



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

## 2017 anaw 1

An Act of the National Assembly for Wales to make provision about the taxation of land transactions; to amend the Tax Collection and Management (Wales) Act 2016 (anaw 6) to make provision about counteracting avoidance of devolved taxes; to make other amendments to that Act; and for connected purposes. [24 May 2017]

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### OVERVIEW

#### 1 Overview of Act

(1) This Act is arranged as follows—

- (a) Part 2 provides for a tax to be charged on land transactions (“land transaction tax”) and makes provision about the key concepts underlying the tax including—
  - (i) which transactions are land transactions,
  - (ii) what is, and what is not, a chargeable interest,
  - (iii) when a chargeable interest is acquired and the treatment of transactions involving contracts required to be completed by transfer, as well as the treatment of other kinds of transactions,
  - (iv) which land transactions are, and which are not, chargeable to the tax (“chargeable transactions”), and
  - (v) what is, and what is not, chargeable consideration in relation to a chargeable transaction,
- (b) Part 3 makes provision about—
  - (i) tax bands and tax rates,

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- (ii) how to calculate the amount of tax chargeable, and
  - (iii) the reliefs available from land transaction tax,
  - (c) Part 4 makes provision about the application of this Act to leases,
  - (d) Part 5 makes provision about the application of this Act and the Tax Collection and Management (Wales) Act 2016 (anaw 6) to certain persons and bodies, including companies, partnerships and trusts,
  - (e) Part 6 makes provision about returns and payment of the tax including provision about—
    - (i) when a return is required to be made in relation to a land transaction,
    - (ii) who must make a return and pay the tax, and
    - (iii) when the tax is required to be paid (including provision about when payment may be deferred),
  - (f) Part 7 inserts into the Tax Collection and Management (Wales) Act 2016 (anaw 6) provisions establishing a general rule for the purposes of counteracting avoidance arrangements in relation to devolved taxes, and
  - (g) Part 8 provides for amendments to the Tax Collection and Management (Wales) Act 2016 (anaw 6) and contains provisions that apply generally for the purposes of this Act, including definitions of expressions used in this Act.
- (2) Schedule 1 contains an overview of the Schedules to this Act.

## PART 2

### THE TAX AND KEY CONCEPTS

#### CHAPTER 1

##### LAND TRANSACTION TAX

## 2 Land transaction tax

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

#### CHAPTER 2

##### LAND TRANSACTIONS

## 3 Land transaction

- (1) In this Act, a “land transaction” means an acquisition of a chargeable interest.

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

#### **4 Chargeable interest**

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

#### **5 Exempt interest**

- (1) The following are exempt interests—
  - (a) a security interest;
  - (b) a licence to use or occupy land;
  - (c) a tenancy at will;
  - (d) a franchise or manor.
- (2) In subsection (1)—
  - (a) “security interest” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any other obligation;
  - (b) “franchise” means a grant from the Crown such as the right to hold a market or fair, or the right to take tolls.
- (3) See also paragraph 7 of Schedule 10 (which makes additional provision about exempt interests in relation to alternative financial arrangements).
- (4) The Welsh Ministers may by regulations amend this section so as to—
  - (a) provide that any other description of interest or right in relation to land in Wales is an exempt interest;
  - (b) provide that a description of interest or right in relation to land in Wales is no longer an exempt interest;
  - (c) vary a description of an exempt interest.

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

- (1) For the purposes of this Act, each of the following is an acquisition and a disposal of a chargeable interest—
  - (a) the creation of the interest;
  - (b) the surrender or release of the interest;
  - (c) the variation of the interest.

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

## 7 Buyer and seller

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

## 8 Linked transactions

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

## 9 Land partly in Wales and partly in England

- (1) This section sets out how this Act applies to a transaction which is the acquisition of—
  - (a) an estate, interest, right or power in or over land, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,

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where the land is partly in Wales and partly in England.

- (2) The transaction is to be treated as if it were two transactions, one relating to the land in Wales (“the Welsh transaction”) and the other relating to the land in England (“the English transaction”).
- (3) The consideration for the transaction is to be apportioned between those two transactions on a just and reasonable basis.
- (4) Accordingly, the Welsh transaction is to be treated as a land transaction within the meaning of this Act (being the acquisition of a chargeable interest relating to the land in Wales).
- (5) But subsection (4) does not apply in the case of an exempt interest.
- (6) WRA must publish guidance about transactions to which subsection (1) applies, including guidance about identifying the location of the border between Wales and England.
- (7) WRA may revise guidance published under subsection (6) and must publish the revised guidance.
- (8) See section 48A of the [Finance Act 2003 \(c. 14\)](#) as to the application of Part 4 of that Act (stamp duty land tax) to the English transaction.
- (9) In section 48A of the [Finance Act 2003 \(c. 14\)](#), after subsection (5) insert—
  - “(6) See section 9 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 0) as to the application of that Act to the transaction relating to the land in Wales.”

## CHAPTER 3

### PARTICULAR TRANSACTIONS

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

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

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

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

*Contracts and transfers: particular cases*

## 11 Contract providing for transfer to third party

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

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

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

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

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

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

Schedule 2 makes—

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

#### *Substantial performance*

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

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



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

### *Options etc.*

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

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

### *Exchanges*

## **16 Exchanges**

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

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

## CHAPTER 4

### CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

#### *Chargeable transactions*

#### 17 Chargeable transaction

A land transaction is a chargeable transaction unless—

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

#### *Chargeable consideration*

#### 18 Chargeable consideration

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

#### 19 Contingent consideration

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

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## **20 Uncertain or unascertained consideration**

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

## **21 Annuities**

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

## **22 Deemed market value**

- (1) This section applies where the buyer is a company and—
  - (a) the seller is connected with the buyer, or
  - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.
- (2) The chargeable consideration for the transaction is to be taken to be—
  - (a) the amount determined under subsection (3) in respect of the transaction, or
  - (b) if greater, the amount which would be the chargeable consideration for the transaction ignoring this section.
- (3) The amount mentioned in subsection (2)(a) is—
  - (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
  - (b) if the acquisition is the grant of a lease at a rent, that rent.

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- (4) In this section—  
     “company” (“*cwmni*”) means any body corporate;  
     “shares” (“*cyfranddaliadau*”) includes stock and the reference to shares in a company includes a reference to securities issued by a company.
- (5) Where this section applies paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (6) This section has effect subject to—  
     (a) the exceptions provided for in section 23, and  
     (b) any other provision affording exemption or relief from tax.

## 23 Exceptions

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

## PART 3

### CALCULATION OF TAX AND RELIEFS

#### *Calculation of tax*

## 24 Regulations specifying tax bands and tax rates

- (1) The Welsh Ministers must by regulations specify the tax bands and percentage tax rates for each band applicable in the case of the following types of chargeable transactions—  
     (a) residential property transactions,

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- (b) higher rates residential property transactions, and
  - (c) non-residential property transactions.
- (2) In this Act, “tax band” means a lower and, if specified, upper amount of money from or, as the case may be, between which a specified percentage tax rate applies.
- (3) Regulations under subsection (1)(a) and (c) must specify, in the case of each type of transaction—
  - (a) a tax band for which the applicable tax rate is 0% (“the zero rate band”),
  - (b) two or more tax bands above the zero rate band,
  - (c) the tax rate for each band above the zero rate band so that the rate for each band is higher than the rate for the band below it, and
  - (d) a date on which the tax bands and tax rates apply in relation to transactions with an effective date on or after that date.
- (4) Regulations under subsection (1)(b) must specify—
  - (a) three or more tax bands,
  - (b) an applicable tax rate for each band which—
    - (i) must, in respect of any higher rates residential property transaction, be higher than the highest rate that would be applicable to any amount within that band were that transaction a residential property transaction, and
    - (ii) except in the case of the lowest band, is higher than the rate applicable to the band below it, and
  - (c) a date on which the tax bands and tax rates apply in relation to transactions with an effective date on or after that date.
- (5) Regulations under subsection (1) may specify—
  - (a) different tax bands and tax rates in respect of different categories of each type of chargeable transaction (including by reference to different descriptions of buyer);
  - (b) different dates under subsection (3)(d) or (4)(c) in respect of each specified tax band or tax rate.
- (6) A chargeable transaction is a residential property transaction if—
  - (a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.
- (7) But if Schedule 5 applies to a chargeable transaction it is a higher rates residential property transaction.
- (8) A chargeable transaction is a non-residential property transaction if—
  - (a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of any of the transactions consists of or includes such an interest.
- (9) Tax bands and tax rates specified in regulations under subsection (1) do not apply in relation to a chargeable transaction in so far as the chargeable consideration for

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the transaction is rent (for provision about the tax bands and tax rates applicable to chargeable consideration which is rent see paragraphs 27 and 28 of Schedule 6).

(10) Schedule 5 makes provision about higher rates residential property transactions.

(11) The Welsh Ministers may by regulations amend Schedule 5.

## **25 Procedure for regulations specifying tax bands and tax rates**

(1) A statutory instrument containing—

- (a) the first regulations made under section 24(1),
- (b) the first regulations made under paragraph 27(4) of Schedule 6 (tax bands and rates: rent element of residential leases), or
- (c) the first regulations made under paragraph 28(1) of that Schedule (tax bands and rates: rent element of non-residential and mixed leases),

may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

(2) A statutory instrument containing—

- (a) the second or subsequent regulations made under section 24(1),
- (b) the second or subsequent regulations made under paragraph 27(4) of Schedule 6, or
- (c) the second or subsequent regulations made under paragraph 28(1) of that Schedule,

must be laid before the National Assembly for Wales and ceases to have effect on the expiry of 28 days beginning with the day it is made unless, before the expiry of that period, it is approved by a resolution of the National Assembly.

(3) But if—

- (a) the National Assembly votes on a motion for a resolution to approve a statutory instrument laid under subsection (2) before the expiry of the period of 28 days mentioned in that subsection, and
- (b) the motion is not passed,

the instrument ceases to have effect at the end of the day on which the vote takes place.

(4) In calculating any period of 28 days for the purposes of subsection (2), no account is to be taken of any period during which the National Assembly is—

- (a) dissolved, or
- (b) in recess for more than 4 days.

## **26 Tax bands and tax rates applicable when regulations cease to have effect**

(1) In this section—

- (a) “rejected regulations” means regulations which cease to have effect by virtue of subsection (2) or (3) of section 25;
- (b) “the interim period” means the period—
  - (i) beginning with the date specified by rejected regulations as the date on which specified tax bands and tax rates apply in relation to a chargeable transaction, and
  - (ii) ending when those regulations cease to have effect by virtue of subsection (2) or (3) of section 25.

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- (2) Subject to subsection (3), if the effective date of a chargeable transaction falls within the interim period the tax bands and tax rates applicable to the transaction are the bands and rates specified by the rejected regulations as applying to the transaction.
- (3) If—
- (a) the effective date of a chargeable transaction falls within the interim period, and
  - (b) subsection (4), (5) or (6) applies,
- the tax bands and tax rates applicable to the transaction are the bands and rates which would have been applicable had the rejected regulations not been made.
- (4) This subsection applies where the buyer—
- (a) is required by virtue of section 44 to make a return relating to the transaction on or before the filing date and fails to do so, and
  - (b) also fails to make the return on or before the date on which the interim period ends.
- (5) This subsection applies where the first return required in relation to the chargeable transaction is required under one of the following provisions—
- (a) section 47 (duty to make return where contingency ceases or consideration is ascertained);
  - (b) section 51 (return as a result of later linked transaction);
  - (c) paragraph 3(4) or 5(5) of Schedule 6 (return as a result of lease continuing);
  - (d) paragraph 13(1) of that Schedule (return where tax underpaid where rent determined on reconsideration).
- (6) This subsection applies where—
- (a) the buyer in the transaction makes a claim under section 63A of TCMA,
  - (b) by virtue of subsection (5) of that section, the assessment of tax chargeable contained in a tax return made in relation to the transaction is treated as having been amended, and
  - (c) a further return is required in relation to the transaction under—
    - (i) a provision mentioned in subsection (5) of this section,
    - (ii) section 49 (further return where relief is withdrawn), or
    - (iii) paragraph 24 of Schedule 5 (return where transaction treated as higher rates residential property transaction).
- (7) But subsection (6) does not affect a return made before the claim is made under section 63A TCMA.
- (8) Section 63A of TCMA makes provision for relief to be claimed in cases where subsection (2) applies if the amount of tax chargeable is greater than the amount which would have been chargeable had the rejected regulations not been made.

## **27 Amount of tax chargeable: transactions which are not linked**

- (1) The amount of tax chargeable in respect of a chargeable transaction which is not one of a number of linked transactions (for which see section 28) is to be calculated as follows.

### *Step 1*

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For each tax band applicable to the transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the percentage tax rate for that band.

*Step 2*

Calculate the sum of the amounts reached under Step 1.

The result is the amount of tax chargeable.

- (2) But this section does not apply for the purposes of calculating the amount of any tax chargeable in respect of rent where the whole or part of the chargeable consideration for a chargeable transaction is rent; instead see—
- (a) in the case of a residential property transaction, paragraph 27 of Schedule 6 and any regulations made under that paragraph which make provision about the tax chargeable in respect of rent in the case of residential leases;
  - (b) in the case of a non-residential property transaction, paragraph 29 of that Schedule which provides for the calculation of tax chargeable in respect of rent in the case of non-residential and mixed leases.

## **28 Amount of tax chargeable: linked transactions**

- (1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.

*Step 1*

Calculate the tax which would be chargeable in accordance with section 27(1), if the chargeable consideration for the transaction were the total consideration.

*Step 2*

Divide the chargeable consideration for the transaction by the total consideration.

*Step 3*

Multiply the amount arrived at under Step 1 by the fraction arrived at under Step 2.

The result is the amount of tax chargeable.

- (2) In subsection (1), the “total consideration” is the total of the chargeable consideration for all the linked transactions (not including any chargeable consideration which is rent).
- (3) Where the whole or part of the chargeable consideration for a linked transaction is rent this section does not apply for the purposes of calculating the amount of any tax chargeable in respect of the rent; instead see—
- (a) in the case of a residential property transaction, paragraph 27 of Schedule 6 and any regulations made under that paragraph, and
  - (b) in the case of a non-residential property transaction, paragraph 30 of that Schedule (calculation of tax chargeable in respect of rent: linked transactions).

## **29 Calculation provisions subject to certain provisions about reliefs**

Sections 27 and 28 are subject to—

- (a) Schedule 13 (relief for acquisitions involving multiple dwellings);
- (b) paragraph 10 of Schedule 14 (relief for transactions entered into by persons exercising collective rights);
- (c) Part 3 of Schedule 17 (acquisition relief);



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- (d) paragraphs 6 and 8 of Schedule 18 (partial charities relief in certain circumstances).

### *Reliefs*

## **30 Reliefs**

- (1) The following Schedules make provision about reliefs and other provision connected to those reliefs—
- Schedule 9 (sale and leaseback relief);
  - Schedule 10 (alternative property finance relief);
  - Schedule 11 (relief for alternative finance investment bonds);
  - Schedule 12 (relief for incorporation of limited liability partnership);
  - Schedule 13 (relief for acquisitions involving multiple dwellings);
  - Schedule 14 (relief for certain acquisitions of dwellings);
  - Schedule 15 (relief for certain transactions relating to social housing);
  - Schedule 16 (group relief);
  - Schedule 17 (reconstruction and acquisition reliefs);
  - Schedule 18 (charities relief);
  - Schedule 19 (open-ended investment company reliefs);
  - Schedule 20 (relief for acquisitions by public bodies and health bodies);
  - Schedule 21 (compulsory purchase relief and planning obligation relief);
  - Schedule 22 (miscellaneous reliefs).
- (2) The following provisions of this Act provide relief from tax for certain land transactions (and accordingly if relief is claimed such transactions are not chargeable transactions)—
- paragraphs 18(2) and 19(2) of Schedule 2 (relief for notional transactions associated with assignments of rights and relief for certain subsales);
  - paragraph 1 of Schedule 9 (sale and leaseback relief);
  - paragraphs 2 and 3 of Schedule 10 (relief for certain alternative property finance transactions);
  - paragraphs 13(1) and 15(1) of Schedule 11 (relief for certain transactions relating to alternative finance investment bonds);
  - paragraph 1 of Schedule 12 (relief for incorporation of limited liability partnership);
  - paragraphs 2(1), 3(1), 4(1), 5(1), 6(1) and 7(1) of Schedule 14 (relief for certain acquisitions of dwellings);
  - paragraph 4 of Schedule 15 (shared ownership leases: relief for certain reversions);
  - paragraph 6(2) of that Schedule (shared ownership leases: relief for certain staircasing transactions);
  - paragraph 13 of that Schedule (shared ownership trust relief: transfer upon termination);
  - paragraph 14 of that Schedule (shared ownership trusts: relief for certain staircasing transactions);
  - paragraph 19(1) of that Schedule (relief for certain acquisitions by social housing providers);

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- paragraph 2(1) of Schedule 16 (group relief);  
 paragraph 2(1) of Schedule 17 (reconstruction relief);  
 paragraphs 3(1) and 5 of Schedule 18 (charities relief);  
 paragraphs 1(1) and 2(1) of Schedule 19 (open-ended investment companies relief);  
 paragraphs 1(1) and 2 of Schedule 20 (relief for acquisitions by public bodies and health bodies);  
 paragraphs 1(1) and 2(1) of Schedule 21 (compulsory purchase relief and planning obligation relief);  
 Schedule 22 (miscellaneous reliefs).
- (3) The following provisions of this Act provide relief for certain chargeable transactions in the manner specified in the respective provision—
- paragraph 19(3) of Schedule 2 (partial relief for certain subsales);
  - Schedule 13 (relief for acquisitions involving multiple dwellings);
  - paragraphs 2(3), 3(4), 4(4), 5(3), 6(4) and 7(3) of Schedule 14 (partial relief for certain acquisitions of dwellings which exceed the permitted area);
  - paragraph 10 of that Schedule (relief for transactions entered into by persons exercising collective rights);
  - paragraph 2 of Schedule 15 (relief relating to contingent consideration in the case of a right to buy transaction);
  - paragraph 3 of that Schedule (shared ownership leases: election for consideration to be taken to be market value);
  - paragraph 5 of that Schedule (shared ownership leases where staircasing allowed: election for consideration to be based on open market value);
  - paragraph 12 of that Schedule (shared ownership trusts: election for consideration to be taken to be market value);
  - Part 3 of Schedule 17 (acquisition relief);
  - paragraphs 6 and 8 of Schedule 18 (partial charities relief in certain circumstances).
- (4) Any relief under the any of the provisions mentioned in subsections (2) and (3) (other than relief under paragraph 3 of Schedule 22 (visiting forces and international military headquarters reliefs)) must be claimed in the first return made in relation to the land transaction, or in an amendment of that return.
- (5) Relief under paragraph 3 of Schedule 22—
- (a) may be claimed in the return for the land transaction, or in an amendment of that return, or
  - (b) if not claimed in the return or amended return and the period allowed for amendment of the return has ended, may be claimed by making a claim for repayment of any amount of tax overpaid (see Chapter 7 of Part 3 of TCMA), and section 78 of TCMA (time limit for making claims) does not apply to a claim for relief under paragraph 3 of Schedule 22.
- (6) The Welsh Ministers may by regulations amend this Act so as to—
- (a) add a relief;
  - (b) modify a relief;
  - (c) remove a relief;
  - (d) modify section 31.

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### 31 Reliefs: anti-avoidance

- (1) Relief is not available under any of the provisions mentioned in subsection (2) or (3) of section 30 in respect of a land transaction—
  - (a) which is a tax avoidance arrangement, or
  - (b) which forms part of arrangements which are tax avoidance arrangements.
- (2) An arrangement is a “tax avoidance arrangement” if—
  - (a) the obtaining of a tax advantage for any person is the main purpose, or one of the main purposes, of the buyer in the land transaction entering into the arrangement, and
  - (b) the arrangement lacks genuine economic or commercial substance other than the obtaining of a tax advantage.
- (3) In this section—
 

“arrangement” (“*trefniant*”) includes any transaction, scheme, agreement, grant, understanding, promise, undertaking or series of any of those things (whether or not legally enforceable);

“tax” (“*treth*”) means land transaction tax, income tax, corporation tax, capital gains tax, stamp duty land tax, stamp duty reserve tax or stamp duty;

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

  - (a) relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax, or
  - (d) deferral of a payment of tax or advancement of a repayment of tax.

## PART 4

### LEASES

### 32 Leases

- (1) In this Act, “lease” means—
  - (a) an interest or right in or over land for a term of years (whether fixed or periodic), or
  - (b) any other interest or right in or over land terminable by a period of notice or by notice at any time (other than a tenancy at will, being an exempt interest by virtue of section 5(1)(c)).
- (2) Schedule 6 makes further provision about leases.

## PART 5

### APPLICATION OF ACT AND TCMA TO CERTAIN PERSONS AND BODIES

### 33 Companies

- (1) In this Act, “company”, except as otherwise provided, means any body corporate or unincorporated association, but does not include a partnership.

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- (2) Everything to be done by a company under this Act, or under TCMA as it applies in relation to land transaction tax, is to be done by the company acting through—
  - (a) the proper officer of the company, or
  - (b) another person having for the time being the express, implied or apparent authority of the company to act on its behalf for the purpose.
- (3) Subsection (2)(b) does not apply where a liquidator has been appointed for the company.
- (4) For the purposes of this Act, and TCMA as it applies in relation to land transaction tax—
  - (a) the proper officer of a body corporate is the secretary, or person acting as secretary, of the body, and
  - (b) the proper officer of an unincorporated association, or of a body corporate that does not have a proper officer within paragraph (a), is the treasurer, or person acting as treasurer, of the association or body.
- (5) Subsection (4) does not apply if a liquidator or administrator has been appointed for the company.
- (6) If a liquidator or administrator has been appointed for the company, then—
  - (a) the liquidator or the administrator is the proper officer, and
  - (b) if two or more persons are appointed to act jointly or concurrently as the administrator of the company, the proper officer is—
    - (i) such one of them as is specified in a notice given to WRA by those persons for the purposes of this section, or
    - (ii) where WRA is not so notified, such one or more of those persons as WRA may designate as the proper officer for those purposes.
- (7) The Welsh Ministers may by regulations make further provision about the application of this Act, and TCMA as it applies in relation to land transaction tax, to companies or a description of company specified in the regulations.
- (8) Regulations under subsection (7) may (among other things) amend or repeal any provision of this Act or TCMA.

### **34 Unit trust schemes**

- (1) This Act (with the exception of the provisions mentioned in subsection (8)), and TCMA as it applies in relation to land transaction tax, apply in relation to a unit trust scheme as if—
  - (a) the trustees were a company, and
  - (b) the rights of the unit holders were shares in the company.
- (2) Each of the parts of an umbrella scheme is to be regarded as a separate unit trust scheme and the scheme as a whole is not so regarded.
- (3) In this section and section 35, an “umbrella scheme” means a unit trust scheme—
  - (a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another.

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- (4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.
- (5) In this Act, subject to any regulations under subsection (6)—
  - “unit trust scheme” (“*cynllun ymddiriedolaeth unedau*”) has the same meaning as in the [Financial Services and Markets Act 2000 \(c. 8\)](#) (see section 237 of that Act), and
  - “unit holder” (“*deiliad unedau*”) means a participant in a unit trust scheme.
- (6) The Welsh Ministers may by regulations provide 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 as it applies in relation to land transaction tax.
- (7) Section 620 of the [Corporation Tax Act 2010 \(c. 4\)](#) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, but as if references to an authorised unit trust were references to a unit trust scheme.
- (8) A unit trust scheme is not to be treated as a company for the purposes of Schedules 16 (group relief) and 17 (reconstruction relief or acquisition relief).

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

- (1) The Welsh Ministers may by regulations make such provision as they consider appropriate for securing that the provisions of this Act and TCMA have effect in relation to—
  - (a) open-ended investment companies of such description as may be specified in the regulations, and
  - (b) transactions involving such companies,in a manner corresponding, subject to such modifications as the Welsh Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such unit trust schemes.
- (2) Regulations under subsection (1) may in particular make provision—
  - (a) modifying the operation of any provision specified in the regulations in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme;
  - (b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act, and TCMA as it applies in relation to land transaction tax.
- (3) In this section, “open-ended investment company” has the meaning given by section 236 of the [Financial Services and Markets Act 2000 \(c. 8\)](#).

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

- (1) This Act (with the exception of the provisions mentioned in subsection (9)), and TCMA as it applies in relation to land transaction tax, apply in relation to a co-ownership authorised contractual scheme as if—

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- (a) the scheme were a company, and
  - (b) the rights of the participants were shares in the company.
- (2) An “umbrella COACS” means a co-ownership authorised contractual scheme—
- (a) whose arrangements provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them (“pooling arrangements”), and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (3) A “sub-scheme”, in relation to an umbrella COACS, means such of the pooling arrangements as relate to a separate pool.
- (4) Each of the sub-schemes of an umbrella COACS is to be regarded as a separate co-ownership authorised contractual scheme, and the umbrella COACS as a whole is not so regarded.
- (5) In relation to a sub-scheme of an umbrella COACS—
- (a) references to chargeable interests are references to such of the chargeable interests as, under the pooling arrangements, form part of the separate pool to which the sub-scheme relates, and
  - (b) references to the scheme documents are references to such parts of the documents as apply to the sub-scheme.
- (6) References to a co-ownership authorised contractual scheme are treated as including a collective investment scheme which—
- (a) is constituted under the law of an EEA State other than the United Kingdom by a contract,
  - (b) is managed by a body corporate incorporated under the law of an EEA State, and
  - (c) is authorised under the law of the EEA State mentioned in paragraph (a) in a way which makes it, under that law, the equivalent of a co-ownership authorised contractual scheme as defined in subsection (7),
- provided that, apart from this section, no charge to tax is capable of arising to the scheme under this Act.
- (7) Subject to any regulations under subsection (8)—
- “co-ownership authorised contractual scheme” (*“cynllun contractiol awdurdodedig cyfberchnogaeth”*) means a co-ownership scheme which is authorised for the purposes of the [Financial Services and Markets Act 2000 \(c. 8\)](#) by an authorisation order in force under section 261D(1) of that Act;
- “co-ownership scheme” (*“cynllun cyfberchnogaeth”*) has the same meaning as in the [Financial Services and Markets Act 2000 \(c. 8\)](#) (see section 235A of that Act).
- (8) The Welsh Ministers may by regulations provide that a scheme of a description specified in the regulations is to be treated as not being a co-ownership authorised contractual scheme for the purposes of this Act, and TCMA as it applies in relation to land transaction tax.
- (9) A co-ownership authorised contractual scheme is not to be treated as a company for the purposes of Schedules 16 (group relief) and 17 (reconstruction relief or acquisition relief).

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- (10) Anything required or authorised to be done under this Act or TCMA by or in relation to the buyer in a land transaction is to be done by or in relation to the operator of a co-ownership authorised contractual scheme; and accordingly section 33(2) to (6) does not apply in relation to a scheme to which this section applies.
- (11) But where the operator of the scheme is a body corporate, section 33(2) to (6) applies in relation to the operator, with the references to a company in those subsections having effect as though they were references to the operator.
- (12) In this section—
- “collective investment scheme” (“*cynllun buddsoddi torfol*”) has the meaning given by section 235 of the [Financial Services and Markets Act 2000 \(c. 8\)](#);
  - “operator” (“*gweithredwr*”)—
    - (a) in relation to a co-ownership authorised contractual scheme constituted under the law of the United Kingdom, has the meaning given by section 237(2) of the [Financial Services and Markets Act 2000 \(c. 8\)](#), and
    - (b) in relation to a collective investment scheme treated as a co-ownership authorised contractual scheme by virtue of subsection (6) (equivalent EEA schemes), means the corporate body responsible for the management of the scheme (however described);
  - “participant” (“*cyfranogwr*”) is to be read in accordance with section 235 of the [Financial Services and Markets Act 2000 \(c. 8\)](#).

### **37 Joint buyers: general rules**

- (1) This section and sections 38 to 40 apply to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.
- (2) The general rules are that—
- (a) any obligation of the buyer under this Act or TCMA in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
  - (b) anything required or authorised by this Act or TCMA to be done in relation to the buyer must be done in relation to all of them,
  - (c) anything authorised by this Act or TCMA to be done by the buyer must be done by all of them, and
  - (d) any liability of the buyer under this Act or TCMA in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)) is a joint and several liability of the buyers.
- (3) These general rules are subject to provision made in sections 38 to 40.
- (4) This section and sections 38 to 40 have effect subject to—
- (a) the provisions of Schedule 7 relating to partnerships, and
  - (b) the provisions of Schedule 8 relating to trustees.

### **38 Joint buyers: returns and declarations**

- (1) If the transaction is a notifiable transaction, a single return is required.

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- (2) The declaration required by section 53 (declaration that return is complete and correct) must be made by all the buyers.

### **39 Joint buyers: enquiries and assessments**

- (1) If WRA issues a notice of enquiry under section 43 of TCMA into a return—
- (a) the notice must be issued to each of the buyers whose identity is known to WRA;
  - (b) the powers of WRA under Part 4 of TCMA to require information and documents for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the buyers;
  - (c) any closure notice under section 50 of TCMA must be issued to each of the buyers whose identity is known to WRA;
  - (d) any of the buyers may apply under section 51 of TCMA for a direction that a closure notice be issued (and all of them are entitled to be parties to the application).
- (2) A WRA determination under section 52 of TCMA relating to the transaction must be made against all the buyers and is not effective against any of them unless notice of it is issued under that section to each of them whose identity is known to WRA.
- (3) A WRA assessment under section 54 or 55 of TCMA relating to the transaction must be made in respect of all the buyers and is not effective in respect of any of them unless notice of it is issued under section 61 of TCMA to each of them whose identity is known to WRA.

### **40 Joint buyers: appeals and reviews**

- (1) The agreement of all the buyers is required if a settlement agreement relating to the transaction is to be entered into under section 184 of TCMA.
- (2) A notice of request under section 173 of TCMA may be given by any of the buyers.
- (3) Where WRA undertakes a review of an appealable decision relating to the transaction following such a request made by some (but not all) of the buyers—
- (a) notice of the review must be issued by WRA to each of the other buyers whose identity is known to WRA;
  - (b) any of the other buyers may be a party to the review if they notify WRA in writing;
  - (c) notice of WRA's conclusions under section 176(5), (6) or (7) of TCMA must be issued to each of the buyers whose identity is known to WRA;
  - (d) section 177 of TCMA (effect of conclusions of review) applies in relation to all of the buyers.
- (4) In the case of an appeal under Part 8 of TCMA relating to the transaction—
- (a) the appeal may be brought by any of the buyers;
  - (b) notice of the appeal must be issued by WRA to each of the buyers who are not bringing the appeal and whose identity is known to WRA;
  - (c) any of the buyers are entitled to be parties to the appeal;
  - (d) the tribunal's determination under section 181 of TCMA binds all the buyers.



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#### **41 Partnerships**

- (1) Schedule 7 makes provision about the application of this Act and TCMA in relation to partnerships.
- (2) The Welsh Ministers may by regulations amend Schedule 7.

#### **42 Trusts**

- (1) Schedule 8 makes provision about the application of this Act and TCMA in relation to trusts.
- (2) The Welsh Ministers may by regulations amend Schedule 8.

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

- (1) The personal representatives of a person who is the buyer in a land transaction—
  - (a) are responsible for discharging any obligation of the buyer under this Act or TCMA in relation to the transaction, and
  - (b) may deduct any payment made by them under this Act or TCMA out of the assets and effects of the deceased person.
- (2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act or TCMA in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

## **PART 6**

### **RETURNS AND PAYMENTS**

#### **CHAPTER 1**

#### **RETURNS**

##### *Duty to make return*

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

- (1) The buyer in a notifiable land transaction must make a return to WRA.
- (2) A return made under this section must—
  - (a) be made before the end of the period of 30 days beginning with the day after the effective date of the transaction, and
  - (b) if the transaction is a chargeable transaction, include a self-assessment.
- (3) In this Act, “self-assessment” in relation to a return, means an assessment of the amount of tax that, on the basis of the information contained in that return, is chargeable in respect of the transaction.

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### *Notifiable transactions*

#### **45 Notifiable transactions**

- (1) For the purposes of this Act, a land transaction is notifiable if it is—
  - (a) an acquisition of a major interest in land (see section 68) that does not fall within one of the exceptions listed in section 46,
  - (b) an acquisition of a chargeable interest, other than a major interest in land, if—
    - (i) it is not exempt from charge as provided for in Schedule 3, and
    - (ii) tax is chargeable at a rate of more than 0%, or would be so chargeable but for a relief listed in section 30, in respect of any part of the chargeable consideration for the transaction,
  - (c) a land transaction that a person is treated as entering into by virtue of section 11(3)(contract providing for transfer to third party), or
  - (d) a notional or additional notional land transaction within the meaning given in paragraph 8(1) and (3) of Schedule 2.
- (2) This section has effect subject to—
  - (a) section 10(5) (contract and transfer),
  - (b) paragraph 18(5) of Schedule 4 (arrangements involving public or educational bodies),
  - (c) paragraph 44(1) of Schedule 7 (transfer of partnership interest), and
  - (d) paragraph 2(6) of Schedule 10 (alternative property finance).

#### **46 Exceptions for certain acquisitions of major interests in land**

- (1) The exceptions referred to in section 45 are as follows.
- (2) A transaction which is exempt from charge as provided for in Schedule 3.
- (3) An acquisition other than the grant, assignment or surrender of a lease where the chargeable consideration, together with the chargeable consideration for any linked transactions, is less than £40,000.
- (4) The grant of a lease for a term of less than 7 years, where the chargeable consideration does not exceed the zero rate threshold.
- (5) The assignment or surrender of a lease where—
  - (a) the lease was originally granted for a term of less than 7 years, and
  - (b) the chargeable consideration for the assignment or surrender does not exceed the zero rate threshold.
- (6) The grant of a lease for a term of 7 years or more where—
  - (a) the chargeable consideration other than rent is less than £40,000, and
  - (b) the relevant rent is less than £1,000.
- (7) The assignment or surrender of a lease where—
  - (a) the lease was originally granted for a term of 7 years or more, and
  - (b) the chargeable consideration for the assignment or surrender is less than £40,000.

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- (8) Chargeable consideration for an acquisition exceeds the zero rate threshold if it includes —
- (a) any amount in respect of which tax is chargeable at a rate of more than 0%, or
  - (b) any amount in respect of which tax would be so chargeable but for a relief listed in section 30(2) or (3).
- (9) In subsection (6), “relevant rent” means—
- (a) the annual rent (as defined in paragraph 36(2) of Schedule 6), or
  - (b) in the case of the grant of a lease to which paragraph 31 of Schedule 7 applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that paragraph).
- (10) The Welsh Ministers may by regulations amend subsection (3), (6) or (7) so as to substitute for an amount for the time being specified there a different amount.

### *Adjustments*

#### **47 Contingency ceases or consideration is ascertained: duty to make return**

- (1) The buyer in a land transaction must make a return to WRA if—
- (a) section 19 or 20 (contingent, uncertain or unascertained consideration) applies in relation to the transaction, or to any transaction in relation to which the transaction is a linked transaction,
  - (b) an event mentioned in subsection (2) occurs, and
  - (c) the effect of the event is that—
    - (i) the transaction becomes notifiable,
    - (ii) additional tax is payable in respect of the transaction, or
    - (iii) tax is payable in respect of the transaction where none was payable.
- (2) The events are—
- (a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or
  - (b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.
- (3) A return made under this section must—
- (a) be made before the end of the period of 30 days beginning with the day after the day on which the event mentioned in subsection (2) occurred, and
  - (b) include a self-assessment.
- (4) Despite section 157(3) of TCMA (late payment interest), the late payment interest start date in relation to an amount—
- (a) stated in a return made under this section as the tax payable,
  - (b) payable as a result of an amendment or correction to such a return,
  - (c) payable as a result of an assessment made in addition to such a return, or
  - (d) payable as a result of a determination or an assessment made in place of such a return,

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is the day after the end of the period of 30 days beginning with the day after the effective date of the transaction (and Chapter 1 of Part 6 of that Act is to be read accordingly).

- (5) The Welsh Ministers may by regulations amend subsection (4) so as to substitute for the period for the time being specified there, a different period.
- (6) This section does not apply in so far as the chargeable consideration consists of—
  - (a) rent (see Schedule 6);
  - (b) an annuity to which section 21 applies.

#### **48 Contingency ceases or consideration ascertained: repayment of tax**

- (1) Subsection (2) applies in relation to a land transaction if—
  - (a) section 19 or 20 (contingent, uncertain or unascertained consideration) applies in relation to the transaction, or to any transaction in relation to which the transaction is a linked transaction,
  - (b) an event mentioned in section 47(2) occurs (“the relevant event”), and
  - (c) the effect of the relevant event is that there is less tax payable in respect of the transaction than the buyer has already paid in accordance with the return made for the transaction (“the land transaction return”).
- (2) In order to obtain a repayment of the amount of tax overpaid, the buyer in the land transaction may—
  - (a) within the period allowed for amendment of the land transaction return, amend the return accordingly (see section 41 of TCMA);
  - (b) after the end of that period (if the return is not so amended), make a claim for repayment of the amount overpaid in accordance with Chapter 7 of Part 3 of TCMA as modified by subsection (3).
- (3) In its application to a claim to which subsection (2)(b) applies, Chapter 7 of Part 3 of TCMA applies as if for section 78 there were substituted—

#### **“78 Time limit for making claims**

A claim under section 63 to which section 48(2)(b) of LTTA applies must be made before the later of the end of—

- (a) the period of 4 years beginning with the day after the filing date for the tax return to which the land transaction tax already paid relates, or
  - (b) the period of 12 months beginning with the relevant event (within the meaning given in section 48(1)(b) of LTTA).”
- (4) But where the transaction (“the relevant transaction”) is the grant or assignment of a lease, no claim may be made under subsection (2)—
    - (a) in respect of the repayment (in whole or in part) of any loan or deposit that is treated by virtue of paragraph 19 of Schedule 6 as being consideration given for the relevant transaction, or
    - (b) in respect of the refund of any of the consideration given for the relevant transaction, in a case where the refund—
      - (i) is made under arrangements that were made in connection with the relevant transaction, and

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(ii) is contingent on the termination or assignment of the lease or on the grant of a chargeable interest out of the lease.

- (5) This section does not apply—
- (a) so far as the consideration consists of rent (see Schedule 6);
  - (b) where section 21 (annuities) applies.

#### **49 Further return where relief is withdrawn**

- (1) The buyer in a land transaction must make a further return to WRA if relief is withdrawn to any extent under—
- (a) Schedule 11 (alternative finance investment bonds);
  - (b) Schedule 14 (relief for certain acquisitions of residential property);
  - (c) Schedule 16 (group relief);
  - (d) Schedule 17 (reconstruction or acquisition relief);
  - (e) Schedule 18 (charities relief).
- (2) A return made under this section must—
- (a) be made before the end of the period of 30 days beginning with the day after the day on which the disqualifying event occurred, and
  - (b) include a self-assessment.
- (3) The disqualifying event is—
- (a) in relation to the withdrawal of relief under Schedule 11, an event mentioned in paragraph 14 of that Schedule;
  - (b) in relation to the withdrawal of relief for certain acquisitions of residential property under Schedule 14, an event mentioned in paragraph 8(1), (3) or (4) of that Schedule;
  - (c) in relation to the withdrawal of group relief under Schedule 16, the buyer ceasing to be a member of the same group as the seller within the meaning of that Schedule;
  - (d) in relation to the withdrawal of reconstruction relief or acquisition relief under Schedule 17, an event mentioned in paragraph 5(2) or 7(2) or (3) of that Schedule;
  - (e) in relation to the withdrawal of charities relief under Schedule 18, a disqualifying event as defined in paragraph 2(4), 5(2) or 8(2) of that Schedule.
- (4) Despite section 157(3) of TCMA (late payment interest), the late payment interest start date in relation to an amount—
- (a) stated in a return made under subsection (1)(a) as the tax payable,
  - (b) payable as a result of an amendment or correction to such a return,
  - (c) payable as a result of an assessment made in addition to such a return, or
  - (d) payable as a result of a determination or an assessment made in place of such a return,
- is the day after the end of the period of 30 days beginning with the day after the effective date of the first transaction (and Chapter 1 of Part 6 of that Act is to be read accordingly).
- (5) The Welsh Ministers may by regulations amend subsection (4) so as to substitute for the period for the time being specified there, a different period.

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## **50 Single return in respect of linked transactions with same effective date**

- (1) Where there are two or more linked transactions with the same effective date the buyer, or all of the buyers if there is more than one, may make a single return as if all of those transactions were a single notifiable transaction.
- (2) Where two or more buyers make a single return in respect of linked transactions, sections 37 to 40 apply as if—
  - (a) the transactions in question were a single transaction, and
  - (b) those buyers were buyers acting jointly.

## **51 Return as a result of later linked transaction**

- (1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
  - (a) the earlier transaction becomes notifiable,
  - (b) additional tax is chargeable in respect of the earlier transaction, or
  - (c) tax is chargeable in respect of the earlier transaction where none was chargeable before.
- (2) The buyer in the earlier transaction must make a return in respect of that transaction.
- (3) A return made under this section must—
  - (a) be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction, and
  - (b) include a self-assessment.
- (4) This section does not affect any requirement to make a return in respect of the later transaction.

## **52 Power to amend period in which returns must be made**

- (1) The Welsh Ministers may by regulations amend a provision listed in subsection (2) so as to substitute for the period for the time being specified there, a different period.
- (2) The provisions are—
  - (a) section 44(2)(a);
  - (b) section 47(3)(a);
  - (c) section 49(2)(a);
  - (d) section 51(3)(a);
  - (e) paragraph 24(4)(a) of Schedule 5;
  - (f) paragraph 3(4) of Schedule 6;
  - (g) paragraph 5(5) of that Schedule;
  - (h) paragraph 13(1) of that Schedule.

### *Declarations*

## **53 Declaration**

- (1) A return under this Act must include a declaration by the buyer that the return is, to the best of the buyer’s knowledge, correct and complete.

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- (2) But where—
- (a) the buyer authorises an agent to complete the return,
  - (b) the buyer makes a declaration that, with the exception of the relevant date, the information provided in the return is to the best of the buyer’s knowledge, correct and complete, and
  - (c) the return includes a declaration by the agent that the relevant date provided in the return is to the best of the agent’s knowledge correct,
- the requirement in subsection (1) is deemed to be met.
- (3) The relevant date is—
- (a) in relation to a return under section 47, the date of the event as a result of which the return is required,
  - (b) in relation to a return under section 49, the date on which the disqualifying event occurred,
  - (c) in relation to a return under section 51, the effective date of the later transaction,
  - (d) in relation to a return under paragraph 24 of Schedule 5, the date on which the interim period that applies in accordance with paragraph 9(5) or 18(5) of that Schedule ended, and
  - (e) in relation to a return made under any other provision of this Act, the effective date of the transaction.
- (4) Nothing in subsection (2) affects the liability of the buyer under this Act or TCMA.

#### **54 Buyer with a disability: declaration by the Official Solicitor**

- (1) Where—
- (a) a buyer in a land transaction is disabled,
  - (b) the Official Solicitor is acting for that buyer, and
  - (c) the return includes a declaration by the Official Solicitor that the return is to best of the Official Solicitor’s knowledge correct and complete,
- the requirement in section 53 is deemed to be met.
- (2) Nothing in this section affects the liability of the buyer under this Act or TCMA.
- (3) For the purposes of this section, a person is disabled if they have a disability for the purposes of the [Equality Act 2010 \(c. 15\)](#).
- (4) In this section, the “Official Solicitor” means the Official Solicitor to the Senior Courts.

#### **55 Declaration by person authorised to act on behalf of individual**

- (1) This section applies to a declaration mentioned in section 53 that a return is correct and complete.
- (2) Where the buyer is an individual, the requirement that the buyer make such a declaration (alone or jointly with others) is treated as met if a declaration to that effect is made by a person authorised to act on behalf of that individual in relation to the matters to which the return or certificate relates.

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- (3) For the purposes of this section a person (“P”) is not regarded as authorised to act on behalf of an individual unless P is so authorised by a power of attorney in writing, signed by that individual.
- (4) This section does not apply where an individual is acting in accordance with section 33 (persons through whom a company acts)—
  - (a) as the proper officer of a company, or
  - (b) otherwise on behalf of a company.

## CHAPTER 2

### LIABILITY FOR AND PAYMENT OF TAX

#### *Liability for tax*

#### **56 Liability for tax**

- (1) The buyer in a chargeable transaction must pay the tax in respect of that transaction and accordingly the buyer is chargeable to the tax for the purposes of TCMA.
- (2) As to the liability of buyers acting jointly, see—
  - (a) sections 37 to 40 (joint buyers),
  - (b) Schedule 7 (partnerships), and
  - (c) Schedule 8 (trusts).

#### *Payment of tax*

#### **57 Payment of tax**

- (1) Where a buyer in a land transaction makes a return, the buyer must pay any amount, or any additional amount, of tax payable not later than the filing date for the return.
- (2) Where a buyer in a land transaction amends a return in respect of that transaction, the buyer must pay any amount, or any additional amount, of tax payable as a result of that amendment—
  - (a) if the amendment is made by the filing date for that return, not later than that date, and
  - (b) if the amendment is made after the filing date for the return, when the buyer gives notice of the amendment to WRA.
- (3) But see Chapter 3 (deferral of tax).



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## CHAPTER 3

### DEFERRAL OF TAX

#### 58 Deferral requests in cases of contingent or uncertain consideration

- (1) A buyer in a land transaction where the whole or part of the chargeable consideration is contingent or uncertain (see sections 19 and 20) may give notice to WRA (“a deferral request”) requesting that payment of an amount of tax payable stated in the first return relating to the transaction (“the requested amount”) be deferred.
- (2) But the requested amount may not exceed the deferrable amount (see section 59).
- (3) WRA must agree to a deferral request if—
  - (a) the return and the deferral request are made on or before the filing date for that return,
  - (b) the request—
    - (i) specifies the requested amount to be deferred,
    - (ii) sets out the calculation of the requested amount carried out in accordance with section 59 (including the amount of consideration falling within step 2 of that calculation (“the deferred consideration”)),
    - (iii) sets out the reasons why the deferred consideration is contingent or uncertain and the reasons why it falls to be paid or provided on one or more future dates of which at least one will or may fall more than 6 months after the effective date of the transaction,
    - (iv) proposes an expected end date of the deferral period (see subsection (8)), and
    - (v) contains any other information as may be required by virtue of section 191 of TCMA (giving notices to WRA),
  - (c) WRA is satisfied that the requested amount does not exceed the deferrable amount calculated in accordance with section 59, and
  - (d) the land transaction is not a tax avoidance arrangement nor forms part of arrangements which are tax avoidance arrangements.
- (4) Otherwise WRA must refuse a deferral request (but see subsections (5) and (6)).
- (5) But if WRA thinks that the requested amount exceeds the deferrable amount it may nevertheless grant the deferral request in relation to so much of the requested amount as does not exceed the deferrable amount.
- (6) When agreeing to a deferral request WRA—
  - (a) must determine the amount of tax it agrees to defer (the “deferred amount”);
  - (b) must determine the expected end date of the deferral period (that may be different to the expected end date proposed by the buyer) (see subsection (8));
  - (c) may impose such conditions (including conditions requiring the buyer to make payments of part of the deferred amount at specified times during the deferral period) as WRA thinks appropriate.
- (7) In this section, “tax avoidance arrangement” has the same meaning as in section 31.
- (8) In this Chapter—

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- (a) “deferral period” means the period beginning with the filing date for the return referred to in subsection (1) and ending on the earlier of—
    - (i) the expected end date, or
    - (ii) the date on which an event mentioned in subsection (9) occurs in relation to the deferred consideration;
  - (b) “expected end date” means—
    - (i) the date on which an event mentioned in subsection (9) is expected to occur in relation to the deferred consideration, or
    - (ii) if that date cannot be predicted, the fifth anniversary of the effective date of the transaction (or, where the expected end date is changed under section 62, the fifth anniversary of the previous expected end date).
- (9) The events are—
- (a) where the deferred consideration is contingent, the date on which contingency occurs or it becomes clear that it will not occur;
  - (b) where the deferred consideration is uncertain, the date on which the consideration becomes ascertained.

## 59 Calculation of deferrable amount

The deferrable amount in respect of a land transaction to which section 58(1) applies is to be calculated as follows.

### *Step 1*

Calculate the amount of tax chargeable in respect of the land transaction in accordance with section 27 or 28.

### *Step 2*

Determine the amount or value of chargeable consideration for the land transaction that—

- (a) has not already been paid or provided,
- (b) is contingent or uncertain (see sections 19 and 20),
- (c) does not consist of—
  - (i) rent (within the meaning given in Schedule 6), or
  - (ii) an annuity to which section 21 applies, and
- (d) falls to be paid or provided on one or more future dates of which at least one will or may fall more than 6 months after the effective date of the transaction.

That amount or value of consideration is the deferred consideration.

### *Step 3*

Calculate (in accordance with section 27 or 28) the amount of tax that would have been chargeable in respect of the land transaction had the chargeable consideration for the transaction been reduced by the amount or value of the deferred consideration.

### *Step 4*

Deduct the amount of tax calculated under step 3 from the amount calculated under step 1.

The remaining amount of tax is the deferrable amount.

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

- (1) Where WRA agrees to a deferral request, it must issue a notice to the buyer specifying—
  - (a) the deferred amount and, if any, the refused amount,
  - (b) the expected end date of the deferral period,
  - (c) any condition WRA has imposed under section 58(6)(c), and
  - (d) if the deferred amount is lower than the proposed deferred amount, the reasons for that decision.
- (2) Where WRA refuses a deferral request, it must issue a notice to the buyer specifying the reasons for the refusal.

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

- (1) Where WRA agrees to a deferral request—
  - (a) the buyer must pay the deferred amount before the end of the day following the date on which the deferral period ends (despite section 57), and
  - (b) despite section 157(3) of TCMA, the late payment interest start date in relation to the deferred amount is the date following the date on which the deferred amount is required to be paid (and Chapter 1 of Part 6 of TCMA is to be read accordingly).
- (2) Where WRA refuses a deferral request (or agrees to a request but agrees a deferred amount which is lower than the requested amount)—
  - (a) the amount of tax which WRA has refused to defer (“the refused amount”) is required to be paid by the end of the later of—
    - (i) the date on which the buyer receives notice of WRA's decision, or
    - (ii) the date on which the amount would otherwise be required to be paid in accordance with section 57, and
  - (b) the late payment interest start date for the refused amount is the later of—
    - (i) the day after the date on which the refused amount is required to be paid, or
    - (ii) the date which would otherwise be specified under section 157(3) of TCMA as the late payment interest start date in relation to that amount.
- (3) See sections 47 and 48 for provision about cases where the amount of tax payable changes as a result of—
  - (a) a contingency occurring or not occurring, or
  - (b) uncertain consideration becoming ascertained.

## **62 Variation of deferral requests**

- (1) Where WRA has agreed to a deferral request, the buyer may give notice to WRA requesting—
  - (a) a change to the expected end date;
  - (b) variation or removal of a condition imposed under section 58(6)(c).
- (2) A request under subsection (1) must specify the change in circumstances which the buyer thinks justifies the change, variation or removal.

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- (3) If WRA thinks it appropriate to do so, it may—
- (a) agree to the request made under subsection (1), or
  - (b) agree to—
    - (i) a different expected end date than that requested under subsection (1)(a);
    - (ii) a different variation of a condition than that requested under subsection (1)(b).
- (4) Where WRA makes a decision under this section it must issue a notice to the buyer setting out the decision and the reasons for it.

### **63 Failure to comply with WRA’s agreement to defer**

- (1) If WRA thinks that the buyer—
- (a) has failed to comply with a condition imposed under section 58(6)(c) or varied under section 62, or
  - (b) has, in relation to the deferral request or a request made under section 62(1)—
    - (i) provided false or misleading information, or
    - (ii) withheld information,
- the deferral request is to be treated as if it had never been made (and section 57 of this Act and section 157 of TCMA apply accordingly).
- (2) In such a case WRA must issue a notice to the buyer stating that deferral request is to be treated as if it had never been made and setting out the consequences of that.

### **64 Regulations about deferral of tax**

- (1) The Welsh Ministers may by regulations—
- (a) make provision for the deferral of tax in cases where the deferred consideration consists of rent (within the meaning given in Schedule 6);
  - (b) make provision applying this Chapter (with such modifications as may be specified in the regulations) to cases where the consideration to which a deferral request relates, or any element of that consideration, consists of—
    - (i) the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, or
    - (ii) the provision of services (other than the carrying out of such works);
  - (c) make provision for WRA to make variations under section 62 without the buyer giving notice of a request under subsection (1) of that section (whether by agreement with the buyer or by imposition).
- (2) Regulations under subsection (1) may make such modifications of this Act as the Welsh Ministers consider necessary or expedient.

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## CHAPTER 4

### REGISTRATION OF LAND TRANSACTIONS

#### 65 Registration of land transactions

- (1) The Chief Land Registrar (“the Registrar”) may not register, record or otherwise reflect in an entry made in the register of title maintained by the Registrar a notifiable land transaction or a document effecting or evidencing such a transaction unless a WRA certificate is produced with the application to register, record or otherwise reflect the transaction.
- (2) A “WRA certificate” is a certificate issued by WRA stating that a return has been made in respect of the transaction.
- (3) But subsection (1) does not apply in so far as—
  - (a) the notifiable land transaction or a document effecting or evidencing that transaction is required to be registered, recorded or otherwise reflected in an entry made in the register of title without any application to register;
  - (b) the entry registers, records or otherwise reflects an interest or right other than the chargeable interest acquired by the buyer in the land transaction.
- (4) This section does not apply to—
  - (a) a contract which is to be treated as a land transaction by virtue of—
    - (i) section 10(4) (contract and transfer), or
    - (ii) section 11(3) (contract providing for transfer to third party);
  - (b) a notional or additional notional transaction within the meaning given in Schedule 2;
  - (c) an agreement for a lease which is to be treated as a land transaction by virtue of paragraph 20(1) of Schedule 6;
  - (d) a variation of a lease which is to be treated as a land transaction by virtue of paragraph 24(1) or 25(1) of that Schedule.
- (5) The Welsh Ministers may by regulations make provision about WRA certificates.
- (6) Regulations made under subsection (5) may in particular—
  - (a) make provision as to the conditions that must be met before a certificate is issued;
  - (b) make provision about the issue of duplicate certificates;
  - (c) provide for the issue of multiple certificates where a return is made relating to more than one transaction.
- (7) The Registrar—
  - (a) must allow WRA to inspect any certificates produced under this section, and
  - (b) may enter into arrangements for affording WRA other information and facilities for verifying that the requirements of this Act have been complied with.

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## PART 7

### GENERAL ANTI-AVOIDANCE RULE

#### 66 General anti-avoidance rule

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

#### “PART 3A

### GENERAL ANTI-AVOIDANCE RULE

#### *Overview*

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

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

#### *Artificial tax avoidance arrangements*

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

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

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### 81C Artificial tax avoidance arrangements

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

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

For the purposes of this Part—

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

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

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

#### *Counteracting tax advantages*

### 81E Adjustments to counteract tax advantages

- (1) WRA may make such adjustments as it considers just and reasonable to counteract a tax advantage that would (ignoring this Part) arise from an artificial tax avoidance arrangement.
- (2) An adjustment may be made in respect of the devolved tax in question or any other devolved tax.

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- (3) An adjustment must be made—
  - (a) where the adjustment relates to a tax return in respect of which an enquiry is in progress, by amending the return in a closure notice issued under section 50;
  - (b) otherwise by means of a WRA assessment.
- (4) WRA may not make an adjustment unless it has complied with the requirements of sections 81F and 81G.

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

- (1) WRA may issue a notice (a “proposed counteraction notice”) to a taxpayer if WRA considers—
  - (a) that a tax advantage has arisen to a person from an artificial tax avoidance arrangement, and
  - (b) that the tax advantage should be counteracted by means of an adjustment under section 81E.
- (2) A proposed counteraction notice must—
  - (a) specify the tax avoidance arrangement and the tax advantage,
  - (b) explain why WRA considers that a tax advantage has arisen from an artificial tax avoidance arrangement,
  - (c) set out the adjustment that WRA proposes to make in order to counteract the tax advantage,
  - (d) specify any amount that the taxpayer will be required to pay in accordance with the proposed WRA assessment, and
  - (e) inform the taxpayer—
    - (i) that a final counteraction notice is to be issued after the expiry of the period of 45 days beginning with the day on which the proposed counteraction notice is issued,
    - (ii) that the taxpayer may request that WRA extend that 45 day period, and
    - (iii) that the taxpayer may make written representations to WRA at any time before the final counteraction notice is issued.

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

- (1) WRA must, after the expiry of the 45 day period mentioned in section 81F(2)(e)(i) or such longer period as WRA has agreed to, issue a notice (a “final counteraction notice”) to the taxpayer.
- (2) A final counteraction notice must state whether the tax advantage arising from the tax avoidance arrangement is to be counteracted by means of an adjustment under section 81E.
- (3) In determining whether the tax advantage is to be counteracted WRA must have regard to any written representations made by the taxpayer.
- (4) If a final counteraction notice states that a tax advantage is to be counteracted by means of an adjustment the notice must also—
  - (a) specify the adjustment required to give effect to the counteraction,



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- (b) where the adjustment relates to a tax return in respect of which an enquiry is in progress, specify the amendment of the return which is to be included in the closure notice issued under section 50 when WRA reaches its conclusions in the enquiry,
  - (c) where paragraph (b) does not apply—
    - (i) be accompanied by the WRA assessment which gives effect to the adjustment, or
    - (ii) where a WRA assessment giving effect to the adjustment has been made, specify that assessment, and
  - (d) specify any amount that the taxpayer—
    - (i) will be required to pay as a result of the amendment specified under paragraph (b), or
    - (ii) is required to pay in accordance with the WRA assessment mentioned in paragraph (c).
- (5) If a final counteraction notice states that a tax advantage is not to be counteracted it must state the reasons for WRA's decision.

*Proceedings before a court or tribunal*

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

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

- (a) that there is an artificial tax avoidance arrangement, and
- (b) that the adjustments made (or to be made) to counteract the tax advantage arising from the arrangement are just and reasonable.

*Commencement and transitional provision*

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

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

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## PART 8

### INTERPRETATION AND FINAL PROVISIONS

#### *Interpretation*

**67 Meaning of tax**

Except as otherwise provided, in this Act, “tax” means land transaction tax.

**68 Meaning of major interest in land**

References in this Act to a “major interest” in land are to—

- (a) an estate in fee simple absolute, or
- (b) a term of years absolute,

whether subsisting at law or in equity.

**69 Meaning of subject-matter and main subject-matter**

Except as otherwise provided, references in this Act to the subject-matter of a land transaction are to the chargeable interest acquired (the “main subject-matter”), together with any interest or right appurtenant or pertaining to it that is acquired with it.

**70 Meaning of market value**

For the purposes of this Act, “market value” is to be determined as for the purposes of the [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#) (see sections 272 to 274 of that Act).

**71 Meaning of effective date of transaction**

Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is the date of completion.

**72 Meaning of residential property**

(1) In this Act, “residential property” means—

- (a) a building that is used or suitable for use as one or more dwellings, or is in the process of being constructed or adapted for such use;
- (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land);
- (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).

(2) Accordingly, “non-residential property” means any property that is not residential property.

(3) But see the rule in subsection (9) in the case of a transaction involving 6 or more dwellings.

(4) For the purposes of subsection (1), a building used for any of the following purposes is used as a dwelling—

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- (a) residential accommodation for school pupils;
  - (b) residential accommodation for students, other than accommodation falling with subsection (5)(b);
  - (c) residential accommodation for members of the armed forces;
  - (d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (5).
- (5) For the purposes of subsection (1), a building used for any of the following purposes is not used as a dwelling—
- (a) a home or other institution providing residential accommodation for children;
  - (b) a hall of residence for students in further or higher education;
  - (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
  - (d) a hospital or hospice;
  - (e) a prison or similar establishment;
  - (f) a hotel or similar establishment.
- (6) Where a building is used for a purpose specified in subsection (5), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.
- (7) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (4) and at least one of those specified in subsection (5)—
- (a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same subsection, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,
  - (b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.
- (8) In this section, “building” includes part of a building.
- (9) Where 6 or more dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as being non-residential property.
- (10) The Welsh Ministers may by regulations amend this section.

### **73 Meaning of dwelling**

References in this Act to a “dwelling” are to residential property comprising a single dwelling.

### **74 References to connected persons**

- (1) Section 1122 of the [Corporation Tax Act 2010 \(c. 4\)](#) (connected persons) applies for the purposes of any reference in this Act to a person being connected with another person.
- (2) But see the particular provision made in the following provisions—
- (a) section 23(3)(b) (exceptions to deemed market value rule in transactions with connected companies);

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- (b) paragraphs 16(2)(b) and 24(2)(b) of Schedule 7 (partnership transactions: determining the corresponding partners);
- (c) paragraph 51 of that Schedule (partnerships: application of section 1122 of the [Corporation Tax Act 2010 \(c. 4\)](#) to Schedule 7 generally);
- (d) paragraph 5(5) of Schedule 16 (group relief: joint venture companies);
- (e) paragraph 6(3) of that Schedule (group relief: mortgage arrangements).

## 75 Other definitions

In this Act—

“child” (“*plentyn*”) means a person under the age of 18;

“consumer prices index” (“*mynegai prisiau defnyddwyr*”) means the all items consumer prices index published by the Statistics Board;

“enactment” (“*deddfiad*”) means an enactment (whenever enacted or made) which is, or is contained in—

- (a) an Act of Parliament,
- (b) an Act or a Measure of the National Assembly for Wales, or
- (c) subordinate legislation (within the meaning of the [Interpretation Act 1978 \(c. 30\)](#)) made under—
  - (i) an Act of Parliament, or
  - (ii) an Act or a Measure of the National Assembly for Wales;

“land” (“*tir*”) includes—

- (a) buildings and structures;
- (b) land covered by water;

“registered social landlord” (“*landlord cymdeithasol cofrestredig*”) means a body registered as a social landlord in a register maintained under section 1(1) of the [Housing Act 1996 \(c. 52\)](#);

“retail prices index” (“*mynegai prisiau manwerthu*”) means the United Kingdom General Index of Retail Prices published by the Statistics Board under section 21 of the [Statistics and Registration Service Act 2007 \(c. 18\)](#);

“TCMA” (“*DCRht*”) means the Tax Collection and Management (Wales) Act 2016 (anaw 6);

“Wales” (“*Cymru*”) has the meaning given by section 158(1) of the [Government of Wales Act 2006 \(c. 32\)](#).

*Amendments to the Tax Collection and Management (Wales) Act 2016*

## 76 Amendments to TCMA

Schedule 23 makes amendments to TCMA.

*Independent review*

## 77 Independent review of land transaction tax

- (1) The Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed before the expiry of the period of 6 years beginning with the day on which this subsection comes into force.

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- (2) Following the completion of the review, the Welsh Ministers must publish a report of it.
- (3) The arrangements mentioned in subsection (1) may include—
  - (a) payment of expenses incurred by a person in carrying out (or assisting in carrying out) the review;
  - (b) provision of assistance (including financial assistance) to such a person;
  - (c) directing WRA to assist in carrying out the review.

### *Final provisions*

## **78 Power to make consequential etc. provision**

- (1) The Welsh Ministers may by regulations make such incidental, consequential, supplemental, transitional, transitory or saving provision as they think appropriate for the purposes of, or in connection with, or for giving full effect to, any provision made by or under this Act.
- (2) Regulations under this section may amend, revoke or repeal any enactment (including any provision made by or under this Act).
- (3) If a statutory instrument contains regulations under this section which the Welsh Ministers consider makes provision which may have the effect mentioned in subsection (4), the instrument may not be made unless a draft has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (4) The effect is that, in respect of a land transaction—
  - (a) the amount of tax chargeable is more than the amount which would be chargeable if the regulations are not made, or
  - (b) tax is chargeable where none would be chargeable if the regulations are not made.

## **79 Regulations**

- (1) Any power to make regulations under this Act—
  - (a) must be exercised by statutory instrument, and
  - (b) includes power to make different provision for different purposes.
- (2) A statutory instrument containing regulations made under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales—
  - (a) section 5(4) (exempt interests);
  - (b) section 18(2) (chargeable consideration);
  - (c) section 24(11) (higher rates residential property transactions);
  - (d) section 30(6) (reliefs);
  - (e) section 33(7) (companies);
  - (f) section 34(6) (unit trusts);
  - (g) section 35(1) (open-ended investment companies);
  - (h) section 36(8) (co-ownership authorised contractual schemes);
  - (i) section 41(2) (partnerships);

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- (j) section 42(2) (trusts);
  - (k) section 46(10) (thresholds for notifiable transactions);
  - (l) section 47(5) (late payment interest start date);
  - (m) section 49(5) (late payment interest start date);
  - (n) section 52(1) (period within which returns must be made);
  - (o) section 64(1) (regulations about deferral of tax);
  - (p) section 72(10) (residential property);
  - (q) paragraph 7 of Schedule 3 (exempt transactions);
  - (r) paragraph 27(2) of Schedule 6 (charging tax on rent element of residential leases);
  - (s) paragraph 32 of that Schedule (temporal discount rate for leases);
  - (t) paragraph 36(1)(b) of that Schedule (specified amount of relevant rent);
  - (u) paragraph 37 of that Schedule (power to amend or repeal paragraphs 34 to 36);
  - (v) paragraph 6(7) of Schedule 13 (multiple dwellings relief: minimum percentage of tax attributable to dwellings);
  - (w) paragraph 3 of Schedule 17 (acquisition relief: proportion of tax relieved).
- (3) Any other statutory instrument containing regulations made under this Act (except an instrument mentioned in subsection (4)) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4) Subsection (3) does not apply to a statutory instrument containing any of the following
- (a) regulations made under section 24(1) or paragraph 27(4) or 28(1) of Schedule 6 (regulations about tax rates and bands);
  - (b) regulations made under section 78 to which subsection (3) of that section applies.

## **80 Crown application**

- (1) This Act binds the Crown.
- (2) But see paragraph 2 of Schedule 3 (which exempts land transactions from charge where the buyer is a specified Crown body).
- (3) And nothing in Chapter 2 of Part 6 (liability for and payment of tax) affects the operation of sections 8 and 9 of the [Crown Private Estates Act 1862 \(c. 37\)](#).
- (4) Subsection (1) does not make the Crown liable to prosecution for an offence.

## **81 Coming into force**

- (1) This Part (except section 76 and Schedule 23) comes into force on the day after the day on which this Act receives Royal Assent.
- (2) The remaining provisions of this Act come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.
- (3) An order under subsection (2) may appoint different days for different purposes.

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**82 Short title**

The short title of this Act is the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

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## SCHEDULE 1

(as introduced by section 1(2))

### OVERVIEW OF SCHEDULES

The Schedules to this Act are arranged as follows—

- (a) Schedules 2 to 4 comprise a group of Schedules which make provision related to the key concepts of land transaction tax—
  - (i) Schedule 2 sets out how this Act applies to pre-completion transactions;
  - (ii) Schedule 3 specifies certain transactions which are exempt from a charge to the tax;
  - (iii) Schedule 4 makes detailed provision about what counts as chargeable consideration for a land transaction;
- (b) Schedule 5 makes provision about higher rates residential property transactions;
- (c) Schedule 6 makes provision about the application of this Act to leases;
- (d) Schedules 7 and 8 comprise a group of Schedules making provision about the application of this Act to certain entities, specifically partnerships (Schedule 7) and trusts (Schedule 8);
- (e) Schedules 9 to 22 comprise a group of Schedules which make provision about reliefs available from the tax;
- (f) Schedule 23 makes amendments to TCMA.

## SCHEDULE 2

(as introduced by section 13)

### PRE-COMPLETION TRANSACTIONS

#### PART 1

#### INTRODUCTION AND KEY CONCEPTS

##### *Overview*

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



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- (e) Part 5 provides for relief to be available to certain buyers in cases where certain pre-completion transactions are entered into;
- (f) Part 6 makes some general interpretative provisions.

#### *Application of this Schedule*

- 2 (1) This Schedule applies where—
- (a) a person (“the original buyer”) enters into a contract (“the original contract”) for the acquisition by the original buyer of a chargeable interest under which the acquisition is to be completed by a transfer, and
  - (b) there is a pre-completion transaction.
- (2) The reference in sub-paragraph (1)(a) to a contract does not include a contract that is an assignment of rights in relation to another contract.
- (3) For any one contract for the acquisition of a chargeable interest there is only one original buyer (and for the purposes of this Schedule joint original buyers are to be treated as one original buyer).
- (4) This Schedule does not apply where paragraph 21 of Schedule 6 (assignment of agreement for lease) applies (and accordingly, despite paragraph 3, the assignment of an agreement for lease is not a pre-completion transaction).

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

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

#### *Other key terms*

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

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transaction took place was entitled to call for a transfer of (what became) the subject-matter of the pre-completion transaction.

- (3) References in this Schedule to the “subject-matter” of a pre-completion transaction—
- (a) are to the chargeable interest the transfer of which the transferee is entitled to call for as a result of the pre-completion transaction, and
  - (b) also include, so far as is appropriate, interests or rights appurtenant or pertaining to the chargeable interest.

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

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

## PART 2

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

*Pre-completion transactions which are assignments of rights*

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

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

- 7 (1) This paragraph applies if the pre-completion transaction is an assignment of rights.
- (2) If the subject-matter of the original contract is transferred to the transferee, the transfer is taken to be the completion of the original contract (despite section 10 and in particular subsection (10)(a) of that section).
- (3) Sub-paragraphs (4) to (8) apply if—
- (a) the subject-matter of the original contract is transferred to the transferee, or
  - (b) the original contract is substantially performed by the transferee.
- (4) The transferee is taken to be the buyer in the land transaction effected as mentioned in section 10(3), or treated as effected under section 10(4).
- (5) For the purpose of determining the chargeable consideration for that land transaction, the land transaction is taken to give effect to a contract the consideration under which is the consideration paid or provided by the transferee or a person connected with the transferee—
- (a) for the subject-matter of the original contract, and
  - (b) for the assignment of rights.
- (6) Paragraph 1 of Schedule 4 (chargeable consideration: money or money’s worth) has effect accordingly but subject to sub-paragraphs (7) and (8) of this paragraph.
- (7) This paragraph does not allow any amount of consideration given by a person to be counted twice in determining the chargeable consideration.

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- (8) In any case where there is a relevant connection between the parties as mentioned in paragraph 15(2) (minimum consideration rule), the chargeable consideration for the land transaction mentioned in sub-paragraph (4) of this paragraph is calculated (regardless of whether the consideration is taken to be the amount in paragraph (a), (b) or (c) of paragraph 15(2)) as if in paragraph 1 of Schedule 4 the words “or a person connected with the buyer” were omitted.
- (9) The original contract is to be taken to be “substantially performed by the transferee” where a land transaction is treated as effected under section 10(4) by reason of—
- (a) the transferee under the assignment of rights, or a person connected with the transferee, taking possession of the whole, or substantially the whole, of the subject-matter of the original contract,
  - (b) a substantial amount of the consideration being paid or provided by the transferee or a person connected with the transferee, or
  - (c) consideration paid or provided by the transferee, or a person connected with the transferee, amounting, when taken together with consideration paid or provided by another person, to a substantial amount of the consideration.
- (10) References in sub-paragraph (9) to possession and to the payment or provision of a substantial amount of the consideration are to be read in accordance with subsections (2) and (3) of section 14 (meaning of substantial performance).
- (11) In sub-paragraph (9), “the consideration”—
- (a) in relation to the land transaction, means (what is taken to be) the consideration for the acquisition of the subject-matter of the land transaction;
  - (b) in relation to the original contract, means the consideration for the transferee’s acquisition of the subject-matter of that contract;
  - (c) in relation to the assignment of rights, means the consideration for the transferee’s acquisition of the rights to which that contract relates.

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

- 8 (1) Where paragraph 7(4) to (8) applies (assignment of rights: original contract completed or substantially performed) this Act has effect as if—
- (a) the effective date of the land transaction mentioned in paragraph 7(4) (“the transferee’s land transaction”) were also the effective date of another land transaction (a “notional land transaction”), and
  - (b) the original buyer were the buyer in that notional land transaction.
- (2) The notional land transaction is referred to in this paragraph as being “associated with” the assignment of rights under which the original buyer is the transferor.
- (3) Where sub-paragraph (1) applies and the assignment of rights mentioned in paragraph 7(1) (“the implemented assignment of rights”) was preceded by one or more related assignments of rights, then for the purposes of this Act there is taken to be, for each assignment of rights (other than the first) in the chain formed by the implemented assignment of rights and those preceding assignments of rights, an additional notional land transaction—
- (a) the effective date of which is the effective date of the transferee’s land transaction, and
  - (b) where the buyer is the transferor under that assignment of rights.

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

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

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

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- (3) But repayment of tax is due only if a claim for it is made by amendment, in accordance with section 41 of TCMA, of the return in respect of the notional or additional notional land transaction.

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

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

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

- 11 (1) This paragraph applies where—
- (a) the pre-completion transaction is an assignment of rights, and
  - (b) either the subject-matter of the original contract is transferred to the transferee or the original contract is substantially performed by the transferee.
- (2) This paragraph does not apply if the original contract is itself a free-standing transfer (see Part 3 of this Schedule for the treatment of such cases).
- (3) The general rule is that in relation to a relevant land transaction, references in this Act to the seller are to be read as references to the seller under the original contract (but see sub-paragraphs (4) and (5)).
- (4) In cases where the original contract was substantially performed before the transferee became entitled to call for a transfer of the whole or part of the subject-matter of the original contract, references in this Act to the seller are to be read as references to the person who was the buyer under the original contract when it was substantially performed.
- (5) In relation to a relevant land transaction, references to the seller in any of the following provisions are to be read as including the seller under the original contract and the transferor under any relevant assignment of rights—
- (a) paragraph 8(1)(a) of Schedule 4 (debt as consideration);
  - (b) paragraph 11(2)(c) of that Schedule (carrying out of works);
  - (c) paragraph 14 of that Schedule (indemnity given by buyer);
  - (d) paragraph 1(1) and (2) of Schedule 20 (transfers involving public bodies);
  - (e) paragraph 2(1)(a) of Schedule 21 (compliance with planning obligations: conditions for relief).
- (6) The following are “relevant land transactions”—
- (a) the land transaction given effect by the transfer mentioned in sub-paragraph (1)(b) or treated as having been given effect by the substantial performance mentioned in that sub-paragraph;
  - (b) the notional land transaction mentioned in paragraph 8(1) and any additional notional land transaction under paragraph 8(3).

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- (7) In determining under section 8(1) whether or not a relevant land transaction such as is mentioned in sub-paragraph (6)(a) is linked to another transaction, it may be assumed that any of the following is the seller in the relevant land transaction—
- (a) the seller (determined in accordance with sub-paragraph (3)), or
  - (b) the transferor under any relevant assignment of rights.
- (8) The following are “relevant assignments of rights” in relation to a relevant land transaction—
- (a) the assignment of rights mentioned in sub-paragraph (1)(a);
  - (b) any other transaction that is an assignment of rights in relation to the original contract and has some subject-matter in common with the assignment of rights mentioned in paragraph (a).

### PART 3

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

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

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

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

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

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- (i) is to a person who, as a result of a transaction that is an assignment of rights in relation to the free-standing transfer, is entitled to call for a transfer of the whole or part of the subject-matter of the free-standing transfer, and
- (ii) includes a person connected with such a person.

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

- 14 (1) This paragraph applies where—
- (a) the pre-completion transaction is a free-standing transfer and the transferee acquires the subject-matter of the free-standing transfer as mentioned in paragraph 13(2) (read with paragraph 13(3)), or
  - (b) the pre-completion transaction is an assignment of rights and either—
    - (i) the subject-matter of the original contract is transferred to the transferee, or
    - (ii) the original contract is substantially performed by the transferee, but paragraph 11(1) (references to the seller where transferee is assignee under an assignment of rights) does not apply because the original contract is a free-standing transfer (see paragraph 11(2)).
- (2) The general rule is that in relation to the relevant land transaction, references in this Act to the seller are to be read as references to the seller under the first appropriate transaction (but see sub-paragraph (3)).
- (3) In relation to the relevant land transaction, references to the seller in the specified provisions (see sub-paragraph (4)) are to be read as including—
- (a) the seller in the first appropriate transaction,
  - (b) the transferor under the final transaction, and
  - (c) the transferor under any other pre-completion transaction relating to, and which has some subject-matter in common with, the transactions mentioned in paragraphs (a) and (b).
- (4) The specified provisions are—
- (a) paragraph 8(1)(a) of Schedule 4 (debt as consideration);
  - (b) paragraph 11(2)(c) of that Schedule (carrying out of works);
  - (c) paragraph 14 of that Schedule (indemnity given by buyer);
  - (d) paragraph 1(1) and (2) of Schedule 20 (transfers involving public bodies);
  - (e) paragraph 2(1)(a) of Schedule 21 (compliance with planning obligations: conditions for relief).
- (5) In determining under section 8(1) whether or not the relevant land transaction is linked to another transaction, it may be assumed that any of the following is the seller in the relevant land transaction—
- (a) the seller in the first appropriate transaction,
  - (b) the transferor under the final transaction, and
  - (c) the transferor under any other pre-completion transaction relating to, and which has some subject-matter in common with, the transactions mentioned in paragraphs (a) and (b).
- (6) In this paragraph—
- (a) “the relevant land transaction” means—

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



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## PART 4

### THE MINIMUM CONSIDERATION RULE

#### *The minimum consideration rule*

- 15 (1) This paragraph applies where paragraph 7(3) or 13(2) (pre-completion transactions: chargeable interest acquired, or treated as acquired, by transferee) applies.
- (2) If there is a relevant connection between parties, then for the purposes of paragraph 1 of Schedule 4 the consideration given by the buyer for the subject-matter of the land transaction referred to in paragraph 7(4) or 13(2) is taken to be the highest of—
- (a) the amount it would be apart from this sub-paragraph,
  - (b) the first minimum amount (see paragraph 16), or
  - (c) the second minimum amount (see paragraph 17).
- (3) There is a “relevant connection between parties” if the transferee in relation to the pre-completion transaction mentioned in paragraph 7(1) or 13(1) (“the implemented transaction”) is connected with, or is not acting at arm’s length in relation to—
- (a) the transferor in relation to the implemented transaction, or
  - (b) a transferor in relation to a pre-completion transaction—
    - (i) which is one in a chain of successive pre-completion transactions (all having at least part of their subject-matter in common and including the implemented transaction) in relation to the original contract, and
    - (ii) which precedes the implemented transaction in the chain.
- (4) Where the implemented transaction is a pre-completion transaction in relation to—
- (a) a contract for a land transaction that is not itself a free-standing transfer in relation to any other contract, and
  - (b) a contract, or two or more successive contracts, that are themselves free-standing transfers in relation to the contract mentioned in paragraph (a),
- references in this Part of this Schedule to the “original contract” are to the contract mentioned in paragraph (a) only (and references to the “original buyer” are to be read accordingly).

#### *The first minimum amount*

- 16 (1) The “first minimum amount” is to be determined in accordance with sub-paragraph (2) unless conditions A to C in sub-paragraph (3) are met, in which case it is to be determined in accordance with that sub-paragraph.
- (2) The “first minimum amount” is—
- (a) if the chargeable interest acquired (or treated as acquired) under the land transaction referred to in paragraph 7(4) or 13(2) is the whole subject-matter of the original contract, the amount of any consideration (in money or money’s worth) agreed to be given, under the terms of the original contract, for the acquisition of that subject-matter, or
  - (b) if paragraph (a) does not apply, so much of the amount mentioned in that paragraph as is referable, on a just and reasonable apportionment, to the chargeable interest acquired (or treated as acquired) under the land transaction referred to in paragraph 7(4) or 13(2).

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- (3) If conditions A to C are met, the “first minimum amount” is the amount of any consideration (in money or money’s worth) agreed, under the terms of the transfer to the first T, to be given in respect of the subject-matter of that transaction (including any consideration relating to an obligation of the transferor under the transfer to the first T).

*Condition A*

That the pre-completion transaction referred to in paragraph 7(4) or 13(2) is one of a chain of successive transactions (all having at least part of their subject-matter in common) that are pre-completion transactions in relation to the original contract.

*Condition B*

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

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

*Condition C*

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

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

*The second minimum amount*

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

$$CP - CR$$

Figure 1

where—

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

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

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

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

## PART 5

### RELIEFS

*Relief for transferor: assignment of rights*

- 18 (1) This paragraph applies where—

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

*Relief for original buyer: qualifying subsales*

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

$$OC - QS$$

Figure 2

where—

OC is the amount that the consideration would be apart from this sub-paragraph, and

QS is so much of OC as is referable to the subject-matter of the qualifying subsale,

and OC may be reduced more than once if there is more than one qualifying subsale.

- (4) But no relief is available under this paragraph if—
- (a) the original contract had been substantially performed when the qualifying subsale was entered into, or
  - (b) the transaction effected, or treated as effected, by the performance of the qualifying subsale is relieved from tax by virtue of Schedule 10 (alternative property finance reliefs).

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

## PART 6

### INTERPRETATION AND INDEX

#### *Interpretation*

- 20 In this Schedule—  
“contract” (“*contract*”) includes any agreement;  
“transfer” (“*trosglwyddiad*”) includes any instrument.

#### *Index of expressions defined in this Schedule*

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

Table 1

Expression	Paragraph
“additional notional land transaction” (“ <i>trafodiad tir tybiannol ychwanegol</i> ”)	Paragraph 8(3)
“assignment of rights” (“ <i>aseinio hawliau</i> ”)	Paragraph 6
“contract” (“ <i>contract</i> ”)	Paragraph 20
“free-standing transfer” (“ <i>trosglwyddiad annibynnol</i> ”)	Paragraph 12
“notional land transaction” (“ <i>trafodiad tir tybiannol</i> ”)	Paragraph 8(1)
“original buyer” (“ <i>prynwr gwreiddiol</i> ”) and “original contract” (“ <i>contract gwreiddiol</i> ”)	Paragraph 2(1)(a) (but see also paragraph 15(4))
“part of the subject-matter of the original contract” (“ <i>rhan o destun y contract gwreiddiol</i> ”)	Paragraph 4(1)

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Expression	Paragraph
“pre-completion transaction” (“ <i>trafodiad cyngwblhau</i> ”)	Paragraph 3
“qualifying subsale” (“ <i>is-werthiant cymwys</i> ”)	Paragraph 19(6)
“subject-matter” (“ <i>testun</i> ”) (of a precompletion transaction)	Paragraph 4(3)
“transfer” (“ <i>trosglwyddiad</i> ”)	Paragraph 20
“the transferee” (“ <i>y trosglwyddai</i> ”) (in relation to a pre-completion transaction)	Paragraph 3(1)(a)
“the transferor” (“ <i>y trosglwyddwr</i> ”) (in relation to a pre-completion transaction)	Paragraph 4(2)

### SCHEDULE 3

(as introduced by section 17)

#### TRANSACTIONS EXEMPT FROM CHARGE

##### *No chargeable consideration*

- 1 A land transaction is exempt from charge if there is no chargeable consideration for the transaction (but see section 22 (deemed market value)).

##### *Acquisitions by the Crown*

- 2 A land transaction under which the buyer is any of the following is exempt from charge —
- (a) the Welsh Ministers, the First Minister, the Counsel General to the Welsh Government;
  - (b) a Minister of the Crown;
  - (c) the Scottish Ministers;
  - (d) a Northern Ireland department;
  - (e) the National Assembly for Wales Commission;
  - (f) the Corporate Officer of the House of Lords;
  - (g) the Corporate Officer of the House of Commons;
  - (h) the Scottish Parliamentary Corporate Body;
  - (i) the Northern Ireland Assembly Commission.

##### *Transactions in connection with divorce etc.*

- 3 A transaction between one party to a marriage and the other (whether or not the marriage is subsisting at the time of the transaction) is exempt from charge if it is effected —
- (a) in pursuance of an order of a court made on granting in respect of the parties a decree of divorce, nullity of marriage or judicial separation;

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- (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties' judicial separation, at any time after the granting of such a decree as mentioned in paragraph (a);
- (c) in pursuance of—
  - (i) an order of a court made at any time under section 22A, 23A or 24A of the [Matrimonial Causes Act 1973 \(c. 18\)](#), or
  - (ii) an incidental order of a court made under section 8(2) of the [Family Law \(Scotland\) Act 1985 \(c. 37\)](#) by virtue of section 14(1) of that Act;
- (d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

*Transactions in connection with dissolution of civil partnership etc.*

- 4 A transaction between one party to a civil partnership and the other (whether or not the civil partnership is subsisting at the time of the transaction) is exempt from charge if it is effected—
- (a) in pursuance of an order of a court made on granting in respect of the parties an order or decree for the dissolution or annulment of the civil partnership or their judicial separation;
  - (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the civil partnership, or the parties' judicial separation, at any time after the granting of such an order or decree as mentioned in paragraph (a);
  - (c) in pursuance of—
    - (i) an order of a court made at any time under any provision of Schedule 5 to the [Civil Partnership Act 2004 \(c. 33\)](#) that corresponds to section 22A, 23A or 24A of the [Matrimonial Causes Act 1973 \(c. 18\)](#), or
    - (ii) an incidental order of a court made under any provision of the [Civil Partnership Act 2004 \(c. 33\)](#) that corresponds to section 8(2) of the [Family Law \(Scotland\) Act 1985 \(c. 37\)](#) by virtue of section 14(1) of that Act of 1985;
  - (d) at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation or the making of a separation order in respect of them.

*Assents and appropriations by personal representatives*

- 5 (1) The acquisition of property by a person in or towards satisfaction of the person's entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is exempt from charge.
- (2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.
  - (3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 9(1) of Schedule 4.

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(4) In this paragraph—

“debt” (“*dyled*”) means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and

“secured debt” (“*dyled sicredig*”) means debt that, immediately after the death of the deceased person, is secured on the property.

*Variation of testamentary dispositions etc.*

6 (1) A transaction following a person’s death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is exempt from charge if the following conditions are met.

(2) The conditions are—

(a) that the transaction is carried out within the period of two years after a person’s death, and

(b) that no consideration in money or money’s worth other than the making of a variation of another such disposition is given for it.

(3) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 9(3) of Schedule 4.

(4) This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

*Power to add, remove or vary exemptions*

7 The Welsh Ministers may by regulations amend this Schedule so as to—

(a) provide for any other description of land transaction to be exempt from charge;

(b) provide that a description of land transaction is no longer exempt from charge;

(c) vary a description of land transaction that is exempt from charge.

SCHEDULE 4

(as introduced by section 18(1))

CHARGEABLE CONSIDERATION

*Money or money’s worth*

1 The chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money’s worth given for the subject-matter of the transaction, directly or indirectly, by the buyer or a person connected with the buyer.

*Value added tax*

2 The chargeable consideration for a transaction includes any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an option to tax any land under Part 1 of Schedule 10 to the [Value Added Tax Act 1994 \(c. 23\)](#) made after the effective date of the transaction.



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### *Postponed consideration*

- 3 The amount or value of the chargeable consideration for a transaction is to be determined without any discount for postponement of the right to receive it or any part of it.

### *Just and reasonable apportionment*

- 4 (1) For the purposes of this Act, consideration attributable—
- (a) to two or more land transactions,
  - (b) in part to a land transaction and in part to another matter, or
  - (c) in part to matters making it chargeable consideration and in part to other matters,
- is to be apportioned on a just and reasonable basis.
- (2) If the consideration is not so apportioned, this Act has effect as if it had been so apportioned.
- (3) For the purposes of this paragraph, any consideration given for what is in substance one bargain is to be treated as attributable to all the elements of the bargain, even though—
- (a) separate consideration is, or purports to be, given for different elements of the bargain, or
  - (b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

### *Exchanges*

- 5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person (alone or jointly) as buyer wholly or partly in consideration of one or more other land transactions being entered into by that person (alone or jointly) as seller.
- (2) In this paragraph—
- (a) “relevant transaction” means any of those transactions, and
  - (b) “relevant acquisition” means a relevant transaction entered into as buyer and “relevant disposal” means a relevant transaction entered into as seller.
- (3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made, the chargeable consideration for the acquisition is—
    - (i) the market value of the subject-matter of the acquisition as at the effective date of the transaction,
    - (ii) if the acquisition is the grant of a lease at a rent, that rent, and
    - (iii) any value added tax chargeable in respect of that acquisition as at the effective date of the transaction;
  - (b) where two or more relevant acquisitions are made, the chargeable consideration for each relevant acquisition is—
    - (i) the market value of the subject-matter of the acquisition as at the effective date of the transaction,
    - (ii) if the acquisition is the grant of a lease at a rent, that rent, and

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- (iii) any value added tax chargeable in respect of that acquisition as at the effective date of the transaction.
- (4) In determining market value for the purpose of sub-paragraph (3)(a)(i) and (b)(i), no account is to be taken of a reduction in what would otherwise be the market value of the subject-matter where the reduction is the result of anything done, the main purpose or one of the main purposes of which, is to avoid tax (whether by the buyer or any other person).
- (5) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that is given for the acquisition;
  - (b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that is given for the acquisitions.
- (6) For the purposes of sub-paragraph (5)(b) the appropriate proportion is—

$$\frac{MV}{TMV}$$

Figure 3

where—

MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and

TMV is the total market value of the subject-matter of all the relevant acquisitions.

- (7) This paragraph has effect subject to paragraph 6 (partition etc.: disregard of existing interest).
- (8) This paragraph does not apply in a case to which paragraph 18 (arrangements involving public or educational bodies) applies.

*Partition etc.: disregard of existing interest*

- 6 In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the buyer immediately before the partition or division does not count as chargeable consideration.

*Valuation of non-monetary consideration*

- 7 Except as otherwise provided, the value of any chargeable consideration for a land transaction, other than—
- (a) money (whether in sterling or another currency), or
  - (b) debt as defined for the purposes of paragraph 8 (debt as consideration),
- is to be taken to be its market value at the effective date of the transaction.

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### *Debt as consideration*

- 8 (1) Where the chargeable consideration for a land transaction consists in whole or in part of—
- (a) the satisfaction or release of debt due to the buyer or owed by the seller, or
  - (b) the assumption of existing debt by the buyer,
- the amount of debt satisfied, released or assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.
- (2) But where the chargeable consideration for a land transaction consists in whole or in part of both—
- (a) the satisfaction or release of debt owed by the seller, and
  - (b) the assumption of that debt by the buyer,
- the amount of debt assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.
- (3) Where—
- (a) debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and
  - (b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,
- then for the purposes of this paragraph there is an assumption of that debt by the buyer, and that assumption of debt constitutes chargeable consideration for the transaction.
- (4) Where in a case in which sub-paragraph (1)(b) or (2) applies—
- (a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and
  - (b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there are two or more such persons immediately afterwards,
- the amount of secured debt assumed is to be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to the person's undivided share of the property at that time.
- (5) For the purposes of sub-paragraph (4), each joint tenant of property is treated as holding an equal undivided share of it.
- (6) If the effect of this paragraph would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.
- (7) In this paragraph—
- (a) “debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date,
  - (b) “existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and
  - (c) references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with

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the amount of any interest that has accrued due on or before the effective date of the transaction.

*Cases where conditions for exemption not fully met*

- 9 (1) Where a land transaction would be exempt from charge under paragraph 5 of Schedule 3 (assents and appropriations by personal representatives) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.
- (2) In sub-paragraph (1) “secured debt” has the same meaning as in paragraph 5 of Schedule 3.
- (3) Where a land transaction would be exempt from charge under paragraph 6 of Schedule 3 (variation of testamentary dispositions etc.) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any variation as is mentioned in that sub-paragraph.

*Conversion of amounts in foreign currency*

- 10 (1) References in this Act to the amount or value of the consideration for a transaction are to its amount or value in sterling.
- (2) For the purposes of this Act, the sterling equivalent of an amount expressed in another currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).

*Carrying out of works*

- 11 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—
- (a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and
- (b) to the extent that those conditions are not met, the value of the works is to be taken into account as chargeable consideration.
- (2) The conditions referred to in sub-paragraph (1) are—
- (a) that the works are carried out after the effective date of the transaction,
- (b) that the works are carried out on land acquired or to be acquired under the transaction or on other land held by the buyer or a person connected with the buyer, and
- (c) that it is not a condition of the transaction that the works are carried out by the seller or a person connected with the seller.
- (3) Where by virtue of—
- (a) section 10(5) (contract and transfer), or
- (b) paragraph 20 of Schedule 6 (agreement for lease),
- there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the

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grant of the lease), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.

- (4) In this paragraph—
- (a) references to the acquisition of land are to the acquisition of a major interest in it;
  - (b) the value of the works is to be taken to be the amount that would have to be paid in the open market as at the effective date of the transaction for the carrying out of the works in question (including any value added tax that would be chargeable in respect of the carrying out of the works).
- (5) This paragraph is subject to paragraph 18 (arrangements involving public or educational bodies).

#### *Provision of services*

- 12 (1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 11 applies), the value of that consideration is to be taken to be the amount that would have to be paid in the open market as at the effective date of the transaction to obtain those services.
- (2) That amount includes any value added tax that would be chargeable in respect of the provision of the services.
- (3) This paragraph is subject to paragraph 18 (arrangements involving public or educational bodies).

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

- 13 Where a land transaction is entered into by reason of the buyer's employment, or that of a person connected with the buyer, then—
- (a) if the transaction gives rise to a charge to tax under Chapter 5 of Part 3 of the [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#) (taxable benefits: living accommodation) and—
    - (i) no rent is payable by the buyer, or
    - (ii) the rent payable by the buyer is less than the cash equivalent of the benefit calculated under section 105 or 106 of that Act,there is to be taken to be payable by the buyer as rent an amount equal to the cash equivalent chargeable under those sections;
  - (b) if the transaction would give rise to a charge under that Chapter but for section 99 of that Act (accommodation provided for performance of duties), the consideration for the transaction is the actual consideration (if any);
  - (c) if neither paragraph (a) nor paragraph (b) applies, the consideration for the transaction is to be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.

#### *Indemnity given by buyer*

- 14 Where the buyer agrees to indemnify the seller in respect of liability to a third party arising from breach of an obligation owed by the seller in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

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*Buyer bearing inheritance tax liability*

- 15       Where—
- (a) there is a land transaction that is—
    - (i) a transfer of value within section 3 of the [Inheritance Tax Act 1984 \(c. 51\)](#) (transfers of value), or
    - (ii) a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately before the person’s death,
  - and
  - (b) the buyer is or becomes liable to pay, agrees to pay or does in fact pay any inheritance tax due in respect of the transfer or disposition,
- the buyer’s liability, agreement or payment does not count as chargeable consideration for the transaction.

*Buyer bearing capital gains tax liability*

- 16       (1) Where—
- (a) there is a land transaction under which the chargeable interest in question—
    - (i) is acquired otherwise than by a bargain made at arm’s length, or
    - (ii) is treated by section 18 of the [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#) (transactions between connected persons) as so acquired,
  - and
  - (b) the buyer is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal of the chargeable interest,
- the buyer’s liability or payment does not count as chargeable consideration for the transaction.
- (2) Sub-paragraph (1) does not apply if there is chargeable consideration for the transaction (disregarding the liability or payment referred to in sub-paragraph (1)(b)).

*Costs of enfranchisement*

- 17       Costs borne by the buyer under section 9(4) of the [Leasehold Reform Act 1967 \(c. 88\)](#) or section 33 of the [Leasehold Reform, Housing and Urban Development Act 1993 \(c. 28\)](#) (costs of enfranchisement) do not count as chargeable consideration.

*Arrangements involving public or educational bodies*

- 18       (1) This paragraph applies in any case where arrangements are entered into under which —
- (a) there is a transfer, or the grant or assignment of a lease, of land by a qualifying body (“A”) to a person who is not a qualifying body (“B”) (“the main transfer”),
  - (b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or sub-lease of the whole, or substantially the whole, of that land (“the leaseback”),
  - (c) B undertakes to carry out works or provide services to A, and
  - (d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money,

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whether or not there is also a transfer, or the grant or assignment of a lease, of any other land by A to B (a “transfer of surplus land”).

- (2) The following are qualifying bodies—
- (a) public bodies within paragraph 1 of Schedule 20 or specified in regulations under that paragraph (relief for certain transactions involving public bodies);
  - (b) institutions within the further education sector or the higher education sector within the meaning of section 91 of the [Further and Higher Education Act 1992 \(c. 13\)](#);
  - (c) further education corporations within the meaning of section 17 of that Act;
  - (d) higher education corporations within the meaning section 90 of that Act.
- (3) The following do not count as chargeable consideration for the main transfer or any transfer of surplus land—
- (a) the leaseback,
  - (b) the carrying out of building works by B for A, or
  - (c) the provision of services by B to A.
- (4) The chargeable consideration for the leaseback does not include—
- (a) the main transfer,
  - (b) any transfer of surplus land, or
  - (c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (3).
- (5) Sub-paragraphs (3) and (4) are to be disregarded for the purposes of determining whether the land transaction in question is notifiable.

## SCHEDULE 5

(as introduced by section 24(10))

### HIGHER RATES RESIDENTIAL PROPERTY TRANSACTIONS

#### PART 1

#### INTRODUCTORY

##### *Overview*

- 1 (1) This Schedule makes provision about higher rates residential property transactions.
- (2) This Schedule is arranged as follows—
- (a) Part 2 describes the chargeable transactions that are higher rates residential property transactions where the buyer is an individual and the transaction involves a dwelling;
  - (b) Part 3 describes the chargeable transactions that are higher rates residential property transactions where the buyer is an individual and the transaction involves multiple dwellings;
  - (c) Part 4 describes the chargeable transactions that are higher rates residential property transactions where the buyer is not an individual;

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- (d) Part 5 contains supplementary provision, including about returns and about the application of the provisions in Parts 2, 3 and 4 in specified circumstances;
- (e) Part 6 contains interpretative provision.

## PART 2

### BUYER IS AN INDIVIDUAL: SINGLE DWELLING TRANSACTIONS

#### *Introductory*

- 2 This Part sets out when a chargeable transaction is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b) in the case of a transaction involving a dwelling where the buyer is an individual.

#### *Higher rates residential property transactions*

- 3 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) it falls within sub-paragraph (2), and
  - (b) paragraph 5 applies.
- (2) A transaction falls within this sub-paragraph if—
- (a) the buyer is an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in a dwelling (“the purchased dwelling”), and
  - (c) the chargeable consideration for the transaction is £40,000 or more.
- (3) But a transaction does not fall within sub-paragraph (2) if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
  - (b) the main subject-matter of the transaction is reversionary on that lease, and
  - (c) the lease meets the conditions set out in sub-paragraph (4).
- (4) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
  - (b) the lease has an unexpired term of more than 21 years.
- (5) This paragraph applies subject to the exceptions provided for in—
- (a) paragraph 7 (interest in same main residence exception), and
  - (b) paragraph 8 (replacement of main residence exception).
- (6) In this Part of this Schedule, “purchased dwelling” has the meaning given by sub-paragraph (2)(b).
- 4 Where paragraph 9 applies, an intermediate transaction (within the meaning given by that paragraph) is to be treated as a higher rates residential property transaction.

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

- 5 (1) This paragraph applies in relation to a transaction if, at the end of the day that is the effective date of the transaction—



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- (a) the buyer has a major interest in a dwelling other than the purchased dwelling, and
  - (b) that interest has a market value of £40,000 or more.
- (2) But this paragraph does not apply if the interest described in sub-paragraph (1) is reversionary on a lease which—
- (a) is not held by a person connected with the buyer, and
  - (b) has an unexpired term of more than 21 years.
- (3) Where the buyer is jointly entitled with one or more persons to the major interest referred to in sub-paragraph (1)(a), the reference in sub-paragraph (1)(b) to the market value of the interest is to the market value of the buyer’s beneficial share in the interest as determined in accordance with sub-paragraph (4) or (5).
- (4) Where the buyer is beneficially entitled as a tenant in common, the market value of the buyer’s beneficial share is equal to—

Figure 4

where—

MV is the market value of the major interest, and

PI is—

- (a) the percentage of the interest to which the buyer is entitled, or
- (b) where—
  - (i) the buyer and the buyer’s spouse or civil partner are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
  - (ii) taken together the buyer and the buyer’s spouse or civil partner are entitled as tenants in common,the percentage of the interest to which the buyer and the buyer’s spouse or civil partner are so entitled.

- (5) Where the buyer is beneficially entitled as a joint tenant, the market value of the buyer’s beneficial share is equal to—

$$\frac{MV}{JT}$$

Figure 5

where—

MV is the market value of the major interest, and

JT is the number of joint tenants entitled to the interest.

- (6) For the purpose of sub-paragraph (5), the buyer and the buyer’s spouse or civil partner are to be treated as one joint tenant if—
- (a) they are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
  - (b) they are beneficially entitled as joint tenants to the interest.

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*Two or more buyers*

- 6 Where there are two or more buyers who are individuals in a transaction—
- (a) the transaction is a higher rates residential property transaction if paragraph 3 applies in relation to any one of the buyers;
  - (b) an intermediate transaction (within the meaning of paragraph 9(2)) is to be treated as a higher rates residential property transaction if paragraph 9 applies in relation to any one of the buyers.

*Interest in same main residence exception*

- 7 A transaction is not a higher rates residential property transaction under paragraph 3 if the main subject-matter of the transaction is a major interest in a dwelling—
- (a) in which, immediately before the effective date of the transaction, the buyer had another major interest, and
  - (b) which, immediately before and after the effective date of the transaction, is the buyer’s only or main residence.

*Replacement of main residence exception*

- 8 (1) A transaction is not a higher rates residential property transaction under paragraph 3 if the purchased dwelling is a replacement for the buyer’s only or main residence.
- (2) For the purposes of this paragraph, the purchased dwelling is a replacement for the buyer’s only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intends the purchased dwelling to be the buyer’s only or main residence,
  - (b) in another land transaction (“the previous transaction”), the effective date of which was during the period of 3 years ending with the effective date of the transaction concerned, the buyer or the buyer’s spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),
  - (c) immediately after the effective date of the previous transaction, neither the buyer nor the buyer’s spouse or civil partner had a major interest in the sold dwelling,
  - (d) at any time during the period of 3 years referred to in paragraph (b) the sold dwelling was the buyer’s only or main residence, and
  - (e) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the buyer or the buyer’s spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the buyer’s only or main residence.
- (3) Sub-paragraph (2)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them were not living together on the effective date of the transaction concerned (for the meaning of “living together”, see paragraph 25(3)).
- (4) For the purposes of this paragraph, the purchased dwelling may become a replacement for the buyer’s only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intended the purchased dwelling to be the buyer’s only or main residence,

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- (b) in another land transaction the effective date of which is during the period of 3 years beginning with the day after the effective date of the transaction concerned, the buyer or the buyer’s spouse, former spouse, civil partner or former civil partner disposes of a major interest in another dwelling (“the sold dwelling”),
  - (c) immediately after the effective date of that other land transaction, neither the buyer nor the buyer’s spouse or civil partner has a major interest in the sold dwelling, and
  - (d) at any time during the period of 3 years ending with the effective date of the transaction concerned the sold dwelling was the buyer’s only or main residence.
- (5) Sub-paragraph (4)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them are not living together on the effective date of that other land transaction (for the meaning of “living together”, see paragraph 25(3)).
- (6) For further provision in connection with a dwelling becoming a replacement for the buyer’s only or main residence, see paragraph 23.

*Replacement of main residence: transactions during interim period*

- 9 (1) This paragraph applies where—
- (a) the buyer in an intermediate transaction replaces a main residence in another transaction, and
  - (b) the effective date of the intermediate transaction is during the interim period.
- (2) An intermediate transaction is a transaction—
- (a) that falls within paragraph 3(2), and
  - (b) to which paragraph 5 does not apply.
- (3) In determining whether a transaction falls within paragraph 3(2) for the purposes of this paragraph, the reference in paragraph 3(3) to the end of the day that is the effective date of the transaction has effect as though it were a reference to the end of either or both of the following—
- (a) the day that is the effective date of the transaction;
  - (b) the day on which the interim period ends.
- (4) For the purposes of this paragraph, a buyer replaces a main residence in another transaction if—
- (a) in relation to a dwelling in Wales, the conditions set out in paragraph 8(2) are met in respect of the transaction,
  - (b) in relation to a dwelling in England or Northern Ireland, the conditions set out in paragraph 3(6) of Schedule 4ZA to the [Finance Act 2003 \(c. 14\)](#) are met in respect of the transaction, or
  - (c) in relation to a dwelling in Scotland, the conditions set out in paragraph 2(2) of Schedule 2A to the [Land and Buildings Transaction Tax \(Scotland\) Act 2013 \(asp 11\)](#) are met in respect of the transaction.
- (5) In this paragraph, the interim period means—
- (a) where sub-paragraph (4)(a) applies, the period—
    - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 8(2)(b), and

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- (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 8(2)(a);
  - (b) where sub-paragraph (4)(b) applies, the period—
    - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 3(6)(b) of Schedule 4ZA to the [Finance Act 2003 \(c. 14\)](#), and
    - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 3(6)(a) of that Schedule;
  - (c) where sub-paragraph (4)(c) applies, the period—
    - (i) beginning with the date on which the buyer disposed of the ownership of a dwelling as provided for in paragraph 2(2)(a) of Schedule 2A to the [Land and Buildings Transaction Tax \(Scotland\) Act 2013 \(asp 11\)](#), and
    - (ii) ending with the effective date of the transaction referred to in that paragraph.
- (6) For further provision in connection with an intermediate transaction being treated as a higher rates residential property transaction, see paragraph 24.

### PART 3

#### BUYER IS AN INDIVIDUAL: MULTIPLE DWELLING TRANSACTIONS

##### *Introductory*

- 10 This Part sets out when a chargeable transaction is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b) in the case of a transaction involving multiple dwellings where the buyer is an individual.

##### *Higher rates residential property transaction*

- 11 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) it falls within sub-paragraph (2), and
  - (b) paragraph 13 or 15 applies.
- (2) A transaction falls within this sub-paragraph if—
- (a) the buyer is an individual, and
  - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”).
- (3) In this Part of this Schedule, “purchased dwellings” has the meaning given by sub-paragraph (2)(b).
- (4) Where paragraph 18 applies, an intermediate transaction (within the meaning given by that paragraph) is to be treated as a higher rates residential property transaction.
- (5) A transaction within section 72(9) is not a higher rates residential property transaction save where Schedule 13 applies (see in particular paragraph 6(6) of that Schedule).

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*Two or more buyers*

- 12 Where there are two or more buyers who are individuals in a transaction—
- (a) the transaction is a higher rates residential property transaction if paragraph 11 applies in relation to any one of the buyers;
  - (b) an intermediate transaction (within the meaning given by paragraph 18(2)) is to be treated as a higher rates residential property transaction if paragraph 18 applies in relation to any one of the buyers.

*Two or more qualifying dwellings*

- 13 (1) This paragraph applies if at least two of the purchased dwellings are qualifying dwellings.
- (2) A purchased dwelling is a qualifying dwelling for the purposes of this Part of this Schedule if the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more.
- (3) But a purchased dwelling is not a qualifying dwelling if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
  - (b) the main subject-matter of the transaction is reversionary on that lease, and
  - (c) the lease meets the conditions set out in sub-paragraph (4).
- (4) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
  - (b) the lease has an unexpired term of more than 21 years.
- (5) A purchased dwelling is not a qualifying dwelling if the exception provided for in paragraph 14 applies (subsidiary dwelling exception).

*Subsidiary dwelling exception*

- 14 (1) A purchased dwelling is not a qualifying dwelling if it is subsidiary to any of the other purchased dwellings.
- (2) For the purposes of this paragraph, one of the purchased dwellings (“dwelling A”) is subsidiary to another of the purchased dwellings (“dwelling B”) if—
- (a) dwelling A is situated within the grounds of, or within the same building as, dwelling B, and
  - (b) the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to dwelling B is equal to, or greater than, two thirds of the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the following combined—
    - (i) dwelling A,
    - (ii) dwelling B, and
    - (iii) each of the other purchased dwellings (if any) which are situated within the grounds of, or within the same building as, dwelling B.

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*Buyer has a major interest in other dwelling*

- 15 (1) This paragraph applies if—
- (a) only one of the purchased dwellings is a qualifying dwelling, and
  - (b) at the end of the day that is the effective date of the transaction—
    - (i) the buyer has a major interest in a dwelling other than one of the purchased dwellings, and
    - (ii) that interest has a market value of £40,000 or more.
- (2) But this paragraph does not apply if the interest described in sub-paragraph (1)(b) is reversionary on a lease which—
- (a) is not held by a person connected with the buyer, and
  - (b) has an unexpired term of more than 21 years.
- (3) Where the buyer is jointly entitled with one or more persons to the major interest referred to in sub-paragraph (1)(b)(i), the reference in sub-paragraph (1)(b)(ii) to the market value of the interest is to the market value of the buyer’s beneficial share in the interest as determined in accordance with sub-paragraph (4) or (5).
- (4) Where the buyer is beneficially entitled as a tenant in common, the market value of the buyer’s beneficial share is equal to—

$$MV \times PI$$

Figure 6

where—

MV is the market value of the major interest, and

PI is—

- (a) the percentage of the interest to which the buyer is entitled, or
- (b) where—
  - (i) the buyer and the buyer’s spouse or civil partner are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
  - (ii) taken together the buyer and the buyer’s spouse or civil partner are entitled as tenants in common,
 the percentage of the interest to which the buyer and the buyer’s spouse or civil partner are so entitled.

- (5) Where the buyer is beneficially entitled as a joint tenant, the market value of the buyer’s beneficial share is equal to—

$$\frac{MV}{JT}$$

Figure 7

where—

MV is the market value of the major interest, and

JT is the number of joint tenants entitled to the interest.

- (6) For the purpose of sub-paragraph (5), the buyer and the buyer’s spouse or civil partner are to be treated as one joint tenant if—

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- (a) they are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
  - (b) they are beneficially entitled as joint tenants to the interest.
- (7) This paragraph applies subject to the exceptions provided for in—
- (a) paragraph 16 (interest in same main residence exception), and
  - (b) paragraph 17 (replacement of main residence exception).

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

- 16 Paragraph 15 does not apply if the main subject-matter of the transaction is a major interest in the qualifying dwelling referred to in paragraph 15(1)(a), and that dwelling is one—
- (a) in which, immediately before the effective date of the transaction, the buyer had another major interest, and
  - (b) which, immediately before and after the effective date of the transaction, is the buyer’s only or main residence.

#### *Replacement of main residence exception*

- 17 (1) Paragraph 15 does not apply if the qualifying dwelling referred to in paragraph 15(1) (a) is a replacement for the buyer’s only or main residence.
- (2) For the purposes of this paragraph, a qualifying dwelling is a replacement for the buyer’s only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intends that qualifying dwelling to be the buyer’s only or main residence,
  - (b) in another land transaction (“the previous transaction”), the effective date of which was during the period of 3 years ending with the effective date of the transaction concerned, the buyer or the buyer’s spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),
  - (c) immediately after the effective date of the previous transaction, neither the buyer nor the buyer’s spouse or civil partner had a major interest in the sold dwelling,
  - (d) at any time during the period of 3 years referred to in paragraph (b) the sold dwelling was the buyer’s only or main residence, and
  - (e) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the buyer or the buyer’s spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the buyer’s only or main residence.
- (3) Sub-paragraph (2)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them were not living together on the effective date of the transaction concerned (for the meaning of “living together”, see paragraph 25(3)).
- (4) For the purposes of this paragraph, that qualifying dwelling may become a replacement for the buyer’s only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intended that qualifying dwelling to be the buyer’s only or main residence,

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- (b) in another land transaction the effective date of which is during the period of 3 years beginning with the day after the effective date of the transaction concerned, the buyer or the buyer's spouse, former spouse, civil partner or former civil partner disposes of a major interest in another dwelling ("the sold dwelling"),
  - (c) immediately after the effective date of that other land transaction, neither the buyer nor the buyer's spouse or civil partner has a major interest in the sold dwelling, and
  - (d) at any time during the period of 3 years ending with the effective date of the transaction concerned the sold dwelling was the buyer's only or main residence.
- (5) Sub-paragraph (4)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them are not living together on the effective date of that other land transaction (for the meaning of "living together", see paragraph 25(3)).
- (6) For further provision in connection with a dwelling becoming a replacement for the buyer's only or main residence, see paragraph 23.

*Replacement of main residence: transactions during interim period*

- 18 (1) This paragraph applies where—
- (a) the buyer in an intermediate transaction replaces a main residence in another transaction, and
  - (b) the effective date of the intermediate transaction is during the interim period.
- (2) An intermediate transaction is a transaction—
- (a) that falls within paragraph 11(2),
  - (b) where only one of the purchased dwellings is a qualifying dwelling, and
  - (c) to which paragraph 15 does not apply.
- (3) In determining whether a purchased dwelling is a qualifying dwelling for the purposes of this paragraph, the reference in paragraph 13(3) to the end of the day that is the effective date of the transaction has effect as though it were a reference to the end of either or both of the following—
- (a) the day that is the effective date of the transaction;
  - (b) the day on which the interim period ends.
- (4) For the purposes of this paragraph, a buyer replaces a main residence in another transaction if—
- (a) in relation to a dwelling in Wales, the conditions set out in paragraph 17(2) are met in respect of the transaction,
  - (b) in relation to a dwelling in England or Northern Ireland, the conditions set out in paragraph 3(6) of Schedule 4ZA to the [Finance Act 2003 \(c. 14\)](#) are met in respect of the transaction, or
  - (c) in relation to a dwelling in Scotland, the conditions set out in paragraph 2(2) of Schedule 2A to the [Land and Buildings Transaction Tax \(Scotland\) Act 2013 \(asp 11\)](#) are met in respect of the transaction.
- (5) In this paragraph, the interim period means—
- (a) where sub-paragraph (4)(a) applies, the period—



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- (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 17(2)(b), and
    - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 17(2)(a);
  - (b) where sub-paragraph (4)(b) applies, the period—
    - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 3(6)(b) of Schedule 4ZA to the [Finance Act 2003 \(c. 14\)](#), and
    - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 3(6)(a) of that Schedule;
  - (c) where sub-paragraph (4)(c) applies, the period—
    - (i) beginning with the date on which the buyer disposed of the ownership of a dwelling as provided for in paragraph 2(2)(a) of Schedule 2A to the [Land and Buildings Transaction Tax \(Scotland\) Act 2013 \(asp 11\)](#), and
    - (ii) ending with the effective date of the transaction referred to in that paragraph.
- (6) For further provision in connection with an intermediate transaction being treated as a higher rates residential property transaction, see paragraph 24.

## PART 4

### BUYER IS NOT AN INDIVIDUAL

#### *Introductory*

- 19 This Part sets out when a chargeable transaction where the buyer is not an individual is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b).

#### *Transaction involving a dwelling*

- 20 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) the buyer is not an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in a dwelling (“the purchased dwelling”), and
  - (c) the chargeable consideration for the dwelling is £40,000 or more.
- (2) But a transaction is not a higher rates residential property transaction under sub-paragraph (1) if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
  - (b) the main subject-matter of the transaction is reversionary on that lease, and
  - (c) the lease meets the conditions set out in sub-paragraph (3).
- (3) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
  - (b) the lease has an unexpired term of more than 21 years.

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*Transaction involving multiple dwellings*

- 21 (1) A chargeable transaction is a higher rates residential property transaction if—
- (a) the buyer is not an individual,
  - (b) the main subject-matter of the transaction consists of a major interest in two or more dwellings (“the purchased dwellings”), and
  - (c) at least one of the purchased dwellings is a dwelling to which sub-paragraph (2) applies.
- (2) This sub-paragraph applies to a purchased dwelling if the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more.
- (3) But sub-paragraph (2) does not apply to a purchased dwelling if at the end of the day that is the effective date of the transaction—
- (a) the purchased dwelling is subject to a lease,
  - (b) the main subject-matter of the transaction is reversionary on that lease, and
  - (c) the lease meets the conditions set out in sub-paragraph (4).
- (4) The conditions are that—
- (a) the lease is not held by a person connected with the buyer, and
  - (b) the lease has an unexpired term of more than 21 years.
- (5) A transaction within section 72(9) is not a higher rates residential property transaction save where Schedule 13 applies (see in particular paragraph 6(6) of that Schedule).

*Two or more buyers*

- 22 Where there are two or more buyers in a transaction, the transaction is a higher rates residential property transaction if paragraph 20 or 21 applies in relation to any one of the buyers.

## PART 5

### SUPPLEMENTARY PROVISIONS

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

- 23 (1) This paragraph applies where by reason of paragraph 8(4) or 17(4) a chargeable transaction (“the transaction concerned”) ceases to be a higher rates residential property transaction for the purpose of regulations under section 24(1)(b).
- (2) The land transaction (“the subsequent transaction”) by reference to which the condition in paragraph 8(4)(b) or 17(4)(b) was met may not be taken into account for the purposes of paragraph 8(2)(b) or 17(2)(b) in determining whether any other chargeable transaction is a higher rates residential property transaction.
- (3) Sub-paragraph (4) applies where—
- (a) the effective date of the subsequent transaction falls on or before the filing date for the return in respect of the transaction concerned, and
  - (b) the return has not been made.

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- (4) The buyer may, when making the return in respect of the transaction concerned, treat the purchased dwelling referred to in paragraph 8(4) or 17(4) as though it had been a replacement for the buyer's only or main residence on the effective date of the transaction concerned; and in such a case the transaction concerned is to be treated as if it had never been a higher rates residential property transaction.
- (5) Sub-paragraph (6) applies where the effect of the transaction concerned ceasing to be a higher rates residential property transaction is that less tax is payable in respect of it than the buyer has already paid in accordance with a return made for that transaction.
- (6) In order to obtain repayment of the amount of tax overpaid, the buyer may—
  - (a) within the period allowed for amendment of the return, amend it accordingly (see section 41 of TCMA);
  - (b) after the end of that period (if that return is not so amended), make a claim for repayment of the amount overpaid in accordance with Chapter 7 of Part 3 of TCMA.

*Further provision in connection with transactions being treated as higher rates residential property transactions*

- 24
- (1) This paragraph applies where by reason of the application of paragraph 9 or 18 a chargeable transaction ("the intermediate transaction") is treated as a higher rates residential property transaction.
  - (2) The intermediate transaction is treated as a higher rates residential property transaction for the purposes of this Act as from the end of the interim period that applies in accordance with paragraph 9(5) or 18(5).
  - (3) The buyer in the intermediate transaction must make a return to WRA in respect of that transaction.
  - (4) A return made under this paragraph must—
    - (a) be made before the end of the period of 30 days beginning with the day after the end of the interim period that applies in accordance with paragraph 9(5) or 18(5), and
    - (b) include a self-assessment.

*Spouses and civil partners purchasing alone*

- 25
- (1) Sub-paragraph (2) applies in relation to a chargeable transaction if—
    - (a) the buyer (or one of them) is married or in a civil partnership on the effective date,
    - (b) the buyer and the buyer's spouse or civil partner are living together on that date, and
    - (c) the buyer's spouse or civil partner is not a buyer in the transaction.
  - (2) The transaction is to be treated as being a higher rates residential property transaction if it would have been a higher rates residential property transaction had the buyer's spouse or civil partner been a buyer.
  - (3) Individuals who are married to, or are civil partners of, each other are treated for the purposes of this Schedule as living together unless—
    - (a) they are separated under an order of a court of competent jurisdiction,

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- (b) they are separated by a deed of separation, or
- (c) they are in fact separated in circumstances in which the separation is likely to be permanent.

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

- 26 (1) For the purpose of determining whether paragraph 5 or 15 applies to a chargeable transaction, the buyer is not to be treated as having a major interest in another dwelling to which sub-paragraphs (2) and (3) apply.
- (2) This sub-paragraph applies to a dwelling the interest in which is held by the buyer as a tenant in common in consequence of—
- (a) an order under section 24(1)(b) of the [Matrimonial Causes Act 1973 \(c. 18\)](#) (property adjustments orders in connection with matrimonial proceedings),
  - (b) an order under section 17(1)(a)(ii) of the [Matrimonial and Family Proceedings Act 1984 \(c. 42\)](#) (property adjustment orders after overseas divorce) corresponding to such an order as is mentioned in paragraph (a),
  - (c) an order under paragraph 7(1)(b) of Schedule 5 to the [Civil Partnership Act 2004 \(c. 33\)](#) (property adjustment orders in connection with dissolution etc. of civil partnership), or
  - (d) an order under paragraph 9 of Schedule 7 to the [Civil Partnership Act 2004 \(c. 33\)](#) (property adjustment orders in connection with overseas dissolution etc. of civil partnership) corresponding to such an order as is mentioned in paragraph (c).
- (3) This sub-paragraph applies to a dwelling that is the only or main residence of a person for the benefit of whom an order referred to in sub-paragraph (2) is made.

*Settlements and bare trusts*

- 27 (1) Sub-paragraph (3) applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
  - (b) the buyer (or one of them) is acting as trustee of a settlement, and
  - (c) under the terms of the settlement a beneficiary will be entitled to—
    - (i) occupy the dwelling or dwellings for life, or
    - (ii) income earned in respect of the dwelling or dwellings.
- (2) Sub-paragraph (3) also applies in relation to a land transaction if—
- (a) the main subject-matter of the transaction consists of a term of years absolute in a dwelling, and
  - (b) the buyer (or one of them) is acting as a trustee of a bare trust (within the meaning given by paragraph 2(1) and (2) of Schedule 8).
- (3) Where this sub-paragraph applies in relation to a land transaction the beneficiary of the settlement or bare trust (rather than the trustee) is to be treated for the purposes of this Schedule as the buyer (or as one of them).
- (4) Paragraphs 3(3) and 4 of Schedule 8 (trustees to be treated as the buyer) have effect subject to sub-paragraph (3).
- 28 (1) Sub-paragraph (3) applies where—
- (a) a person is a beneficiary under a settlement,

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- (b) a major interest in a dwelling forms part of the trust property, and
    - (c) under the terms of the settlement, the beneficiary is entitled to—
      - (i) occupy the dwelling for life, or
      - (ii) income earned in respect of the dwelling.
  - (2) Sub-paragraph (3) also applies where—
    - (a) a person is a beneficiary under a bare trust (within the meaning given by paragraph 2(1) and (2) of Schedule 8), and
    - (b) a term of years absolute in a dwelling forms part of the trust property.
  - (3) Where this sub-paragraph applies—
    - (a) the beneficiary is to be treated for the purposes of this Schedule as holding the interest in the dwelling, and
    - (b) if the trustee of the settlement or bare trust disposes of the interest, the beneficiary is to be treated for the purposes of this Schedule as having disposed of it.
- 29 (1) Where—
- (a) the main subject-matter of a land transaction consists of an interest other than a major interest in a dwelling, and
  - (b) sub-paragraph (2) or (3) applies in relation to the transaction,
- then, for the avoidance of doubt, the effect of paragraph 28 of this Schedule or, as the case may be, paragraph 3(1) of Schedule 8, is that the main subject-matter of the transaction is to be treated for the purposes of this Schedule as consisting of a major interest in a dwelling.
- (2) This sub-paragraph applies in relation to a transaction where—
    - (a) a major interest in the dwelling is held on a bare trust for a beneficiary (“B”),
    - (b) there is a disposal of the whole or part of B’s interest in the dwelling,
    - (c) immediately before the effective date of the transaction—
      - (i) the major interest is, by virtue of paragraph 3(1) of Schedule 8, treated as if it were vested in B, or
      - (ii) B is, by virtue of paragraph 28, treated as holding the major interest in the dwelling, and
    - (d) immediately after the effective date of the transaction—
      - (i) the major interest is, by virtue of paragraph 3(1) of Schedule 8, treated as if it were vested in the buyer, or
      - (ii) the buyer is, by virtue of paragraph 28, treated as holding the major interest.
  - (3) This sub-paragraph applies in relation to a transaction where—
    - (a) a person (“B”) is a beneficiary under a settlement where a major interest in the dwelling forms part of the trust property,
    - (b) under the terms of the settlement B is entitled to—
      - (i) occupy the dwelling for life, or
      - (ii) income earned in respect of the dwelling,
    - (c) there is a disposal of the whole or part of B’s interest in the dwelling,
    - (d) immediately before the effective date of the transaction B is, by virtue of paragraph 28, treated as holding the major interest in the dwelling, and

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- (e) immediately after the effective date of the transaction the buyer is, by virtue of that paragraph, treated as holding the major interest.
- (4) In determining whether sub-paragraph (2) or (3) applies to a transaction, ignore paragraphs 30 and 35(5).
- 30 (1) This paragraph applies where, by reason of paragraph 27 or 28 or paragraph 3(1) of Schedule 8 (bare trusts), the child of a person (“P”) would (but for this paragraph) be treated for the purposes of this Schedule as—
  - (a) being the buyer in relation to a land transaction,
  - (b) holding an interest in a dwelling, or
  - (c) having disposed of an interest in a dwelling.
- (2) Where this paragraph applies—
  - (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as being the buyer, holding the interest or (as the case may be) having disposed of the interest, and
  - (b) the child is not to be so treated.
- (3) Sub-paragraph (2)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together (for the meaning of which, see paragraph 25(3)).
- (4) This paragraph does not apply where—
  - (a) a person (“D”) acquires, holds or disposes of, a major interest in a dwelling in a child’s name or on the child’s behalf,
  - (b) D does so in the exercise of powers conferred on D as the deputy of the child, and
  - (c) D holds or, in the case of a disposal, held, that interest on trust for the child.
- (5) In sub-paragraph (4), “deputy” means—
  - (a) a person appointed under section 16 of the [Mental Capacity Act 2005 \(c. 9\)](#), or
  - (b) a person appointed to an equivalent position under the law of a country or territory outside England and Wales (and accordingly the reference to an interest being held on trust by such a person is to its being held on an equivalent basis under that law).
- 31 (1) This paragraph applies in relation to a land transaction if—
  - (a) the main subject-matter of the transaction consists of a major interest in one or more dwellings,
  - (b) the buyer (or one of them) is acting as trustee of a settlement,
  - (c) that buyer is an individual, and
  - (d) under the terms of the settlement a beneficiary is not entitled to—
    - (i) occupy the dwelling or dwellings for life, or
    - (ii) income earned in respect of the dwelling or dwellings.
- (2) In determining whether paragraph 20 or 21 applies to the transaction—
  - (a) if the buyer mentioned in sub-paragraph (1) is the only buyer, ignore sub-paragraph (1)(a) of those paragraphs, and
  - (b) if that buyer is not the only buyer, ignore sub-paragraph (1)(a) of those paragraphs when having regard to that buyer.

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### Partnerships

- 32 (1) Sub-paragraph (2) applies in relation to a chargeable transaction, the subject-matter of which consists of a major interest in one or more dwellings if—
- (a) the buyer (or one of them) is a partner in a partnership, but
  - (b) the buyer does not enter into the transaction for the purposes of the partnership.
- (2) For the purposes of determining whether paragraph 5 or 15 applies to the transaction, any major interest in any other dwelling that is 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 the buyer.
- (3) Paragraph 4(1)(a) of Schedule 7 (chargeable interests held by partnerships treated as held by the partners) has effect subject to sub-paragraph (2).

### Alternative finance arrangements

- 33 (1) This paragraph applies in relation to a chargeable transaction which is the first transaction under an alternative finance arrangement entered into between a person and a financial institution.
- (2) The person (rather than the institution) is to be treated for the purposes of this Schedule as the buyer in relation to the transaction.
- (3) In this paragraph—
- “alternative finance arrangement” (“*trefniant cyllid arall*”) means an arrangement of a kind mentioned in paragraph 2(1) or 3(1) of Schedule 10 (alternative property finance reliefs);
  - “financial institution” (“*sefydliad ariannol*”) has the meaning given by paragraph 8 of that Schedule;
  - “first transaction” (“*trafodiad cyntaf*”), in relation to an alternative finance arrangement, has the meaning given by paragraph 2(1)(a) or 3(1)(a) of that Schedule.

### Major interests in dwellings inherited jointly

- 34 (1) This paragraph applies where by virtue of an inheritance—
- (a) a person (“P”) becomes jointly entitled with one or more other persons to a major interest in a dwelling, and
  - (b) P’s beneficial share in the interest does not exceed 50% (see sub-paragraph (4)).
- (2) P is not to be treated for the purposes of paragraph 5(1)(a) or 15(1)(b) as having the major interest at any time during the period of 3 years beginning with the date of the inheritance.
- (3) But if at any time during that period of 3 years P becomes the only person beneficially entitled to the whole of the interest or P’s beneficial share in the interest exceeds 50% P is, from that time, to be treated as having the major interest for the purposes of the application of paragraphs 5(1)(a) and 15(1)(b) (subject to any disposal by P).
- (4) P’s share in the interest exceeds 50% if—

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- (a) P is beneficially entitled as a tenant in common or coparcener to more than half the interest,
  - (b) P and P’s spouse or civil partner taken together are beneficially entitled as tenants in common or coparceners to more than half the interest, or
  - (c) P and P’s spouse or civil partner are beneficially entitled as joint tenants to the interest and there is no more than one other joint tenant who is so entitled.
- (5) Sub-paragraph (4)(b) and (c) do not apply if, on the effective date of the transaction referred to in paragraph 5 or 15, P and P’s spouse or civil partner are not living together (for the meaning of “living together”, see paragraph 25(3)).
- (6) In this paragraph “inheritance” means the acquisition of an interest in or towards satisfaction of an entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person.
- (7) This paragraph applies in relation to an interest acquired following a person’s death as a result of a variation of a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property comprised in that person’s estate made within the period of 2 years after the person’s death, as it applies in relation to an inheritance; and in such a case the reference in sub-paragraph (2) to the date of the inheritance means the date of the acquisition of the interest in accordance with the variation.

## PART 6

### INTERPRETATION

#### *Dwellings outside Wales*

- 35 (1) In the provisions of this Schedule specified in sub-paragraph (4), references to a “dwelling” include references to a dwelling situated outside Wales.
- (2) In relation to a dwelling situated in England, those provisions are to be construed in accordance with the provisions of the [Finance Act 2003 \(c. 14\)](#).
- (3) In the application of those provisions in relation to a dwelling situated in a country or territory outside England and Wales—
- (a) references to a “major interest” in the dwelling are to an equivalent interest in the dwelling under the law of that country or territory,
  - (b) references to persons being beneficially entitled as joint tenants, tenants in common or coparceners to an interest in the dwelling are to persons having an equivalent entitlement to the interest in the dwelling under the law of that country or territory,
  - (c) references to a “land transaction” in relation to the dwelling are to the acquisition of an interest in the dwelling under the law of that country or territory,
  - (d) references to the “effective date” of a land transaction in relation to the dwelling are to the date on which the interest in the dwelling is acquired under the law of that country or territory, and
  - (e) references to “inheritance” are to the acquisition of an interest from a deceased person’s estate in accordance with the laws of that country or territory concerning the inheritance of property.



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- (4) The provisions of this Schedule referred to in sub-paragraphs (1), (2) and (3) are—
- (a) paragraph 5(1)(a),
  - (b) paragraph 8(2)(b), (c), (d) and (e) and (4)(b), (c) and (d),
  - (c) paragraph 9(4),
  - (d) paragraph 15(1)(b),
  - (e) paragraph 17(2)(b), (c), (d) and (e) and (4)(b), (c) and (d),
  - (f) paragraph 18(4),
  - (g) paragraph 26,
  - (h) paragraph 28,
  - (i) paragraph 32(2), and
  - (j) paragraph 34.
- (5) Where the child of a person (“P”) has an interest in a dwelling which is situated in a country or territory outside Wales—
- (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as having that interest, and
  - (b) the child is not to be so treated.
- (6) Sub-paragraph (5)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together (for the meaning of which, see paragraph 25(3)).
- (7) Sub-paragraph (5) does not apply where—
- (a) a person (“D”) acquires, holds or disposes of, a major interest in a dwelling in a child’s name or on the child’s behalf,
  - (b) D does so in the exercise of powers conferred on D as the deputy of the child, and
  - (c) D holds or, in the case of a disposal, held, that interest on trust for the child.
- (8) In sub-paragraph (7), “deputy” means—
- (a) a person appointed under section 16 of the [Mental Capacity Act 2005 \(c. 9\)](#), or
  - (b) a person appointed to an equivalent position under the law of a country or territory outside England and Wales (and accordingly the reference to an interest being held on trust by such a person is to its being held on an equivalent basis under that law).

#### *What counts as a dwelling*

- 36 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) A building or part of a building counts as a dwelling if—
- (a) it is used or suitable for use as a dwelling, or
  - (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.

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- (5) The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
  - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a dwelling, and
  - (c) construction or adaptation of the building, or part of a building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5)—
- “contract” (“*contract*”) includes any agreement;
- “relevant deeming provision” (“*darpariaeth dybio berthnasol*”) means any of sections 10 to 13 or paragraph 8(1) to (5) of Schedule 2 (pre-completion transactions) or paragraph 20 of Schedule 6 (agreement for lease);
- “substantially performed” (“*cyflawni’n sylweddol*”) has the same meaning as in section 14.
- (7) A building or part of a building used for a purpose specified in section 72(4) or (5) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.

*Major interest not to include certain leases*

- 37 For the purposes of this Schedule, any term of years absolute or leasehold estate is not a “major interest” if its term does not exceed 7 years on the date of its grant.

SCHEDULE 6

(as introduced by section 32(2))

LEASES

**PART 1**

INTRODUCTORY

*Overview*

- 1 (1) This Schedule makes provision about the application of this Act in relation to leases.
- (2) The Schedule is arranged as follows—
- (a) Part 2 makes provision about determining the duration of a lease for the purposes of this Act and associated provision about leases with overlapping terms;

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- (b) Part 3 makes provision about the treatment of consideration in relation to leases, including rent and consideration other than rent and makes provision about not treating certain consideration as chargeable consideration;
- (c) Part 4 makes provision about agreements for lease and the treatment of certain assignments and variations of leases for the purposes of this Act;
- (d) Part 5 makes provision for no tax to be chargeable on the rent element of residential leases, sets out how the charge to tax is to be calculated on the rent element of other leases and makes provision about the calculation of the tax charge in relation to consideration other than rent.

## PART 2

### DURATION OF LEASE AND TREATMENT OF OVERLAPPING LEASES

#### *Lease for a fixed term*

- 2 In applying any provision of this Act to a lease for a fixed term no account is to be taken of—
- (a) any contingency as a result of which the lease may be terminated before the end of the fixed term, or
  - (b) any right of either party to terminate the lease or renew it.

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

- 3 (1) This paragraph applies to—
- (a) a lease granted for a fixed term and thereafter until terminated, or
  - (b) a lease granted for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Act (except section 46 (notifiable transactions: exceptions)) a lease to which this paragraph applies is treated—
- (a) in the first instance as if it were a lease for the original fixed term and no longer;
  - (b) if the lease continues after the end of that term, as if it were a lease for a fixed term one year longer than the original fixed term;
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term two years longer than the original fixed term,
- and so on (but see sub-paragraph (5)).
- (3) For the purposes of section 46 (notifiable transactions: exceptions) a lease to which this paragraph applies is treated as granted for a period equal to the original fixed term.
- (4) Where—
- (a) a lease is treated, by virtue of sub-paragraph (2), as continuing for a period longer than the original fixed term, and
  - (b) as a result additional tax is payable in respect of a land transaction or tax is payable in respect of a land transaction where none was payable,

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the buyer must make a return or further return (including a self-assessment) in respect of the land transaction before the end of the period of 30 days beginning with the day after the end of the period for which the lease is treated as continuing.

- (5) Where—
- (a) a lease would, by virtue of sub-paragraph (2), be treated as continuing for a period (or further period) of one year, but
  - (b) it actually terminates at a time during that one year period,
- the lease is to be treated as continuing under sub-paragraph (2) only until it terminates; and sub-paragraph (4) applies accordingly.
- (6) This paragraph is subject to paragraphs 4 and 8 (rent under a continuing lease to be treated as rent under a new lease).

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

- 4 (1) This paragraph applies where—
- (a) (ignoring this paragraph) paragraph 3 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term one year longer than the original fixed term,
  - (b) during that one year period the tenant under that lease is granted a new lease of the same or substantially the same premises,
  - (c) the term of the new lease begins during that one year period, and
  - (d) paragraph 8 (tenant holding over: new lease backdated to previous year) does not apply.
- (2) Paragraph 3 does not apply to treat the lease as continuing after the original fixed term.
- (3) The term of the new lease is treated for the purposes of this Act as beginning with the day after the end of the original fixed term.
- (4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that one year period is to be treated as payable under the new lease (and paragraph 9(3) does not apply to that rent).
- (5) Where the fixed term of a lease has previously been treated as extended (on one or more occasions) under paragraph 3, this paragraph applies as if references to the original fixed term were references to the previously extended fixed term.

*Leases for an indefinite term*

- 5 (1) For the purposes of this Act (except section 46 (notifiable transactions: exceptions))
- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of a year;
  - (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of 2 years;
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of 3 years,
- and so on.
- (2) But where—

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- (a) a lease is treated, by virtue of sub-paragraph (1) as if it were a lease for a fixed term of 2 or more years, and
  - (b) it actually terminates before the end of that fixed term,
- the lease is to be treated as continuing under sub-paragraph (1) only until it terminates; and sub-paragraph (5) applies accordingly.
- (3) For the purposes of section 46 (notifiable transactions: exceptions) a lease for an indefinite term is treated as granted for a period of less than 7 years.
  - (4) For the purposes of this Act, no account is to be taken of any other enactment deeming a lease for an indefinite term to be a lease for a different term.
  - (5) Where—
    - (a) a lease is treated, by virtue of sub-paragraph (1), as being for a fixed term,
    - (b) the lease continues after the end of that term and accordingly is treated as being for a longer fixed term, and
    - (c) as a result of the lease continuing, additional tax is payable in respect of a land transaction or tax is payable in respect of a land transaction where none was payable,the buyer must make a return or further return (including a self-assessment) in respect of the land transaction before the end of the period of 30 days beginning with the day after the end of the longer fixed term for which the lease is treated as continuing.
  - (6) Where—
    - (a) a lease is treated, by virtue of sub-paragraph (1), as being for a fixed term of one year,
    - (b) the lease actually terminates before the end of that fixed term, and
    - (c) had the lease been granted for a fixed term ending on the date on which it actually terminates, less tax would have been chargeable than the amount assessed as such in the return made in respect of the grant of the lease,the buyer may, within the period allowed for amendment of the return, amend it accordingly (for provision as to amendment of returns, see section 41 of TCMA).

#### *Successive linked leases*

- 6 (1) For the purposes of this Act a series of linked leases are treated as a single lease—
  - (a) granted at the time of the grant of the first lease in the series,
  - (b) for a term equal to the aggregate of the terms of all the leases, and
  - (c) in consideration of the rent payable under all of the leases.
- (2) Two or more leases constitute “a series of linked leases” if they—
  - (a) are successive leases granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) are linked transactions.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 51 (return or further return in consequence of later linked transaction).

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

- 7 (1) This paragraph applies where—

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- (a) the tenant under a lease (“the old lease”) surrenders it to the landlord and in consideration of that surrender the landlord grants a lease to the tenant of the same or substantially the same premises (“the new lease”),
  - (b) the tenant under a lease (“the old lease”) of premises to which Part 2 of the [Landlord and Tenant Act 1954 \(c. 56\)](#) (security of tenure for business, professional and other tenants) applies, makes a request for a new tenancy (“the new lease”) which is then executed,
  - (c) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in the sub-tenant’s original lease (“the old lease”) in pursuance of—
    - (i) an order of a court on a claim for relief against re-entry or forfeiture, or
    - (ii) a contractual entitlement arising in the event of the head lease being terminated, or
  - (d) a person who has guaranteed the obligations of a tenant under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Act, the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the taxable rent that would have been payable in respect of that period under the old lease (but it cannot be treated as being reduced to a negative amount).
- (3) For the purposes of sub-paragraph (2)—
- (a) the “overlap period” is the period between the date of the grant of the new lease and what would have been the end of the term of the old lease had it not been terminated;
  - (b) rent is “taxable” if or to the extent that it is taken into account in determining the tax chargeable in respect of the acquisition of the old lease.

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

- 8 (1) This paragraph applies where—
- (a) the tenant under a lease (“the old lease”) continues in occupation after the date on which, under its terms, the lease terminates (“the contractual termination date”),
  - (b) the tenant is granted a lease of the same or substantially the same premises (“the new lease”),
  - (c) the new lease is granted on a date falling more than one year after the contractual termination date, and
  - (d) the term of the new lease is expressed to begin on a date falling within the period —
    - (i) beginning with the contractual termination date, and
    - (ii) ending with the latest anniversary of that date falling before the date on which the new lease is granted,
 (“the whole years of holdover”).
- (2) The term of the new lease is treated for the purposes of this Act as beginning with the date on which it is expressed to begin.

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- (3) The rent payable under the new lease in respect of the period—
- (a) beginning with the date on which the new lease is expressed to begin, and
  - (b) ending at the end of the whole years of holdover,
- is treated for the purposes of this Act as reduced by the amount of taxable rent payable in respect of the holdover tenancy for that period (but it cannot be treated as being reduced to a negative amount).
- (4) The holdover tenancy is treated for the purposes of this Act as a lease for a fixed term ending at the end of the whole years of holdover.
- (5) For the purposes of this paragraph—
- (a) “holdover tenancy” means—
    - (i) the old lease if it continues beyond the contractual termination date (whether by virtue of the lease being granted for a fixed term and thereafter until terminated or by operation of law), or
    - (ii) any other tenancy of the same or substantially the same premises by virtue of which the tenant under the old lease continues in occupation after the contractual termination date;
  - (b) rent is “taxable” if or to the extent that it is taken into account in determining the tax chargeable in respect of the acquisition of the holdover tenancy.

### PART 3

#### RENT AND OTHER CONSIDERATION

##### *Rent*

- 9 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent and other matters but not apportioned is to be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of Schedule 4 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.
- (3) For the purposes of this Act, “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.

##### *Variable or uncertain rent*

- 10 (1) This paragraph applies where the amount of rent payable under a lease—
- (a) varies in accordance with provision in the lease, or
  - (b) is contingent, uncertain or unascertained.
- (2) As regards rent payable in respect of any period before the end of the fifth year of the term of the lease—
- (a) this Act applies as in relation to other chargeable consideration, and
  - (b) accordingly sections 19 and 20 apply if the amount is contingent, uncertain or unascertained.
- (3) As regards rent payable in respect of any period after the end of the fifth year of the term of the lease, the annual amount of rent is assumed, in every case, to be the

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equal to the highest amount of rent payable in respect of any period of 12 consecutive months in the first 5 years of the term.

- (4) In determining that amount—
- (a) disregard paragraphs 7(2) and 8(3) (where further lease granted, deemed reduction of rent for overlap period), and
  - (b) if necessary, take into account any amounts determined in accordance with sub-paragraph (2)(b).
- (5) This paragraph is subject to paragraph 12 (adjustment where rent ceases to be uncertain).
- (6) For the purposes of this paragraph and paragraph 12, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—
- (a) section 12, 13 or 33 of the [Agricultural Holdings Act 1986 \(c. 5\)](#) (provisions relating to increases, reductions and other variations of rent), or
  - (b) Part 2 of the [Agricultural Tenancies Act 1995 \(c. 8\)](#) (rent review under farm business tenancy).
- (7) For the purposes of this Act, no account is to be taken of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index used to express a rate of inflation.

*First rent review in final quarter of fifth year*

- 11 Where—
- (a) a lease contains provision under which the rent may be adjusted,
  - (b) under that provision the first (or only) such adjustment—
    - (i) is to an amount that (before that adjustment) is uncertain, and
    - (ii) has effect from a date (the “review date”) that is expressed as falling 5 years after a specified date, and
  - (c) the specified date falls within the period of 3 months before the beginning of the term of the lease,

this Act applies as if references to the first 5 years of the term of the lease were to the period beginning with the start of the term and ending with the review date and references to the fifth year of the term of the lease are to be read accordingly.

*Adjustment of tax where rent determined on reconsideration date*

- 12 (1) Where, in the case of a land transaction relating to a lease—
- (a) section 19 or 20 (contingent, uncertain or unascertained consideration) applies to the land transaction by virtue of paragraph 10, and
  - (b) the reconsideration date is reached,
- the buyer in the transaction must, on the reconsideration date, determine the rent paid or payable in respect of the first 5 years of the term of the lease.
- (2) Paragraphs 13 and 14 make provision for the adjustment of tax payable in respect of a land transaction (and of any transaction linked to such a transaction) as a result of such a determination.



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- (3) For the purposes of this paragraph and paragraphs 13 and 14, the reconsideration date is —
- (a) the date falling at the end of the fifth year of the term of the lease, or
  - (b) any earlier date on which the amount of rent payable in respect of the first 5 years of the term of the lease ceases to be uncertain.
- (4) For the purposes of sub-paragraph (3)(b) and paragraph 13(2), the amount of rent payable ceases to be uncertain when—
- (a) in the case of contingent rent, the contingency occurs or it becomes clear that it will not occur;
  - (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.

*Underpayment of tax where rent determined on reconsideration date*

- 13 (1) If, as a result of determining on the reconsideration date the rent paid or payable in respect of the first 5 years of the term of the lease—
- (a) a land transaction becomes notifiable, or
  - (b) additional tax is payable in respect of a land transaction or tax is payable where none was payable,
- the buyer must make a return or further return (including a self-assessment) in respect of the land transaction before the end of the period of 30 days beginning with the reconsideration date.
- (2) Where—
- (a) a return is made under sub-paragraph (1) as a result of determining the rent paid or payable in respect of the first 5 years of the term of the lease on the date falling at the end of the fifth year of that term,
  - (b) when the return is made, the rent so paid or payable remains uncertain, and
  - (c) no later than the end of the period of 12 months beginning with the filing date for the return, that rent ceases to be uncertain,
- the buyer must amend the return in accordance with section 41 of TCMA.

*Overpayment of tax where rent determined on reconsideration date*

- 14 (1) If, as a result of determining on the reconsideration date the rent paid or payable in respect of the first 5 years of the term of the lease, less tax is payable in respect of a land transaction than has already been paid—
- (a) the buyer may, within the period allowed for amendment of the return, amend it accordingly;
  - (b) after the end of that period, the buyer may (if the return is not so amended) make a claim for repayment of the amount overpaid in accordance with Chapter 7 of Part 3 of TCMA as modified by sub-paragraph (2).
- (2) In its application to a claim to which sub-paragraph (1)(b) applies, Chapter 7 of Part 3 of TCMA applies as if for section 78 there were substituted—

**“78 Time limit for making claims**

A claim under section 63 to which paragraph 14(1)(b) of Schedule 6 to LTTA applies must be made before the later of the end of—

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- (a) the period of 4 years beginning with the day after the filing date for the tax return to which the land transaction tax already paid relates, or
- (b) the period of 12 months beginning with the reconsideration date (within the meaning of paragraph 12(3) of that Schedule).”

*Reverse premiums*

- 15 (1) In the case of the grant, assignment or surrender of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant;
  - (b) in relation to the assignment of a lease, a premium moving from the assignor to the assignee;
  - (c) in relation to the surrender of a lease, a premium moving from the tenant to the landlord.

*Tenants’ obligations etc. that do not count as chargeable consideration*

- 16 (1) In the case of a grant of a lease none of the following counts as chargeable consideration —
- (a) any undertaking by the tenant to repair, maintain or insure the leased premises;
  - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management;
  - (c) any other obligation of the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market;
  - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease;
  - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease;
  - (f) any liability of the tenant for costs under section 14(2) of the [Leasehold Reform Act 1967 \(c. 88\)](#) or section 60 of the [Leasehold Reform, Housing and Urban Development Act 1993 \(c. 28\)](#) (costs to be borne by person exercising statutory rights to be granted lease);
  - (g) any other obligation of the tenant to bear the landlord’s reasonable costs or expenses of, or incidental to, the grant of the lease;
  - (h) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation [\(EC\) No 73/2009](#)) in respect of land subject to the lease.
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of an obligation mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

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*Surrender of existing lease in return for new lease*

- 17 (1) Where a lease is granted in consideration of the surrender of an existing lease between the same parties—
- (a) the grant of the new lease does not count as chargeable consideration for the surrender, and
  - (b) the surrender does not count as chargeable consideration for the grant of the new lease.
- (2) Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.

*Assignment of lease: assumption of obligations by assignee*

- 18 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
  - (b) to perform or observe any other undertaking of the tenant under the lease, does not count as chargeable consideration for the assignment.

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

- 19 (1) Where, under arrangements made in connection with the grant of a lease—
- (a) the tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and
  - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant, or on the death of the tenant,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.
- (2) Where, under arrangements made in connection with the assignment of a lease—
- (a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
  - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee, or on the death of the assignee,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignment of the lease.
- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or assignment of the lease is not more than twice the relevant maximum rent.
- (4) The relevant maximum rent is—
- (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any period of 12 consecutive months in the first 5 years of the term of the lease;
  - (b) in relation to the assignment of a lease, the highest amount of rent payable in respect of any period of 12 consecutive months falling within the first 5 years of the term remaining outstanding as at the date of the assignment.
- (5) In determining the highest amount of rent for the purposes of sub-paragraph (4)—

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- (a) disregard paragraphs 7(2) and 8(3) (where further lease granted, deemed reduction of rent for overlap period), and
  - (b) if necessary, take into account any amounts determined in accordance with paragraph 10(2)(b) (determining contingent, uncertain or unascertained rent).
- (6) Tax is not chargeable by virtue of this paragraph if it would be chargeable only as a result of the application of paragraph 34 (which excludes the zero rate band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year) to an amount of chargeable consideration determined under sub-paragraph (1) or (2).

## PART 4

### AGREEMENTS FOR LEASE, ASSIGNMENTS AND VARIATIONS

#### *Agreement for lease*

- 20 (1) Where—
- (a) an agreement for a lease is entered into, and
  - (b) the agreement is substantially performed without having been completed,
- the agreement is treated for the purposes of this Act as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.
- (2) The effective date of the transaction is the date of substantial performance of the agreement.
- (3) For the purposes of this paragraph the agreement is completed by the grant of a lease (“the actual lease”) in substantial conformity with the agreement.
- (4) Where the actual lease is subsequently granted the notional lease is treated for the purposes of this Act as if it were a lease granted—
- (a) on the date of substantial performance of the agreement,
  - (b) for a term beginning with that date and ending at the end of the term of the actual lease, and
  - (c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.
- (5) Where sub-paragraph (4) applies the grant of the actual lease is disregarded for the purposes of this Act except section 51 (return or further return in consequence of later linked transaction).
- (6) For the purposes of section 51—
- (a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 8),
  - (b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax chargeable in respect of the notional lease as a result of sub-paragraph (4), and
  - (c) the reference in section 51(2) to “the buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.

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- (7) Where—
- (a) sub-paragraph (1) applies, and
  - (b) within the period of 12 months beginning with the date of substantial performance of the agreement, the agreement is (to any extent) rescinded or annulled, or is for any other reason not carried into effect, and
  - (c) in consequence, the return made in respect of the agreement is amended, the tax paid by virtue of that sub-paragraph must (to that extent) be repaid by WRA.
- (8) For the purposes of the application of section 14(1) (substantial performance) to this paragraph and paragraph 21 any agreement for lease is to be treated as a contract.

*Assignment of agreement for lease*

- 21 (1) This paragraph applies where a person (“P”) assigns P’s interest as tenant under an agreement for lease.
- (2) Where this paragraph applies Schedule 2 (transactions entered into before completion of contract) does not apply.
- (3) If the assignment occurs without the agreement having been substantially performed, section 10 (contract and transfer) has effect as if—
- (a) the agreement were with the assignee (“A”) and not P, and
  - (b) the consideration given by A for entering into the agreement included any consideration given by A for the assignment.
- (4) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
  - (b) the effective date of that transaction is the date of the assignment.
- (5) Where there are successive assignments, this paragraph has effect in relation to each one of them.

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

- 22 (1) This paragraph applies where the grant of a lease is relieved from tax by virtue of any of the provisions specified in sub-paragraph (4).
- (2) The first assignment of the lease that is not relieved from tax by virtue of any of the provisions specified in sub-paragraph (4), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
  - (b) on the same terms as those on which the assignee holds the lease after the assignment.
- (3) Sub-paragraph (2) does not apply where an assignment of a lease, but for the application of that sub-paragraph, would be relieved from tax by virtue of Schedule 11 (alternative finance investment bonds).
- (4) The provisions are—
- (a) Schedule 9 (sale and leaseback relief);

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- (b) paragraphs 13 and 15 of Schedule 11 (alternative finance investment bond relief);
  - (c) Schedule 16 (group relief);
  - (d) Schedule 17 (reconstruction and acquisition relief);
  - (e) Schedule 18 (charities relief);
  - (f) paragraph 1 of Schedule 20 (relief for certain acquisitions involving public bodies).
- (5) This paragraph does not apply where the relief in question is group relief, reconstruction or acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment.
- (6) For the purposes of sub-paragraph (5), “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the event falling within paragraph 8(2)(a) of Schedule 16 (buyer ceasing to be a member of the same group as the seller) as read with paragraph 9 of that Schedule;
  - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 5(2) of Schedule 17 or, as the case may be, the event mentioned in paragraph 7(2) or (3) of that Schedule;
  - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 2(4) or 5(2)(b) of Schedule 18.

#### *Assignment of lease*

- 23 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of—
- (a) section 47 (contingency ceases and consideration is ascertained: duty to make return),
  - (b) section 51 (return or further return in consequence of later linked transaction),
  - (c) paragraph 3 or 5 of this Schedule (return or further return required where fixed term or indefinite term lease continues), or
  - (d) paragraphs 12, 13 and 14 of this Schedule (adjustment where rent ceases to be uncertain),
- must, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.
- (3) This paragraph does not apply if the assignment is treated as the grant of a lease by the assignor (see paragraph 22).

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

- 24 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (2) Where any consideration in money or money’s worth (other than an increase in rent) is given by the tenant for any variation of a lease, other than a variation of the amount

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of the rent or of the term of the lease, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.

- (3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the landlord.

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

- 25 (1) Where a lease is varied so as to increase the amount of rent as from a date before the end of the fifth year of the term of the lease, the variation is treated for the purposes of this Act as if it were the grant of a lease in consideration of the additional rent made payable by it.
- (2) Sub-paragraph (1) does not apply to an increase of rent in pursuance of—
- (a) a provision contained in the lease before it was varied, or
  - (b) a provision mentioned in paragraph 10(6)(a) or (b) (variations of certain agricultural leases).

## PART 5

### CALCULATION OF TAX CHARGEABLE

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

- 26 For the purposes of this Part of this Schedule, a transaction is—
- (a) an acquisition of a residential lease if—
    - (i) it is the acquisition of a lease or other chargeable interest relating to a lease, the main subject-matter of which consists entirely of residential property, or
    - (ii) where the acquisition is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of residential property;
  - (b) an acquisition of a non-residential lease if—
    - (i) it is the acquisition of a lease or other chargeable interest relating to a lease, the main subject-matter of which consists entirely of land which is not residential property, or
    - (ii) where the acquisition is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of land which is not residential property;
  - (c) an acquisition of a mixed lease if—
    - (i) it is the acquisition of a lease or other chargeable interest relating to a lease, the main subject-matter of which includes land which is not residential property, or
    - (ii) where the acquisition is one of a number of linked transactions, the main subject-matter of any of the transactions includes land which is not residential property.

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

- 27 (1) In the case of an acquisition of a residential lease, no tax is chargeable in respect of so much of the chargeable consideration as consists of rent.

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- (2) The Welsh Ministers may by regulations amend this paragraph so as to substitute sub-paragraph (1) with a calculation of tax chargeable in respect of so much of the chargeable consideration as consists of rent in the case of an acquisition of a residential lease.
- (3) Regulations under sub-paragraph (2)—
  - (a) must specify the method of calculation (including the method applicable to a case where the acquisition is one of a number of linked transactions each of which being the acquisition of a residential lease), and
  - (b) may make such other supplemental, incidental or consequential modifications of any enactment (including this Act) as the Welsh Ministers consider necessary or expedient.
- (4) If regulations are made under sub-paragraph (2), the Welsh Ministers must by regulations specify the tax bands and percentage tax rates for each band applicable to the chargeable consideration which consists of rent.
- (5) Regulations under sub-paragraph (4) must specify—
  - (a) a tax band for which the applicable tax rate is 0% (“the RL zero rate band”),
  - (b) two or more tax bands above the RL zero rate band,
  - (c) the tax rate for each band above the RL zero rate band so that the rate for each band is higher than the rate for the band below it, and
  - (d) a date on which the tax bands and tax rates apply in relation to transactions with an effective date on or after that date.
- (6) Regulations under sub-paragraph (4) may specify—
  - (a) different tax bands and tax rates in respect of different categories of acquisition of a residential lease;
  - (b) different dates under sub-paragraph (5)(d) in respect of each specified tax band or tax rate.

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

- 28 (1) The Welsh Ministers must by regulations specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent in cases of the acquisition of a non-residential lease or mixed lease.
- (2) Regulations under sub-paragraph (1) must specify—
    - (a) a tax band for which the applicable tax rate is 0% (“the NRL zero rate band”),
    - (b) two or more tax bands above the NRL zero rate band,
    - (c) the tax rate for each band above the NRL zero rate band so that the rate for each band is higher than the rate for the band below it, and
    - (d) a date on which the tax bands and tax rates apply in relation to transactions with an effective date on or after that date.
  - (3) Regulations under sub-paragraph (1) may specify—
    - (a) different tax bands and tax rates in respect of different categories of acquisition of a non-residential lease or mixed lease;
    - (b) different dates under sub-paragraph (2)(d) in respect of each specified tax band or tax rate.



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

- 29 In the case of the acquisition of a non-residential lease or mixed lease, the amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be calculated as follows (unless paragraph 30 (linked transactions) applies).

*Step 1*

Calculate the net present value (the “NPV”) of the rent payable over the term of the lease (see paragraph 31).

*Step 2*

For each tax band applicable to the acquisition, multiply so much of the NPV as falls within the band by the tax rate for that band.

*Step 3*

Calculate the sum of the amounts reached under Step 2.

The result is the amount of tax chargeable in respect of rent.

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

- 30 Where the acquisition of a non-residential lease or mixed lease is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be calculated as follows.

*Step 1*

Calculate the total of the net present values (the “TNPV”) of the rent payable over the terms of all the linked leases (see paragraph 31).

*Step 2*

For each tax band applicable to the acquisition, multiply so much of the TNPV as falls within the band by the tax rate for that band.

*Step 3*

Calculate the sum of the amounts reached under Step 2.

The result is the total tax chargeable in respect of rent.

*Step 4*

Divide the NPV of the rent payable over the term of the lease in question by the TNPV.

*Step 5*

Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4.

The result is the amount of tax chargeable in respect of rent for the lease in question.

*Net present value*

- 31 The NPV of the rent payable over the term of a lease is calculated by applying the following formula—

$$NPV = \sum_{i=1}^n \frac{r_i}{(1+T)^i}$$

Figure 8

where—

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$r_i$  is the rent payable in respect of year  $i$ ,  
 $i$  is the first, second, third etc. year of the term of the lease,  
 $n$  is the term of the lease, and  
 $T$  is the temporal discount rate (see paragraph 32).

*Temporal discount rate*

32 For the purposes of paragraph 31 the “temporal discount rate” is 3.5% or such other rate as the Welsh Ministers may by regulations specify.

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

33 (1) Where in the case of an acquisition of a lease there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraphs 34 and 35).

(2) Tax chargeable under this Part of this Schedule in respect of rent is in addition to any tax chargeable under any provision of this Act in respect of consideration other than rent.

*Tax chargeable in respect of consideration other than rent: no zero rate band for non-residential leases*

34 (1) This paragraph applies in the case of an acquisition of a non-residential lease where—

- (a) there is chargeable consideration other than rent, and
- (b) section 27 (amount of tax chargeable: transactions which are not linked) or 28 (amount of tax chargeable: linked transactions) applies to the acquisition.

(2) If the relevant rent is at least the specified amount, the zero rate band does not apply in relation to the consideration other than rent and, accordingly, any case which would have fallen within that band is treated as falling within the next tax band.

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

35 (1) This paragraph applies in the case of an acquisition of a mixed lease where—

- (a) there is chargeable consideration other than rent, and
- (b) the relevant rent attributable, on a just and reasonable apportionment, to the land which is not residential property is at least the specified amount.

(2) For the purpose of determining the amount of tax chargeable in relation to the consideration other than rent, the transaction (or where it is one of a number of linked transactions, that set of transactions) is treated as if it were two separate but linked transactions (or two separate sets of linked transactions which are themselves linked) namely—

- (a) one whose subject-matter consists of all the land that is residential property (and section 28 (amount of tax chargeable: linked transactions) applies accordingly), and
- (b) one whose subject-matter consists of all the land that is not residential property (and that section as modified by paragraph 34 applies accordingly).

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- (3) For that purpose, the chargeable consideration attributable to each of those separate transactions (or sets of linked transactions) is the chargeable consideration so attributable on a just and reasonable basis.

#### *Relevant rent*

- 36 (1) In paragraphs 34 and 35—
- (a) “the relevant rent” means—
    - (i) the annual rent in relation to the transaction in question, or
    - (ii) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions;
  - (b) “the specified amount” means an amount of relevant rent specified by the Welsh Ministers by regulations.
- (2) In sub-paragraph (1)(a) “the annual rent” means—
- (a) the average annual rent over the term of the lease, or
  - (b) if—
    - (i) different amounts of rent are payable for different parts of the term, and
    - (ii) those amounts (or any of them) are ascertainable at the effective date of the transaction,the average annual rent over the term for which the highest ascertainable rent is payable.

#### *Power to amend or repeal paragraphs 34 to 36*

- 37 The Welsh Ministers may by regulations amend or repeal paragraphs 34 to 36.

## SCHEDULE 7

(as introduced by section 41(1))

### PARTNERSHIPS

#### PART 1

#### INTRODUCTORY

#### *Overview*

- 1 This Schedule makes provision about the application of this Act and TCMA in relation to partnerships.
- 2 This Schedule is arranged as follows—
- (a) Part 2 makes general provision about the treatment of partnerships;
  - (b) Part 3 makes provision about ordinary transactions involving a partnership;
  - (c) Part 4 makes provision about transactions involving transfers to a partnership from a partner or certain other persons;

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- (d) Part 5 makes provision about transactions involving transfers from a partnership to a partner or certain other persons;
- (e) Part 6 makes provision about transactions between partnerships and about transactions involving a partnership consisting wholly of bodies corporate;
- (f) Part 7 makes provision about transfers to or from a partnership where the chargeable consideration includes rent;
- (g) Part 8 makes provision about transfers of interest in, and transactions involving, property investment partnerships;
- (h) Part 9 makes provision about the application to certain transactions involving partnerships of provisions of this Act relating to exemptions and reliefs, of certain provisions of TCMA and about the notification of such transactions;
- (i) Part 10 defines expressions used in this Schedule.

## PART 2

### GENERAL PROVISIONS

#### *Partnerships*

- 3 In this Act, a “partnership” means—
- (a) a partnership within the [Partnership Act 1890 \(c. 39\)](#);
  - (b) a limited partnership registered under the [Limited Partnerships Act 1907 \(c. 24\)](#);
  - (c) a limited liability partnership formed under the [Limited Liability Partnerships Act 2000 \(c. 12\)](#);
  - (d) a firm or entity of similar character to any of those mentioned above formed under the law of a country or territory outside the United Kingdom.

#### *Chargeable interests treated as held by partners etc.*

- 4 (1) For the purposes of this Act—
- (a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and
  - (b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners,
- and not by or on behalf of the partnership as such.
- (2) Sub-paragraph (1) applies despite a partnership being regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

#### *Acquisition of interest in partnership not chargeable except as specially provided*

- 5 The acquisition of an interest in a partnership is not a chargeable transaction despite the partnership property including land, except as provided by—
- (a) paragraph 18 (transfer of interest pursuant to earlier arrangements);
  - (b) paragraph 34 (transfer of interest in property-investment partnership).

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#### *Continuity of partnerships*

- 6 For the purposes of this Act, a partnership is treated as the same partnership despite a change in membership if any person who was a member before the change remains a member after the change.

#### *Partnership not to be regarded as a unit trust scheme etc.*

- 7 For the purposes of this Act, a partnership is not to be regarded as a unit trust scheme or an open-ended investment company.

### **PART 3**

#### **ORDINARY PARTNERSHIP TRANSACTIONS**

#### *Introduction*

- 8 This Part of this Schedule applies to land transactions entered into as buyers by or on behalf of the members of a partnership, other than transactions within Parts 4 to 8 of this Schedule.

#### *Responsibility of partners*

- 9 (1) Anything required or authorised to be done under this Act or TCMA by or in relation to the buyer in the transaction must be done by or in relation to all the responsible partners.
- (2) The responsible partners in relation to a transaction are—
- (a) the persons who are partners at the effective date of the transaction, and
  - (b) any person who becomes a member of the partnership after the effective date of the transaction.
- (3) This paragraph has effect subject to paragraph 10 (representative partners).

#### *Representative partners*

- 10 (1) Anything required or authorised to be done under this Act or TCMA in connection with the transaction by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.
- (2) This includes making the declaration required by section 53 (declaration that return is complete and correct).
- (3) A “representative partner” means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Act.
- (4) Any such nomination, or the revocation or such a nomination, has effect only after notice of the nomination, or revocation, has been given to WRA.

#### *Joint and several liability of responsible partners*

- 11 (1) Where the responsible partners are liable to pay—
- (a) tax or late payment interest on that tax,

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- (b) an amount under section 55 of TCMA (recovery of excessive repayment) or late payment interest on that amount, or
  - (c) a penalty under Part 5 of TCMA or late payment interest on that penalty,
- the liability is a joint and several liability of those partners.
- (2) No amount may be recovered under sub-paragraph (1)(a) or (b) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable.
  - (3) No amount may be recovered under sub-paragraph (1)(c) from a person who did not become a partner until after the relevant time.
  - (4) The relevant time is—
    - (a) in relation to so much of a penalty as is payable in respect of any day, or to late payment interest on so much of a penalty as is so payable, the beginning of that day;
    - (b) in relation to any other penalty, or to late payment interest on the penalty, the time when the act or omission occurred that caused the penalty to become payable.
  - (5) In this paragraph, “late payment interest” means late payment interest under Part 6 of TCMA.

## PART 4

### TRANSACTIONS INVOLVING TRANSFERS TO A PARTNERSHIP

#### *Introduction*

- 12 In this Part of this Schedule—
- (a) paragraphs 13 to 17 make provisions about the treatment of certain land transactions involving the transfer of a chargeable interest to a partnership, and
  - (b) paragraphs 18 and 19 provide for certain events following such transactions to be treated as land transactions.

#### *Transfer of chargeable interest to a partnership: general*

- 13 (1) This paragraph applies where—
- (a) a partner transfers a chargeable interest to the partnership,
  - (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
  - (c) a person connected with—
    - (i) a partner, or
    - (ii) a person who becomes a partner as a result of or in connection with the transfer,
 transfers a chargeable interest to the partnership.
- (2) This paragraph applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

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(3) The chargeable consideration for the transaction is taken to be equal to—

Figure 9

where—

MV is the market value of the chargeable interest transferred, and  
SLP is the sum of the lower proportions.

- (4) Paragraph 14 provides for determining the sum of the lower proportions.
- (5) Part 7 applies if the whole or part of the chargeable consideration for the transaction is rent.
- (6) Paragraphs 9 to 11 (responsibility of partners) have effect in relation to a transaction to which this paragraph applies, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.
- (7) This paragraph has effect subject to any election under paragraph 36.

*Transfer of chargeable interest to a partnership: sum of the lower proportions*

14 The sum of the lower proportions in relation to a transaction to which paragraph 13 applies is determined as follows—

*Step 1*

Identify the relevant owner or owners (see paragraph 15).

*Step 2*

For each relevant owner, identify the corresponding partner or partners (see paragraph 16).

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is zero.

*Step 3*

For each relevant owner, find the proportion of the chargeable interest to which the owner was entitled immediately before the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step 4*

Find the lower of the following (“the lower proportion”) for each corresponding partner—

- (a) the proportion of the chargeable interest attributable to the partner (see paragraph 17);
- (b) the partner's partnership share immediately after the transaction.

*Step 5*

Add together the lower proportions of each corresponding partner.

The result is the sum of the lower proportions.

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*Relevant owner*

- 15 (1) For the purposes of paragraph 14 (see Step 1), a person is a relevant owner if—
- (a) immediately before the transaction, the person was entitled to a proportion of the chargeable interest, and
  - (b) immediately after the transaction, the person is a partner or is connected with a partner.
- (2) For the purposes of paragraph 14 and this paragraph, persons who are entitled to a chargeable interest as beneficial joint tenants are taken to be entitled to the chargeable interest as beneficial tenants in common in equal shares.

*Corresponding partner*

- 16 (1) For the purposes of paragraph 14 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately after the transaction—
- (a) the person is a partner, and
  - (b) the person is the relevant owner or is an individual connected with the relevant owner.
- (2) For the purpose of sub-paragraph (1)(b), a company is to be treated as an individual connected with the relevant owner if it—
- (a) holds property as trustee, and
  - (b) is connected with the relevant owner only because of section 1122(6) of the [Corporation Tax Act 2010 \(c. 4\)](#) (as it has effect with the omission of subsection (6)(c) to (e)).

*Proportion of chargeable interest attributable to corresponding partner*

- 17 For the purposes of paragraph 14 (Step 4), the proportion of the chargeable interest attributable to a corresponding partner is—
- (a) if the partner is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to that partner (at Step 3) in respect of that owner;
  - (b) if the partner is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to that partner (at Step 3) in respect of each of those owners.

*Transfer of partnership interest pursuant to tax avoidance arrangements*

- 18 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest to a partnership (“the land transfer”);
  - (b) the land transfer falls within paragraph 13(1);
  - (c) there is subsequently a transfer of an interest in the partnership (“the partnership transfer”);
  - (d) the partnership transfer is made—
    - (i) if the land transfer falls within paragraph 13(1)(a) or (b), by the person who makes the land transfer;
    - (ii) if the land transfer falls within paragraph 13(1)(c), by the partner concerned;



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- (e) the partnership transfer is made pursuant to arrangements which are, or form part of, tax avoidance arrangements that were in place at the time of the land transfer;
  - (f) the partnership transfer is not (apart from this paragraph) a chargeable transaction.
- (2) For the purposes of this Act, the partnership transfer—
- (a) is taken to be a land transaction, and
  - (b) is a chargeable transaction.
- (3) The partners are taken to be the buyers in the transaction.
- (4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.
- (5) That proportion is—
- (a) if the person making the partnership transfer is not a partner immediately after the partnership transfer, that person’s partnership share immediately before that transfer;
  - (b) if the person is a partner immediately after the partnership transfer, the difference between the person’s partnership share before and after that transfer.
- (6) The partnership transfer and the land transfer are taken to be linked transactions.
- (7) Paragraphs 9 to 11 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.
- (8) In this paragraph, “tax avoidance arrangements” has the meaning given by section 31.

*Withdrawal of money etc. from partnership after transfer of chargeable interest*

- 19 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest to a partnership (“the land transfer”);
  - (b) the land transfer falls within paragraph 13(1);
  - (c) during the period of 3 years beginning with the effective date of the land transfer, a qualifying event within sub-paragraph (2) occurs;
  - (d) the qualifying event is, or forms part of, a tax avoidance arrangement;
  - (e) at the time of the qualifying event, an election has not been made in respect of the land transfer under paragraph 36.
- (2) A qualifying event is—
- (a) a withdrawal from the partnership of money or money’s worth which does not represent income profit, by the relevant person—
    - (i) withdrawing capital from the relevant person’s capital account,
    - (ii) reducing the relevant person’s interest in the partnership, or
    - (iii) ceasing to be a partner, or

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- (b) in a case where the relevant person has made a loan to the partnership—
  - (i) the repayment (to any extent) by the partnership of the loan, or
  - (ii) a withdrawal by the relevant person from the partnership of money or money’s worth which does not represent income profit.
- (3) For the purposes of sub-paragraph (2), the relevant person is—
  - (a) where the land transfer falls within 13(1)(a) or (b), the person who makes the land transfer, and
  - (b) where the land transfer falls within paragraph 13(1)(c), the partner concerned or a person connected with that partner.
- (4) For the purposes of this Act, the qualifying event—
  - (a) is taken to be a land transaction, and
  - (b) is a chargeable transaction.
- (5) The partners are taken to be the buyers under the transaction.
- (6) Paragraphs 9 to 11 (responsibility of partners) have effect in relation to the transaction.
- (7) The chargeable consideration for the transaction is taken to be—
  - (a) in a case falling within sub-paragraph (2)(a), equal to the value of the money or money’s worth withdrawn from the partnership;
  - (b) in a case falling within sub-paragraph (2)(b)(i), equal to the amount repaid;
  - (c) in a case falling within sub-paragraph (2)(b)(ii), equal to so much of the value of the money or money’s worth withdrawn from the partnership as does not exceed the amount of the loan.
- (8) But the chargeable consideration determined under sub-paragraph (7) is not to exceed the market value, as at the effective date of the land transfer, of the chargeable interest transferred by the land transfer, reduced by any amount previously chargeable to tax.
- (9) Where—
  - (a) a qualifying event gives rise to a charge under this paragraph, and
  - (b) the same event gives rise to a charge under paragraph 34 (transfer of interest in property investment partnership),
 the amount of the charge under this paragraph is reduced (but not below zero) by the amount of the charge under that paragraph.
- (10) In this paragraph, “tax avoidance arrangement” has the meaning given by section 31.

## PART 5

### TRANSACTIONS INVOLVING TRANSFERS FROM A PARTNERSHIP

#### *Introduction*

- 20 This Part of this Schedule makes provision about the treatment of certain land transactions involving the transfer of a chargeable interest from a partnership.

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*Transfer of chargeable interest from a partnership: general*

- 21 (1) This paragraph applies where a chargeable interest is transferred—
- (a) from a partnership to a person who is or has been one of the partners, or
  - (b) from a partnership to a person connected with a person who is or has been one of the partners.
- (2) The chargeable consideration for the transaction is (subject to paragraph 30) taken to be equal to—

Figure 10

where—

MV is the market value of the interest transferred, and  
SLP is the sum of the lower proportions.

- (3) Paragraph 22 provides for determining the sum of the lower proportions.
- (4) Part 7 applies if the whole or part of the chargeable consideration for the transaction is rent.
- (5) For the purposes of this paragraph, property that was partnership property before the partnership was dissolved or otherwise ceased to exist is to be treated as remaining partnership property until it is distributed.
- (6) This paragraph has effect subject to any election under paragraph 36.

*Transfer of chargeable interest from a partnership: sum of the lower proportions*

- 22 The sum of the lower proportions in relation to a transaction to which paragraph 21 applies is determined as follows—

*Step 1*

Identify the relevant owner or owners (see paragraph 23).

*Step 2*

For each relevant owner, identify the corresponding partner or partners (see paragraph 24).

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is zero.

*Step 3*

For each relevant owner, find the proportion of the chargeable interest to which that owner is entitled immediately after the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step 4*

Find the lower of the following (“the lower proportion”) for each corresponding partner—

- (a) the proportion of the chargeable interest attributable to the partner (see paragraph 25);
- (b) the partnership share attributable to the partner (see paragraphs 26 and 27).

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*Step 5*

Add together the lower proportions of each corresponding partner.

The result is the sum of the lower proportions.

*Relevant owner*

- 23 (1) For the purposes of paragraph 22 (see Step 1), a person is a relevant owner if—
- (a) immediately after the transaction, that person is entitled to a proportion of the chargeable interest, and
  - (b) immediately before the transaction, that person was a partner or connected with a partner.
- (2) For the purposes of paragraph 22 and this paragraph, persons who are entitled to a chargeable interest as beneficial joint tenants are to be taken to be entitled to the chargeable interest as beneficial tenants in common in equal shares.

*Corresponding partner*

- 24 (1) For the purposes of paragraph 22 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately before the transaction—
- (a) the person was a partner, and
  - (b) the person was the relevant owner or was an individual connected with the relevant owner.
- (2) For the purpose of sub-paragraph (1)(b), a company is to be treated as an individual connected with the relevant owner if it—
- (a) holds property as trustee, and
  - (b) is connected with the relevant owner only because of section 1122(6) of the [Corporation Tax Act 2010 \(c. 4\)](#) (as it has effect with the omission of subsection (6)(c) to (e)).

*Proportion of chargeable interest attributable to corresponding partner*

- 25 For the purposes of paragraph 22 (see Step 4), the proportion of the chargeable interest attributable to a corresponding partner is—
- (a) if the partner is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to that partner (at Step 3) in respect of that owner;
  - (b) if the partner is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to that partner (at Step 3) in respect of each of those owners.

*Partnership share attributable to corresponding partner: effective date of transfer before 20 October 2003*

- 26 (1) This paragraph applies for the purposes of paragraph 22 (see Step 4) where the effective date of the transfer of the relevant chargeable interest to the partnership was before 20 October 2003.
- (2) Where this paragraph applies, the partnership share attributable to a corresponding partner is to be determined, as follows—

*Step 1*

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Find the partner's actual partnership share on the relevant date.

The relevant date—

- (a) if the partner was a partner on 19 October 2003, is that date;
- (b) if the partner became a partner after that date, is the date on which the partner became a partner.

*Step 2*

Add to that partnership share any increases in the partner's partnership share which—

- (a) occur in the period beginning with the day after the relevant date and ending immediately before the transaction to which paragraph 22 applies, and
- (b) count for this purpose (see sub-paragraph (5)).

The result is the increased partnership share.

*Step 3*

Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period beginning with the day after the relevant date and ending immediately before the transaction to which paragraph 22 applies.

The result is the partnership share attributable to the partner.

- (3) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.
- (4) If the partner ceased to be a partner before 19 October 2003, the partnership share attributable to the partner is zero.
- (5) An increase counts for the purpose of Step 2 only if the instrument by which the transfer was effected has been stamped with ad valorem stamp duty.
- (6) In this paragraph and paragraph 27, the relevant chargeable interest is—
  - (a) the chargeable interest which ceases to be partnership property as a result of the transaction to which paragraph 22 applies, or
  - (b) where the transaction to which paragraph 22 applies is the creation of a chargeable interest, the chargeable interest out of which that interest is created.

*Partnership share attributable to corresponding partner: effective date of transfer on or after 20 October 2003*

- 27
- (1) This paragraph applies for the purposes of paragraph 22 (see Step 4) where the effective date of the transfer of the relevant chargeable interest to the partnership was on or after 20 October 2003.
  - (2) Where this paragraph applies and neither of the conditions in sub-paragraph (3) is met, the partnership share attributable to the partner is zero.
  - (3) The conditions are—
    - (a) the instrument by which the transfer was effected has been stamped with ad valorem stamp duty;
    - (b) any land transaction tax or, as the case may be, stamp duty land tax payable in respect of the transfer has been paid.

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- (4) Where this paragraph applies, and one of the conditions in sub-paragraph (3) is met, the partnership share attributable to the partner is determined as follows—

*Step 1*

Find the partner's actual partnership share on the relevant date.

The relevant date—

- (a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date;
- (b) if the partner became a partner after that date, is the date on which the partner became a partner.

*Step 2*

Add to that partnership share any increases in the partner's partnership share which—

- (a) occur in the period beginning with the day after the relevant date and ending immediately before the transaction to which paragraph 22 applies, and
- (b) count for this purpose (see sub-paragraph (7)).

The result is the increased partnership share.

*Step 3*

Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 22 applies.

The result is the partnership share attributable to the partner.

- (5) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.
- (6) If the partner ceased to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.
- (7) An increase counts for the purpose of Step 2 only if—
  - (a) where the transfer which resulted in the increase took place on or before 22 July 2004, the instrument by which the transfer was effected has been stamped with ad valorem stamp duty;
  - (b) where the transfer which resulted in the increase took place after that date, any land transaction tax or, as the case may be, stamp duty land tax payable in respect of the transfer has been paid.

## PART 6

### OTHER PARTNERSHIP TRANSACTIONS

#### *Introduction*

28 This Part of this Schedule makes provision about—

- (a) transactions involving a transfer from a partnership to a partnership, and
- (b) transactions where the partnership consists entirely of bodies corporate.

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*Transfer of chargeable interest from a partnership to a partnership*

- 29 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest from a partnership to a partnership, and
  - (b) the transfer is both—
    - (i) a transaction to which paragraph 13 (transfer of chargeable interest to a partnership) applies, and
    - (ii) a transaction to which paragraph 21 (transfer of chargeable interest from a partnership) applies.
- (2) Paragraphs 13(3) and 21(2) do not apply.
- (3) The chargeable consideration for the transaction is taken to be what it would have been if paragraph 13(3) had applied or, if greater, what it would have been if paragraph 21(2) had applied.
- (4) Where the whole or part of the chargeable consideration for the transaction is rent—
- (a) paragraph 31 does not apply;
  - (b) the tax chargeable in respect of so much of the chargeable consideration as consists of rent is taken to be the greater of—
    - (i) what the tax chargeable would have been if paragraph 31 applied in relation to a transaction to which paragraph 13 applies, or
    - (ii) what the tax chargeable would have been if paragraph 31 applied in relation to a transaction to which paragraph 21 applies;
  - (c) the disapplication of the zero rate band provided for by paragraph 34 of Schedule 6 has effect if it would have had effect if paragraph 31(6) of this Schedule had applied.

*Transfer of chargeable interest from a partnership consisting wholly of bodies corporate*

- 30 (1) This paragraph applies where—
- (a) there is a transaction to which paragraph 21 applies;
  - (b) immediately before the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 21 and 31 have effect with the following modifications.
- (3) Paragraph 21 has effect as if for sub-paragraphs (2) and (3) there were substituted—
- “(2) The chargeable consideration for the transaction is taken to be equal to the market value of the interest transferred.”
- (4) Paragraph 31(2) has effect as if for “sub-paragraphs (3) to (6)” there were substituted “sub-paragraph (5)”.
- (5) Paragraph 31 has effect as if sub-paragraphs (3), (4), (6) and (7) were omitted.

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## PART 7

### APPLICATION OF PARTS 5 AND 6 IN RELATION TO LEASES

*Transfer of chargeable interest to or from a partnership: chargeable consideration including rent*

- 31 (1) This paragraph applies in relation to a transaction to which paragraph 13 or 21 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Part 5 of Schedule 6 (leases: calculation of tax chargeable) has effect with the modifications set out in sub-paragraphs (3) to (6).
- (3) Paragraph 29 has effect as if—
- (a) in Step 1, for “the net present value (the “NPV”) of the rent payable over the term of the lease” there were substituted “the relevant chargeable proportion of the net present value (the “NPV”) of the rent payable over the term of the lease”;
  - (b) in Step 2, for “the NPV” there were substituted “the relevant chargeable proportion”.
- (4) Paragraph 30 has effect as if—
- (a) in Step 1, for “the total of the net present values (the “TNPV”) of the rent payable over the terms of all the linked leases” there were substituted “the total of the relevant chargeable proportions of the net present values (the “TNPV”) of the rent payable over the terms of all the leases”;
  - (b) in Step 2, for “the TNPV” there were substituted “the total of the relevant chargeable proportions”;
  - (c) in Step 4, for “the NPV” substitute “the relevant chargeable proportion” and for “the TNPV” substitute “the total of the relevant chargeable proportions”.
- (5) Paragraph 33(1) has effect as if for “paragraphs 34 and 35” there were substituted “paragraphs 13 and 21 of Schedule 7 and paragraphs 34 and 35 of this Schedule”.
- (6) Paragraph 36(1)(a) has effect as if—
- (a) in sub-paragraph (i) for “the annual rent” there were substituted “the relevant chargeable proportion of the annual rent”;
  - (b) in sub-paragraph (ii) for “the total of the annual rents” there were substituted “the relevant chargeable proportion of the total of the annual rents”.
- (7) For the purposes of paragraphs 29, 30 and 36 of Schedule 6 as modified by this paragraph, the relevant chargeable proportion is—

Figure 11

where SLP is the sum of the lower proportions.

- (8) The following paragraphs apply for determining the sum of the lower proportions—
- (a) in the case of a transaction to which paragraph 13 applies, paragraph 14, and
  - (b) in the case of a transaction to which paragraph 21 applies, paragraph 22.



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- (9) In the case of a transaction to which paragraph 21 applies, this paragraph is subject to paragraph 30.

## PART 8

### TRANSFERS INVOLVING PROPERTY-INVESTMENT PARTNERSHIPS

#### *Introduction*

- 32 This Part of this Schedule makes provision—
- (a) about certain transactions involving the transfer of an interest in a property-investment partnership, and
  - (b) for a property investment partnership to elect to disapply paragraph 13 in relation to certain land transactions.

#### *Meaning of property investment partnerships*

- 33 (1) In this Schedule, a “property-investment partnership” is a partnership whose sole or main activity is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question).
- (2) In sub-paragraph (1), “construction operations” has the same meaning as in Chapter 3 of Part 3 of the [Finance Act 2004 \(c. 12\)](#) (see section 74 of that Act).
- (3) For the purposes of sub-paragraph (1), “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outside Wales.

#### *Transfer of interest in property-investment partnership*

- 34 (1) This paragraph applies where—
- (a) there is a transfer of an interest in a property-investment partnership, and
  - (b) the relevant partnership property includes a chargeable interest.
- (2) For the purposes of this Act, the transfer—
- (a) is taken to be a land transaction, and
  - (b) is a chargeable transaction.
- (3) The buyer in the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.
- (4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, the person’s partnership share immediately after the transfer;
  - (b) if the person was a partner before the transfer, the difference between that person’s partnership share before and after the transfer.

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- (6) The “relevant partnership property”, in relation to a Type A transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
- (a) any chargeable interest that was transferred to the partnership in connection with the transfer,
  - (b) a lease to which paragraph 35 (exclusion of market rent leases) applies, and
  - (c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred.
- (7) The “relevant partnership property”, in relation to a Type B transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
- (a) any chargeable interest that was transferred to the partnership in connection with the transfer,
  - (b) a lease to which paragraph 35 (exclusion of market rent leases) applies,
  - (c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred,
  - (d) any chargeable interest that was transferred to the partnership on or before 22 July 2004,
  - (e) any chargeable interest in respect of whose transfer to the partnership an election has been made under paragraph 36, and
  - (f) any other chargeable interest whose transfer to the partnership did not fall within paragraph 13(1).
- (8) A Type A transfer is—
- (a) a transfer that takes the form of arrangements entered into under which—
    - (i) the whole or part of a partner’s interest as partner is acquired by another person (who may be an existing partner), and
    - (ii) consideration in money or money’s worth is given by or on behalf of the person acquiring the interest, or
  - (b) a transfer that takes the form of arrangements entered into under which—
    - (i) a person becomes a partner,
    - (ii) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and
    - (iii) there is a withdrawal of money or money’ worth from the partnership by the existing partner mentioned in paragraph (ii) (other than money or money’s worth paid from the resources available to the partnership prior to the transfer).
- (9) Any other transfer to which this paragraph applies is a Type B transfer.
- (10) An interest in respect of the transfer of which this paragraph applies is to be treated as a chargeable interest for the purposes of paragraph 8(2) of Schedule 16 (group relief) to the extent that the relevant partnership property consists of a chargeable interest.

*Exclusion of market rent leases*

- 35 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 34(6) or (7) if the following four conditions are met.

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- (2) Condition 1 is that—
  - (a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and
  - (b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.
- (3) Condition 2 is that the rent payable under the lease as granted was a market rent at the time of the grant.
- (4) Condition 3 is that—
  - (a) the term of the lease is 5 years or less, or
  - (b) if the term of the lease is more than 5 years—
    - (i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and
    - (ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.
- (5) Condition 4 is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less than a market rent.
- (6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.
- (7) A review date is a date from which the rent determined as a result of a rent review is payable.

*Election by property-investment partnership to disapply paragraph 13*

- 36
- (1) Paragraph 13 does not apply to a transfer of a chargeable interest to a property-investment partnership if the buyer in the transaction elects for that paragraph not to apply.
  - (2) Where an election under this paragraph is made in respect of a transaction—
    - (a) paragraph 21 (transfer of chargeable interest from a partnership: general) is also disappplied,
    - (b) the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and
    - (c) the transaction falls within Part 3 (ordinary partnership transactions) of this Schedule.
  - (3) An election under this paragraph must be included in the return made in respect of the transaction, or in an amendment of that return (for provision as to amendment of returns, see section 41 of TCMA).
  - (4) The election is irrevocable so that the return may not be amended so as to withdraw the election.
  - (5) Where an election under this paragraph in respect of a transaction (the “main transaction”) is made in an amendment of a return—
    - (a) the election has effect as if it had been made on the date on which the return was made, and

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- (b) any return in respect of an affected transaction may be amended (within the period allowed for amendment of that return) to take account of that election.
- (6) In sub-paragraph (5), “affected transaction” in relation to the main transaction means a transaction—
  - (a) to which paragraph 34 (transfer of interest in property-investment partnership) applied, and
  - (b) with an effective date on or after the effective date of the main transaction.

*Partnership interests: application of provisions about exchange*

- 37 (1) Where section 16 (exchanges) applies to the acquisition of an interest in a property-investment partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership is to be treated as a major interest in land, for the purposes of paragraph 5 of Schedule 4 if the relevant partnership property includes a major interest in land.
- (2) In sub-paragraph (1), “relevant partnership property” has the meaning given by paragraphs 34(6) or (7) (as appropriate, and as read with paragraph 35).
- (3) Where this paragraph applies, paragraph 6 of Schedule 4 (partition etc.: disregard of existing interest) does not apply.

## PART 9

### APPLICATION OF EXEMPTIONS, RELIEFS, PROVISIONS OF TCMA AND NOTIFICATION PROVISIONS

*Introduction*

- 38 In this Part of this Schedule—
- (a) paragraph 39 makes provision about the application of exemptions and reliefs to transactions to which this Schedule applies;
  - (b) paragraphs 40 and 41 make provision about the application of group relief to certain transactions mentioned in Part 4 of this Schedule;
  - (c) paragraph 42 makes provision about the application of charities relief to certain transfers of interest in a partnership;
  - (d) paragraph 43 makes provision about the application of certain provisions of TCMA to partnerships;
  - (e) paragraph 44 makes provision about the notification of certain transfers of interest in a partnership.

*Application of exemptions and reliefs*

- 39 (1) Paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply to transactions to which paragraph 13, 18, 21 or 34 applies.
- (2) But (subject to paragraphs 40 and 42) this Schedule has effect subject to any other provision affording exemption or relief from tax.

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*Application of group relief*

- 40 (1) Schedule 16 (group relief) applies to—
- (a) a transaction to which paragraph 13 applies, and
  - (b) a transaction that is a chargeable transaction by virtue of paragraph 18, with the following modifications.
- (2) Paragraph 8 has effect as if—
- (a) in sub-paragraph (2)(a), for “the buyer” there were substituted “a partner who was a partner at the effective date of the relieved transaction (“the relevant partner”)”;
  - (b) for sub-paragraph (2)(b) there were substituted—
    - “(b) at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—
      - (i) was acquired by or on behalf of the partnership under the relieved transaction, or
      - (ii) is derived from a chargeable interest so acquired, and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”;
  - (c) in sub-paragraph (4), for the words from “the transferee company” to the end there were substituted “or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership”;
  - (d) in sub-paragraph (5), the definition of “relevant associated company” were omitted.
- (3) Paragraphs 9 to 14 have effect as if for “the buyer” (each time it occurs) there were substituted “the relevant partner”.

*Sum of the lower portions: connected company*

- 41 (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 14)—
- (a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that, by virtue of paragraph 16(1)(b), Step 2 includes connected persons only if they are individuals, and
  - (b) the connected company and the original owner are members of the same group.
- (2) The charge in respect of the transaction is to be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.
- (3) The provisions of Schedule 16 apply to relief under sub-paragraph (2) as to group relief under paragraph 2(1) of that Schedule, but—
- (a) as if paragraph 4(3)(a) were omitted,

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- (b) as if in paragraph 8(2)(a) for “the buyer” there were substituted “a partner who was, at the effective date of the transaction, a partner and a member of the same group as the transferor (“the relevant partner”); and
- (c) with the other modifications specified in paragraph 40.

*Application of charities relief*

- 42 (1) Schedule 18 (charities relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 18 or 34 with the following modifications.
- (2) Paragraph 1(b) has effect as if for “a buyer in a land transaction” there were substituted “a transferee under a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 18 or 34 of Schedule 7;”.
- (3) Paragraph 2 has effect as if—
- (a) in sub-paragraph (1), for “a buyer in a land transaction” there were substituted “a transferee under a transfer of an interest in a partnership by virtue of paragraph 18 or 34 of Schedule 7;”;
  - (b) in sub-paragraph (1)(a), for “if C intends to hold the subject-matter of the transaction” there were substituted “if every chargeable interest held as partnership property immediately after the transfer is held”;
  - (c) sub-paragraph (1)(b) were omitted;
  - (d) in sub-paragraph (2), for “C holds the subject-matter of the transaction” there were substituted “a chargeable interest held as partnership property is held”;
  - (e) after sub-paragraph (2) there were inserted—
    - “(2A) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Schedule 7 (see paragraph 48 of that Schedule).
    - (2B) Paragraph 45(1) of Schedule 7 (meaning of references to partnership property) applies for the purposes of this Schedule as it applies for the purposes of that Schedule.”;
  - (f) in sub-paragraph (4), for “a buyer in a land transaction” there were substituted “a transferee under a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 18 or 34 of Schedule 7;”;
  - (g) in sub-paragraph (4)(b), for “the subject-matter of the transaction” there were substituted “any chargeable interest held as partnership property immediately after the transaction”.
- (4) Paragraph 3 has effect as if—
- (a) for “a land transaction” there were substituted “a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 18 or 34 of Schedule 7;”;
  - (b) for “the buyer” there were substituted “the transferee”.
- (5) Paragraph 4 has effect as if—
- (a) in sub-paragraph (1)(a), for “a land transaction” were substituted “a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 18 or 34 of Schedule 7;”;
  - (b) for sub-paragraph (4) there were substituted—

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- “(4) At the time of the disqualifying event the partnership property includes a chargeable interest—
- (a) that was held as partnership property immediately after the relieved transaction, or
  - (b) that is derived from an interest held as partnership property at that time.”;
- (c) for sub-paragraph (6) there were substituted—
- “(6) An “appropriate proportion” means an appropriate proportion having regard to—
- (a) the chargeable interests held as partnership property immediately after the relieved transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and
  - (b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”

#### *Modifications of TCMA in relation to partnerships*

- 43 (1) TCMA applies in relation to land transaction tax in respect of a land transaction entered into as buyers by or on behalf of the members of a partnership with the following modifications.
- (2) Section 58 (conditions for making WRA assessments) has effect as if subsection (2) (c) were omitted.
  - (3) Section 59 (time limits for WRA assessments) has effect as if in subsection (7) in the definition of “related person”, paragraph (b) were omitted.
  - (4) Section 79 (the claimant: partnerships) has effect as if there were substituted for it—

#### **“79 The claimant: partnerships in relation to land transactions**

- (1) This section is about the application of sections 63 and 63A in a case where—
  - (a) (in a case falling within section 63(1)(a)) the person paid the amount in question in the capacity of a partner in a partnership (within the meaning of paragraph 3 of Schedule 7 to LTTA),
  - (b) (in a case falling within section 63(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity, or
  - (c) (in a case falling within section 63A(1)) the buyer in the land transaction is a person acting in such a capacity.
- (2) In such a case, only a representative partner within the meaning of paragraph 10 of Schedule 7 to LTTA may make a claim under section 63 or 63A in respect of the amount in question.”
- (5) Section 80 (assessment of claimant in connection with claim) has effect as if in subsection (2), for “any relevant person (as defined in section 79(3))” there were substituted “a responsible partner within the meaning of paragraph 9 of Schedule 7 to LTTA”.

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- (6) Section 91 (requiring information and documents in relation to a partnership) has effect as if—
- (a) for subsection (1) there were substituted—
    - “(1) This section applies in relation to a partnership within the meaning of paragraph 3 of Schedule 7 to LTTA.”;
  - (b) in subsection (2)—
    - (i) in the opening words, for “one of the partners” (in both places) there were substituted “one of the responsible partners”;
    - (ii) in paragraphs (a)(iii) and (c), for “at least one of the partners” there were substituted “the representative partner, or where there is no representative partner, to at least one of the responsible partners”;
  - (c) after subsection (2) there were inserted—
    - “(3) “Responsible partner” and “representative partner” have the meanings given by paragraphs 9 and 10 of Schedule 7 to LTTA.”
- (7) Section 100 (taxpayer notices following a tax return) has effect as if for subsection (6) there were substituted—
- “(6) Where any responsible partner in a partnership has made a tax return, this section has effect as if that return had been made by each of the responsible partners.
  - (6A) “Partnership” and “responsible partner” have the meanings given by paragraphs 3 and 9 of Schedule 7 to LTTA.”

*Notification of transfer of partnership interest*

- 44 (1) A transaction which is a chargeable transaction by virtue of paragraph 18 or 34 (transfer of partnership interest) is a notifiable transaction only if the chargeable consideration for the transaction exceeds the zero rate threshold.
- (2) The chargeable consideration for a transaction exceeds the zero rate threshold if it includes—
- (a) any amount in respect of which tax is chargeable at a rate of more than 0%, or
  - (b) any amount in respect of which tax would be so chargeable but for a relief.

## PART 10

### INTERPRETATION

*Partnership property and partnership share*

- 45 (1) Any reference in this Schedule to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.
- (2) Any reference in this Schedule to a person’s partnership share at any time is to the proportion in which the person is entitled at that time to share in the income profits of the partnership.



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#### *Transfer of a chargeable interest*

- 46 References in this Schedule to a transfer of a chargeable interest include—
- (a) the creation of a chargeable interest,
  - (b) the variation of a chargeable interest, and
  - (c) the surrender or release of a chargeable interest.

#### *Transfer of chargeable interest to a partnership*

- 47 For the purposes of this Schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

#### *Transfer of interest in a partnership*

- 48 For the purposes of this Schedule, where a person acquires or increases a partnership share there is a transfer of an interest in the partnership (to that partner and from the other partners).

#### *Transfer of a chargeable interest from a partnership*

- 49 For the purposes of this Schedule, there is a transfer of a chargeable interest from a partnership in any case where—
- (a) a chargeable interest that was partnership property ceases to be partnership property, or
  - (b) a chargeable interest is granted or created out of partnership property and the interest is not partnership property.

#### *Market value of leases*

- 50 (1) This paragraph applies in relation to a lease for the purposes of this Schedule if—
- (a) the grant of the lease is or was a transaction to which paragraph 13 applies or applied (or a transaction to which paragraph 13 would have applied if that paragraph had been in force at the time of the grant), or
  - (b) the grant of the lease is a transaction to which paragraph 21 applies.
- (2) In determining the market value of the lease, an obligation of the tenant under the lease is to be taken into account if (but only if)—
- (a) it is an obligation such as is mentioned in paragraph 16(1) of Schedule 6 (tenant's obligations that do not count as chargeable consideration), or
  - (b) it is an obligation to make a payment to a person.

#### *Connected persons*

- 51 (1) Section 1122 of the [Corporation Tax Act 2010 \(c. 4\)](#) (connected persons) has effect for the purposes of this Schedule.
- (2) As applied by sub-paragraph (1), that section has effect with the omission of subsection (7) (partners connected with each other).
- (3) As applied by sub-paragraph (1) for the purposes of paragraphs 15, 16, 23 and 24, that section has effect with the omission of subsection (6)(c) to (e) (trustee connected with settlement).

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### Arrangements

52 In this Schedule, “arrangements” has the meaning given by section 31(3).

## SCHEDULE 8

(as introduced by section 42(1))

### TRUSTS

#### Overview

- 1 (1) This Schedule makes provision about the application of this Act and TCMA in relation to trusts.
- (2) This Schedule is arranged as follows—
- (a) paragraph 2 defines key terms;
  - (b) paragraph 3 makes provision about transactions involving bare trusts;
  - (c) paragraphs 4 to 10 make provision about transactions involving settlements and the responsibilities of trustees of a settlement;
  - (d) paragraph 11 makes provision about the treatment of the interests of beneficiaries under certain trusts.

#### Key terms

- 2 (1) In this Schedule, a “bare trust” means a trust under which property is held by a person as trustee—
- (a) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being aged under 18 or lacking capacity (within the meaning of the [Mental Capacity Act 2005 \(c. 9\)](#)) to administer and manage the person’s property and affairs, or
  - (b) for two or more persons who are or would be jointly so entitled,
- and includes a case in which a person holds property as nominee for another.
- (2) The reference in sub-paragraph (1) to a person being absolutely entitled as against the trustee is a reference to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—
- (a) to resort to the property for payment of duty, taxes, costs or other outgoings, or
  - (b) to direct how the property is to be dealt with.
- (3) In this Schedule, a “settlement” means a trust that is not a bare trust.

#### Bare trusts

- 3 (1) Where a person (“T”) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of, the person or persons for whom T is trustee.
- (2) But sub-paragraph (1) does not apply in relation to the grant of a lease.

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- (3) Where a lease is granted to a person as bare trustee, that person is to be treated for the purposes of this Act, as it applies in relation to the grant of the lease, as buyer of the whole of the interest acquired.
- (4) Where a lease is granted by a person as bare trustee, that person is to be treated for the purposes of this Act, as it applies in relation to the grant of the lease, as seller of the whole of the interest disposed of.

#### *Acquisition by trustees of settlement*

- 4 Where persons acquire a chargeable interest or an interest in a partnership as trustees of a settlement, they are to be treated for the purposes of this Act, as it applies in relation to that acquisition, as buyers of the whole of the interest acquired (including the beneficial interest).

#### *Consideration for exercise of power of appointment or discretion*

- 5 (1) Sub-paragraph (2) applies where a chargeable interest is acquired by virtue of—
  - (a) the exercise of a power of appointment, or
  - (b) the exercise of a discretion vested in trustees of a settlement.
- (2) Any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion is to be treated as consideration for the acquisition of the interest.

#### *Reallocation of trust property as between beneficiaries*

- 6 Where—
  - (a) the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and
  - (b) the beneficiary consents to ceasing to have an interest in that other property,the fact that the beneficiary gives consent does not mean that there is chargeable consideration for the acquisition.

#### *Responsibility of trustees of settlement*

- 7 (1) Where the trustees of a settlement are liable to pay—
  - (a) tax or late payment interest on that tax,
  - (b) an amount under section 55 of TCMA (recovery of excessive repayment) or late payment interest on that amount, or
  - (c) a penalty under Part 5 of TCMA or late payment interest on that penalty,the payment, penalty or interest may be recovered (but only once) from any one or more of the responsible trustees.
- (2) No amount may be recovered by virtue of sub-paragraph (1)(c) from a person who did not become a responsible trustee until after the relevant time.
- (3) The responsible trustees, in relation to a land transaction, are the persons who are trustees at the effective date of the transaction and any person who subsequently becomes a trustee.

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- (4) The relevant time is—
- (a) in relation to so much of a penalty as is payable in respect of any day, or to late payment interest on so much of a penalty as is so payable, the beginning of that day;
  - (b) in relation to any other penalty, or to late payment interest on the penalty, the time when the act or omission occurred that caused the penalty to become payable.
- (5) In this paragraph, “late payment interest” means late payment interest under Part 6 of TCMA.

*Relevant trustees for purposes of return etc.*

- 8 (1) A return in relation to a land transaction may be made or given by any one or more of the trustees who are the responsible trustees in relation to the transaction.
- (2) The trustees by whom such a return is made are referred to in this Schedule as “the relevant trustees”.
- (3) The declaration required by section 53 (declaration that return is complete and correct) must be made by all the relevant trustees.

*Relevant trustees: enquiries and assessments*

- 9 (1) If WRA issues a notice of enquiry under section 43 of TCMA into the return—
- (a) the notice must be issued to each of the relevant trustees whose identity is known to WRA;
  - (b) the powers of WRA under Part 4 of TCMA to require information and documents for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the relevant trustees;
  - (c) any of the relevant trustees may apply under section 51 of TCMA for a direction that a closure notice be issued (and all of them are entitled to be parties to the application);
  - (d) any closure notice under section 50 of TCMA must be issued to each of the relevant trustees whose identity is known to WRA.
- (2) A WRA determination under section 52 of TCMA relating to the transaction must be made against all of the relevant trustees and is not effective against any of them unless notice of it is given to each of them whose identity is known to WRA.
- (3) A WRA assessment under section 54 or 55 of TCMA relating to the transaction must be made in respect of all of the relevant trustees and is not effective in respect of any of them unless notice of it is issued under section 61 of TCMA to each of them whose identity is known to WRA.

*Relevant trustees: appeals and reviews*

- 10 (1) The agreement of all the relevant trustees is required if a settlement agreement relating to the transaction is to be entered into under section 184 of TCMA.
- (2) A notice of request under section 173 of TCMA may be given by any of the relevant trustees.

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- (3) Where WRA undertakes a review of an appealable decision relating to the transaction following such a request made by some (but not all) of the relevant trustees—
- (a) notice of the review must be issued by WRA to each of the other relevant trustees whose identity is known to WRA;
  - (b) any of the other relevant trustees may be a party to the review if they notify WRA in writing;
  - (c) notice of WRA’s conclusions under section 176(5), (6) or (7) of TCMA must be issued to each of the relevant trustees whose identity is known to WRA;
  - (d) section 177 of TCMA (effect of conclusions of review) applies in relation to all of the relevant trustees.
- (4) In the case of an appeal under Part 8 of TCMA relating to the transaction—
- (a) the appeal may be brought by any of the relevant trustees;
  - (b) notice of the appeal must be issued by WRA to each of the relevant trustees who are not bringing the appeal and whose identity is known to WRA;
  - (c) any of the relevant trustees are entitled to be parties to the appeal;
  - (d) the tribunal’s determination under section 181 of TCMA binds all the relevant trustees.

#### *Interests of beneficiaries under certain trusts*

- 11 (1) Sub-paragraphs (2) and (3) apply where property is held in trust under the law of Scotland, or of a country or territory outside the United Kingdom, on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.
- (2) The beneficiary is to be treated for the purpose of this Act as having an equitable interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or, as the case may be, the country or territory outside the United Kingdom.
- (3) An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.

## SCHEDULE 9

(as introduced by section 30(1))

### SALE AND LEASEBACK RELIEF

#### *The relief*

- 1 The leaseback element of a sale and leaseback arrangement is relieved from tax if the qualifying conditions are met.

#### *Sale and leaseback arrangements*

- 2 A sale and leaseback arrangement is an arrangement under which—
- (a) a person (“A”) transfers or grants to another person (“B”) a major interest in land (the “sale”), and
  - (b) out of that interest B grants a lease to A (the “leaseback”).

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### *Qualifying conditions*

- 3 (1) The qualifying conditions are—
- (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
  - (b) that the only other consideration (if any) for the sale is the payment of money (whether in sterling or another currency) or the assumption, satisfaction or release of a debt (or both),
  - (c) that the sale is not a transfer of rights within the meaning of section 12 (contract providing for transfer to third party: effect of transfer of rights) or a pre-completion transaction within the meaning of Schedule 2 (pre-completion transactions), and
  - (d) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see Schedule 16) at that date.
- (2) In sub-paragraph (1)(b), “debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date.

## SCHEDULE 10

(as introduced by section 30(1))

### ALTERNATIVE PROPERTY FINANCE RELIEFS

#### PART 1

#### INTRODUCTORY

#### *Overview*

- 1 (1) This Schedule makes provision for relief in the case of certain land transactions connected to alternative property finance arrangements.
- (2) The Schedule is arranged as follows—
- (a) Part 2 sets out the circumstances in which certain transactions are relieved from tax;
  - (b) Part 3 sets out the circumstances where relief is not available;
  - (c) Part 4 makes provision for an interest held by a financial institution in certain circumstances to be treated as an exempt interest;
  - (d) Part 5 defines certain terms for the purposes of this Schedule.

#### PART 2

#### THE RELIEFS

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

- 2 (1) This paragraph applies where arrangements are entered into between a person (“P”) and a financial institution under which—

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- (a) the institution purchases a major interest in land or an undivided share of a major interest in land (“the first transaction”),
  - (b) where the interest purchased is an undivided share, the major interest is held on trust for the institution and P as beneficial tenants in common,
  - (c) the institution (or the person holding the land on trust as mentioned in paragraph (b)) grants to P out of the major interest a lease (if the major interest is freehold) or a sub-lease (if the major interest is leasehold) (“the second transaction”), and
  - (d) the institution and P enter into an agreement under which P has a right to require the institution or its successor in title to transfer to P (in one transaction or a series of transactions) the whole interest purchased by the institution under the first transaction.
- (2) The first transaction is relieved from tax if the seller is—
- (a) P, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in sub-paragraph (1) entered into between it and P.
- (3) The second transaction is relieved from tax if the provisions of this Act and TCMA relating to the first transaction are complied with (including any requirement to pay tax chargeable on the first transaction).
- (4) A transfer to P that results from the exercise of the right mentioned in sub-paragraph (1)(d) (“a further transaction”) is relieved from tax if—
- (a) the provisions of this Act and TCMA relating to the first and second transactions are complied with, and
  - (b) at all times between the second transaction and the further transaction—
    - (i) the interest purchased under the first transaction is held by a financial institution so far as not transferred by a previous further transaction, and
    - (ii) the lease or sub-lease granted under the second transaction is held by P.
- (5) The agreement mentioned in sub-paragraph (1)(d) is not to be treated—
- (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred to P (and accordingly section 14(1) does not apply), nor
  - (b) as a distinct land transaction by virtue of section 15 (options and rights of pre-emption).
- (6) A further transaction that is relieved from tax by virtue of sub-paragraph (4) is not a notifiable transaction unless it involves the transfer to P of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

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

- 3 (1) This paragraph applies where arrangements are entered into between a person (“P”) and a financial institution under which—
- (a) the institution—
    - (i) purchases a major interest in land (“the first transaction”), and

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- (ii) sells that interest to P (“the second transaction”), and
  - (b) P grants the institution a legal mortgage (as defined in section 205(1)(xvi) of the [Law of Property Act 1925 \(c. 20\)](#)) over that interest.
- (2) The first transaction is relieved from tax if the seller is—
- (a) P, or
  - (b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in paragraph 2(1) entered into between it and P.
- (3) The second transaction is relieved from tax if the financial institution complies with the provisions of this Act and TCMA relating to the first transaction and, where that includes a requirement to pay tax chargeable on the first transaction, the tax so chargeable must be based on chargeable consideration that is not less than the market value of the interest and, in the case of the grant of a lease at a rent, the market rent.
- (4) For the purposes of sub-paragraph (3), the market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.

*References to P where P is an individual who has died*

- 4           References in paragraphs 2 and 3 to P are to be read, in relation to times after P has died, as references to P’s personal representatives.

### PART 3

#### CIRCUMSTANCES WHERE ARRANGEMENTS NOT RELIEVED

*No relief where group relief, acquisition relief or reconstruction relief available on first transaction*

- 5           Paragraphs 2 and 3 do not apply to arrangements in relation to which group relief, acquisition relief or reconstruction relief is available on the first transaction (even if such a relief is subsequently withdrawn).

*Land sold to financial institution and leased to a person: arrangements to transfer control of institution*

- 6           (1) Paragraph 2 does not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.
- (2) That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as an event occurring or the carrying out of an act).
- (3) In this paragraph—
- “alternative finance arrangements” (“*trefniadau cyllid eraill*”) means the arrangements referred to in paragraph 2(1);
  - “connected arrangements” (“*trefniadau cysylltiedig*”) means any arrangements entered into in connection with the making of alternative



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finance arrangements (including arrangements involving one or more persons who are not parties to the alternative finance arrangements);

“relevant financial institution” (“*sefydliad ariannol perthnasol*”) means the financial institution which enters into the alternative finance arrangements.

- (4) Section 1124 of the [Corporation Tax Act 2010 \(c. 4\)](#) applies for the purposes of determining who has control of the relevant financial institution.

## PART 4

### EXEMPT INTEREST

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

- 7 (1) An interest held by a financial institution as a result of the first transaction within the meaning of paragraph 2(1)(a) is an exempt interest (but see the following).
- (2) The interest ceases to be an exempt interest if—
- (a) the lease mentioned in paragraph 2(1)(c) ceases to have effect, or
  - (b) the right under paragraph 2(1)(d) ceases to have effect or becomes subject to a restriction.
- (3) The interest is not an exempt interest if group relief, acquisition relief or reconstruction relief is available on the first transaction (even if such a relief is subsequently withdrawn).
- (4) Despite sub-paragraph (1), the interest is not an exempt interest in respect of—
- (a) the first transaction itself, or
  - (b) a further transaction within the meaning of paragraph 2(4).

## PART 5

### INTERPRETATION

#### *Meaning of “financial institution”*

- 8 In this Schedule, “financial institution” means—
- (a) a financial institution within the meaning of section 564B of the [Income Tax Act 2007 \(c. 3\)](#) (alternative finance arrangements: meaning of “financial institution”) other than a person referred to in subsection (1)(d) of that section (persons with permission to enter into credit agreements and contracts for hire of goods);
  - (b) a person with permission under Part 4A of the [Financial Services and Markets Act 2000 \(c. 8\)](#) to carry on the regulated activity specified in Article 63F(1) of the [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#) (entering into regulated home purchase plans as home purchase providers).

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### *Meaning of “arrangements”*

- 9 In this Schedule, “arrangements” includes any agreement, understanding, scheme, transaction or series of any of those things (whether or not legally enforceable).

## SCHEDULE 11

(as introduced by section 30(1))

### RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

#### PART 1

#### INTRODUCTORY

### *Overview*

- 1 (1) This Schedule makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds.
- (2) The Schedule is arranged as follows—
- (a) this Part includes definitions of key terms (paragraph 2);
  - (b) Part 2 provides that certain events relating to an alternative finance investment bond are not to be treated as chargeable transactions (paragraph 3) and provides for exceptions to that (paragraph 4);
  - (c) Part 3 sets out the general conditions which apply to the operation of the reliefs provisions in Part 4;
  - (d) Part 4 provides for relief for certain transactions (paragraphs 13 and 15) as well as making provision about withdrawal of relief (paragraph 14) and circumstances where relief is not available (paragraph 17);
  - (e) Part 5 sets out how to apply the relief provisions in cases where the underlying asset is replaced by another asset (paragraph 18) and imposes a duty on WRA to notify the Chief Land Registrar when a charge registered under this Schedule is discharged (paragraph 19).

### *Interpretation*

- 2 In this Schedule—
- “alternative finance investment bond” (“*bond buddsoddi cyllid arall*”) means arrangements to which section 564G of the [Income Tax Act 2007 \(c. 3\)](#) (investment bond arrangements) applies;
- “arrangements” (“*trefniadau*”) includes any agreement, understanding, scheme, transaction or series of any of those things (whether or not legally enforceable);
- “bond assets” (“*asedau bond*”), “bond-holder” (“*deiliad bond*”), “bond-issuer” (“*dyroddwr bond*”) and “capital” (“*cyflafaf*”) have the meaning given by section 564G of the [Income Tax Act 2007 \(c. 3\)](#);
- “prescribed” (“*rhagnodedig*”) means prescribed in regulations made by the Welsh Ministers;
- “qualifying interest” (“*buddiant cymwys*”) means a major interest in land other than a lease for a term of 21 years or less.

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## PART 2

### ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER BOND NOT TO BE TREATED AS CHARGEABLE TRANSACTION

#### *Bond-holder not to be treated as having an interest in the bond assets*

- 3 For the purposes of this Act—
- (a) the bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets;
  - (b) the bond-issuer under such a bond is not treated as a trustee of the bond assets.

#### *Bond-holder treated as having an interest if control of underlying asset acquired*

- 4 (1) Paragraph 3 does not apply if control of the underlying asset is acquired by—
- (a) a bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise management and control of the bond assets to the exclusion of any other bond-holders.
- (3) But sub-paragraph (1) does not operate to disapply paragraph 3 in either of the following cases.
- (4) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets, and
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders) transfer sufficient rights for that exercise no longer to be possible.
- (5) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.
- (6) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

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### PART 3

#### CONDITIONS FOR OPERATION OF RELIEFS ETC.

##### *Introduction*

- 5 This Part of this Schedule defines conditions 1 to 7 for the purposes of paragraphs 13 to 16 and 18.

##### *Condition 1*

- 6 Condition 1 is that one person (“A”) and another (“B”) enter into arrangements under which—
- (a) A transfers to B a qualifying interest in land (“the first transaction”), and
  - (b) A and B agree that when the interest ceases to be held by B as mentioned in paragraph 7(b), B will transfer the interest to A.

##### *Condition 2*

- 7 Condition 2 is that—
- (a) B, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in condition 1), and
  - (b) the interest in land to which the arrangements mentioned in condition 1 relate is held by B as a bond asset.

##### *Condition 3*

- 8 (1) Condition 3 is that, for the purpose of generating income or gains for the alternative finance investment bond—
- (a) B and A enter into a leaseback agreement, or
  - (b) such other condition or conditions as may be prescribed is or are met.
- (2) For the purposes of condition 3, B and A enter into a leaseback agreement if B grants to A, out of the interest transferred to B—
- (a) a lease (if the interest transferred is freehold), or
  - (b) a sub-lease (if the interest transferred is leasehold).

##### *Condition 4*

- 9 (1) Condition 4 is that, before the end of the period of 120 days beginning with the effective date of the first transaction, B provides WRA with the prescribed evidence that a satisfactory legal charge has been entered in the register of title kept under section 1 of the [Land Registration Act 2002 \(c. 9\)](#).
- (2) A charge is satisfactory for the purposes of condition 4 if it—
- (a) is a first charge on the interest transferred to B,
  - (b) is in favour of WRA, and
  - (c) is for the total of—
    - (i) the amount of tax which would (apart from paragraph 13) be chargeable on the first transaction if the chargeable consideration

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- for that transaction had been the market value of the interest on the effective date of that transaction, and
- (ii) any interest and penalties which would for the time being be payable on or in relation to that amount of tax, if the tax had been payable (but not paid) in respect of the first transaction.

*Condition 5*

- 10 Condition 5 is that the total of the payments of capital made to B before the termination of the bond is not less than 60% of the market value of the interest in the land on the effective date of the first transaction.

*Condition 6*

- 11 Condition 6 is that B holds the interest in the land as a bond asset until the termination of the bond.

*Condition 7*

- 12 Condition 7 is that—
- (a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, the interest is transferred by B to A (“the second transaction”), and
- (b) the second transaction is given effect not more than 10 years (or such other period as may be prescribed) after the first transaction.

## **PART 4**

### **RELIEF FOR CERTAIN TRANSACTIONS**

*Relief for the first transaction*

- 13 (1) The first transaction is relieved from tax if each of conditions 1 to 3 is met before the end of the period of 30 days beginning with the effective date of that transaction.
- (2) Where the qualifying interest in land is replaced as the bond asset by an interest in other land, sub-paragraph (1) is subject to paragraph 18 (replacement of asset).
- (3) Sub-paragraph (1) is also subject to paragraph 17 (no relief where bond-holder acquires control of underlying asset).

*Withdrawal of relief for the first transaction*

- 14 (1) Relief under paragraph 13 is withdrawn if—
- (a) the qualifying interest in land is transferred by B to A without conditions 5 and 6 having been met,
- (b) the period mentioned in (or prescribed under) paragraph 12(b) expires and any one of those conditions has not been met, or
- (c) at any time it becomes apparent for any other reason that any one of conditions 5 to 7 cannot or will not be met.
- (2) Relief under paragraph 13 is also withdrawn if condition 4 is not met.

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- (3) Where relief under paragraph 13 is withdrawn the amount of tax chargeable on the first transaction is the tax that would have been chargeable but for the relief if the chargeable consideration for the transaction had been the market value of the qualifying interest on the effective date of the transaction.

*Relief for the second transaction*

- 15 (1) The second transaction is relieved from tax if—
- (a) each of conditions 1 to 7 is met, and
  - (b) the provisions of this Act and TCMA in relation to the first transaction are complied with.
- (2) Where the qualifying interest in land is replaced as the bond asset by an interest in other land, sub-paragraph (1) is subject to paragraph 18 (replacement of asset).
- (3) Sub-paragraph (1) is also subject to paragraph 17 (no relief where bond-holder acquires control of underlying asset).

*Discharge of charge when conditions for relief met*

- 16 If, after the effective date of the second transaction, B provides WRA with the prescribed evidence that each of conditions 1 to 3 and 5 to 7 has been met, the land ceases to be subject to the charge registered in pursuance of condition 4.

*Relief not available where bond-holder acquires control of underlying asset*

- 17 (1) Relief provided under paragraph 13 or 15 (including where the relief is provided under either paragraph as modified by paragraph 18) is not available if control of the underlying asset is acquired by—
- (a) the bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise management and control of the bond assets to the exclusion of any other bond-holders.
- (3) If BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, the effect of sub-paragraph (1) is that paragraph 13 does not apply to that transaction.
- (4) If BH, or the group, acquires control of the underlying asset after the end of that period and conditions 1 to 3 have been met, the effect of sub-paragraph (1) is that any relief under paragraph 13 is treated as withdrawn under paragraph 14.
- (5) But sub-paragraph (1) does not prevent the reliefs being available in either of the following cases.
- (6) The first case is where—

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- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets, and
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.
- (7) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.
- (8) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

## PART 5

### SUPPLEMENTARY

#### *Replacement of asset*

- 18 (1) Paragraphs 13 to 16 apply with the modifications set out in sub-paragraph (2) or (as the case may be) (3) if—
- (a) conditions 1 to 3 and 7 are met in relation to an interest in land (“the original land”),
  - (b) B ceases to hold the original land as a bond asset (and accordingly, transfers it to A) before the termination of the alternative finance investment bond,
  - (c) A and B enter into further arrangements satisfying condition 1 relating to an interest in other land (“the replacement land”), and
  - (d) the value of the interest in the replacement land at the time it is transferred from A to B is greater than or equal to the market value of the interest in the original land on the effective date of the first transaction relating to the original land.
- (2) In relation to the original land, condition 6 does not need to be met if conditions 1, 2, 3, 6 and 7 (as modified by sub-paragraph (3)) are met in relation to the replacement land.
- (3) In relation to the replacement land—
- (a) condition 5 applies as if the reference to the interest in land were a reference to the interest in the original land, and
  - (b) condition 7 applies as if the reference in paragraph 12(b) to the first transaction were a reference to the first transaction relating to the original land.
- (4) If the replacement land is in Wales, the original land ceases to be subject to the charge registered in pursuance of condition 4 when—
- (a) B provides WRA with the prescribed evidence that condition 7 is met in relation to the original land, and

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- (b) condition 4 is met in relation to the replacement land.
- (5) If the replacement land is not in Wales, the original land ceases to be subject to the charge registered in pursuance of condition 4 when B provides WRA with the prescribed evidence that—
  - (a) condition 7 is met in relation to the original land, and
  - (b) each of conditions 1 to 3 is met in relation to the replacement land.
- (6) This paragraph also applies where the replacement land is replaced by further replacement land; and in that event—
  - (a) references to the original land (except those in sub-paragraph (3)) are to be read as references to the replacement land, and
  - (b) references to the replacement land are to be read as references to the further replacement land.

*WRA to notify Registrar of discharge of charge*

- 19 (1) Where a charge is discharged in accordance with paragraph 16 or 18(4) or (5), WRA must notify the Chief Land Registrar of the discharge in accordance with land registration rules (within the meaning of the [Land Registration Act 2002 \(c. 9\)](#)).
- (2) WRA must do so within the period of 30 days beginning with the date on which B provides the evidence in question.

SCHEDULE 12

(as introduced by section 30(1))

RELIEF FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

*The relief*

- 1 A transaction by which a chargeable interest is transferred by a person (“the transferor”) to a limited liability partnership in connection with its incorporation is relieved from tax if conditions A to C are met.

*Condition A*

- 2 Condition A is that the effective date of the transaction is not more than one year after the date of incorporation of the limited liability partnership.

*Condition B*

- 3 Condition B is that at the relevant time the transferor—
  - (a) is a partner in a partnership comprised of all the persons who are, or are to be, members of the limited liability partnership (and no-one else), or
  - (b) holds the chargeable interest as nominee or bare trustee for one or more of the partners in such a partnership.

*Condition C*

- 4 Condition C is that—



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- (a) the proportions of the chargeable interest to which the persons mentioned in paragraph 3(a) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or
- (b) none of the differences in those proportions has arisen as part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

### *Interpretation*

- 5 (1) In this Schedule—
- “limited liability partnership” (“*partneriaeth atebolrwydd cyfyngedig*”) means a limited liability partnership formed under the [Limited Liability Partnerships Act 2000 \(c. 12\)](#);
  - “the relevant time” (“*yr adeg berthnasol*”) means—
    - (a) where the transferor acquired the chargeable interest after the incorporation of the limited liability partnership, immediately after the transferor acquired it, and
    - (b) in any other case, immediately before the limited liability partnership’s incorporation.
- (2) In paragraph 4(b), “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

## SCHEDULE 13

(as introduced by section 30(1))

### RELIEF FOR ACQUISITIONS INVOLVING MULTIPLE DWELLINGS

#### *Overview*

- 1 This Schedule makes provision about relief available for acquisitions involving multiple dwellings.
- 2 This Schedule is arranged as follows—
- (a) paragraph 3 identifies the transactions to which this Schedule applies,
  - (b) paragraph 4 defines key terms,
  - (c) paragraph 5 provides for the amount of tax chargeable,
  - (d) paragraphs 6 and 7 make further provision about how the tax is calculated, and
  - (e) paragraph 8 provides for certain buildings which are yet to be constructed or adapted to be treated as dwellings for the purposes of this Schedule.

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

- 3 (1) This Schedule applies to a relevant transaction.
- (2) A “relevant transaction” is a chargeable transaction that is—
- (a) within sub-paragraph (3) or (4), and
  - (b) not excluded by sub-paragraph (5).
- (3) A transaction is within this sub-paragraph if its main subject-matter consists of—

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- (a) an interest in at least two dwellings, or
  - (b) an interest in at least two dwellings and other property.
- (4) A transaction is within this sub-paragraph if—
- (a) its main subject-matter consists of—
    - (i) an interest in a dwelling, or
    - (ii) an interest in a dwelling and other property,
  - (b) it is one of a number of linked transactions, and
  - (c) the main subject-matter of at least one of the other linked transactions consists of—
    - (i) an interest in some other dwelling or dwellings, or
    - (ii) an interest in some other dwelling or dwellings and other property.
- (5) A transaction is excluded by this sub-paragraph if—
- (a) paragraph 10 (relief for transactions entered into by persons exercising collective rights) of Schedule 14 applies to it, or
  - (b) relief under Schedule 16 (group relief), Schedule 17 (reconstruction and acquisition relief) or Schedule 18 (charities relief) is available for it (even if such a relief is withdrawn).
- (6) A reference in this Schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.
- (7) But, in the case of a dwelling subject to a lease granted for an initial term of more than 21 years, any interest that is a superior interest in relation to the lease is not to be treated as an interest in a dwelling for the purposes of paragraphs 4 and 5.
- (8) Sub-paragraph (7) does not apply where—
- (a) the seller is a qualifying body within the meaning given by paragraph 9(3) of Schedule 15 (relief for certain acquisitions of residential properties by tenants),
  - (b) the transaction is a sale under a sale and leaseback arrangement within the meaning of paragraph 2 of Schedule 9 (sale and leaseback arrangements),
  - (c) that sale is the grant of a leasehold interest, and
  - (d) the leaseback element of that arrangement is relieved from tax under Schedule 9 (sale and leaseback relief).

### *Key terms*

- 4 (1) “The consideration attributable to dwellings” is—
- (a) for a single dwelling transaction, so much of the chargeable consideration for the transaction as is attributable to the dwelling;
  - (b) for a multiple dwelling transaction, so much of the chargeable consideration for the transaction as is attributable to the dwellings in total.
- (2) “The remaining consideration” is the chargeable consideration for the transaction less the consideration attributable to dwellings.
- (3) A relevant transaction is a “single dwelling transaction” if its main subject-matter consists of—
- (a) an interest in a dwelling, or
  - (b) an interest in a dwelling and other property.

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- (4) A relevant transaction is a “multiple dwelling transaction” if its main subject-matter consists of—
- (a) an interest in at least two dwellings, or
  - (b) an interest in at least two dwellings and other property.
- (5) “Attributable” means attributable on a just and reasonable apportionment.

*The amount of tax chargeable*

- 5 (1) If relief under this Schedule is claimed for a relevant transaction, the amount of tax chargeable in respect of the transaction is the sum of—
- (a) the tax related to the consideration attributable to dwellings, and
  - (b) the tax related to the remaining consideration (if any).
- (2) If the whole or part of the chargeable consideration for a relevant transaction is rent, sub-paragraph (1) has effect subject to Part 5 of Schedule 6 (leases: calculation of tax chargeable).

*Determining the tax related to the consideration attributable to dwellings*

- 6 (1) For the purposes of paragraph 5(1)(a), “the tax related to the consideration attributable to dwellings” is determined as follows—

*Step 1*

Determine the amount of tax that would be chargeable under section 27 on the assumption that—

- (a) the chargeable transaction is a residential property transaction, and
- (b) the chargeable consideration were the fraction produced by dividing total dwellings consideration by total dwellings.

*Step 2*

Multiply the amount determined at Step 1 by total dwellings.

*Step 3*

If the relevant transaction is one of a number of linked transactions, go to Step 4. Otherwise, the amount found at Step 2 is the tax related to the consideration attributable to dwellings.

*Step 4*

Multiply the amount found at Step 2 by—

Figure 12

where—

“CD” is the consideration attributable to dwellings for the relevant transaction, and

“TDC” is total dwellings consideration.

- (2) But if the amount found at Step 2 of sub-paragraph (1) is less than 1% of total dwellings consideration, for the purposes of paragraph 5(1)(a) “the tax related to the consideration attributable to dwellings” is an amount equal to 1% of the consideration attributable to dwellings.

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- (3) "Total dwellings consideration" means—
- (a) for a transaction that is not one of a number of linked transactions, the consideration attributable to dwellings for that transaction;
  - (b) for one of a number of linked transactions—
    - (i) the total of the consideration attributable to dwellings for that transaction and all the other linked transactions that are relevant transactions, plus
    - (ii) so much of the chargeable consideration for any of the linked transactions (whether or not relevant transactions) as is not included in the calculation under paragraph (i) but is attributable to the same dwellings by reference to which that calculation is made.
- (4) "Total dwellings" means the total number of dwellings by reference to which total dwellings consideration is calculated.
- (5) In the application of sub-paragraph (1), no account is to be taken of—
- (a) section 72(9) (transfer of 6 or more separate dwellings treated as non-residential property), or
  - (b) paragraph 34 (tax chargeable for consideration other than rent: mixed leases) of Schedule 6 (leases).
- (6) In the application of sub-paragraph (1), where a relevant transaction is a higher rates residential property transaction (as provided for in Schedule 5), the amount of tax that would be chargeable under section 27 is to be determined on that basis.
- (7) The Welsh Ministers may by regulations amend sub-paragraph (2) so as to substitute for the percentages for the time being specified there, different percentages.

*Determining the tax related to the remaining consideration*

- 7 (1) For the purposes of paragraph 5(1)(b), "the tax related to the remaining consideration" is the appropriate fraction of the amount of tax which (but for this Schedule) would be due in respect of the relevant transaction.
- (2) In sub-paragraph (1), "the appropriate fraction" means—

Figure 13

where—

"RC" is the remaining consideration for the relevant transaction,  
 "TDC" is total dwellings consideration, and  
 "TRC" is total remaining consideration.

- (3) The "total remaining consideration" is—
- (a) for a transaction that is not one of a number of linked transactions, the remaining consideration for that transaction;
  - (b) for one of a number of linked transactions—
    - (i) the total of the chargeable consideration for all those transactions, less
    - (ii) total dwellings consideration.

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

- 8 (1) For the purposes of this Schedule, the main subject-matter of a transaction is to be taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
  - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a dwelling, and
  - (c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.
- (2) In sub-paragraph (1)—
- “contract” (“*contract*”) includes any agreement;
  - “relevant deeming provision” (“*darpariaeth dybio berthnasol*”) means any of—
    - (a) section 10 (contract and transfer),
    - (b) section 11 (contract providing transfer to third party),
    - (c) paragraph 8(1) to (5) of Schedule 2 (assignment of rights: transferor treated as making a separate acquisition), or
    - (d) paragraph 20 of Schedule 6 (agreement for lease);
  - “substantially performed” (“*cyflawni’n sylweddol*”) has the meaning given by section 14.
- (3) Subsections (4) to (7) of section 72 (meaning of residential property) apply for the purposes of this paragraph as they apply for the purposes of subsection (1)(a) of that section.

SCHEDULE 14

(as introduced by section 30(1))

RELIEF FOR CERTAIN ACQUISITIONS OF DWELLINGS

**PART 1**

INTRODUCTORY

*Overview*

- 1 (1) This Schedule makes provision about reliefs available for certain acquisitions of dwellings.
- (2) This Schedule is arranged as follows—
- (a) Part 2 provides relief for certain acquisitions by housebuilders, property traders and employers, and is arranged as follows—
    - (i) paragraph 2 provides for relief in the case of an acquisition of a dwelling by a housebuilder from an individual acquiring a new dwelling,

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- (ii) paragraph 3 provides for relief in the case of an acquisition of a dwelling by a property trader from an individual acquiring a new dwelling,
  - (iii) paragraph 4 provides for relief in the case of an acquisition of a dwelling by a property trader from an individual where a chain of transactions breaks down,
  - (iv) paragraph 5 provides for relief in the case of an acquisition of a dwelling by a property trader from personal representatives,
  - (v) paragraph 6 provides for relief in the case of an acquisition of a dwelling by a property trader in the case of relocation of employment,
  - (vi) paragraph 7 provides for relief in the case of an acquisition of a dwelling by an employer in the case of relocation of employment,
  - (vii) paragraph 8 makes provision about withdrawal of the reliefs available to property traders, and
  - (viii) paragraph 9 makes provision about the interpretation of words and phrases which apply to Part 2 of this Schedule;
- (b) Part 3 provides relief for transactions entered into by a person or persons exercising collective rights.

## PART 2

### RELIEF FOR CERTAIN ACQUISITIONS OF DWELLINGS

#### *Acquisition by housebuilder from individual acquiring new dwelling*

- 2 (1) Where a housebuilder acquires a dwelling (“the old dwelling”) from an individual (whether alone or with other individuals), the acquisition is relieved from tax if the following conditions are met (but see sub-paragraph (3) for provision about partial relief).
- (2) The conditions are—
- (a) that the individual (whether alone or with other individuals) acquires a new dwelling from the housebuilder,
  - (b) that the individual—
    - (i) occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition by the housebuilder, and
    - (ii) intends to occupy the new dwelling as the individual’s only or main residence,
  - (c) that each acquisition is entered into in consideration of the other, and
  - (d) that the area of land acquired by the housebuilder does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired by the housebuilder exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) In this paragraph—

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- (a) references to the acquisition of the new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,
- (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling, and
- (c) references to the market value of the old dwelling and of the permitted area are to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Acquisition by property trader from individual acquiring new dwelling*

- 3 (1) Where a property trader acquires a dwelling (“the old dwelling”) from an individual (whether alone or with other individuals), the acquisition is relieved from tax if the following conditions are met (but see sub-paragraph (4) for provision about partial relief).
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from housebuilders,
  - (b) that the individual (whether alone or with other individuals) acquires a new dwelling from a housebuilder,
  - (c) that the individual—
    - (i) occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition by the property trader, and
    - (ii) intends to occupy the new dwelling as the individual’s only or main residence,
  - (d) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling,
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
  - (e) that the area of land acquired by the property trader does not exceed the permitted area.
- (3) Sub-paragraph (2)(d)(ii) does not apply to the grant of lease or licence to the individual for a period of no more than 6 months.
- (4) Where the conditions in sub-paragraph (2)(a) to (d) are met but the area of land acquired by the property trader exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (5) In this paragraph—
- (a) references to the acquisition of a new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling, and

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- (c) references to the market value of the old dwelling and of the permitted area are to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Acquisition by property trader from individual where chain of transactions breaks down*

- 4 (1) Where a property trader acquires a dwelling (“the old dwelling”) from an individual (whether alone or with other individuals), the acquisition is relieved from tax if the following conditions are met (but see sub-paragraph (4) for provision about partial relief).
- (2) The conditions are—
- (a) that the individual has made arrangements to sell the old dwelling and acquire another dwelling (“the second dwelling”),
  - (b) that the arrangements to sell the old dwelling fail,
  - (c) that the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,
  - (d) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in those circumstances,
  - (e) that the individual—
    - (i) occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition by the property trader, and
    - (ii) intends to occupy the second dwelling as the individual’s only or main residence,
  - (f) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling,
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
  - (g) that the area of land acquired by the property trader does not exceed the permitted area.
- (3) Sub-paragraph (2)(f)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.
- (4) Where the conditions in sub-paragraph (2)(a) to (f) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (5) In this paragraph—
- (a) references to the acquisition of the second dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling, and
  - (c) references to the market value of the old dwelling and of the permitted area are to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.



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*Relief for acquisition by property trader from personal representatives*

- 5 (1) Where a property trader acquires a dwelling from the personal representatives of a deceased individual, the acquisition is relieved from tax if the following conditions are met (but see sub-paragraph (3) for provision about partial relief).
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from personal representatives of deceased individuals,
  - (b) that the deceased individual occupied the dwelling as the individual's only or main residence at some time in the period of 2 years ending with the date of the individual's death,
  - (c) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the dwelling,
    - (ii) to grant a lease or licence of the dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and
  - (d) that the area of land acquired by the property trader does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling, and
  - (b) references to the market value of the dwelling and of the permitted area are to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Acquisition by property trader in case of relocation of employment*

- 6 (1) Where a property trader acquires a dwelling from an individual (whether alone or with other individuals), the acquisition is relieved from tax if the following conditions are met (but see sub-paragraph (4) for provision about partial relief).
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in connection with a change of residence resulting from relocation of employment,
  - (b) that the individual occupied the dwelling as the individual's only or main residence at some time in the period of 2 years ending with the date of the acquisition by the property trader,
  - (c) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (d) that the consideration for the acquisition does not exceed the market value of the dwelling,
  - (e) that the property trader does not intend—

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- (i) to spend more than the permitted amount on refurbishment of the dwelling, or
  - (ii) to grant a lease or licence of the dwelling, or
  - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and
  - (f) that the area of land acquired by the property trader does not exceed the permitted area.
- (3) Sub-paragraph (2)(e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.
- (4) Where the conditions in sub-paragraph (2)(a) to (e) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (5) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling, and
  - (b) references to the market value of the dwelling and of the permitted area are to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Acquisition by employer in case of relocation of employment*

- 7 (1) Where an individual's employer acquires a dwelling from the individual (whether alone or with other individuals), the acquisition is relieved from tax if the following conditions are met (but see sub-paragraph (3) for provision about partial relief).
- (2) The conditions are—
- (a) that the individual occupied the dwelling as the individual's only or main residence at some time in the period of 2 years ending with the date of the acquisition by the employer,
  - (b) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (c) that the consideration for the acquisition does not exceed the market value of the dwelling, and
  - (d) that the area of land acquired by the employer does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling,
  - (b) references to the market value of the dwelling and of the permitted area are, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area, and
  - (c) references to an individual's employer include a prospective employer.

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*Withdrawal of reliefs available to property traders*

- 8 (1) Relief under paragraphs 3 (acquisition by property trader from individual acquiring new dwelling) and 4 (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling,
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.
- (2) Sub-paragraph (1)(b) does not apply to the grant of lease or licence to the individual acquiring the new dwelling or the second dwelling for a period of no more than 6 months.
- (3) Relief under paragraph 5 (relief for acquisition by property trader from personal representatives) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling,
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.
- (4) Relief under paragraph 6 (acquisition by property trader in case of relocation of employment) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling,
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.
- (5) Sub-paragraph (4)(b) does not apply to the grant of lease or licence to the individual relocating for a period of no more than 6 months.
- (6) Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.

*Interpretation*

- 9 (1) For the purposes of this Part of this Schedule—
- (a) “housebuilder” means—
    - (i) a company,
    - (ii) a limited liability partnership, or
    - (iii) a partnership whose members are all either companies or limited liability partnerships,that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings and references in this Schedule to a housebuilder includes any company or limited liability partnership connected with it;
  - (b) “new dwelling” means a building or part of a building that—
    - (i) has been constructed for use as a single dwelling and has not previously been occupied, or
    - (ii) has been adapted for use as a single dwelling and has not been occupied since its adaptation;

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- (c) “new place of employment” means the place where an individual normally performs, or is normally to perform, duties of employment after a relocation of employment;
- (d) “permitted amount”, in relation to the refurbishment of a dwelling, means—
  - (i) £10,000, or
  - (ii) 5% of the consideration for the acquisition of the dwelling,
 whichever is the greater, but subject to a maximum of £20,000;
- (e) “permitted area”, in relation to a dwelling, means that part of the dwelling which is land occupied and enjoyed with the building or part of the building occupied as a dwelling as its garden or grounds that does not exceed—
  - (i) an area (inclusive of the site of the building or part of the building) of 0.5 of a hectare, or
  - (ii) such larger area as is required for the reasonable enjoyment of the building or part of the building as a dwelling having regard to its size and character,
 but where paragraph (ii) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the building or part of the building as its garden or grounds if the rest of the land were separately occupied;
- (f) “principal”, in relation to a property trader, means—
  - (i) in the case of a company, a director;
  - (ii) in the case of a limited liability partnership, a member;
  - (iii) in the case of a partnership whose members are all either companies or limited liability partnerships, a member or a person who is a principal of a member;
- (g) “property trader” means—
  - (i) a company,
  - (ii) a limited liability partnership, or
  - (iii) a partnership whose members are all either companies or limited liability partnerships,
 that carries on the business of buying and selling dwellings;
- (h) “refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—
  - (i) cleaning the dwelling, or
  - (ii) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards;
- (i) “relocation of employment” means a change of an individual’s place of employment due to—
  - (i) the individual becoming employed by a new employer,
  - (ii) an alteration of the duties of the individual’s employment, or
  - (iii) an alteration of the place where the individual normally performs those duties.

- (2) For the purposes of paragraphs 6 and 7, a change of residence is one “resulting from” relocation of employment if—
- (a) the change is made wholly or mainly to allow the individual to live within a reasonable daily travelling distance of the individual’s new place of employment, and

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- (b) the individual's former residence is not within a reasonable daily travelling distance of that place.
- (3) For the purposes of Part 2—
- (a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
  - (b) references to the principals or employees of a property trader include the principals or employees of any such company.

### PART 3

#### RELIEF FOR PERSONS EXERCISING COLLECTIVE RIGHTS

*Relief for transactions entered into by persons exercising collective rights*

- 10 (1) This paragraph applies where a chargeable transaction is entered into by a person or persons nominated or appointed by qualifying tenants of flats contained in premises in exercise of—
- (a) a right under Part 1 of the [Landlord and Tenant Act 1987 \(c. 31\)](#) (right of first refusal), or
  - (b) a right under Chapter 1 of Part 1 of the [Leasehold Reform, Housing and Urban Development Act 1993 \(c. 28\)](#) (right to collective enfranchisement).
- (2) The amount of tax chargeable is determined as follows.
- Step 1*
- Determine the fraction of the chargeable consideration produced by dividing the total amount of that consideration by the number of qualifying flats contained in the premises.
- Step 2*
- Determine the amount of tax chargeable under section 27 as if the chargeable consideration for the chargeable transaction were the fraction of the chargeable consideration calculated under Step 1.
- Step 3*
- Multiply the amount determined at Step 2 by the number of qualifying flats contained in the premises.
- (3) In this paragraph—
- (a) “flat” and “qualifying tenant” have the same meaning as in the Chapter or the Part of the Act conferring the right being exercised;
  - (b) “qualifying flat” means a flat that is held by a qualifying tenant who is participating in the exercise of the right.

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## SCHEDULE 15

(as introduced by section 30(1))

### RELIEF FOR CERTAIN TRANSACTIONS RELATING TO SOCIAL HOUSING

#### PART 1

##### INTRODUCTORY

###### *Overview*

- 1 (1) This Schedule makes provision about reliefs available for certain transactions relating to social housing.
- (2) This Schedule is arranged as follows—
  - (a) Part 2 makes provision about relief available for right to buy transactions,
  - (b) Part 3 makes provision about the tax chargeable and relief available where a shared ownership lease or a rent to shared ownership lease transaction is entered into,
  - (c) Part 4 makes provision about the tax chargeable and relief available where a shared ownership trust is declared and where a rent to shared ownership trust scheme is entered into,
  - (d) Part 5 makes provision about relief available for a rent to mortgage transaction, and
  - (e) Part 6 provides relief for certain acquisitions by registered social landlords.

#### PART 2

##### RIGHT TO BUY RELIEF

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

- 2 (1) In the case of a right to buy transaction—
  - (a) section 19(1) (contingent consideration to be included in chargeable consideration on assumption that contingency will occur) does not apply, and
  - (b) any consideration that would be payable only if a contingency were to occur, or that is payable only because a contingency has occurred, does not count as chargeable consideration.
- (2) A “right to buy transaction” means—
  - (a) the sale of a dwelling at a discount, or the grant of a lease of a dwelling at a discount, by a relevant public sector body, or
  - (b) the sale of a dwelling, or the grant of a lease of a dwelling, in pursuance of the preserved right to buy.
- (3) The following are relevant public sector bodies for the purposes of this paragraph—
  - (a) a Minister of the Crown;
  - (b) the Welsh Ministers;
  - (c) a local housing authority within the meaning given by section 1 of the [Housing Act 1985 \(c. 68\)](#);
  - (d) a registered social landlord;

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- (e) a housing action trust established under Part 3 of the [Housing Act 1988 \(c. 50\)](#);
  - (f) a local policing body within the meaning of section 101(1) of the [Police Act 1996 \(c. 16\)](#);
  - (g) a person specified for the purposes of this paragraph by the Welsh Ministers by regulations.
- (4) For the purposes of sub-paragraph (2)(b), the sale of a dwelling, or the grant of a lease of a dwelling, is made in pursuance of the preserved right to buy if—
- (a) the seller is a person against whom the right to buy under Part 5 of the [Housing Act 1985 \(c. 68\)](#) is exercisable by virtue of section 171A of that Act,
  - (b) the buyer is the qualifying person for the purposes of the preserved right to buy, and
  - (c) the dwelling is the qualifying dwelling-house in relation to the buyer.
- (5) A grant by the Welsh Ministers under section 20 or 21 of the [Housing Act 1996 \(c. 52\)](#) (purchase grants in respect of disposals at a discount by registered social landlords) does not count as part of the chargeable consideration for a right to buy transaction in relation to which the seller is a registered social landlord or private registered provider of social housing.
- (6) In this paragraph—
- “qualifying dwelling-house” (“*tŷ annedd*” *cymwys*”) and “qualifying person” (“*person cymwys*”) have the meaning given by section 171B of the [Housing Act 1985 \(c. 68\)](#);
  - “registered social landlord” (“*landlord cymdeithasol cofrestredig*”) means a body registered as a social landlord in a register maintained under section 1(1) of the [Housing Act 1996 \(c. 52\)](#).

### PART 3

#### SHARED OWNERSHIP LEASES

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

- 3 (1) This paragraph applies where—
- (a) a lease is granted—
    - (i) by a qualifying body, or
    - (ii) in pursuance of the preserved right to buy,
  - (b) the conditions in sub-paragraph (2) are met, and
  - (c) the buyer elects for tax to be charged in accordance with this paragraph.
- (2) The conditions are—
- (a) that the lease must be of a dwelling;
  - (b) that the lease must give the tenant exclusive use of the dwelling;
  - (c) that the lease must provide for the tenant to acquire the reversion;
  - (d) that the lease must be granted partly in consideration of rent and partly in consideration of a premium calculated by reference to—
    - (i) the market value of the dwelling, or
    - (ii) a sum calculated by reference to that value;

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- (e) that the lease must contain a statement of—
  - (i) the market value of the dwelling, or
  - (ii) the sum calculated by reference to that value, by reference to which the premium is calculated.
- (3) An election for tax to be charged under this paragraph—
  - (a) must be included in the return made in respect of the grant of the lease (or in an amendment to that return), and
  - (b) is irrevocable, so that the return may not be amended so as to withdraw the election.
- (4) Where this paragraph applies the chargeable consideration for the grant of the lease is taken to be the amount stated in the lease in accordance with sub-paragraph (2)(e)(i) or (ii).
- (5) Where this paragraph applies no account is taken for the purposes of land transaction tax of the rent mentioned in sub-paragraph (2)(d).
- (6) Section 70 (meaning of market value) does not apply to this paragraph.

*Shared ownership lease: transfer of reversion where election made for market value treatment*

- 4 The transfer of the reversion to the tenant under the terms of a lease to which paragraph 3 applies (shared ownership lease: election for market value treatment) is relieved from tax if—
- (a) an election was made under paragraph 3, and
  - (b) any tax chargeable in respect of the grant of the lease has been paid.

*Shared ownership lease: election for market value treatment of premium where staircasing allowed*

- 5 (1) This paragraph applies where—
- (a) a lease is granted—
    - (i) by a qualifying body, or
    - (ii) in pursuance of the preserved right to buy,
  - (b) the conditions in sub-paragraph (2) are met, and
  - (c) the buyer elects for tax to be charged in accordance with this paragraph.
- (2) The conditions are—
- (a) that the lease must be of a dwelling;
  - (b) that the lease must give the tenant exclusive use of the dwelling;
  - (c) that the lease must provide that the tenant may, on the payment of a sum, require the terms of the lease to be varied so that the rent payable under it is reduced;
  - (d) that the lease must be granted partly in consideration of rent and partly in consideration of a premium calculated by reference to—
    - (i) the premium obtainable on the open market for the grant of a lease containing the same terms as the lease but with the substitution of the minimum rent for the rent payable under the lease, or
    - (ii) a sum calculated by reference to that premium;
  - (e) that the lease must contain a statement of the minimum rent and of—



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- (i) the premium obtainable on the open market, or
  - (ii) the sum calculated by reference to that premium, by reference to which the premium is calculated.
- (3) An election for tax to be charged in accordance with this paragraph—
  - (a) must be included in the return made in respect of the grant of the lease (or in an amendment to that return), and
  - (b) is irrevocable, so that the return may not be amended so as to withdraw the election.
- (4) Where an election is made under this paragraph the chargeable consideration for the grant other than rent is taken to be the amount stated in the lease in accordance with sub-paragraph (2)(e)(i) or (ii).
- (5) In this paragraph, the “minimum rent” means the lowest rent which could become payable under the lease if it were varied as mentioned in sub-paragraph (2)(c) at the date when the lease is granted.

*Shared ownership lease: staircasing transactions*

- 6
- (1) This paragraph applies where under a shared ownership lease—
    - (a) the tenant has the right, on the payment of a sum, to require the terms of the lease to be varied so that the rent payable under it is reduced, and
    - (b) by exercising that right the tenant acquires an interest, additional to one already held, calculated by reference to the market value of the dwelling and expressed as a percentage of that dwelling or its value (a “share of the dwelling”).
  - (2) Where this paragraph applies, the acquisition is relieved from tax if—
    - (a) an election was made under paragraph 3 (shared ownership lease: election for market value treatment) or paragraph 5 (shared ownership lease: election where staircasing allowed) and any tax chargeable in respect of the grant of the lease has been paid, or
    - (b) immediately after the acquisition the total share of the dwelling held by the tenant does not exceed 80%.
  - (3) Section 70 (meaning of market value) does not apply in relation to the references in this paragraph to the market value of the dwelling.

*Shared ownership lease: grant not linked with staircasing transactions etc.*

- 7
- For the purpose of determining the amount of tax chargeable on the grant of a shared ownership lease of a dwelling, the grant is to be treated as if it is not linked to—
- (a) any acquisition of an interest in the dwelling to which paragraph 6 applies, or
  - (b) a transfer of the reversion to the tenant under the terms of the lease.

*Rent to shared ownership lease: charge to tax*

- 8
- (1) The chargeable consideration for transactions forming part of a rent to shared ownership lease scheme is determined in accordance with this paragraph.

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- (2) A “rent to shared ownership lease scheme” means a scheme or arrangement under which a qualifying body—
  - (a) grants an occupation contract of a dwelling to a person (“the tenant”) or persons (“the tenants”), and
  - (b) subsequently grants a shared ownership lease of the dwelling or another dwelling to the tenant or one or more of the tenants.
- (3) The following transactions are to be treated as if they were not linked to each other—
  - (a) the grant of the occupation contract;
  - (b) the grant of the shared ownership lease;
  - (c) any other land transaction between the qualifying body and the tenant, or any of the tenants, entered into as part of the scheme.
- (4) For the purposes of determining the effective date of the grant of the shared ownership lease, the possession of the dwelling by the tenant or tenants under the occupation contract is to be disregarded.
- (5) In this paragraph, “occupation contract” has the meaning given by Part 2 of the Renting Homes (Wales) Act 2016 (anaw 1).

*Shared ownership leases: interpretation*

- 9 (1) For the purposes of paragraphs 6, 7 and 8, a “shared ownership lease” means a lease granted—
  - (a) by a qualifying body, or
  - (b) in pursuance of the preserved right to buy,
 in relation to which the conditions in paragraph 3(2) or 5(2) are met.
- (2) Sub-paragraphs (3) and (4) apply to paragraphs 3 to 8.
- (3) A “qualifying body” means—
  - (a) a local housing authority within the meaning given by section 1 of the [Housing Act 1985 \(c. 68\)](#);
  - (b) a housing association within the meaning given by the [Housing Associations Act 1985 \(c. 69\)](#);
  - (c) a housing action trust established under Part 3 of the [Housing Act 1988 \(c. 50\)](#).
- (4) A lease is granted in pursuance of the preserved right to buy if—
  - (a) the seller is a person against whom the right to buy under Part 5 of the [Housing Act 1985 \(c. 68\)](#) is exercisable by virtue of section 171A of that Act (preservation of right to buy on disposal to private sector landlord),
  - (b) the tenant is the qualifying person for the purposes of the preserved right to buy, and
  - (c) the lease is of a dwelling that is the qualifying dwelling-house in relation to the buyer.
- (5) In sub-paragraph (4), “qualifying person” (“*person cymwys*”) and “qualifying dwelling-house” (“*ty annedd cymwys*”) have the meaning given by section 171B of the [Housing Act 1985 \(c. 68\)](#).

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## PART 4

### SHARED OWNERSHIP TRUSTS

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

- 10 (1) This paragraph applies to paragraphs 11 to 17.
- (2) A “shared ownership trust” means a trust of land within the meaning of section 1 of the [Trusts of Land and Appointment of Trustees Act 1996 \(c. 47\)](#) which satisfies the following conditions.
- (3) Condition 1 is that the trust property is—
- (a) a dwelling, and
  - (b) in Wales.
- (4) Condition 2 is that one of the beneficiaries (“the social landlord”) is a qualifying body.
- (5) Condition 3 is that the terms of the trust—
- (a) provide for one or more of the individual beneficiaries (“the buyer”) to have exclusive use of the trust property as the only or main residence of the buyer,
  - (b) require the buyer to make an initial payment to the social landlord (“the initial capital”),
  - (c) require the buyer to make additional payments to the social landlord by way of compensation under section 13(6)(a) of the [Trusts of Land and Appointment of Trustees Act 1996](#) (“the rent-equivalent payments”),
  - (d) enable the buyer to make other additional payments to the social landlord (“equity-acquisition payments”),
  - (e) determine the initial beneficial interests of the social landlord and of the buyer by reference to which the initial capital was calculated,
  - (f) specify a sum, equating or relating to the market value of the dwelling, by reference to which the initial capital was calculated, and
  - (g) provide for the buyer’s beneficial interest in the trust property to increase, and the social landlord’s to diminish or to be extinguished as equity-acquisition payments are made.
- (6) Section 70 (meaning of market value) does not apply to this paragraph.
- (7) In Condition 1, “dwelling” includes land which is to be used for the construction of a dwelling.
- (8) In Condition 2, “qualifying body” means—
- (a) a local housing authority within the meaning given by section 1 of the [Housing Act 1985 \(c. 68\)](#);
  - (b) a housing association within the meaning given by the [Housing Associations Act 1985 \(c. 69\)](#);
  - (c) a housing action trust established under Part 3 of the [Housing Act 1988 \(c. 50\)](#).

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*Shared ownership trust: the buyer*

- 11 For the purposes of this Act, the person or persons identified as the buyer in accordance with paragraph 10, and not the social landlord or any other beneficiary is (or are) to be treated as the buyers of the trust property.

*Shared ownership trust: election for market value treatment*

- 12 (1) This paragraph applies where—
- (a) a shared ownership trust is declared, and
  - (b) the buyer makes an election under this paragraph.
- (2) An election for tax to be charged in accordance with this paragraph—
- (a) must be included in the return made in respect of the grant of the lease (or in an amendment to that return), and
  - (b) is irrevocable so that the return may not be amended so as to withdraw the election.
- (3) Where this paragraph applies—
- (a) the chargeable consideration for the declaration of the shared ownership trust is taken to be the amount stated in accordance with paragraph 10(5)(f), and
  - (b) no account is to be taken of the rent-equivalent payments.

*Shared ownership trust transfer upon termination*

- 13 The transfer to the buyer of an interest in the trust property upon the termination of the trust is relieved from tax if—
- (a) an election has been made under paragraph 12, and
  - (b) any tax chargeable in respect of the declaration of the shared ownership trust has been paid.

*Shared ownership trust: staircasing transactions*

- 14 (1) An equity-acquisition payment under a shared ownership trust, and the consequent increase in the buyer's beneficial interest is to be relieved from tax if—
- (a) an election has been made for relief under paragraph 12, and
  - (b) any tax chargeable in respect of the declaration of the trust has been paid.
- (2) An equity-acquisition payment under a shared ownership trust, and the consequent increase in the buyer's beneficial interest is also to be relieved from tax if following the increase the buyer's beneficial interest does not exceed 80% of the the total beneficial interest in the trust property.

*Shared ownership trust: treatment of additional payments where no election made*

- 15 Where no election has been made under paragraph 12 in respect of a shared ownership trust—
- (a) the initial capital is to be treated as chargeable consideration other than rent, and
  - (b) any rent-equivalent payment by the buyer is to be treated as a payment of rent.

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

- 16 For the purposes of determining the amount of tax chargeable on the declaration of a shared ownership trust, the declaration is to be treated as if it were not linked to—
- (a) any equity-acquisition payment under the trust or any consequent increase in the buyer’s beneficial interest in the trust property, or
  - (b) 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*

- 17 (1) The chargeable consideration for transactions forming part of a rent to shared ownership trust scheme is determined in accordance with this paragraph.
- (2) A “rent to shared ownership trust scheme” means a scheme or arrangement under which —
- (a) a qualifying body grants an occupation contract of a dwelling to a person (“the tenant”) or persons (“the tenants”), and
  - (b) the tenant, or one or more of the tenants, subsequently becomes the buyer under a shared ownership trust of the dwelling, or another dwelling, under which the qualifying body is the social landlord.
- (3) The following transactions are to be treated as if they were not linked to each other—
- (a) the grant of the occupation contract,
  - (b) the declaration of the shared ownership trust, and
  - (c) any other land transaction between the qualifying body and the tenant, or any of the tenants, entered into as part of the scheme.
- (4) In this paragraph “occupation contract” has the meaning given by Part 2 of the Renting Homes (Wales) Act 2016 (anaw 1).

## PART 5

### RENT TO MORTGAGE

*Rent to mortgage: chargeable consideration*

- 18 (1) The chargeable consideration for a rent to mortgage transaction is determined in accordance with this paragraph.
- (2) A rent to mortgage transaction means—
- (a) the transfer of a dwelling to a person, or
  - (b) grant of a lease of a dwelling to a person,
- pursuant to the exercise by that person of the right to acquire on rent to mortgage terms under Part 5 of the [Housing Act 1985 \(c. 68\)](#).
- (3) The chargeable consideration for a rent to mortgage transaction is equal to the price that would be payable by virtue of section 126 of the [Housing Act 1985 \(c. 68\)](#), for—
- (a) a transfer of the dwelling to the person where the rent to mortgage transaction is a transfer, or
  - (b) the grant of a lease of the dwelling to the person where the rent to mortgage transaction is the grant of a lease,

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if the buyer was exercising the right to buy under Part 5 of that Act.

## PART 6

### RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

#### *Relief for certain acquisitions by registered social landlords*

- 19 (1) A land transaction under which the buyer is a registered social landlord is relieved from tax if—
- (a) the registered social landlord is controlled by its tenants,
  - (b) the seller is a qualifying body, or
  - (c) the transaction is funded with the assistance of a public subsidy.
- (2) The reference in sub-paragraph (1)(a) to a registered social landlord “controlled by its tenants” is to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.
- (3) In this paragraph—
- “board member” (“*aelod o'r bwrdd*”), in relation to a registered social landlord, means—
- (a) if it is a company, a director of the company,
  - (b) if it is a body corporate whose affairs are managed by its members, a member,
  - (c) if it is body of trustees, a trustee, or
  - (d) if it is not within paragraphs (a) to (c), a member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord;
- “public subsidy” (“*cymhorthdal cyhoeddus*”) means any grant or other financial assistance—
- (a) made or given by way of a distribution pursuant to section 25 of the [National Lottery etc. Act 1993 \(c. 39\)](#) (application of money by distributing bodies),
  - (b) made by the Welsh Ministers under section 18 of the [Housing Act 1996 \(c. 52\)](#) (social housing grants), or
  - (c) under section 126 of the [Housing Grants, Construction and Regeneration Act 1996 \(c. 53\)](#) (financial assistance for regeneration and development);
- “qualifying body” (“*corff cymwys*”) means any of the following—
- (a) a registered social landlord;
  - (b) a housing action trust established under Part 3 of the [Housing Act 1988 \(c. 50\)](#);
  - (c) a county or county borough council constituted under section 21 of the [Local Government Act 1972 \(c. 70\)](#);
  - (d) a county or district council constituted under section 2 of that Act;
  - (e) the Welsh Ministers.

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## SCHEDULE 16

(as introduced by section 30(1))

### GROUP RELIEF

#### PART 1

##### INTRODUCTORY

###### *Overview*

- 1 (1) This Schedule makes provision about the relief available for certain transactions where the seller and the buyer are companies that are members of the same group.
- (2) This Schedule is arranged as follows—
  - (a) Part 2 describes the relief available and makes provision about the interpretation of this Schedule,
  - (b) Part 3 restricts the availability of the relief,
  - (c) Part 4 makes provision about the withdrawal of the relief, and
  - (d) Part 5 makes provision about recovery of unpaid tax from certain persons.

#### PART 2

##### THE RELIEF

###### *Group relief*

- 2 (1) A land transaction is relieved from tax if the seller and the buyer are companies that are members of the same group at the effective date of the transaction.
- (2) Relief under this paragraph is referred to in this Schedule as “group relief”.
- (3) This paragraph is subject to paragraph 4 (restrictions on availability of group relief) and paragraphs 8 and 12 (withdrawal of group relief).

###### *Group relief: interpretation*

- 3 (1) The following provisions apply for the purposes of group relief.
- (2) “Company” means a body corporate.
- (3) Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.
- (4) A company (“company A”) is the 75% subsidiary of another company (“company B”) if company B—
  - (a) is beneficial owner of not less than 75% of the ordinary share capital of company A,
  - (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of company A, and
  - (c) would be beneficially entitled to not less than 75% of any assets of company A available for distribution to its equity holders on a winding-up.

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- (5) For the purposes of sub-paragraph (4)(a)—
- (a) the ownership referred to is ownership either directly or through another company or companies, and
  - (b) the amount of ordinary share capital of company A owned by company B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the [Corporation Tax Act 2010 \(c. 4\)](#).
- (6) In sub-paragraphs (4)(a) and (5)(b), “ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- (7) Chapter 6 of Part 5 of the [Corporation Tax Act 2010 \(c. 4\)](#) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (4)(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.
- (8) But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Act are to be treated as omitted for the purposes of sub-paragraph (4)(b) and (c).

### PART 3

#### RESTRICTIONS ON AVAILABILITY OF RELIEF

##### *Restrictions on availability of group relief*

- 4 (1) Group relief is not available if, at the effective date of the transaction, there are arrangements in existence by virtue of which—
- (a) a person has or could obtain, at that or some later time, control of the buyer but not of the seller, or
  - (b) any persons together have or could obtain, at that time or some time later, control of the buyer but not of the seller.
- (2) Sub-paragraph (1) does not apply to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”)—
- (a) in relation to which section 75 of the [Finance Act 1986 \(c. 41\)](#) (stamp duty: acquisition relief) will apply,
  - (b) in relation to which the conditions for relief under that section will be met, and
  - (c) as a result of which the buyer will be a member of the same group as the acquiring company.
- (3) Group relief is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—
- (a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or
  - (b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.
- (4) Arrangements are within sub-paragraph (3)(a) if under them—



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- (a) the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions, and
  - (b) the transaction or transactions, or any of them, involve a payment or other disposition by a person other than a group company.
- (5) In sub-paragraphs (3)(a) and (b), a “group company” means a company that at the effective date of the transaction is a member of the same group as the seller or the buyer.
- (6) In this paragraph—  
“arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;  
“control” (“*rheolaeth*”) has the meaning given by section 1124 of the [Corporation Tax Act 2010 \(c. 4\)](#).
- (7) This paragraph has effect subject to paragraphs 5 and 6 (certain arrangements not within paragraph 4).

*Certain arrangements not within paragraph 4: joint venture companies*

- 5 (1) Arrangements entered into by a joint venture company which, apart from this paragraph, would be arrangements to which paragraph 4 applies are not to be treated as such arrangements if and so long as—
- (a) the arrangements fall within sub-paragraph (2), and
  - (b) none of the contingencies mentioned in sub-paragraph (3) to which the arrangements relate has occurred.
- (2) Arrangements fall within this sub-paragraph if they are—
- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in sub-paragraph (3) occurring, or
  - (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member’s voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in sub-paragraphs (1)(b) and (2) are—
- (a) the voluntary departure of a member,
  - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the [Insolvency Act 1986 \(c. 45\)](#) or the [Insolvency \(Northern Ireland\) Order 1989 \(S.I.1989/2405 \(N.I.19\)\)](#) or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
  - (c) a serious deterioration in the financial condition of a member,
  - (d) a change of control of a member,
  - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),

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- (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
  - (g) an unresolved disagreement between the members, and
  - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question were entered into.
- (4) This paragraph does not apply if a member could, alone or together with connected persons, dictate the terms or timing of—
- (a) the transfer of shares or securities, or
  - (b) the suspension of a member’s voting rights,
- in advance of one or more of the contingencies occurring.
- (5) For the purposes of sub-paragraph (4), members are not connected with each other by reason only of their membership of the joint venture company.
- (6) In this paragraph—
- “constitutional document” (“*dogfen gyfansoddiadol*”) means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;
  - “joint venture company” (“*cwmni cyd-fenter*”) means a company which—
    - (a) has two or more member companies, and
    - (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;
  - “member” (“*aelod*”) means a holder of shares or securities in the joint venture company.

*Certain mortgage arrangements not within paragraph 4*

- 6 (1) Arrangements entered into by a company which, apart from this paragraph, would be arrangements to which paragraph 4 applies are not to be treated as such arrangements if and so long as—
- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
  - (b) the mortgagee has not exercised its rights against the mortgagor.
- (2) This paragraph does not apply if the mortgagee—
- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
  - (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any event which allows it to exercise its rights against the mortgagor.
- (3) For the purposes of sub-paragraph (2)(b), a mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.
- (4) In this paragraph, “mortgage” means—
- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and

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- (b) in Scotland, any right in security.

## PART 4

### WITHDRAWAL OF RELIEF

#### *Interpretation: relieved transaction*

- 7 In this Part of this Schedule, a transaction that is relieved from tax by virtue of paragraph 2 (group relief) is referred to as a “relieved transaction”.

#### *Withdrawal of group relief*

- 8 (1) Where sub-paragraph (2) applies, group relief in relation to a relieved transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
- (2) This sub-paragraph applies where, in the case of a relieved transaction—
- (a) the buyer ceases to be a member of the same group as the seller—
    - (i) before the end of the period of 3 years beginning with the effective date of the transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
  - (b) at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—
    - (i) that was acquired by the buyer in the relieved transaction, or
    - (ii) that is derived from an interest so acquired,and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.
- (3) The amount chargeable is the tax that would have been chargeable in respect of the relieved transaction but for group relief if the chargeable consideration for that transaction had been an amount equal to—
- (a) the market value of the subject-matter of the transaction, and
  - (b) if the acquisition was the grant of a lease at a rent, that rent,
- or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (4) In sub-paragraphs (1) and (3), “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relieved transaction and what is held at the relevant time by the transferee company or, as the case may be, by that company and its relevant associated companies.
- (5) In this paragraph—
- “arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;
  - “relevant associated company” (“*cwmni cyswllt perthnasol*”), in relation to the buyer, means a company that—

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- (a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and
  - (b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.
- (6) This paragraph has effect subject to paragraphs 9 and 10 (cases in which group relief not withdrawn) and paragraph 12 (withdrawal of group relief in certain cases involving successive transactions).

*Cases in which group relief not withdrawn*

- 9 (1) Group relief is not withdrawn under paragraph 8 in the following cases.
- (2) The first case is where the buyer ceases to be a member of the same group as the seller by reason of—
- (a) anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure, or
  - (b) the seller or another company that is above the seller in the group structure otherwise ceasing to exist.
- (3) For the purposes of sub-paragraph (2), a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.
- (4) The second case is where—
- (a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—
    - (i) section 75 of the [Finance Act 1986 \(c. 41\)](#) applies (stamp duty: acquisition relief), and
    - (ii) the conditions for relief under that section are met, and
  - (b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.
- (5) But in a case within sub-paragraph (4), sub-paragraph (6) applies if—
- (a) the buyer ceases to be a member of the same group as the acquiring company—
    - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
  - (b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest—
    - (i) that was acquired by the buyer in the relieved transaction, or
    - (ii) that is derived from an interest so acquired,
 and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.
- (6) The provisions of this Schedule apply as if the buyer had then ceased to be a member of the same group as the seller.

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- (7) In sub-paragraph (5)—
- “arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;
  - “relevant associated company” (“*cwmni cyswllt perthnasol*”), in relation to the buyer, means a company that is a member of the same group as the buyer that ceases to be a member of the same group as the acquiring company in consequence of the buyer so ceasing.

*Group relief not withdrawn where seller leaves group*

- 10 (1) Group relief is not withdrawn under paragraph 8 where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.
- (2) The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—
- (a) the seller, or
  - (b) another company that—
    - (i) is above the seller in the group structure, and
    - (ii) as a result of the transaction ceases to be a member of the same group as the buyer.
- (3) For the purpose of sub-paragraph (2), a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.
- (4) But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 8, 9(4) and (6), 13 and 14 have effect as if the buyer had then ceased to be a member of the same group as the seller (but see sub-paragraph (7)).
- (5) For the purposes of this paragraph, there is a change in the control of the buyer if—
- (a) a person who controls the buyer (alone or with others) ceases to do so,
  - (b) a person obtains control of the buyer (alone or with others), or
  - (c) the buyer is wound up.
- (6) For the purposes of sub-paragraph (5), a person (“P”) does not control, or obtain control of, the buyer if P is under the control of another person or other persons.
- (7) Sub-paragraph (4) does not apply where—
- (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the [Corporation Tax Act 2010 \(c. 4\)](#)) obtains control of, or ceases to control, the buyer, and
  - (b) the other persons who controlled the buyer before that change continue to do so.
- (8) In this paragraph, references to “control” are to be interpreted in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#) (subject to sub-paragraph (6)).

*Group relief not withdrawn as a result of certain transfers of business etc. by mutual societies*

- 11 (1) Group relief is not withdrawn under paragraph 8 where—
- (a) there is a relevant transfer of business or engagement,

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- (b) before the date of the relevant transfer there had been a relieved transaction, and
  - (c) as a result of that transfer, the buyer in the relieved transaction ceases to be a member of the same group as the seller—
    - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period.
- (2) In this paragraph, a “relevant transfer of business or engagement” means—
- (a) a transfer of business described in paragraph 10(1)(a) and (b) of Schedule 22 (transactions entered into by building societies);
  - (b) a transfer of business described in paragraph 11(1) of that Schedule (transactions entered into by friendly societies);
  - (c) a transfer of business described in paragraph 12(1) of that Schedule (transactions entered into by co-operative and community benefit societies or credit unions).

*Withdrawal of group relief in certain cases involving successive transactions*

- 12 (1) Where in the case of a relieved transaction—
- (a) there is a change in the control of the buyer,
  - (b) that change occurs—
    - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,
  - (c) apart from this paragraph, group relief in relation to the relieved transaction would not be withdrawn under paragraph 8, and
  - (d) any previous transaction falls within sub-paragraph (3),
- paragraphs 8, 9 and 10 have effect in relation to the relieved transaction as if the seller in the earliest previous transaction falling within sub-paragraph (3) were the seller in the relieved transaction.
- (2) Sub-paragraph (1) has effect subject to sub-paragraph (6).
- (3) A previous transaction falls within this sub-paragraph if—
- (a) the previous transaction is a relieved transaction or is relieved from tax by virtue of Schedule 17 (reconstruction and acquisition reliefs),
  - (b) the effective date of the previous transaction is less than 3 years before the date of the event falling within sub-paragraph (1)(a),
  - (c) the chargeable interest acquired under the relieved transaction by the buyer in that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in the previous transaction, and
  - (d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person in a transaction that is not a relieved transaction nor is relieved from tax by virtue of Schedule 17 (reconstruction and acquisition reliefs).
- (4) For the purposes of this paragraph, there is a change in the control of a company if—

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- (a) any person who controls the company (alone or with others) ceases to do so,
  - (b) a person obtains control of the company (alone or with others), or
  - (c) the company is wound up.
- (5) References to “control” in this paragraph are to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#).
- (6) Sub-paragraph (1) does not apply where—
- (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the [Corporation Tax Act 2010 \(c. 4\)](#)) obtains control of, or ceases to control, the buyer, and
  - (b) the other persons who controlled the buyer before that change continue to do so.
- (7) If two or more transactions effected at the same time are the earliest previous transactions falling within sub-paragraph (3), the reference in sub-paragraph (1) to the seller in the earliest previous transaction is a reference to the persons who are the sellers in the earliest previous transactions.
- (8) In this paragraph, “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

## PART 5

### RECOVERY OF RELIEF FROM CERTAIN PERSONS

#### *Recovery of group relief from another group company or controlling director*

- 13 (1) This paragraph applies where—
- (a) tax is chargeable under paragraph 8 (withdrawal of group relief),
  - (b) the amount so chargeable has been finally determined, and
  - (c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 14, be required to pay the unpaid tax (together with any interest payable)—
- (a) the seller;
  - (b) any company that at any relevant time was a member of the same group as the buyer and was above it in the group structure;
  - (c) any person who at any relevant time was a controlling director of the buyer or a company having control of the buyer.
- (3) For the purposes of sub-paragraph (2)(b)—
- (a) a “relevant time” means any time between the effective date of the relieved transaction and the buyer ceasing to be a member of the same group as the seller;
  - (b) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.
- (4) In sub-paragraph (2)(c)—

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“director”(“*cyfarwyddwr*”), in relation to a company, has the meaning given by section 67(1) of the [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#) (read with subsection (2) of that section) and includes any person falling within section 452(1) of the [Corporation Tax Act 2010 \(c. 4\)](#);

“controlling director”(“*cyfarwyddwr â rheolaeth*”), in relation to a company, means a director of the company who has control of it (construing control in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#)).

- (5) For the purposes of this paragraph, a claim is not finally determined until—
- (a) the claim, or
  - (b) the amount to which it relates,
- can no longer be varied (whether on review, appeal or otherwise).

*Recovery of group relief: supplementary*

- 14 (1) WRA may issue a notice to a person within paragraph 13(2) requiring the person to pay the amount that remains unpaid before the end of the period of 30 days beginning with the day on which the notice is issued.
- (2) A notice under sub-paragraph (1) must be issued before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 13(1)(b).
- (3) The notice must state the amount required to be paid by the person to whom the notice is issued.
- (4) That amount is a “relevant amount” payable by the person to whom the notice is issued for the purposes of Part 7 of TCMA (payment and enforcement).
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the buyer.

SCHEDULE 17

(as introduced by section 30(1))

RECONSTRUCTION AND ACQUISITION RELIEFS

**PART 1**

INTRODUCTORY

*Overview*

- 1 (1) This Schedule makes provision about reconstruction relief and acquisition relief.
- (2) This Schedule is arranged as follows—
- (a) Part 2 describes the relief available for transactions entered into in pursuance of a scheme of reconstruction,
  - (b) Part 3 provides for the amount of tax chargeable where a land transaction is entered into in connection with a company acquiring the whole or part of the undertaking of another company,



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- (c) Part 4 makes provision about the withdrawal of reconstruction relief or acquisition relief, and
- (d) Part 5 makes provision about recovery of unpaid tax from certain persons.

## PART 2

### RECONSTRUCTION RELIEF

#### *Reconstruction relief*

- 2 (1) Where—
- (a) a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company, and
  - (b) the first and second conditions specified below are met,
- a land transaction entered into for the purposes of or in connection with the transfer of the undertaking or part is relieved from tax.
- (2) Relief under this paragraph is referred to in this Schedule as “reconstruction relief”.
  - (3) The first condition is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all the shareholders of the target company.
  - (4) Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.
  - (5) In sub-paragraphs (3) and (4), “non-redeemable shares” means shares that are not redeemable shares.
  - (6) The second condition is that after the acquisition has been made—
    - (a) each shareholder of each of the companies is a shareholder of the other, and
    - (b) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder.
  - (7) If immediately before the acquisition the target company or the acquiring company holds any of its own shares, the shares are to be treated for the purposes of sub-paragraphs (3) and (6) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).
  - (8) This paragraph is subject to paragraph 5 (withdrawal of reconstruction or acquisition relief).

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### PART 3

#### ACQUISITION RELIEF

##### *Acquisition relief*

- 3 (1) Where—
- (a) a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”), and
  - (b) all the conditions specified below are met,
- the amount of tax chargeable on a land transaction entered into for the purposes of or in connection with the transfer of the undertaking or part is limited to 0.5% of the chargeable consideration for the transaction (or such other proportion of that consideration as the Welsh Ministers may specify by regulations under this paragraph).
- (2) Relief under this paragraph is referred to in this Schedule as “acquisition relief”.
- (3) The first condition is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—
- (a) the target company, or
  - (b) all or any of the target company’s shareholders.
- (4) Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, that condition is met only if the rest of the consideration consists wholly of—
- (a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,
  - (b) the assumption or discharge by the acquiring company of liabilities of the target company, or
  - (c) both of those things.
- (5) In sub-paragraphs (3) and (4), “non-redeemable shares” means shares that are not redeemable shares.
- (6) The second condition is that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part.
- (7) For this purpose, companies are associated if one has control of the other or both are controlled by the same person or persons; and the reference to control is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010](#) (c. 4).
- (8) The third condition is that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests.
- (9) In sub-paragraph (8), “trade” has the same meaning as in section 1119 of the [Corporation Tax Act 2010](#) (c. 4).
- (10) In this paragraph, “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable.

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- (11) This paragraph is subject to paragraph 5 (withdrawal of reconstruction or acquisition relief).

## PART 4

### WITHDRAWAL OF RECONSTRUCTION OR ACQUISITION RELIEF

#### *Interpretation*

- 4 In this Part and in Part 5 of this Schedule, a transaction—
- (a) that is relieved from tax by virtue of reconstruction relief, or
  - (b) on which tax is chargeable in accordance with paragraph 3 (acquisition relief),
- is referred to as a “relieved transaction”.

#### *Withdrawal of reconstruction or acquisition relief*

- 5 (1) Where sub-paragraph (2) applies, reconstruction or acquisition relief in relation to a relieved transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
- (2) This sub-paragraph applies where—
- (a) control of the acquiring company changes—
    - (i) before the end of the period of 3 years beginning with the effective date of the transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
  - (b) at the time control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—
    - (i) that was acquired by the acquiring company under the relieved transaction, or
    - (ii) that is derived from an interest so acquired,and that has not subsequently been acquired at market value under a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed.
- (3) The amount chargeable is the tax that would have been chargeable in respect of the relieved transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to—
- (a) the market value of the subject-matter of the transaction, and
  - (b) if the acquisition was the grant of a lease at a rent, that rent,
- or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (4) In sub-paragraphs (1) and (3), “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relieved transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

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- (5) In this paragraph, “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.
- (6) In this paragraph—
- (a) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - (b) “control” is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#);
  - (c) references to control of a company changing are to the company becoming controlled—
    - (i) by a different person,
    - (ii) by a different number of persons, or
    - (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
- (7) This paragraph has effect subject to paragraph 6 (cases in which reconstruction or acquisition relief not withdrawn).

*Cases in which reconstruction or acquisition relief not withdrawn*

- 6 (1) Reconstruction or acquisition relief is not withdrawn under paragraph 5 in the following cases.
- (2) The first case is where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—
    - (a) any of paragraphs (a) to (d) of paragraph 3 of Schedule 3 (transactions in connection with divorce etc.), or
    - (b) any of paragraphs (a) to (d) of paragraph 4 of that Schedule (transactions in connection with dissolution of civil partnership etc.).
  - (3) The second case is where control of the acquiring company changes as a result of a share transaction that—
    - (a) is effected as mentioned in sub-paragraph (1) of paragraph 6 of Schedule 3 (variation of testamentary dispositions etc.), and
    - (b) meets the conditions in sub-paragraph (2) of that paragraph.
  - (4) The third case is where control of the acquiring company changes as a result of an exempt intra-group transfer.
  - (5) An “exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the [Finance Act 1930 \(c. 28\)](#) or section 11 of the [Finance Act \(Northern Ireland\) 1954 \(c. 23 \(N.I.\)\)](#) (transfers between associated bodies corporate).
  - (6) But see paragraph 7 (withdrawal of relief in case of subsequent non-exempt transfer).
  - (7) The fourth case is where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.

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- (8) “Share acquisition relief” means relief under section 77 of the [Finance Act 1986 \(c. 41\)](#) and a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.
- (9) But see paragraph 7 (withdrawal of relief in case of subsequent non-exempt transfer).
- (10) The fifth case is where—
- (a) control of the acquiring company changes as a result of a loan creditor becoming, or ceasing to be, treated as having control of the company, and
  - (b) the other persons who were previously treated as controlling the company continue to be so treated.
- (11) “Loan creditor” here has the meaning given by section 453 of the [Corporation Tax Act 2010 \(c. 4\)](#).

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

- 7 (1) Reconstruction or acquisition relief in relation to a relieved transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph in the following cases.
- (2) The first case is where paragraph 6(4) (change of control of acquiring company as a result of exempt intra-group transfer) has effect to prevent the withdrawal of reconstruction or acquisition relief on a change of control of the acquiring company, but—
- (a) a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—
    - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
    - (ii) in pursuance of or in connection with arrangements made before the end of that period, and
  - (b) the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
    - (i) that was transferred to the acquiring company by the relieved transaction, or
    - (ii) that is derived from an interest that was so transferred,and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed.
- (3) The second case is where paragraph 6(7) (change of control of acquiring company as a result of a transfer to which share acquisition relief applies) has effect to prevent the withdrawal of reconstruction or acquisition relief on a change of control of the acquiring company, but—
- (a) control of the other company mentioned in that provision changes—
    - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
    - (ii) in pursuance of or in connection with arrangements made before the end of that period,

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- at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred, and
- (b) the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (i) that was transferred to the acquiring company by the relieved transaction, or
  - (ii) that is derived from an interest that was so transferred,
- and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed.
- (4) The amount chargeable is the tax that would have been chargeable in respect of the relieved transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to the market value of the subject-matter of the transaction or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (5) In sub-paragraphs (1) and (4), “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relieved transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.
- (6) In this paragraph, “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.
- (7) In this paragraph—
- (a) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - (b) “control” is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#);
  - (c) references to control of a company changing are to the company becoming controlled—
    - (i) by a different person,
    - (ii) by a different number of persons, or
    - (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.

## PART 5

### RECOVERY OF RECONSTRUCTION OR ACQUISITION RELIEF

*Recovery of reconstruction or acquisition relief from another group company or controlling director*

- 8 (1) This paragraph applies where—
- (a) tax is chargeable under paragraph 5 or 7 (withdrawal of reconstruction or acquisition relief),

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- (b) the amount so chargeable has been finally determined, and
  - (c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 9, be required to pay the unpaid tax (together with any interest payable)—
- (a) any company that at any relevant time was a member of the same group as the acquiring company and was above it in the group structure;
  - (b) any person who at any relevant time was a controlling director of the acquiring company or a company having control of the acquiring company.
- (3) For the purposes of sub-paragraph (2), “relevant time” means any time between effective date of the relieved transaction and the change of control by virtue of which tax is chargeable.
- (4) For the purposes of sub-paragraph (2)(a), a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.
- (5) For the purposes of sub-paragraph (2)(b)—
- (a) “director”, in relation to a company, has the meaning given by section 67(1) of the [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#) (read with subsection (2) of that section) and includes any person falling within section 452(1) of the [Corporation Tax Act 2010 \(c. 4\)](#);
  - (b) “controlling director”, in relation to a company, means a director of the company who has control of it; and “control” here is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#).
- (6) For the purposes of this paragraph, a claim is not finally determined until—
- (a) the claim, or
  - (b) the amount to which it relates,
- can no longer be varied (whether on review, appeal or otherwise).

*Recovery of reconstruction or acquisition relief: supplementary*

- 9
- (1) WRA may issue a notice to a person within paragraph 8(2) requiring the person to pay the amount that remains unpaid before the end of the period of 30 days beginning with the day on which the notice is issued.
  - (2) A notice under sub-paragraph (1) must be issued before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 8(1)(b).
  - (3) The notice must state the amount required to be paid by the person to whom the notice is issued.
  - (4) That amount is a “relevant amount” payable by the person to whom the notice is issued for the purposes of Part 7 of TCMA (payment and enforcement).
  - (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the acquiring company.

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## SCHEDULE 18

(as introduced by section 30(1))

### CHARITIES RELIEF

#### *Overview*

- 1 This Schedule is arranged as follows—
- (a) paragraph 2 defines key terms,
  - (b) paragraph 3 describes the relief available to a charity that is a buyer in a land transaction and the circumstances in which it is available,
  - (c) paragraph 4 describes the circumstances where that relief is withdrawn,
  - (d) paragraph 5 describes the relief available where a charity does not qualify for relief under paragraph 3 but meets other criteria, and makes provision about the circumstances where such relief is withdrawn,
  - (e) paragraph 6 describes the relief available where at least one charity and at least one person who is not a charity are buyers under a land transaction,
  - (f) paragraph 7 describes the circumstances where that relief is withdrawn,
  - (g) paragraph 8 describes the relief available where a charity does not qualify for relief under paragraph 6 but meets other criteria, and makes provision about the circumstances where such relief is withdrawn, and
  - (h) paragraph 9 makes provision about reliefs available for charitable trusts.

#### *Key terms*

- 2 (1) In this Schedule, a charity (“C”) which is a buyer in a land transaction is a “qualifying charity”—
- (a) for the purposes of paragraphs 3, 4 and 5, if C intends to hold the whole of the subject-matter of the transaction for qualifying charitable purposes;
  - (b) for the purposes of paragraphs 6, 7 and 8, if C intends to hold the whole of its undivided share of the subject-matter of the transaction for qualifying charitable purposes.
- (2) For the purposes of this Schedule, C holds the subject-matter of the transaction for “qualifying charitable purposes” if C holds it—
- (a) for use in furtherance of the charitable purposes of C or another charity, or
  - (b) as an investment from which the profits are applied to the charitable purposes of C.
- (3) In this Schedule—
- (a) “charity” has the meaning given by Part 1 of Schedule 6 to the [Finance Act 2010 \(c. 13\)](#), and
  - (b) “charitable purpose” has the meaning given by section 2 of the [Charities Act 2011 \(c. 25\)](#).
- (4) In this Schedule, in relation to C which is a buyer in a land transaction, a “disqualifying event” occurs when—
- (a) C ceases to be established for charitable purposes only, or
  - (b) the whole or any part of the subject-matter of the transaction relieved from tax under this Schedule, or any interest or right derived from it, is used or held by C otherwise than for qualifying charitable purposes.



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*The relief*

- 3 (1) A land transaction is relieved from tax where the buyer is a qualifying charity.
- (2) But see paragraph 4 (withdrawal of relief).

*Withdrawal of charities relief*

- 4 (1) This paragraph applies where—
- (a) a land transaction is relieved from tax under paragraph 3 (“the relieved transaction”),
  - (b) a disqualifying event occurs in relation to a charity (“C”) which was the buyer under the relieved transaction, and
  - (c) the disqualifying event occurs in the circumstances required by sub-paragraphs (3) and (4).
- (2) Where this paragraph applies, relief under paragraph 3, or an appropriate proportion of it, is withdrawn and tax is chargeable (see sub-paragraph (5)).
- (3) The disqualifying event must occur—
- (a) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- (4) At the time of the disqualifying event C must hold a chargeable interest that—
- (a) was acquired by C under the relieved transaction, or
  - (b) that is derived from an interest so acquired.
- (5) The amount chargeable is the amount of tax that would have been chargeable but for paragraph 3 or, as the case may be, an appropriate proportion of that amount.
- (6) An “appropriate proportion” means an appropriate proportion having regard to—
- (a) what was acquired by C under the relieved transaction and what is held by C at the time of the disqualifying event, and
  - (b) the extent to which what is held by C at that time is or becomes used or held for purposes other than qualifying charitable purposes.

*Charity not a qualifying charity*

- 5 (1) This paragraph applies where—
- (a) a land transaction is not relieved from tax under paragraph 3 because the buyer is not a qualifying charity, but
  - (b) the buyer is a charity (“C”) which intends to hold the greater part of the subject-matter of the transaction for qualifying charitable purposes.
- (2) In such a case—
- (a) paragraphs 3 and 4 have effect as if C were a qualifying charity, but
  - (b) for the purposes of paragraph 4, “disqualifying event” includes the following if they are made otherwise than in furtherance of C’s charitable purpose—
    - (i) any transfer by C of a major interest in the whole or any part of the subject-matter of the relieved transaction;

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- (ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter.
- (3) In relation to a transfer or grant that, by virtue of sub-paragraph (2)(b), is a disqualifying event for the purposes of paragraph 4—
  - (a) the date of the disqualifying event for those purposes is the effective date of the relieved transaction, and
  - (b) paragraph 4 has effect with the modifications in sub-paragraph (4).
- (4) The modifications to paragraph 4 are—
  - (a) sub-paragraph (4) is to have effect as if for “At the time of” there were substituted “Immediately before”;
  - (b) sub-paragraph (6)(a) is to have effect as if for “at the time of” there were substituted “immediately before and immediately after”;
  - (c) sub-paragraph (6) is to have effect as if paragraph (b) were omitted.
- (5) For the purposes of this paragraph—
  - (a) a lease is granted “at a premium” if there is consideration other than rent, and
  - (b) a lease is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.
- (6) In this paragraph—
  - (a) “annual rent” has the meaning given by paragraph 36(2) of Schedule 6, and
  - (b) “rent” has the same meaning as in that Schedule.

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

- 6 (1) This paragraph applies where—
- (a) there are two or more buyers under a land transaction,
  - (b) the buyers acquire the subject-matter of the transaction as tenants in common, and
  - (c) at least one of the buyers is a qualifying charity and at least one of the buyers is another person who is not a qualifying charity.
- (2) The tax chargeable in respect of the transaction is reduced by the amount of the relief under sub-paragraph (3) (but see paragraph 7 (withdrawal of partial relief)).
- (3) The relief is equal to the relevant proportion of the tax that would, ignoring paragraph 3, otherwise have been chargeable in respect of the transaction.
- (4) The “relevant proportion”, in the case of a qualifying charity, is the lower of P1 and P2, where—
- P1 is the proportion of the subject-matter of the transaction that is acquired by all the qualifying charities that are buyers under the transaction (in aggregate);
  - P2 is the proportion of the chargeable consideration for the transaction that is given by all the qualifying charities that are buyers under the transaction (in aggregate).

*Withdrawal of partial relief*

- 7 (1) This paragraph applies where—

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- (a) a land transaction is relieved from tax under paragraph 6 (“the relieved transaction”),
  - (b) a disqualifying event occurs in relation to a charity (“C”) which was the buyer under the relieved transaction, and
  - (c) the disqualifying event occurs in the circumstances required by sub-paragraphs (3) and (4).
- (2) Where this paragraph applies, C’s portion of the relief, or an appropriate proportion of C’s portion of that relief, is withdrawn and tax is chargeable in accordance with this paragraph (see sub-paragraph (5)).
- (3) The disqualifying event must occur—
- (a) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- (4) At the time of the disqualifying event, C must hold a chargeable interest that—
- (a) was acquired by C under the relieved transaction, or
  - (b) is derived from an interest so acquired.
- (5) The amount chargeable is equal to C’s portion of the relief or, as the case may be, the appropriate proportion of C’s portion of the relief.
- (6) C’s portion of the relief depends on whether P1 or P2 was lower in the calculation under paragraph 6.
- (7) If P1 was lower, C’s portion of the relief is equal to—

Figure 14

where—

p1 is the proportion of the subject-matter of the transaction that was acquired by C under the transaction;  
P1 has the same meaning as in paragraph 6(4);  
R is the amount of the relief.

- (8) If P2 was lower, C’s portion of the relief is equal to—

Figure 15

where—

p2 is the proportion of chargeable consideration for the transaction that was given by C;  
P2 has the same meaning as in paragraph 6(4);  
R is the amount of the relief.

- (9) In this paragraph, “appropriate proportion” means an appropriate proportion having regard to—
- (a) what was acquired by C under the relieved transaction and what is held by C at the time of the disqualifying event, and

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- (b) the extent to which what is held by C at that time is or becomes used or held for purposes other than qualifying charitable purposes.

*Partial relief: charity not a qualifying charity*

- 8 (1) This paragraph applies where—
- (a) a charity (“C”) is one of two or more buyers acquiring the subject-matter of a land transaction as tenants in common,
  - (b) C is not a qualifying charity,
  - (c) paragraph 6(2) to (4) would apply if C were a qualifying charity, and
  - (d) C intends to hold the greater part of its undivided share of the subject-matter of the transaction for qualifying charitable purposes.
- (2) In such a case—
- (a) paragraphs 6 and 7 have effect as if C were a qualifying charity, but
  - (b) for the purposes of paragraph 7 “disqualifying event” includes the following if they are made otherwise than in furtherance of C’s charitable purposes—
    - (i) any transfer by C of a major interest in the whole or any part of the subject-matter of the relieved transaction;
    - (ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter.
- (3) In relation to a transfer or a grant that, by virtue of sub-paragraph (2)(b), is a disqualifying event for the purposes of paragraph 7—
- (a) the date of the event for those purposes is the effective date of the relieved transaction, and
  - (b) paragraph 7 has effect with the modifications in sub-paragraph (4).
- (4) The modifications to paragraph 7 are—
- (a) sub-paragraph (4) is to have effect as if for “At the time of” there were substituted “Immediately before”;
  - (b) sub-paragraph (9)(a) is to have effect as if for “at the time of” there were substituted “immediately before and immediately after”;
  - (c) sub-paragraph (9) is to have effect as if paragraph (b) were omitted.
- (5) For the purposes of this paragraph—
- (a) a lease is granted “at a premium” if there is consideration other than rent, and
  - (b) a lease is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.
- (6) In this paragraph—
- (a) “annual rent” has the meaning given by paragraph 36(2) of Schedule 6, and
  - (b) “rent” has the same meaning as in that Schedule.

*Application of this Schedule to certain trusts*

- 9 (1) This Schedule applies to the following trusts as it applies to a charity but subject to the modifications in sub-paragraph (2)—
- (a) a trust of which all the beneficiaries are charities, or
  - (b) a unit trust scheme in which all the unit holders are charities.

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- (2) The modifications to this Schedule are—
- (a) the references in paragraph 2(2) to the charitable purposes of C are to have effect as if they were references to those of the beneficiaries or unit holders, or any of them;
  - (b) the references to C in paragraph 2(4), are to have effect as if they were references to any of the beneficiaries or unit holders;
  - (c) the references in paragraphs 5(2)(b) and 8(2)(b) to the charitable purposes of C are to have effect as if they were references to those of the beneficiaries or unit holders, or any of them.

## SCHEDULE 19

(as introduced by section 30(1))

### OPEN-ENDED INVESTMENT COMPANY RELIEFS

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

- 1 (1) A land transaction transferring any property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) is relieved from tax if the conditions set out in subparagraph (2) are met.
- (2) Those conditions are that—
- (a) the transfer forms part of an arrangement for the conversion of an authorised unit trust to an open-ended investment company, as a result of which the whole of the available property of the target trust becomes the whole of the property of the acquiring company,
  - (b) under the arrangement all the units in the target trust are extinguished,
  - (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units,
  - (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units, and
  - (e) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

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

- 2 (1) A land transaction transferring any property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) is relieved from tax if the conditions set out in subparagraph (2) are met.
- (2) Those conditions are that—
- (a) the transfer forms part of an arrangement for the amalgamation of an authorised unit trust with an open-ended investment company, as a result of

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- which the whole of the available property of the target trust becomes part (but not the whole) of the property of the acquiring company,
- (b) under the arrangement all the units in the target trust are extinguished,
  - (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units,
  - (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units, and
  - (e) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

### *Interpretation*

- 3 (1) For the purposes of this Schedule, “the whole of the available property of the target trust” means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust (and “target trust” has the meaning given by paragraph 1 or 2, as the case may be).
- (2) For the purposes of this Schedule, each of the parts of an umbrella scheme (and not the scheme as a whole) is regarded as an authorised unit trust; and “umbrella scheme” has the same meaning as in section 619 of the [Corporation Tax Act 2010 \(c. 4\)](#).
- (3) In this Schedule, “authorised unit trust” means a unit trust scheme in the case of which an order under section 243 of the [Financial Services and Markets Act 2000 \(c. 8\)](#) is in force.

## SCHEDULE 20

(as introduced by section 30(1))

### RELIEF FOR ACQUISITIONS BY PUBLIC BODIES AND HEALTH BODIES

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

- 1 (1) A land transaction entered into on, or in consequence of, or in connection with, a reorganisation effected by or under an enactment is relieved from tax if the buyer and seller are both public bodies.
- (2) The Welsh Ministers may by regulations provide that a land transaction that is not entered into as mentioned in sub-paragraph (1) is relieved from tax if—
- (a) the transaction is effected by or under an enactment specified in the regulations, and
  - (b) either the buyer or the seller is a public body.
- (3) A “reorganisation” means changes involving—
- (a) the establishment, reform or abolition of one or more public bodies,
  - (b) the creation, alteration or abolition of functions (discharged, or to be discharged) by one or more public bodies, or
  - (c) the transfer of functions from one public body to another.
- (4) The following are public bodies for the purposes of this paragraph—

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- (a) a Minister of the Crown;
- (b) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Government;
- (c) the National Assembly for Wales Commission;
- (d) a county or county borough council constituted under section 21 of the [Local Government Act 1972 \(c. 70\)](#);
- (e) a county or district council constituted under section 2 of that Act;
- (f) the council of a London borough;
- (g) any other authority that is a local planning authority within the meaning of the [Town and Country Planning Act 1990 \(c. 8\)](#);
- (h) a Special Health Authority established under section 22 of the [National Health Service \(Wales\) Act 2006 \(c. 42\)](#) or section 28 of the [National Health Service Act 2006 \(c. 41\)](#);
- (i) a Local Health Board established under section 11 of the [National Health Service \(Wales\) Act 2006 \(c. 42\)](#);
- (j) a National Health Service Trust established under section 18 of the [National Health Service \(Wales\) Act 2006 \(c. 42\)](#) or section 25 of the [National Health Service Act 2006 \(c. 41\)](#);
- (k) a strategic planning panel established under section 60D of the [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#);
- (l) a person specified for the purposes of this paragraph by the Welsh Ministers by regulations.

(5) In this paragraph, references to a public body include—

- (a) a company in which all the shares are owned by such a body;
- (b) a wholly-owned subsidiary of such a company.

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

- 2 A land transaction is relieved from tax if the buyer is any of the following—
- (a) a Local Health Board established under section 11 of the [National Health Service \(Wales\) Act 2006 \(c. 42\)](#);
  - (b) a Special Health Authority established established under section 22 of that Act;
  - (c) a National Health Service Trust established under section 18 of that Act;
  - (d) a person specified for the purposes of this paragraph by the Welsh Ministers by regulations.

### SCHEDULE 21

(as introduced by section 30(1))

## COMPULSORY PURCHASE RELIEF AND PLANNING OBLIGATIONS RELIEF

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

- 1 (1) A compulsory purchase facilitating development is relieved from tax.
- (2) In this paragraph—

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“compulsory purchase facilitating development” (“*pryniant gorfodol sy’n hwyluso datblygiad*”) means a land transaction under which the buyer acquires a chargeable interest pursuant to a compulsory purchase order made by the buyer for the purpose of facilitating development by another person; “development” (“*datblygiad*”) has the meaning given by the [Town and Country Planning Act 1990 \(c. 8\)](#) (see section 55 of that Act).

- (3) For the purposes of sub-paragraph (2), it does not matter how the acquisition is effected (so that the provision applies where the acquisition is effected by agreement).

*Relief for compliance with planning obligations*

- 2 (1) A land transaction that is entered into in order to comply with a planning obligation or a modification of a planning obligation is relieved from tax if—
- (a) the planning obligation or modification is enforceable against the seller,
  - (b) the buyer is a public body, and
  - (c) the effective date of the transaction falls within the period of 5 years beginning with the date on which the planning obligation was entered into or modified.

- (2) In this paragraph—

“modification” (“*addasiad*”) of a planning obligation means modification as mentioned in section 106A(1) (modification and discharge of planning obligations) of the [Town and Country Planning Act 1990 \(c. 8\)](#);

“planning obligation” (“*rhwymedigaeth gynllunio*”) means a planning obligation within the meaning of section 106 of that Act that is entered into in accordance with subsection (9) of that section (matters relating to the form and execution of the instrument effecting the planning obligation).

- (3) The following are public bodies for the purposes of this paragraph—
- (a) a county or county borough council constituted under section 21 of the [Local Government Act 1972 \(c. 70\)](#);
  - (b) a Special Health Authority established under section 22 of the [National Health Service \(Wales\) Act 2006 \(c. 42\)](#);
  - (c) a Local Health Board established under section 11 of that Act;
  - (d) a National Health Service Trust established under section 18 of that Act;
  - (e) a person specified for the purposes of this paragraph by the Welsh Ministers by regulations.

SCHEDULE 22

(as introduced by section 30(1))

MISCELLANEOUS RELIEFS

*Lighthouses reliefs*

- 1 A land transaction entered into by or under the direction of the Secretary of State for the purposes of carrying into effect Part 8 of the [Merchant Shipping Act 1995 \(c. 21\)](#) (lighthouses) is relieved from tax.



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- 2 (1) 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 1995 \(c. 21\)](#) is relieved from tax.
- (2) In this paragraph, “the Trinity House” has the meaning given by section 223 of the [Merchant Shipping Act 1995 \(c. 21\)](#).

*Visiting forces and international military headquarters reliefs*

- 3 A land transaction entered into with a view to—
- (a) building or enlarging barracks or camps for a visiting force,
  - (b) facilitating the training of a visiting force, or
  - (c) promoting the health or efficiency of a visiting force,
- is relieved from tax.
- 4 (1) Paragraph 3 has effect in relation to a designated international military headquarters as if—
- (a) the headquarters were a visiting force of a designated country, and
  - (b) the members of that force consisted of such of the persons serving at or attached to the headquarters as are members of the armed forces of a designated country.
- (2) In this paragraph, “designated” means designated for the purpose in question by or under any Order in Council made to give effect to an international agreement.
- 5 In paragraphs 3 and 4, “visiting force” means any body, contingent or detachment of a country’s forces which is for the time being or is to be present in the United Kingdom on the invitation of Her Majesty’s Government in the United Kingdom.

*Relief for property accepted in satisfaction of tax*

- 6 A land transaction—
- (a) which is entered into under section 9 of the [National Heritage Act 1980 \(c. 17\)](#) (disposal of property accepted by the Commissioners for Revenue and Customs in satisfaction of inheritance tax) and by which property is transferred to a person mentioned in subsection (2) of that section, or
  - (b) which is entered into under subsection (4) of that section,
- is relieved from tax.

*Trunk roads relief*

- 7 (1) A land transaction to which the Welsh Ministers are a party, or to which the Secretary of State is a party, is relieved from tax if—
- (a) it relates to a highway or proposed highway which is, or is to become, a trunk road, and
  - (b) but for this paragraph tax would be payable in respect of the transaction as an expense incurred by the Welsh Ministers or the Secretary of State under the [Highways Act 1980 \(c. 66\)](#).
- (2) In this paragraph—
- “highway” (*“priffordd”*) has the meaning given by section 328 of the [Highways Act 1980 \(c. 66\)](#);

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“proposed highway” (“*priffordd arfaethedig*”) has the meaning given by section 329(1) of that Act;

“trunk road” (“*cefnffordd*”) has the meaning given by section 329(1) of that Act.

*Relief for acquisitions by bodies established for national purposes*

- 8 A land transaction is relieved from tax if the buyer is any of the following—
- (a) the Trustees of the British Museum;
  - (b) the Trustees of the National Heritage Memorial Fund;
  - (c) the Trustees of the Natural History Museum.

*Relief for acquisitions in consequence of reorganisation of parliamentary constituencies*

- 9 (1) A land transaction is relieved from tax where an Order in Council is made under the [Parliamentary Constituencies Act 1986 \(c. 56\)](#) (orders specifying new parliamentary constituencies) and where—
- (a) the seller is an existing local constituency association, and
  - (b) the buyer is—
    - (i) a new association that is a successor to the existing association, or
    - (ii) a related body to the existing association that as soon as practicable transfers the interest or right to a new association that is a successor to the existing association.
- (2) Where sub-paragraph (1)(b)(ii) applies, the land transaction giving effect to the transfer mentioned in that sub-paragraph is also relieved.
- (3) In this paragraph—
- “existing local constituency association” (“*cymdeithas etholaeth leol sy’n bodoli eisoes*”) means a local constituency association whose area was the same, or substantially the same, as the area of a former parliamentary constituency or two or more such constituencies immediately before the relevant date;
- “former parliamentary constituency” (“*etholaeth seneddol flaenorol*”) means an area that, for the purposes of parliamentary elections, was a constituency immediately before the relevant date but is no longer such a constituency after that date;
- “local constituency association” (“*cymdeithas etholaeth leol*”) means an unincorporated association (whether described as an association, a branch or otherwise) whose primary purpose is to further the aims of a political party in an area that is or was the same or substantially the same as the area of a parliamentary constituency or two or more parliamentary constituencies;
- “new association” (“*cymdeithas newydd*”) means a local constituency association whose area is the same, or substantially the same, as that of a new parliamentary constituency or two or more such constituencies immediately after the relevant date;
- “new parliamentary constituency” (“*etholaeth seneddol newydd*”) means an area that, for the purposes of parliamentary elections, is such a constituency after the relevant date but was not such a constituency immediately before that date;

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“related body” (“*corff perthynol*”), in relation to a local constituency association, means a body (whether corporate or unincorporated) that is an organ of the political party concerned;

“relevant date” (“*dyddiad perthnasol*”) means the date which the Order mentioned in sub-paragraph (1) comes into operation (see section 4(6) of the [Parliamentary Constituencies Act 1986 \(c. 56\)](#)).

- (4) For the purposes of this paragraph, a new association is a successor to an existing association if any part of the existing association’s area is comprised in the new association’s area.

#### *Building societies relief*

- 10 (1) A land transaction is relieved from tax if it is effected by or in consequence of—
- (a) an amalgamation of two or more building societies under section 93 of the [Building Societies Act 1986 \(c. 53\)](#) (amalgamation), or
  - (b) a transfer of engagements between building societies under section 94 of that Act (transfer of engagements).
- (2) In this paragraph, “building society” has the meaning given by section 119(1) of the [Building Societies Act 1986 \(c. 53\)](#).

#### *Friendly societies relief*

- 11 (1) A land transaction is relieved from tax if it is effected by or in consequence of—
- (a) an amalgamation of two or more registered societies under section 82 of the [Friendly Societies Act 1974 \(c. 46\)](#) (the “1974 Act”) (amalgamation and transfer of engagements),
  - (b) a transfer of engagements under that section,
  - (c) an amalgamation of two or more friendly societies under section 85 of the [Friendly Societies Act 1992 \(c. 40\)](#) (the “1992 Act”) (amalgamation of friendly societies),
  - (d) a transfer of the engagements of a friendly society under section 86 of the 1992 Act (transfer of engagements by or to friendly society), or
  - (e) a transfer of the engagements of a friendly society pursuant to a direction given by the appropriate authority under section 90 of the 1992 Act (power of appropriate authority to effect transfer of engagement).
- (2) In this paragraph—
- “appropriate authority” (“*awdurdod priodol*”) has the meaning given by section 119 of the 1992 Act;
  - “friendly society” (“*cymdeithas gyfeillgar*”) has the meaning given by section 116 of the 1992 Act;
  - “registered” (“*cofrestredig*”) in relation to a society, has the meaning given by section 111 of the 1974 Act.

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

- 12 (1) A land transaction is relieved from tax if it is effected by or in consequence of—
- (a) a transfer by a registered society of its engagements to another registered society in accordance with section 110 of the [Co-operative and Community](#)

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- Benefit Societies Act 2014 (c. 14)** (the “2014 Act”) (transfer of engagements between societies),
- (b) a conversion of a registered society into a company in accordance with section 112 of the 2014 Act (conversion of society into a company, amalgamation with a company etc.),
  - (c) an amalgamation of a registered society with a company in accordance with that section, or
  - (d) a transfer by a registered society of the whole of its engagements to a company in accordance with that section.
- (2) In sub-paragraph (1), “registered society” means a registered society within the meaning given by section 1(1) of the 2014 Act, but in paragraphs (b) to (d) of that sub-paragraph it does not include a society registered as a credit union under that Act by virtue of section 1 of the **Credit Unions Act 1979 (c. 34)** (the “1979 Act”).
- (3) In so far as it applies to a credit union, sub-paragraph (1)(a) has effect as if the reference to section 110 of the 2014 Act were a reference to that section as it has effect subject to section 21 of the 1979 Act (additional provisions relating to amalgamations and transfers of engagements).

## SCHEDULE 23

(as introduced by section 76)

### AMENDMENTS TO THE TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

- 1 TCMA is amended as follows.
- 2 In section 1 (overview of Act), after paragraph (b) insert—
- “(ba) Part 3A makes provision about counteracting avoidance arrangements in relation to devolved taxes;”.
- 3 In the Welsh text, in section 37 (overview of Part), in paragraph (f), for “ymwared” substitute “ryddhad”.
- 4 In Chapter 2 of Part 3, in the chapter heading omit “TAXPAYER”.
- 5 In section 38 (duty to keep and preserve records)—
- (a) in subsection (1)—
    - (i) in paragraph (a), for the words from “make” to the end substitute “demonstrate that the tax return is correct and complete,”;
    - (ii) for paragraph (b) substitute—
      - “(b) preserve any records that may be needed for that purpose.”;
  - (b) in subsection (2)—
    - (i) for “day”, in both places where it occurs, substitute “date”;
    - (ii) in paragraph (b), for the words from “WRA” to the end substitute “the enquiry period ends (see section 43(1A)).”;
  - (c) for subsection (3) substitute—
    - “(3) The “relevant date” is the sixth anniversary of whichever is the later of—
      - (a) the filing date, and

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- (b) if the return has been made and subsequently amended under section 41, the date on which notice of amendment is given under that section.

(3A) But if WRA specifies an earlier date under this subsection, the “relevant date” means the date specified.”;

- (d) in subsection (4)—
  - (i) for “days” substitute “dates”;
  - (ii) for “(3)(b)” substitute “(3A)”;

- (e) for subsection (5) substitute—

“(5) In this Chapter, “records” includes supporting documents (for example, accounts, books, deeds, contracts, vouchers and receipts).”;

- (f) omit subsections (6) to (8);
- (g) the section heading becomes “Duty to keep and preserve records: cases where a tax return is required”.

6 After section 38 insert—

**“38A Duty to keep and preserve records: land transactions in respect of which no tax return is required.**

- (1) This section applies in relation to a land transaction, other than a transaction of a type listed in section 65(4) of LTTA, in respect of which no tax return is required to be made.
- (2) The buyer in a land transaction in relation to which this section applies must—
  - (a) keep any records that may be needed to enable the buyer to demonstrate that no tax return is required to be made, and
  - (b) preserve any records that may be needed for that purpose.
- (3) The records must be preserved until the end of the relevant date.
- (4) The “relevant date” is the sixth anniversary of the effective date of the transaction.
- (5) But if WRA specifies an earlier date under this subsection, the “relevant date” is the date specified.
- (6) Different dates may be specified for different purposes under subsection (5).
- (7) In subsection (4), “effective date” has the same meaning as in LTTA.”

7 In section 39 (preservation of information etc.), after “38” insert “or 38A”.

8 After section 39 insert—

**“39A Power to make regulations about records**

The Welsh Ministers may by regulations provide that the records required to be kept and preserved under this Chapter do, or do not, include records of a description prescribed by the regulations.”

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- 9 In section 40 (meaning of filing date), for “this Act” substitute “the Welsh Tax Acts”.
- 10 In section 41 (amendment of tax return by taxpayer), for subsection (3) substitute—  
“(3) The relevant date is the filing date.  
(3A) But if the Welsh Ministers prescribe another date in regulations under this subsection, the relevant date is that date.”
- 11 In section 42 (correction of tax return by WRA)—  
(a) after subsection (4) insert—  
“(4A) If, as a result of a correction made under this section, an amount, or an additional amount, of devolved tax is payable, the person who made the tax return must pay the amount, or additional amount, before the end of the period of 30 days beginning with the day on which notice of the correction is issued.”;  
(b) in subsection (5)(a), after “return” insert “under section 41”.
- 12 In section 43 (notice of enquiry)—  
(a) in subsection (1), for the words from “period” to the end substitute “enquiry period (but see subsection (1B)).”;  
(b) after subsection (1) insert—  
“(1A) The enquiry period for a tax return is the period of 12 months beginning with the relevant date.  
(1B) But WRA may enquire into a tax return after the expiry of the enquiry period if—  
(a) the tax return is made in respect of a land transaction,  
(b) after the tax return is made, a further return is made in respect of the same land transaction,  
(c) WRA has issued a notice of enquiry into the further return, and  
(d) WRA believes it is necessary to enquire into the tax return mentioned in paragraph (a).”;  
(c) in subsection (2), at the beginning insert “For the purposes of subsection (1A).”;  
(d) in subsection (3), for the words “in consequence of an amendment of the tax return under section 41” substitute—  
“(a) as a result of an amendment of the tax return under section 41, or  
(b) by virtue of subsection (1B).”;  
(e) after subsection (3) insert—  
“(4) In subsection (1B), “further return” means a further return made under LTTA.”
- 13 In section 45 (amendment of tax return during enquiry to prevent loss of tax)—  
(a) in subsection (1)(a), for “payable” substitute “chargeable”;  
(b) in subsection (5), for “section 46” substitute “sections 45A and 46”.
- 14 After section 45 insert—

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**“45A Amendment of tax return by taxpayer when enquiry is in progress**

- (1) This section applies if a person who has made a tax return amends it during the period when an enquiry into the return is in progress.
  - (2) For the purposes of section 44 (scope of enquiry), the amendment is to be treated as something contained in the tax return.
  - (3) The amendment takes effect on the day on which the enquiry is completed unless WRA states in the closure notice issued under section 50 that—
    - (a) the amendment has been taken into account in formulating the amendments required to give effect to WRA’s conclusions, or
    - (b) WRA’s conclusion is that the amendment is incorrect.”
- 15 In section 50 (completion of enquiry), in subsection (4), for “chargeable” substitute “payable”.
- 16 In section 52 (determination of tax chargeable if no tax return made), in subsection (5), for “as a result of” substitute “in accordance with”.
- 17 In the Welsh text, in section 54 (assessment where loss of tax), in paragraph (c), for “ymwared” substitute “rhyddhad”.
- 18 In section 58 (conditions for making WRA assessments)—
  - (a) in subsection (1)(a)—
    - (i) for “two” substitute “three”;
    - (ii) for “(2) and (3)” substitute “(2), (3) and (3A)”;
  - (b) for subsection (3) substitute—

“(3) The second case is where—
    - (a) a tax return has been made,
    - (b) WRA has ceased to be entitled to issue a notice of enquiry into the return, or has completed its enquiries into it, and
    - (c) at the time when WRA ceased to be so entitled or completed those enquiries, it could not reasonably have been expected to be aware of the situation mentioned in section 54 or 55 on the basis of information made available to WRA before that time.”;
  - (c) after subsection (3) insert—

“(3A) The third case is where WRA makes an adjustment under the general anti-avoidance rule (see Part 3A, in particular section 81E).”;
  - (d) in subsection (4)—
    - (i) after “made”, where it first occurs, insert “in the first or second case”;
    - (ii) in paragraph (a), for “the tax return” substitute “a tax return”.
- 19 In section 59 (time limits for WRA assessments), in subsection (7), in the definition of “relevant date”—
  - (a) before paragraph (a), insert—

“(za) if a tax return has not been made, the date by which WRA believes a tax return was required to be made,”;

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- (b) in paragraph (a), for “the tax return”, in the first place where it occurs, substitute “a tax return”.
- 20 In section 61 (assessment procedure), omit subsection (3).
- 21 In the Welsh text, in the heading to Chapter 7 of Part 3 (relief in case of excessive assessment or overpaid tax) for “YMWARED” substitute “RHYDDHAD”.
- 22 In the Welsh text, in section 62 (claims for relief in case of double assessment)—
  - (a) for “ymwared” substitute “ryddhad”;
  - (b) in the section heading, for “ymwared” substitute “rhyddhad”.
- 23 In section 63 (claims for relief for overpaid tax etc.)—
  - (a) in subsection (1)(b), before “determination” insert “WRA”;
  - (b) in the Welsh text, in subsection (2), for “ ei ryddhau ohono” substitute “ollwng y swm”;
  - (c) in subsection (3)—
    - (i) in the Welsh text, for “ymwared” substitute “rhyddhad”;
    - (ii) for “this Act” substitute “the Welsh Tax Acts”;
  - (d) in subsection (4), for “64” substitute “63A”;
  - (e) in the Welsh text, in the section heading, for “ymwared” substitute “rhyddhad”.
- 24 After section 63 insert—

**“63A Claim for relief in respect of land transaction tax: regulations ceasing to have effect**

- (1) If—
  - (a) by virtue of section 26(2) of LTTA the tax bands and tax rates specified in rejected regulations apply to a chargeable transaction, and
  - (b) in consequence, the amount of land transaction tax chargeable in respect of the transaction is greater than the amount that would otherwise have been chargeable,

the buyer in the transaction may make a claim to WRA for the discharge or repayment of the amount of land transaction tax that would not have been chargeable had the rejected regulations not been made.
- (2) Where WRA decides to give effect to a claim under subsection (1) it must also discharge or repay any penalty or interest related to the amount of tax discharged or repaid.
- (3) Any penalty or interest is related to an amount of tax for this purpose to the extent that it—
  - (a) is attributable to the amount, and
  - (b) would not have been incurred but for the application to the transaction in question of the tax bands and tax rates specified in the rejected regulations.
- (4) A claim under subsection (1) must be made before the end of the period of 12 months beginning with the later of—
  - (a) the date on which the rejected regulations cease to have effect, or



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- (b) the filing date for a tax return containing an assessment of tax chargeable calculated using the tax bands and tax rates specified in the rejected regulations.
- (5) A claim under subsection (1) is to be treated as if it were an amendment made under section 41 to the assessment of tax chargeable contained in a tax return.
- (6) In this section—  
“chargeable transaction” (*“trafodiad trethadwy”*) has the meaning given by section 17 of LTTA;  
“rejected regulations” (*“rheoliadau a wrthodir”*) has the meaning given by section 26(1)(a) of that Act.”
- 25 (1) In section 64 (disallowing claims for relief due to unjustified enrichment)—  
(a) after “63” insert “or 63A”;  
(b) in the Welsh text—  
(i) for “ymwared” substitute “ryddhad”;  
(ii) for “ryddhau’r” substitute “ollwng y”.
- (2) The section heading becomes “Disallowing claims for relief due to unjustified enrichment”.
- 26 In the Welsh text, in section 65 (unjustified enrichment: further provision)—  
(a) in subsection (1)(a), for “y byddai person o’r fath i’w ryddhau ohono” substitute “i’w ollwng”;  
(b) in subsection (2)(a), for “ei ryddhau ohono” substitute “ollwng y swm”.
- 27 In section 66 (unjustified enrichment: reimbursement arrangements)—  
(a) in subsection (2), after “63” insert “or 63A”;  
(b) in the Welsh text, in subsection (2)(a), for “ryddhau” substitute “ollwng”.
- 28 In section 67 (cases in which WRA need not give effect to a claim)—  
(a) in the Welsh text, in subsection (1), for “ymwared” substitute “ryddhad”;  
(b) in subsection (2)(a), after “claim” insert “or election”;  
(c) in subsection (2)(b), after “claim” insert “or election”;  
(d) after subsection (2) insert—  
“(2A) In subsection (2), “election” means an election made under paragraph 3, 5 or 12 of Schedule 15 to LTTA (social housing reliefs).”;  
(e) in the Welsh text, in subsection (3), for “ymwared” substitute “rhyddhad”;  
(f) in the Welsh text, in subsection (4), for “ymwared” substitute “rhyddhad” (in both places where it appears).
- 29 In section 68 (making claims)—  
(a) in subsection (1), for “or 63” substitute “, 63 or 63A”;  
(b) in the Welsh text, in subsection (3)(a) for “ryddhau” substitute “ollwng”.
- 30 In section 69 (duty to keep and preserve records), in subsection (1), for “or 63” substitute “, 63 or 63A”.
- 31 In section 71 (amendment of claim by claimant), in subsection (1), for “or 63” substitute “, 63 or 63A”.

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- 32 In the Welsh text, in section 73 (giving effect to claims and amendments), in subsection (1)(b) for “ryddhau’r hawlydd o dreth ddatganoledig neu ei had-dalu iddo” substitute “ollwng y swm o dreth ddatganoledig neu ei ad-dalu i’r hawlydd”.
- 33 In the Welsh text, in section 77 (giving effect to amendments under section 75), in subsection (1)(b) for “ryddhau’r hawlydd ohoni” substitute “ei gollwng”.
- 34 In section 81 (contract settlements)—
- (a) after subsection (1) insert—
- “(1A) In section 63A(1), the reference to repayment of an amount of land transaction tax includes repayment of an amount paid by a person under a contract settlement in connection with that amount of land transaction tax.”;
- (b) in subsection (4), after “63” insert “or 63A”.
- 35 In section 90 (requiring information and documents in relation to a group of undertakings)—
- (a) in subsection (1) for “another” undertaking (a ”subsidiary undertaking”)” substitute “a subsidiary undertaking”;
- (b) in subsection (4) for the words from “section 1162” to the end substitute “sections 1161 and 1162 of, and Schedule 7 to, the [Companies Act 2006 \(c. 46\)](#), but in the application of this section in relation to land transaction tax, section 1161(1)(b) of that 2006 Act has effect as if the words “carrying on a trade or business, with or without a view to profit” were omitted.”
- 36 In section 95 (complying with an information notice), in subsection (1)(a) after “notice” insert “(or such longer period as may be agreed to by WRA and the person)”.
- 37 In the Welsh text, in section 100 (taxpayer notices following a tax return), in subsection (5)(c), for “ymwared” substitute “rhyddhad”.
- 38 In section 116(1) (no review or appeal of tribunal approvals), for “the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#)” substitute “TCEA”.
- 39 In section 118 (penalty for failure to make tax return on or before filing date), after “A person” insert “who is required to make a tax return”.
- 40 In section 119 (penalty for failure to make tax return within 6 months from filing date), in subsection (1), after “A person” insert “who is required to make a tax return”.
- 41 In section 120 (penalty for failure to make tax return within 12 months from filing date)—
- (a) in subsection (1), after “A person” insert “who is required to make a tax return”, and
- (b) in subsection (2), for the words from “the greater of” to the end substitute “—
- (a) £300, or
- (b) a greater amount, not exceeding 95% of the amount of devolved tax to which the person would have been liable if the tax return had been made.”
- 42 For section 122 substitute—

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**“122 Penalty for failure to pay tax on time**

- (1) A person is liable to a penalty if the person has failed to pay an amount of devolved tax on or before the penalty date in respect of that amount.
- (2) The penalty is 5% of the amount of unpaid tax.
- (3) In this section and in section 122A, the penalty date in respect of an amount of devolved tax specified in column 3 of Table A1 is the date specified in column 4.

TABLE A1

Item	Devolved Tax	Amount of Tax	Penalty date
1	Land transaction tax	Amount (or additional amount) payable as a result of a tax return made by the buyer in a land transaction (unless the amount falls within item 8 or 9).	The date falling 30 days after the filing date for the return.
2	Landfill disposals tax	Amount stated in a tax return.	The date falling 30 days after the filing date for the return.
3	Any devolved tax	Amount payable as a result of a WRA determination made in place of a tax return.	The date falling 30 days after the date by which WRA believes the tax return was required to be made.
4	Any devolved tax	Amount payable as a result of a WRA assessment made in place of a tax return (unless the amount falls within item 7).	The date falling 30 days after the date by which WRA believes the tax return was required to be made.
5	Any devolved tax	Amount (or additional amount) payable as a result of a WRA assessment made where a tax return has been made.	The date falling 30 days after the date by which the amount (or additional amount) is required to be paid.
6	Any devolved tax	Amount (or additional amount) payable as a result of an amendment or	The date falling 30 days after the date by which the amount (or

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Item	Devolved Tax	Amount of Tax	Penalty date
7	Any devolved tax	Amount (or additional amount) payable as a result of a WRA assessment made for the purposes of making an adjustment to counteract a tax advantage (see Part 3A) in a case where a tax return which WRA has reason to believe was required to be made has not in fact been made.	additional amount) is required to be paid.  The date falling 30 days after the date by which the amount (or additional amount) is required to be paid.
8	Land transaction tax	Where a deferral request is made under section 58 of LTTA, a deferred amount required to be paid by virtue of section 61(1) of that Act.	The date falling 30 days after the date by which the deferred amount is required to be paid.
9	Land transaction tax	Where a deferral request is made under section 58 of LTTA, a refused amount within the meaning of section 61(2)(a) of that Act.	The date falling 30 days after the date by which the refused amount is required to be paid.
10	Landfill disposals tax	Amount charged by a charging notice issued under section 48 or 49 of LDTA.	The date falling 30 days after the date by which the amount is required to be paid.
11	Any devolved tax	A postponed amount within the meaning of section 181G(2).	The date falling 30 days after the date on which the postponement period ends (see section 181G as to the calculation

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Item	Devolved Tax	Amount of Tax	Penalty date of postponement periods).
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(4) In this section, “deferred amount” has the same meaning as in section 58(6)(a) of LTTA.

(5) The Welsh Ministers may by regulations modify Table A1.

### 122A Further penalties for continuing failure to pay devolved tax

(1) This section applies where a person is liable to a penalty under section 122 in respect of a failure to pay an amount of devolved tax on or before the penalty date for that amount.

(2) If any of the amount remains unpaid after the end of the period of 6 months beginning with the day falling 30 days before the penalty date, the person is liable to a further penalty.

(3) The further penalty is 5% of the amount that remains unpaid.

(4) If any of the amount remains unpaid after the end of the period of 12 months beginning with the day falling 30 days before the penalty date, the person is liable to a second further penalty.

(5) The second further penalty is 5% of the amount that remains unpaid.”

43 Omit sections 123 and 124.

44 In section 125 (special reduction in penalty), after subsection (2) insert—

“(2A) But “special circumstances” may include the fact that WRA has agreed that a person may pay an amount of devolved tax in instalments over an agreed period.”

45 In section 126 (reasonable excuse for failure to make tax return or pay tax), in subsection (2), after “section 122” insert “or 122A”.

46 In section 127 (assessment of penalties)—

- (a) in subsection (5), after “section “122” insert “or 122A”, and
- (b) in subsection (6), after “section 122” insert “or 122A”.

47 In section 128 (time limit for assessment of penalties under Chapter 2)—

- (a) in subsection (1), omit the words “in respect of any amount”;
- (b) in subsection (4), for “122(2)” substitute “122(3)”;
- (c) in subsection (5), omit the words “the later of the following periods”.

48 In section 130 (amount of penalty for inaccuracy in document given to WRA)—

- (a) in subsection (1), after “for a deliberate inaccuracy is” insert “an amount not exceeding”, and
- (b) in subsection (2), after “for a careless inaccuracy is” insert “an amount not exceeding”.

49 In section 132 (penalty for deliberate inaccuracy in document given to WRA by another person), in subsection (4), after “under this section is” insert “an amount not exceeding”.

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- 50 In section 133 (penalty for failure to notify under-assessment or under-determination), in subsection (3), after “under this section is” insert “an amount not exceeding”.
- 51 In section 141 (assessment of penalties under Chapter 3), in subsection (5), omit the words “the later of the following periods”.
- 52 In the Welsh text, in section 142 (interpretation of Chapter 3), in paragraph (c), for “ymwared” substitute “ryddhad” (in both places it appears).
- 53 In section 143 (penalty for failure to keep and preserve records), in subsection (1), after “38” insert “, 38A”.
- 54 In section 144 (reasonable excuse for failure to keep and preserve records), in subsection (1), after “38” insert “, 38A”.
- 55 In section 145 (assessment of penalties under section 143), in subsection (2), after “38” insert “, 38A”.
- 56 After section 154 (payment of penalties) insert—

**“154A Liability of personal representatives**

- (1) If a person liable to a penalty (“P”) has died, any penalty that could have been assessed on P may be assessed on the personal representatives of P.
- (2) Any penalty assessed accordingly is to be paid out of P’s estate.”
- 57 Omit the italic cross-heading immediately preceding section 157.
- 58 For sections 157 and 158 substitute—

**“157 Late payment interest on devolved taxes**

- (1) This section applies to an amount of devolved tax—
- (a) stated in a tax return as—
    - (i) the tax chargeable, or
    - (ii) if the tax return is a further return made by the buyer in a land transaction, the land transaction tax (or additional land transaction tax) payable;
  - (b) payable—
    - (i) as a result of an amendment to a tax return under section 41, 45 or 50;
    - (ii) as a result of a correction to a tax return under section 42;
    - (iii) in accordance with an assessment made in addition to a tax return under section 54 or 55, or
  - (c) payable in accordance with—
    - (i) a determination under section 52, or
    - (ii) an assessment under section 54 or 55,
 made in place of a tax return which was required to be made.
- (2) If the amount is not paid before the late payment interest start date, the amount carries interest (referred to in this Part as “late payment interest”) at the late payment interest rate for the period—
- (a) beginning with the late payment interest start date, and

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- (b) ending with the date of payment.
- (3) The late payment interest start date is —
  - (a) in the case of an amount falling within subsection (1)(a) or (b), the date after the filing date for the tax return;
  - (b) in the case of an amount falling within subsection (1)(c) the date after the filing date for the tax return which was required to be made.
- (4) But where section 160 applies the late payment interest start date is the date specified in that section.

### **157A Late payment interest on penalties**

- (1) This section applies to an amount of penalty required to be paid under Part 5 of this Act.
- (2) If the amount is not paid on or before the date by which it is required to be paid, the amount carries interest (referred to in this Part as “late payment interest”) at the late payment interest rate for the period—
  - (a) beginning with the following day, and
  - (b) ending with the date of payment.
- (3) But where section 160 applies, the late payment interest start date is the date specified in that section.

### **158 Late payment interest: supplementary**

- (1) This section applies for the purposes of sections 157 and 157A.
  - (2) Late payment interest is not payable on late payment interest.
  - (3) A late payment interest start date may be a non-business day within the meaning of section 92 of the [Bills of Exchange Act 1882 \(c. 61\)](#).
  - (4) The date of payment, in relation to an amount, includes the date on which the amount is set off against an amount payable by WRA.
  - (5) “Late payment interest rate” has the meaning given by section 163(1).”
- 59 Omit section 159 (late payment interest start date: amendments to assessments etc.) and the italic cross-heading immediately preceding that section.
- 60 In section 169 (proceedings in magistrates’ court), after subsection (5) insert—
- “(5A) Where a relevant amount includes an amount of land transaction tax in respect of which WRA has agreed to defer payment, any deferral period in respect of that amount (as determined under Chapter 3 of Part 6 of LTTA) must be ignored in calculating the period of 12 months referred to in subsection (4) or (5).
  - (5B) Where a relevant amount includes an amount treated as a postponed amount by virtue of section 181G, any postponement period in respect of that amount (as determined under that section) must be ignored in calculating the period of 12 months referred to in subsection (4) or (5).”

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- 61 In section 170(1) (enforcement by taking control of goods), for “the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#)” substitute “TCEA”.
- 62 In section 172(2) (list of appealable decisions), after paragraph (e) insert—
- “(f) a decision to issue a notice under paragraph 14 of Schedule 16 to LTTA (recovery of group relief: notice requiring payment by another group company or controlling director);
  - (g) a decision to issue a notice under paragraph 9 of Schedule 17 to that Act (recovery of reconstruction or acquisition relief: notice requiring payment by another group company or controlling director).”
- 63 After section 181 insert—

### “CHAPTER 3A

#### PAYMENT AND RECOVERY OF DEVOLVED TAX SUBJECT TO REVIEW OR APPEAL

#### **181A Review or appeal not to affect requirement to pay**

The fact that a person to whom an appealable decision applies has—

- (a) requested a review of the decision, or
- (b) appealed against it,

does not affect any requirement on the person to pay an amount of devolved tax (and interest on that amount).

#### **181B Postponement requests**

- (1) This section applies where a person—
  - (a) gives a notice of request to review an appealable decision, or
  - (b) makes an appeal against such a decision.
- (2) If the person thinks that an excessive amount of devolved tax has been charged on the person in consequence of the decision, the person may make a request to WRA to postpone the recovery of the amount of devolved tax that the person thinks is excessive (and interest on that amount) (a “postponement request”).
- (3) A postponement request must specify—
  - (a) the amount of devolved tax in respect of which the request is made, and
  - (b) the reasons why the person making the request thinks the amount is excessive.
- (4) If WRA thinks that the person making the postponement request has reasonable grounds for thinking that the amount of devolved tax to which the request relates is excessive, WRA may grant the postponement request.
- (5) If WRA thinks that it is only in respect of part of the amount that the person has reasonable grounds for thinking the amount is excessive it may grant the request in respect of that part only.



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- (6) WRA may make the grant of the postponement request (in whole or in part) conditional on the provision of adequate security.
- (7) WRA must issue a notice of its decision to the person who made the postponement request.

### **181C Time limit for making a postponement request**

- (1) A postponement request connected to a review must be made by giving notice of the request to WRA before the end of the period specified in section 174 for requesting the review.
- (2) But if a late request for a review is made under section 175, the postponement request must be made at the same time as the late request.
- (3) A postponement request connected to an appeal must be made by giving notice to WRA before the end of the period specified in section 179 for making the appeal.
- (4) But if the tribunal gives permission under section 180 for a late appeal to be made, the postponement request must be made at the same time as permission is sought for the late appeal.
- (5) Subsections (1) and (3) are subject to section 181D.

### **181D Late postponement request**

- (1) Where a person—
  - (a) requests a review before the end of the period specified in section 174, and
  - (b) makes a postponement request connected to the review after the end of that period,WRA may consider the postponement request only if it is satisfied that the conditions in subsection (3) are met.
- (2) Where a person—
  - (a) makes an appeal before the end of the period specified in section 179, and
  - (b) makes a postponement request connected to the appeal after the end of that period,WRA may consider the postponement request only if it is satisfied that the conditions in subsection (3) are met.
- (3) The conditions are that the person making the postponement request —
  - (a) had a reasonable excuse for not making the request during the period specified in section 174 or 179, as the case may be, and
  - (b) subsequently made the request without unreasonable delay.

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### **181E Application for tribunal review of decision on a postponement request**

- (1) A person who makes a postponement request may, within the period of 30 days beginning with the date WRA issues the notice of its decision on the request, apply to the tribunal for a review of WRA's decision.
- (2) The tribunal may determine that WRA's decision is to be—
  - (a) affirmed,
  - (b) cancelled, or
  - (c) replaced by another decision that WRA could have made.

### **181F Variation after postponement request granted**

- (1) This section applies where—
  - (a) a postponement request has been granted by WRA or the tribunal,
  - (b) there is a subsequent change in circumstances, and
  - (c) in consequence of that change, either WRA or the person who made the request thinks—
    - (i) that the amount of devolved tax in respect of which the request was granted should be varied;
    - (ii) where the grant of the request is conditional on the provision of adequate security, that the condition should be varied.
- (2) Either party may seek the agreement of the other by issuing a notice to the other party specifying the proposed variation.
- (3) If an agreement is reached, WRA must issue a notice to the person confirming the variation.
- (4) The variation has effect from the date WRA issues the notice under subsection (3).
- (5) If no agreement is reached within the period of 21 days beginning with the date the notice is issued under subsection (2), either party may apply to the tribunal for a determination.
- (6) The tribunal may determine such an application by—
  - (a) confirming the proposed variation,
  - (b) refusing the proposed variation, or
  - (c) making such other variation as the tribunal thinks appropriate.

### **181G Effect of postponement**

- (1) WRA must not take any action to recover a postponed amount during the postponement period.
- (2) A postponed amount means—
  - (a) an amount of devolved tax specified in a postponement request (unless the request is a late request made in accordance with section 181C(2) or (4) or section 181D), or

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- (b) an amount of devolved tax in respect of which a postponement request is granted by WRA or the tribunal.
- (3) In the case of a postponed amount falling within subsection (2)(a), the postponement period for the amount—
  - (a) begins with the day on which the postponement request is made, and
  - (b) ends—
    - (i) if the request is granted, with the day on which it is granted,
    - (ii) if the request is not granted and no application is made to the tribunal for a review of that decision, with the first day after the end of the period for making such an application, or
    - (iii) if the request is not granted and an application is made to the tribunal for a review of that decision, with the day on which the tribunal makes its determination.
- (4) In the case of a postponed amount falling within subsection (2)(b) the postponement period for the amount—
  - (a) begins with the date on which the postponement request is granted by WRA or the tribunal, and
  - (b) ends—
    - (i) if the postponement request was made in connection with a review of an appealable decision, with the day on which WRA issues a notice of the conclusions of the review, or
    - (ii) if the postponement request was made in connection with an appeal against an appealable decision, with the day on which the tribunal determines the appeal.
- (5) Where a postponed amount falling within subsection (2)(b) is varied under section 181F, the varied amount is to be treated as the postponed amount from the date of the variation.
- (6) In this section, references to a postponement request being granted include cases where the request is granted in part.

### **181H Postponement requests relating to further appeals**

- (1) Where a person makes (in accordance with TCEA) a further appeal against the tribunal's determination of an appeal against an appealable decision, sections 181B, 181C, 181E, 181F and 181G apply to the further appeal as they apply to an appeal, but as if the following modifications were made.
- (2) Section 181B has effect as if for subsections (3), (4) and (5), there were substituted—
  - “(3) A postponement request must specify—
    - (a) the amount of devolved tax in respect of which the request is made,
    - (b) the reasons why the person making the request thinks the amount is excessive, and
    - (c) the reasons why the person thinks that recovery of the amount (and interest on the amount) would cause the person serious financial hardship.
  - (4) If WRA—

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- (a) thinks that the person making the postponement request has reasonable grounds for thinking that the amount of devolved tax to which the request relates is excessive, and
  - (b) has reason to believe that recovery of the amount (and interest on the amount) would cause the person serious financial hardship,
- WRA may grant the request.
- (5) But if WRA—
- (a) thinks that it is only in respect of part of the amount that the person has reasonable grounds for thinking that the amount is excessive, or
  - (b) has reason to believe that it is only in respect of part of the amount (and interest on that part) that recovery would cause the person serious financial hardship,
- WRA may grant the request in respect of such part of the amount as it thinks appropriate.”
- (3) Section 181C has effect as if—
- (a) in subsection (3), for “before the end of the period specified in section 179 for making the appeal” there were substituted “on or before the day on which the further appeal is made”, and
  - (b) subsection (4) were omitted.
- (4) Section 181F has effect as if, in subsection (1), for paragraph (a) there were substituted—
- “(a) a postponement request has been granted by—
- (i) the Upper Tribunal where the request relates to a further appeal made under section 11 of TCEA, or
  - (ii) the relevant appellate court specified under subsection (11) of section 13 of TCEA where the request relates to a further appeal made under that section.”
- (5) Section 181G has effect as if—
- (a) in subsection (2)(a) the words “(unless the request is a late request made in accordance with section 181C(2) or (4) or section 181D)” were omitted, and
  - (b) for subsection (4)(b) there were substituted—
- “(b) ends on the day on which the further appeal is determined.”.
- (6) The references in sections 181E(1) and (2), 181F(5) and (6) and 181G(2), (3) and (4) to “the tribunal” are to be read as references to—
- (a) the Upper Tribunal in a case where the further appeal is made under section 11 of TCEA, or
  - (b) the relevant appellate court specified under subsection (11) of section 13 of TCEA in a case where the further appeal is made under that section.

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### **181I No further appeal or review of tribunal decisions relating to postponement requests**

(1) In section 11(5) of TCEA (decisions excluded from right of appeal to Upper Tribunal ), after paragraph (cb) (as inserted by section 116(1) of this Act) insert—

“(cc) any decision of the First-tier Tribunal under section 181E or 181F of that Act (appeals relating to postponement requests),”.

(2) In section 13(8) of TCEA (decisions excluded from right of appeal to Court of Appeal etc.), after paragraph (bb) (as inserted by section 116(2) of this Act) insert—

“(bc) any decision of the Upper Tribunal under section 181E or 181F of that Act (appeals relating to postponement requests),”.

64 In section 182 (payment of penalties in the event of a review or appeal), in subsection (3) after “176(5)” insert “, (6)”.

65 After section 183 insert—

### **“183A Suspension of repayment pending further appeal**

(1) This section applies where—

- (a) on an appeal against an appealable decision, the tribunal determines that an amount of devolved tax paid by a person is to be repaid by WRA, and
- (b) WRA applies under section 11(4) or 13(4) of TCEA for permission to make a further appeal.

(2) When applying for permission WRA may request the tribunal’s permission to postpone repayment of the amount until—

- (a) the further appeal is determined, or
- (b) WRA obtains adequate security for the amount.

(3) The relevant tribunal or court must grant WRA’s request if it—

- (a) gives permission for the further appeal to proceed, and
- (b) thinks that granting the request is necessary to protect the revenue.

(4) If permission to make a further appeal is not given—

- (a) by the First-tier Tribunal on an application under section 11(4)(a) of TCEA, or
- (b) by the Upper Tribunal on an application under section 13(4)(a) of that Act,

the fact that WRA made a request under subsection (2) when making the application for permission does not prevent WRA from making another request under that subsection if WRA applies for permission to make a further appeal under section 11(4)(b) or 13(4)(b) of TCEA.

(5) But otherwise, the decision of the relevant tribunal or court on a request under subsection (2) is final.

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(6) In this section—

“relevant tribunal or court” (*“tribiwnlys neu lys berthnasol”*) means whichever of the following WRA applies to for permission to make a further appeal—

- (a) the First-tier Tribunal;
- (b) the Upper Tribunal;
- (c) the relevant appellate court;

“relevant appellate court” (*“llys apeliadol perthnasol”*) means the court specified as such under section 13(11) of TCEA.”

66 Before section 188 (power to make consequential provision etc.) insert—

**“187A Crown application for the purposes of Land Transaction Tax**

(1) In so far as the following provisions of this Act apply to land transaction tax, they bind the Crown—

- (a) Part 3;
- (b) Part 4 (other than Chapter 6);
- (c) Part 6 (other than sections 157A, 160 and 161(2)(b));
- (d) Part 7 (other than sections 168, 169 and 170);
- (e) Part 8 (other than sections 172(1)(d) and (e), (3)(b) and (c), (4), (5) and (6), 182 and 183);
- (f) sections 190 and 191.

(2) But Part 4 does not apply to Her Majesty in Her private capacity (within the meaning of section 38(3) of the [Crown Proceedings Act 1947 \(c. 44\)](#)).

67 In section 189 (regulations), in subsection (2), after “18(2)” insert “122(5),”.

68 In section 190 (issue of notices by WRA)—

- (a) in subsection (1), for “this Act, or of regulations made under it,” substitute “the Welsh Tax Acts, or of regulations made under them,”;
- (b) after subsection (1) insert—

“(1A) A notice must specify the day on which it is issued.

(1B) If the person to whom the notice is issued cannot reasonably ascertain the effect of the notice because of a mistake in it or omission from it (including a mistake or omission relating to the person’s name), the notice is to be treated as not having been issued.”

69 In section 191 (giving notices and other documents to WRA)—

- (a) in subsection (1)—
  - (i) for “this Act, or of regulations made under it” substitute “the Welsh Tax Acts, or of regulations made under them,”;
  - (ii) after “person” insert “to make a tax return or”;
- (b) for subsection (2) substitute—

“(2) The tax return, notice or other document must—

- (a) be in such form,
- (b) contain such information,

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- (c) be accompanied by such other documents, and  
(d) be given in such manner,  
as may be specified by WRA.”;
- (c) in subsection (3), for “this Act” substitute “the Welsh Tax Acts”.
- 70 In section 192(2) (interpretation), in the appropriate places, insert—  
““buyer” (“*prynwr*”) has the same meaning as in LTТА;”  
““land transaction” (“*trafodiad tir*”) has the same meaning as in LTТА;”  
““LTТА” (“*DTTT*”) means the Land Transaction Tax and Anti-avoidance  
of Devolved Taxes (Wales) Act 2017 (anaw 0);”  
““TCEA” (“*DTLIG*”) means the [Tribunals, Courts and Enforcement Act  
2007 \(c. 15\)](#);”  
““the Welsh Tax Acts” (“*Deddfau Trethi Cymru*”) means—  
(a) this Act, and  
(b) LTТА.”
- 71 In section 193 (index of defined expressions), in Table 1, at the appropriate places  
insert the defined expressions in the following table.

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Arrangement (in relation to the general antiavoidance rule) (“ <i>trefniant</i> ”)	section 81B(3)A
Artificial (in relation to the general antiavoidance rule) (“ <i>artiffisial</i> ”)	section 81C
Buyer (“ <i>prynwr</i> ”)	section 192(2)
Final counteraction notice (“ <i>hysbysiad gwrthweithio terfynol</i> ”)	section 81G
General anti-avoidance rule (“ <i>rheol gwrthweithio osgoi trethi cyffredinol</i> ”)	section 81A(2)
Land transaction (“ <i>trafodiad tir</i> ”)	section 192(2)
LTТА (“ <i>DTTT</i> ”)	section 192(2)
Proposed counteraction notice (“ <i>hysbysiad gwrthweithio arfaethedig</i> ”)	section 81F
Tax advantage (“ <i>mantais drethiannol</i> ”)	section 81D
Tax avoidance arrangement (“ <i>trefniant osgoi trethi</i> ”)	section 81B
TCEA (“ <i>DTLIG</i> ”)	section 192(2)
Welsh Tax Acts (“ <i>Deddfau Trethi Cymru</i> ”)	section 192(2)

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