



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2019 Rhif 833 (Cy. 153)

2019 No. 833 (W. 153)

**YMADAEL Â'R UNDEB
EWROPEAIDD, CYMRU**

**EXITING THE EUROPEAN
UNION, WALES**

**TRETH TRAFODIADAU TIR,
CYMRU**

**LAND TRANSACTION TAX,
WALES**

TRETHI, CYMRU

TAXES, WALES

Rheoliadau Deddfau Trethi Cymru
(Diwygiadau Amrywiol) (Ymadael
â'r UE) 2019

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

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn wedi eu gwneud drwy arfer y pwerau a roddir gan baragraff 1(1) o Atodlen 2 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) ac adrannau 18(2), 30(6), 36(8) a 78(1) o Ddeddf Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) 2017 (dccc 1) ("DTTT").

Mae Rhan 2 yn diweddarau cyfeiriad at ddeddfwriaeth yr UE mewn darpariaeth yn DTTT ynghylch trin cydnabyddiaeth mewn perthynas â lesioedd.

Mae Rhan 3 yn diwygio'r diffiniad o elusennau yn Atodlen 18 i DTTT.

Mae Rhan 4 yn pennu bod cynllun contractiol awdurdodedig cyfberchnogaeth o'r disgrifiad a gynhwysir yn rheoliad 4(2) i'w drin fel pe na bai'n gynllun contractiol awdurdodedig cyfberchnogaeth at ddiben treth trafodiadau tir.

Mae Rhan 5 yn gwneud diwygiadau amrywiol i Ddeddf Casglu a Rheoli Trethi (Cymru) 2016 (dccc 6) ("DCRhT") er mwyn ymdrin ag unrhyw fethiant yng nghyfraith yr UE a ddargedwir i weithredu'n effeithiol a diffygion eraill sy'n deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd.

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.

Mae Rhan 6 yn gwneud diwygiadau i DCRhT a DTTT o ganlyniad i'r ddarpariaeth a wneir gan reoliadau 3 a 4.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd Asesiad Effaith Rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Llywodraeth Cymru, Parc Cathays, Caerdydd CF10 3NQ ac ar wefan Llywodraeth Cymru yn www.llyw.cymru.

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.

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The Welsh Tax Acts (Miscellaneous
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Regulations 2019

Gwnaed

2 Ebrill 2019

Made

2 April 2019

Yn dod i rym yn unol â rheoliad 1(2) a (3)

*Coming into force in accordance with
regulation 1(2) and (3)*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan—

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

- (a) mewn perthynas â Rhan 1, y darpariaethau a grybwyllir ym mharagraffau (b) i (f);
- (b) mewn perthynas â Rhan 2, adran 18(2) o Ddeddf Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) 2017(1) (“DTTT”);
- (c) mewn perthynas â Rhan 3, adran 30(6) o DTTT;
- (d) mewn perthynas â Rhan 4, adran 36(8) o DTTT;
- (e) mewn perthynas â Rhan 5, paragraff 1(1) o Atodlen 2 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018(2);
- (f) mewn perthynas â Rhan 6, adran 78(1) o DTTT.

- (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(1) (“LTTA”);
- (c) in relation to Part 3, section 30(6) of LTТА;
- (d) in relation to Part 4, section 36(8) of LTТА;
- (e) in relation to Part 5, paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018(2);
- (f) in relation to Part 6, section 78(1) of LTТА.

(1) 2017 decc 1.
(2) 2018 p. 16.

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

Yn unol ag adran 79(2) o DTTT a pharagraff 1(9) o Atodlen 7 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018, gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

RHAN 1

Rhagarweiniol

Enwi, cychwyn a dehongli

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Deddfau Trethi Cymru (Diwygiadau Amrywiol) (Ymadael â'r UE) 2019.

(2) Yn ddarostyngedig i baragraff (3), daw'r Rheoliadau hyn i rym ar y diwrnod ymadael.

(3) Daw Rhan 2 a'r rheoliad hwn i rym drannoeth y diwrnod y gwneir y Rheoliadau hyn.

(4) Yn y Rheoliadau hyn—

ystyr “DCR h T” (“TCMA”) yw Deddf Casglu a Rheoli Trethi (Cymru) 2016(1);

ystyr “DTTT” (“LTTA”) yw Deddf Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) 2017.

RHAN 2

Lesoedd

Diwygio Atodlen 6 i DTTT

2. Ym mharagraff 16(1)(h) o Atodlen 6 i DTTT (rhwymedigaethau etc. tenantiaid nad ydynt yn cyfrif fel cydnabyddiaeth drethadwy), yn lle “gynllun y taliad sengl (hynny yw, y cynllun cymorthdal incwm i ffermwyr yn unol â Theitl III o Reoliad y Cyngor (EC) Rhif 73/2009)” rhodder “gynllun y taliad sylfaenol (hynny yw, y cynllun cymorthdal incwm i ffermwyr yn unol â Rheoliad (EU) Rhif 1307/2013)”.

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.

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” (“DCR h T”) means the Tax Collection and Management (Wales) Act 2016(1);

“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)”.

RHAN 3
Elusennau

PART 3
Charities

Diwygio Atodlen 18 i DTTT

3.—(1) Mae Atodlen 18 i DTTT wedi ei diwygio fel a ganlyn.

(2) Ar ôl paragraff 1(a) mewnosoder—

“(aa)mae paragraffau 2A i 2D yn gwneud darpariaeth ynglŷn ag ystyr “elusen”.”.

(3) Ym mharagraff 2(3)(a), yn lle “Ran 1 o Atodlen 6 i Ddeddf Cyllid 2010 (p. 13)” rhodder “baragraff 2A”.

(4) Ar ôl paragraff 2 mewnosoder—

“Ystyr “elusen”

2A At ddibenion yr Atodlen hon, ystyr “elusen” yw corff o bersonau neu ymddiriedolaeth—

- (a) sydd wedi ei sefydlu at ddibenion elusennol yn unig,
- (b) sy'n bodloni'r amod awdurdodaeth (gweler paragraff 2B),
- (c) sy'n bodloni'r amod cofrestru (gweler paragraff 2C), a
- (d) sy'n bodloni'r amod rheoli (gweler paragraff 2D).

Ystyr “elusen”: yr amod awdurdodaeth

2B (1) Mae corff o bersonau neu ymddiriedolaeth yn bodloni'r amod awdurdodaeth os yw'n dod yn ddarostyngedig i reolaeth llys perthnasol yn y DU wrth arfer ei awdurdodaeth mewn cysylltiad ag elusennau.

(2) Ystyr “llys perthnasol yn y DU” yw—

- (a) yr Uchel Lys,
- (b) y Llys Sesiwn, neu
- (c) yr Uchel Lys yng Ngogledd Iwerddon.

Ystyr “elusen”: yr amod cofrestru

2C (1) Mae corff o bersonau neu ymddiriedolaeth yn bodloni'r amod cofrestru—

- (a) yn achos corff o bersonau neu ymddiriedolaeth sy'n elusen o fewn ystyr adran 10 o Ddeddf Elusennau 2011 (p. 25), os yw amod A wedi ei fodloni, a

Amendment of Schedule 18 to LTТА

3.—(1) Schedule 18 to LTТА 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) yn achos unrhyw gorff o bersonau neu ymddiriedolaeth arall, os yw amod B wedi ei fodloni.

(2) Amod A yw bod y corff o bersonau neu'r ymddiriedolaeth wedi cydymffurfio ag unrhyw ofyniad i fod wedi ei gofrestru neu wedi ei chofrestru yn y gofrestr o elusennau a gedwir o dan adran 29 o Ddeddf Elusennau 2011.

(3) Amod B yw bod y corff o bersonau neu'r ymddiriedolaeth wedi cydymffurfio ag unrhyw ofyniad i fod wedi ei gofrestru neu wedi ei chofrestru mewn cofrestr sy'n cyfateb i'r hyn a grybwyllir yn amod A a gedwir o dan gyfraith yr Alban neu Ogledd Iwerddon.

Ystyr "elusen": yr amod rheoli

2D (1) Mae corff o bersonau neu ymddiriedolaeth yn bodloni'r amod rheoli os yw ei reolwyr neu ei rheolwyr yn bersonau addas a phriodol i fod yn rheolwyr y corff neu'r ymddiriedolaeth.

(2) Yn y paragraff hwn ystyr "reolwyr", mewn perthynas â chorff o bersonau neu ymddiriedolaeth, yw'r personau sydd â rheolaeth gyffredinol dros weinyddiaeth y corff neu'r ymddiriedolaeth, ac sy'n rheoli gweinyddiaeth y corff neu'r ymddiriedolaeth yn gyffredinol.

(3) Mae is-baragraff (4) yn gymwys mewn perthynas ag unrhyw gyfnod nad yw'r amod rheoli yn cael ei fodloni ar ei hyd.

(4) Mae'r amod rheoli yn cael ei drin fel pe bai wedi ei fodloni os yw ACC yn ystyried—

- (a) nad yw'r methiant i fodloni'r amod wedi niweidio dibenion elusennol y corff neu'r ymddiriedolaeth, neu
- (b) ei bod yn deg ac yn rhesymol o dan yr holl amgylchiadau i'r amod gael ei drin fel pe bai wedi ei fodloni ar hyd y cyfnod."

(5) Mae'r diwygiadau a wneir gan y rheoliad hwn yn cael effaith mewn perthynas â thrafodiadau tir y mae eu dyddiad cael effaith ar y diwrnod ymadael neu ar ôl hynny.

(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.

RHAN 4

Cynlluniau contractiol awdurdodedig cyfberchnogaeth

Disgrifiad o gynllun contractiol awdurdodedig cyfberchnogaeth o dan adran 36(8) o DTTT

4.—(1) Mae cynllun contractiol awdurdodedig cyfberchnogaeth o'r disgrifiad ym mharagraff (2) i'w drin fel pe na bai'n gynllun contractiol awdurdodedig cyfberchnogaeth at ddibenion DTTT a DCRhT fel y mae'n gymwys mewn perthynas â threth trafodiadau tir.

(2) Y disgrifiad yw bod y cynllun—

- (a) wedi ei gyfansoddi o dan gyfraith Gwladwriaeth AEE drwy gcontract,
- (b) wedi ei reoli gan gorff corfforaethol a ymgorfforir o dan gyfraith Gwladwriaeth AEE, ac
- (c) wedi ei awdurdodi o dan gyfraith y Wladwriaeth AEE a grybwyllir yn is-baragraff (a) mewn ffordd sy'n golygu ei fod, o dan y gyfraith honno, yn cyfateb i gynllun contractiol awdurdodedig cyfberchnogaeth a ddiffinnir yn adran 36(7) o DTTT.

(3) Mae'r rheoliad hwn yn cael effaith mewn perthynas ag unrhyw drafodiad tir y mae ei ddyddiad cael effaith ar y diwrnod ymadael neu ar ôl hynny.

RHAN 5

Diwygio DCRhT

Diwygio DCRhT yn deillio o ymadawiad y Deyrnas Unedig â'r Undeb Ewropeaidd

5.—(1) Mae DCRhT wedi ei diwygio fel a ganlyn.

(2) Yn adran 4 (anhymhwyso rhag penodiad fel aelod anweithredol), hepgorer paragraff (c).

(3) Yn adran 65(4)(a) (cyfoethogi anghyfiawn: darpariaeth bellach), yn lle “ddeddfwriaeth yr UE” rhodder “ddeddfwriaeth uniongyrchol yr UE a ddargedwir”.

(4) Yn adran 67(11) (achosion pan na fo angen i ACC roi effaith i hawliad)—

- (a) hepgorer y geiriau o “os yw'r dreth ddatganoledig” hyd at “yn groes i”;
- (b) ym mharagraff (a), yn lle “y darpariaethau” rhodder “os yw'r dreth ddatganoledig a godir, yn yr amgylchiadau o dan sylw, yn groes i'r darpariaethau”;
- (c) ar ôl paragraff (a), yn lle “neu” rhodder “a”;

PART 4

Co-ownership authorised contractual schemes

Description of co-ownership authorised contractual scheme under section 36(8) of LTTA

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 LTTA 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 LTTA.

(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) yn lle paragraff (b) rhodder—

“(b) os yw’r hawliau a roddir gan y darpariaethau hynny, ar yr adeg y codir y dreth, yn cael eu cydnabod ac ar gael mewn cyfraith ddomestig yn rhinwedd Deddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) neu unrhyw ddarpariaeth a wneir o dan y Ddeddf honno.”

RHAN 6

Diwygiadau canlyniadol

Diwygiadau canlyniadol

6.—(1) Yn adran 85(3) o DCRhT (ystyr “rhedeg busnes”), yn lle “Ran 1 o Atodlen 6 i Ddeddf Cyllid 2010 (p. 13)” rhodder “baragraff 2A o Atodlen 18 i DTTT”.

(2) Yn adran 36 o DTTT (cynlluniau contractiol awdurdodedig cyfberchnogaeth)—

(a) hepgorer is-adran (6);

(b) yn is-adran (12), yn y diffiniad o “gweithredwr”—

(i) hepgorer yr “, a” ar ôl paragraff (a);

(ii) hepgorer paragraff (b) (ac mae gweddill y testun yn peidio â bod yn baragraff (a)).

(3) Mae’r diwygiadau a wneir gan y rheoliad hwn yn cael effaith mewn perthynas â thrafodiadau tir y mae eu dyddiad cael effaith ar y diwrnod ymadael neu ar ôl hynny.

(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 LTTA”.

(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.

Rebecca Evans

Y Gweinidog Cyllid a’r Trefnydd, un o Weinidogion
Cymru
2 Ebrill 2019

Minister for Finance and Trefnydd, one of the Welsh
Ministers
2 April 2019

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