

SL(5)367 – The Welsh Tax Acts (Miscellaneous Amendments) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are to be made by the Welsh Ministers pursuant to paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 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 ("the **LTT Act**").

The Regulations predominately amend the LTT Act and the Tax Collection and Management (Wales) Act 2016 ("the **TCM Act**"). The Regulations:

1. update an incorrect reference in Schedule 6 to the LTT Act to clarify that an obligation to transfer payment entitlements under the basic payment scheme of income support for farmers pursuant to Regulation (EU) No 1307/2013 is not included as chargeable consideration on the grant of a lease for the purposes of land transaction tax (replacing a referencing to the predecessor "single payment" scheme under Council Regulation (EC) No 73/2009);
2. amend Schedule 18 of the LTT Act to provide that, following the UK's exit from the European Union, EU or EEA registered charities will no longer be able to claim charities relief from land transaction tax under Schedule 18 of that Act;
3. provide that co-ownership authorised contractual schemes ("CoACS") which are constituted, authorised and managed under the law of an EU or EEA State will no longer receive the same treatment as a UK-based CoACS following EU Exit (and amend section 36(8) of the LTT Act in consequence of this provision);
4. amend the TCM Act to remove the restriction on a Member of the European Parliament being appointed as a non-executive member of the Welsh Revenue Authority; and
5. make further technical and minor amendments to the TCM Act resulting from EU Exit.

Procedure

Affirmative.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(ii) – that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made

Regulation 4 provides that a CoACS of the description in paragraph (2) of that Regulation is to be treated as not being a CoACS for the purposes of the LTT Act and TCM Act as it applies in relation to land transaction tax. The effect of the regulation is that a EU or EEA CoACS which is



constituted, authorised and managed under the law of an EU or EEA State will no longer receive the same treatment as a UK-based CoACS following EU Exit.

However, the description of the scheme specified in Regulation 4(2) is broadly equivalent to the description of such a scheme set out in section 36(6) of the LTT Act, which is currently to be regarded as a CoACS for the purposes of the LTT Act and the TCM Act as it applies in relation to land transaction tax. Regulation 6(2) omits section 36(6) of the LTT Act in consequence of Regulation 4 to resolve this contrary provision.

Regulations 4 and 6(2) therefore appears to have the effect of reversing the intention expressed in the LTT Act regarding the treatment of a particular type of EU or EEA collective investment scheme, which would not seem to be an expected exercise of the enabling powers relied upon by the Welsh Ministers, being sections 36(8) and 78(1) of the LTT Act. The Explanatory Memorandum to the Regulations explains, at paragraph 2.2:

"The provisions...are necessary to ensure the respective provisions in the LTT Act are compatible with the UK's international obligations following the UK's exit from the EU. Due to the restriction on the use of the Withdrawal Act powers (found in section 8(7)(a) of that Act), it is necessary to make these provisions using the powers conferred by the LTT Act because they may have the effect of imposing or increasing a tax liability."

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Section 36(12) of the LTT Act contains a definition of "collective investment scheme", which will become redundant as a result of the amendments made by these Regulations.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No further points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The purpose of the regulation-making power conferred by section 36(8) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ("the LTT Act") is to deem that a scheme of a description specified in those regulations is not to be eligible for the treatment ordinarily given to those schemes by that section. Consequently, regulations made under this power will inevitably have the effect of reversing the proposition set out in the primary legislation insofar as a scheme meets the description in those regulations.

In this instance, the reasons for exercising section 36(8) of the LTT Act are set out in the explanatory memorandum. The exercise of section 78(1) to repeal section 36(6) was also considered appropriate to ensure the legislation provided sufficient clarity.



While it is acknowledged that the circumstances giving rise to the use of the powers, namely the preparations for the UK's exit from the EU in a 'no-deal' scenario, are exceptional and unusual, the Government considers the use of the powers is appropriate and necessary.

The Government accepts the second point made regarding the definition of a "collective investment scheme". While the legal effect of this definition is now redundant, the Government will repeal this definition in the next appropriate piece of legislation.

Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 18 March 2019 and reports to the Assembly in line with the technical reporting points above.

