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WELSH STATUTORY INSTRUMENTS

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**2019 No. 833 (W. 153)**

**EXITING THE EUROPEAN UNION, WALES  
LAND TRANSACTION TAX, WALES  
TAXES, WALES**

The Welsh Tax Acts (Miscellaneous  
Amendments) (EU Exit) Regulations 2019

*Made - - - - 2 April 2019  
Coming into force in accordance with regulation 1(2)  
and (3)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by—

- (a) in relation to Part 1, the provisions mentioned in paragraphs (b) to (f);
- (b) in relation to Part 2, section 18(2) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017<sup>(1)</sup> (“LTTA”);
- (c) in relation to Part 3, section 30(6) of LTTA;
- (d) in relation to Part 4, section 36(8) of LTTA;
- (e) in relation to Part 5, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018<sup>(2)</sup>;
- (f) in relation to Part 6, section 78(1) of LTTA.

In accordance with section 79(2) of LTTA and paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

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(1) 2017 anaw 1.  
(2) 2018 c. 16.

## PART 1

### Introductory

#### **Title, commencement and interpretation**

1.—(1) The title of these Regulations is the Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Part 2 and this regulation come into force on the day after the day on which these Regulations are made.

(4) In these Regulations—

“TCMA” (“*DCRht*”) means the Tax Collection and Management (Wales) Act 2016(3);

“LTTA” (“*DTTT*”) means the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

## PART 2

### Leases

#### **Amendment of Schedule 6 to LTTA**

2. In paragraph 16(1)(h) of Schedule 6 to LTTA (tenants’ obligations etc. that do not count as chargeable consideration), for “single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No 73/2009)” substitute “basic payment scheme (that is, the scheme of income support for farmers in pursuance of Regulation (EU) No 1307/2013)”.

## PART 3

### Charities

#### **Amendment of Schedule 18 to LTTA**

3.—(1) Schedule 18 to LTTA is amended as follows.

(2) After paragraph 1(a) insert—

“(aa) paragraphs 2A to 2D make provision about the meaning of “charity”,”.

(3) In paragraph 2(3)(a), for “Part 1 of Schedule 6 to the Finance Act 2010 (c. 13)” substitute “paragraph 2A”.

(4) After paragraph 2 insert—

#### **“Meaning of “charity”**

2A. For the purpose of this Schedule, “charity” means a body of persons or trust that—

(a) is established for charitable purposes only,

(b) meets the jurisdiction condition (see paragraph 2B),

- (c) meets the registration condition (see paragraph 2C), and
- (d) meets the management condition (see paragraph 2D).

#### **Meaning of “charity”: jurisdiction condition**

**2B.**—(1) A body of persons or trust meets the jurisdiction condition if it falls to be subject to the control of a relevant UK court in the exercise of its jurisdiction with respect to charities.

(2) A “relevant UK court” means—

- (a) the High Court,
- (b) the Court of Session, or
- (c) the High Court in Northern Ireland.

#### **Meaning of “charity”: registration condition**

**2C.**—(1) A body of persons or trust meets the registration condition if—

- (a) in the case of a body of persons or trust that is a charity within the meaning of section 10 of the Charities Act 2011 (c. 25), condition A is met, and
- (b) in the case of any other body of persons or trust, condition B is met.

(2) Condition A is that the body of persons or trust has complied with any requirement to be registered in the register of charities kept under section 29 of the Charities Act 2011.

(3) Condition B is that the body of persons or trust has complied with any requirement to be registered in a register corresponding to that mentioned in condition A kept under the law of Scotland or Northern Ireland.

#### **Meaning of “charity”: management condition**

**2D.**—(1) A body of persons or trust meets the management condition if its managers are fit and proper persons to be managers of the body or trust.

(2) In this paragraph “managers”, in relation to a body of persons or trust, means the persons having the general control and management of the administration of the body or trust.

(3) Sub-paragraph (4) applies in relation to any period throughout which the management condition is not met.

(4) The management condition is treated as met if WRA consider that—

- (a) the failure to meet the condition has not prejudiced the charitable purposes of the body or trust, or
- (b) it is just and reasonable in all the circumstances for the condition to be treated as met throughout the period.”

(5) The amendments made by this regulation have effect in relation to land transactions with an effective date on or after exit day.

## PART 4

### Co-ownership authorised contractual schemes

#### **Description of co-ownership authorised contractual scheme under section 36(8) of LTТА**

4.—(1) A co-ownership authorised contractual scheme of the description in paragraph (2) is to be treated as not being a co-ownership authorised contractual scheme for the purposes of LTТА and TCMA as it applies in relation to land transaction tax.

(2) The description is that the scheme is—

- (a) constituted under the law of an EEA State by contract,
- (b) managed by a body corporate incorporated under the law of an EEA State, and
- (c) authorised under the law of the EEA State mentioned in sub-paragraph (a) in a way which makes it, under that law, the equivalent of a co-ownership authorised contractual scheme defined in section 36(7) of LTТА.

(3) This regulation has effect in relation to any land transaction with an effective date on or after exit day.

## PART 5

### Amendment of TCMA

#### **Amendment of TCMA arising from the withdrawal of the United Kingdom from the European Union**

5.—(1) TCMA is amended as follows.

(2) In section 4 (disqualification for appointment as non-executive member), omit paragraph (c).

(3) In section 65(4)(a) (unjustified enrichment: further provision), for “EU legislation” substitute “retained direct EU legislation”.

(4) In section 67(11) (cases in which WRA need not give effect to a claim)—

- (a) omit the words from “in the circumstances” to “contrary to”;
- (b) in paragraph (a), before “the provisions”, insert “in the circumstances in question, the charge to devolved tax is contrary to”;
- (c) after paragraph (a), for “or” substitute “and”;
- (d) for paragraph (b) substitute—

“(b) at the time the tax is charged, the rights conferred by those provisions are recognised and available in domestic law by virtue of the European Union (Withdrawal) Act 2018 (c. 16) or any provision made under that Act.”

## PART 6

### Consequential amendments

#### **Consequential amendments**

6.—(1) In section 85(3) of TCMA (meaning of “carrying on a business”), for “Part 1 of Schedule 6 to the Finance Act 2010 (c. 13)” substitute “paragraph 2A of Schedule 18 to LTТА”.

- (2) In section 36 of LTTA (co-ownership authorised contractual schemes)—
- (a) omit subsection (6);
  - (b) in subsection (12), in the definition of “operator”—
    - (i) omit the “, and” after paragraph (a);
    - (ii) omit paragraph (b) (and the remaining text ceases to be paragraph (a)).
- (3) The amendments made by this regulation have effect in relation to land transactions with an effective date on or after exit day.

2 April 2019

*Rebecca Evans*  
Minister for Finance and Trefnydd, one of the  
Welsh Ministers

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16) and sections 18(2), 30(6), 36(8) and 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1) (“LTTA”).

Part 2 updates a reference to EU legislation in a provision in LTTA about the treatment of consideration in relation to leases.

Part 3 amends the definition of charities in Schedule 18 to LTTA.

Part 4 specifies that a co-ownership authorised contractual scheme of the description contained in regulation 4(2) is to be treated as not being a co-ownership authorised contractual scheme for the purpose of land transaction tax.

Part 5 makes various amendments to the Tax Collection and Management (Wales) Act 2016 (anaw 6) (“TCMA”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 6 makes amendments to TCMA and LTTA as a consequence of the provision made by regulations 3 and 4.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ and on the Welsh Government’s website at [www.gov.wales](http://www.gov.wales).