relief from LTT for certain land transactions entered into between qualifying public bodies in connection with a statutory reorganisation. Relief may also be claimed where the Welsh Ministers make regulations under sub-paragraph (2) where there is a reorganisation and one of the parties to the land transaction is a public body.
406. In this paragraph, “reorganisation” means changes involving:
- the establishment, reform or abolition of one or more public bodies;
  - the creation, alteration or abolition of functions to be discharged by one or more public bodies; or
  - the transfer of functions from one public body to another.
407. Sub-paragraph (4) provides a list of those entities that constitute a public body for the purposes of this paragraph. References to public body in this paragraph also include a company where all the shares of the company are owned by the public body and the public body is a wholly owned subsidiary of such a company.
408. The Welsh Ministers may add to the list of public bodies in sub-paragraph (4) by regulation.

#### **Relief for acquisitions by certain health service bodies**

409. Paragraph 2 of this Schedule provides relief from LTT where the buyer is a specific health authority defined as follows:
- a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

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- a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006; and
  - a National Health Service Trust established under section 18 of the National Health Service (Wales) Act 2006.
410. The Welsh Ministers may through regulations add to the list of health bodies entitled to claim this relief.

### ***Schedule 21 – Compulsory purchase relief and planning obligations relief***

#### **Relief for compulsory purchase facilitating development**

411. Paragraph 1 of this Schedule provides relief from LTT where land is purchased following the making of a compulsory purchase order for the purposes of facilitating development by another party. For example, this relief might be claimed where a local authority makes a compulsory purchase order (whether by agreement or not) to acquire land or property for development by a separate developer. As this situation comprises two land transactions, two amounts of LTT would be due. However, as long as the local authority is not responsible for the development, it is able to claim relief from LTT when it acquires the chargeable interest under the first transaction.

#### **Relief for compliance with planning obligations**

412. As a condition of granting planning permission, a public body may require the developer to provide certain amenities, such as new roads or a school, known as planning obligations imposed under section 106 or section 106A of the Town and Country Planning Act 1990. Paragraph 2 of this Schedule provides relief from LTT where the public body (as the buyer) acquires a chargeable interest when the developer (as the seller) is complying with such a planning obligation. In order to qualify for the relief the planning obligation must be enforceable against the seller; the buyer must be a public body; and the effective date of the transaction must fall within a five year period beginning with the date of the planning obligation or when the planning obligation was modified.
413. Paragraph 2(3) defines the entities that constitute a public body for the purposes of this relief and further provides that the Welsh Ministers may through regulations add to the list of public bodies entitled to claim this relief.

### ***Schedule 22 - Miscellaneous reliefs***

414. This Schedule provides relief from LTT for land transactions entered into in specific circumstances.

#### **Lighthouses reliefs**

415. Paragraphs 1 and 2 of this Schedule provide relief from LTT for certain land transactions involving lighthouses. Specifically, a land transaction entered into by or under either of the following conditions is relieved from LTT:
- a land transaction entered into by or under the direction of the Secretary of State for the purposes of carrying into effect Part 8 (lighthouses) of the Merchant Shipping Act 1995; or
  - a land transaction entered into by or under the direction of the Trinity House for the purpose of carrying out the services referred to in section 221(1) of the Merchant Shipping Act.

### **Visiting forces and international military headquarters reliefs**

416. [Paragraph 3](#) sets out the situations in which land transactions involving visiting forces or international military headquarters may be relieved from LTT.
417. [Paragraph 3](#) provides relief from LTT where the land transaction involves:
- building or enlarging, barracks or camps for a visiting force;
  - facilitating the training of a visiting force; or
  - promoting the health or efficiency of a visiting force.
418. The above conditions apply to any designated international military headquarters as if it were a visiting force of a designated country; and the members of that force were the persons serving at or attached to the headquarters who are members of the armed forces of a designated country.

### **Relief for property accepted in satisfaction of tax**

419. [Paragraph 6](#) of this Schedule provides relief from LTT for a land transaction involving the transfer of land or property which is accepted in satisfaction of tax under section 9 of the National Heritage Act 1980 (disposal of property accepted by Commissioners). The land transaction in this situation must transfer the chargeable interest to a person nominated by the Secretary of State or the Welsh Ministers (section 9(4) of the National Heritage Act) or an institution or body defined in section 9(2) of the National Heritage Act as:
- any museum, art gallery, library or other similar institution having as a purpose the preservation of a collection of historic, artistic or scientific interest for public benefit;
  - any body having as a purpose the provision, improvement or preservation of amenities enjoyed or to be enjoyed by the public or the acquisition of land to be used by the public; and
  - any body having nature conservation as a purpose.

### **Trunk roads relief**

420. A land transaction where the Welsh Ministers are a party or where the Secretary of State is a party is relieved from LTT if it relates to a highway or proposed highway which is or will become a trunk road, and the Welsh Ministers or the Secretary of State would be required to pay LTT as an expense incurred under the Highways Act 1980. In this Part, the meanings of “highway”, “proposed highway” and “trunk road” are those provided in sections 328 and 329(1) of the Highways Act 1980.

### **Relief for bodies established for national purposes**

421. [Paragraph 8](#) provides that a land transaction is relieved from LTT where the buyer is any of the following:
- the Trustees of the British Museum;
  - the Trustees of the National Heritage Memorial Fund; or
  - the Trustees of the Natural History Museum.

### **Relief for reorganisation of Parliamentary constituencies**

422. [Paragraph 9](#) of this Schedule applies where an Order in Council is made under the Parliamentary Constituencies Act 1986 (orders specifying new parliamentary constituencies). Where a land transaction is entered into as a consequence of such an



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Order, the land transaction is relieved from LTT where the seller is an existing local constituency association and the buyer is either:

- a new association formed to succeed the existing association; or
- a body related to the existing association that seeks to transfer the interest or right as soon as possible to a new association which is a successor to the existing association.

423. In the latter case, both land transactions would be relieved from LTT.

424. For the purposes of Paragraph 9, interpretation of key terms and their meanings is provided for in paragraph 9(3) and (4).

### **Building societies relief**

425. Land transactions are relieved from LTT where they take place in connection with the amalgamation of two or more building societies under section 93 of the Building Societies Act 1986; or where they relate to a transfer of engagements between building societies under section 94 of that Act.

### **Friendly societies relief**

426. The provisions in paragraph 11 provide relief from LTT for certain land transactions involving friendly societies. The transactions eligible for relief under this paragraph are those effected by or in consequence of:

- a transfer of engagements or an amalgamation of two or more registered societies under section 82 of the Friendly Societies Act 1974;
- an amalgamation of two or more friendly societies under section 85 of the Friendly Societies Act 1992;
- a transfer of engagements of a friendly society under section 86 of the Friendly Societies Act 1992; or
- a transfer of engagements of a friendly society pursuant to a direction given by the appropriate authority under section 90 of the Friendly Societies Act 1992.

### **Co-operative and community benefit society and credit union relief**

427. The provisions in paragraph 12 provide relief from LTT where a land transaction takes place in connection with:

- a transfer of engagements between registered societies takes place in accordance with section 110 of the Co-operative and Community Benefit Societies Act 2014 (the “2014 Act”); or
- a registered society is converted or amalgamated with a company, or the whole of the engagements of the registered society is transferred to a company, in accordance with section 112 the 2014 Act.

### ***Schedule 23 –Amendments to the Tax Collection and Management (Wales) Act 2016***

428. This Schedule makes a number of amendments to TCMA.

429. [Paragraph 6](#) inserts section 38A into TCMA which sets out the responsibilities of buyers, where no return is required, to keep and preserve any records (for the time periods specified in the section) that demonstrate that no return was required for the time periods specified.

430. [Paragraph 8](#) inserts section 39A into TCMA which provides the Welsh Ministers with the power by regulations to specify whether particular descriptions of records must, or need not, be kept and preserved.
431. [Paragraph 12](#) amends section 43 of TCMA so that it provides that where an enquiry notice has been issued in relation to a further return that notice of enquiry can, if thought necessary, also be issued for an earlier return made in respect of the same transaction (even where that return would normally be outside the 12 month enquiry window).
432. [Paragraph 14](#) inserts section into 45A which provides that an amendment made to a tax return by a taxpayer under section 41 TCMA during an enquiry into that return does not automatically have effect. The amendment made by the taxpayer will have effect on the completion of the enquiry, unless WRA states otherwise (in the closure notice issued under section 50 TCMA).
433. [Paragraph 24](#) inserts section 63A into TCMA which enables taxpayers to claim relief where regulations setting tax rates and bands cease to have effect under the provisional affirmative procedure for setting tax rates and bands. Other consequential changes are also made to TCMA to reflect the insertion of new section 63A.
434. [Paragraph 42](#) inserts a section which substitutes section 122 of TCMA and provides that a late payment penalty will apply where a sum of devolved tax has not been paid by the “penalty date” set out in Table A1.
435. [Paragraph 42](#) inserts section 122A into TCMA which sets out when persons become liable to further late payment penalties in cases of continued non-payment, and the amount of such penalties.
436. Taking sections 122 and 122A TCMA together, there are three late payment penalty dates and amounts provided by this Act:
- an initial penalty of 5% of the unpaid tax at the “penalty date”;
  - a further penalty of 5% on the tax that remains unpaid after 6 months from the date falling 30 days before the penalty date; and
  - a second further penalty of 5% on the tax that remains unpaid after 12 months from the date falling 30 days before the penalty date.
437. [Paragraph 56](#) inserts section 154A into TCMA which provides that any penalty that could have been assessed on a person who has died may be assessed on that person’s personal representatives and any penalty which may then become due is payable out of the deceased person’s estate.
438. [Paragraph 58](#) substitutes section 157 of TCMA which provides the start date of late payment interest when tax has not been paid on time.
439. [Paragraph 58](#) also inserts section 157A into TCMA and substitutes section 158 of TCMA. This section provides rules for interest (known as “late payment interest”) to run on an unpaid amount of penalty from the date after the date on which that penalty should have been paid.
440. [Paragraph 63](#) inserts Chapter 3A into Part 8 of TCMA that provides rules relating to the payment and recovery of devolved tax in cases where a taxpayer has made a request for a WRA review under section 173 TCMA or an appeal to the Tribunal under section 178 TCMA. These provisions, broadly, give the taxpayer the ability to request that WRA agree to postpone the recovery of a disputed amount of tax, pending resolution of the dispute.
441. Section 181A provides that if a taxpayer requests a review or makes an appeal they are still liable to pay any devolved tax and interest due that is the subject of review or appeal.

442. Section 181B provides that, where there is a request for a review or an appeal, the taxpayer may make a request for the payment of what the taxpayer considers to be an amount of excessive devolved tax to be postponed. The postponement request must state the amount that the taxpayer wishes to be postponed and the reason why they consider the amount to be excessive. WRA will grant a request where they consider that the taxpayer has reasonable grounds for considering that they have been overcharged to tax. WRA may grant the request in whole or part and WRA must issue a notice of its decision. WRA may make the grant conditional on the provision of adequate security.
443. Section 181C provides that the time limit for making a postponement request is the same as that for making a request for a review or appeal. Whilst a request for review is made to WRA and an appeal is made to the Tribunal all postponement requests must be made to WRA. In the case of a late request for review or appeal the postponement request must be made at the same time as the request for review or appeal. If a late request for review or late appeal is refused then the postponement request will not need to be considered as there is no valid request for review or appeal.
444. Section 181D provides additional rules in relation to late postponement requests when there has been a request for review or appeal. WRA may only consider the request if there was a reasonable excuse for not making the postponement request within the statutory time limit and the taxpayer subsequently made that request without unreasonable delay.
445. Section 181E provides the taxpayer with the right, within the period of 30 days beginning with the date WRA issues notice of its decision in relation to the postponement request, to request the Tribunal to consider the postponement request. The Tribunal may confirm, cancel or replace WRA's decision.
446. Section 181F provides rules where either WRA or the taxpayer wishes to vary the postponement request that has been granted in the event that there has been a change in circumstances. That variation can be agreed by consent between WRA and the taxpayer. If no agreement is reached within the period of 21 days beginning with the date that one party requested to the other that the postponement request granted is varied, either party may apply to the Tribunal for determination on the matter.
447. Section 181G makes provision for the effect of the postponement. The postponed amount is defined as the amount of the devolved tax that is specified in a postponement request or the amount for which a postponement request has been granted. The period under which a postponement is in force is described as the "postponement period" and different periods are set depending upon whether the postponement request has just been made or whether it has been granted. In the case where a postponement request has not yet been granted the postponement agreement starts from the date the request is made and ends: on the day it is granted; or, if the request is not granted, either the day after the period for appealing if there is no appeal, or if there is an appeal on the day on which the Tribunal makes its determination. Where a postponement request has been granted then the postponement period begins on the date it was granted and ends either on the day on which WRA issues its notice of conclusion of its review, or when the Tribunal determines the appeal. There is therefore a deemed postponement in force from the date the taxpayer makes their request, for the amount that they request, until WRA decides the request.
448. Section 181H contains rules for postponement requests following a further appeal against a first-instance decision of the Tribunal. A taxpayer will be able to make a request for a postponement of devolved tax where there has been an onward appeal from one court to a higher court. However, WRA will only grant the postponement where they consider that the taxpayer has reasonable grounds for considering that the amount they have been charged is excessive, and that the recovery of the tax would cause the taxpayer serious financial hardship. Serious financial hardship will include matters such as an inability to access finance meaning that the only way to make payment would be by selling the family home or the need to dispose of assets used in the taxpayers business

*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*

that would stop them being able to operate that business effectively. The section also makes some other consequential variations to the operation of other related provisions.

449. Section 181I provides there is to be no appeal against a decision by the Tribunal in relation to a postponement request.
450. [Paragraph 65](#) inserts section 183A into TCMA which has the effect that where WRA makes a further appeal to a higher tribunal or court it is entitled, in certain circumstances, to request that it should not be required to repay the disputed devolved tax pending the resolution of that appeal. Only if the relevant tribunal or court gives permission for WRA to appeal and, additionally, considers that refusing WRA’s request not to repay is necessary to protect the revenue will the request be granted.
451. [Paragraph 66](#) inserts section 187A into TCMA which sets out how TCMA will apply to the Crown in relation to LTT.
452. [Paragraph 68](#) amends section 190 to TCMA so that a notice, for example an assessment, issued by WRA is invalid if the person to whom it is sent cannot reasonably ascertain its effect. The notice is treated as though it had not been issued. The converse will be equally true; that if a taxpayer in receipt of a notice, despite its errors, can ascertain the effect, then it is a valid notice.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

453. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales’ website at:

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=15873>

<i>Stage</i>	<i>Date</i>
Introduced	12 September 2016
Stage 1 - Debate	10 January 2017
Stage 2 Scrutiny Committee – consideration of amendments	16 February 2017
Stage 3 Plenary - consideration of amendments	28 March 2017
Stage 4 Approved by the National Assembly for Wales	4 April 2017
Royal Assent	24 May 2017