



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

2017 anaw 1

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.
- (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.
- (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—
 - (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).
- (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.
- (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.

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.

Status: *This is the original version (as it was originally enacted).*

- (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.