

TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Tax Returns, Enquiries and Assessments

Section 37 – Overview

43. This section provides an overview of the Part that relates to the assessment of devolved taxes, namely, taxpayers' duties, tax returns, WRA enquiries into tax returns, determinations and assessments of tax by the WRA and claims for tax relief and, repayments and the procedure for making them.

Sections 38-39 – Taxpayer duties to keep and preserve records

44. **Section 38** places a duty on a person who is required to make a devolved tax return, to keep and preserve records that are needed to complete that return. It sets out the types of records to be kept and the time period for which records need to be preserved whilst permitting the WRA to specify an earlier date. Provision is also made for the Welsh Ministers to make regulations to prescribe records and supporting documents that must be kept and preserved.
45. **Section 39** sets out how the duty on taxpayers to keep and preserve records can be satisfied, making it clear that they might be preserved in any form and by any means, although this is subject to any conditions or exceptions set out in regulations.

Sections 40-42 – Tax returns

46. **Section 40** gives the definition of “the filing date” as being the date by which a tax return for a devolved tax is due. Legislation about the particular devolved taxes will make provision about what that date is in particular circumstances. Section 41 provides for a person who has made a tax return to be able to amend it and sets out how and when this can be done. A person making an amendment must do so within 12 months of the filing date or by any other date that Welsh Ministers have prescribed by regulations. An amendment cannot be made in the circumstances where a notice to amend a tax return has been issued by the WRA during an enquiry into the tax return (section 45(3)) or a closure notice has been issued following the completion of an enquiry (section 50).
47. **Section 42** permits the WRA to correct a tax return that has obvious errors or omissions by giving notice to the taxpayer. An obvious error might be something like an arithmetical mistake where the figures used for the calculation are nevertheless correct. A correction must be made by WRA within 9 months from the date the tax return was made. The taxpayer may reject the correction by amending the tax return or by giving notice rejecting the correction, provided it is done within 3 months of the WRA notice of correction.

Sections 43-45 – Notice and scope of enquiry and amendment of tax return during enquiry

48. **Section 43** provides for the WRA to enquire into a tax return, provided that notice of the intention to carry out an enquiry is given to the person who made the return. Only one enquiry may be made in relation to any particular tax return (except where the return is amended by the taxpayer, in which case another enquiry could take place into that amendment or matters affected by it). Section 44 sets out the scope and limitations of a WRA enquiry into a tax return.
49. **Section 45** provides for the amendment of a tax return by the WRA during an enquiry where it is of the opinion that the amount of devolved tax stated as being payable in the tax return is insufficient and that without immediate amendment there is likely to be a loss of devolved tax. Where an enquiry is made into an amended tax return, it limits the WRA's power to amend the tax return to matters which have been amended by the taxpayer or affected by the amendment. The period in which an enquiry into a tax return is in progress is defined for the purposes of sections 45 and 46. Any amount of devolved tax that is payable following the amendment must be paid within 30 days of the date of a notice of amendment being issued by the WRA.

Sections 46-49 – Referral to tribunal during enquiry

50. **Section 46** provides for the referral to the tribunal (as defined by section 192) for determination of any questions concerning the tax return during an enquiry. It requires notice of the referral be given jointly by the relevant person and the WRA. Tribunal rules will make provision about the procedure to be followed in a referral. Section 47 enables either party to withdraw a notice of referral made under the previous section.
51. **Section 48** sets out the effect of a referral under section 46 on an enquiry. It provides that a closure notice under section 50 or an application for a direction to issue a closure notice under section 51 cannot be made while proceedings under section 46 are in progress and provides a definition of what "in progress" means in this context.
52. **Section 49** provides that the determination of a question made by the tribunal under section 46 is binding on the parties and cannot be reopened if the result of the enquiry is appealed (unless it is a matter that the tribunal would allow to be reopened had it made a preliminary decision about it in a normal appeal). It requires the WRA to take the determination into account when reaching conclusions on the enquiry and making any amendments to the tax return.

Sections 50-51 – Completion of enquiry

53. **Section 50** provides for the completion of an enquiry. The WRA is required to issue a closure notice to the person who made the tax return on completion of an enquiry. A closure notice must state whether or not an amendment is required and must make any amendment necessary. Any tax payable as a result of an amendment made by the closure notice must be paid within 30 days of the notice being issued.
54. **Section 51** provides for the person who made the return to seek from the tribunal a direction that the WRA should issue a closure notice. The tribunal must give a direction unless it is satisfied the WRA has reasonable grounds for this not to happen. Tribunal rules will set out the procedure for an application of this kind.

Sections 52-53 – WRA determinations

55. **Section 52** provides for the WRA to determine the amount of devolved tax that is chargeable in circumstances where it believes a person is chargeable for devolved tax and that person has not filed a tax return by the required date. Notice of the determination must be given to the person believed to be liable for the devolved tax. Payment must be made by the person within 30 days of the notice being issued. A

determination cannot be made more than four years after the date on which a tax return should have been filed with the WRA.

56. [Section 53](#) provides that where a person makes a self-assessed tax return after the WRA has made a determination the tax return will supersede the WRA's determination. The provision does not apply when a person makes a tax return more than four years after the power to make the determination was first exercisable by the WRA, or more than 12 months after the date on which the determination was issued, whichever is the later. In instances where proceedings have commenced for the recovery of tax following a WRA determination, and during those proceedings the WRA receives a tax return that supersedes its determination, the proceedings may continue as if they were for the recovery of so much of the self-assessed tax which remains due and not yet paid. This is to ensure that WRA does not need to stop those proceedings and start again merely because a late tax return has been made.

Sections 54-61 – WRA assessments

57. [Section 54](#) allows the WRA to make an assessment of devolved tax chargeable where it is of the opinion there is a need to make good a loss of tax where an amount that should have been assessed has not been, an amount assessed is less than it should have been, or relief that has been given is or has become excessive.
58. [Section 55](#) provides for an assessment to be made by the WRA to recover an excessive repayment of tax, including any interest that may have been paid.
59. [Sections 56 and 57](#) provides that references to “WRA Assessment” are to mean assessments made under sections 54 or 55 and references to the taxpayer under sections 58 to 61 are to mean the person chargeable to the devolved tax and, in relation to an assessment to recover excessive repayment of tax, mean the person to whom the excessive repayment of tax was made.
60. [Section 58](#) limits the circumstances in which a WRA assessment can be made to two types of situation. Firstly, those situations which arise because of careless or deliberate behaviour by the taxpayer (defined at section 60), a person acting on behalf of the taxpayer or a person who was in a partnership (defined at section 192) with the taxpayer at the relevant time. Secondly, an assessment can be made in circumstances where the WRA is not entitled to conduct an enquiry into a tax return (generally because the time limit for doing so has expired) or WRA did conduct an enquiry and at the time the enquiry ended (or WRA's right to conduct one expired) it would not have been reasonable to expect WRA to have known the information that they now consider might lead to a loss of tax or excessive repayment of tax within the enquiry window. Subsection (4) prohibits the WRA making an assessment under these provisions if the situation was attributable to a mistake in the calculation of the tax liability that was in accordance with generally prevailing practice at the time the return was made.
61. [Section 59](#) provides the time limits for the WRA assessments. The general time limit is 4 years after the filing date or, if later, after the date the tax return was made. This time limit is extended to 6 years where the loss of tax is attributable to carelessness by the taxpayer or a related person, or 20 years where the loss of tax has been brought about deliberately by the taxpayer or a related person. A WRA assessment to recover excessive repayment of tax is not late if it is made within 12 months of that repayment (even in cases where it would otherwise have been outside the 4, 6 or 20 year time limit). If a taxpayer has died, a WRA assessment must be made on a taxpayer's personal representatives within four years of death and only if the relevant date was no earlier than six years before the death. The section also makes it clear that any objection to a WRA assessment on the basis of the time limits has to be done by way of review or appeal against the assessment under Part 8.
62. [Section 61](#) requires the WRA to issue a notice of an assessment to the taxpayer. The taxpayer is required to pay the amount assessed within 30 days of the issue of the notice.

Sections 62-67 – Relief in case of excessive assessment or overpaid tax

63. **Section 62** provides that a taxpayer can make a claim to the WRA for relief if they believe they have been assessed more than once for the same matter.
64. **Section 63** provides that a taxpayer may make a claim to the WRA for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax liability to be discharged (i.e. they will not have to pay).
65. **Section 64** provides that the WRA may reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. The circumstances when this might happen could include where a person making payment of the devolved tax was not the person who ultimately bore the cost of the tax. For example, in the case of landfill tax the tax is paid by the landfill site operator, yet the cost is generally borne by those charged for depositing waste at the landfill site.
66. **Section 65** provides for circumstances where devolved tax is to be repaid or discharged where the payment was originally made by a person other than the taxpayer or that other person ultimately bore the cost of the tax payment (e.g. as a customer of the taxpayer who had the cost of the tax liability passed on to them as part of the cost of goods or services they paid the taxpayer for). Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched except to the extent that the taxpayer is able to show that the taxpayer actually incurred a quantifiable amount of loss or damage for those mistaken assumptions which could be compensated for.
67. **Section 66** provides that for the purposes of WRA determining whether a repayment or discharge of an amount would unjustly enrich a claimant (this being the basis for rejecting a claim pursuant to section 64), regulations can be made that provide for reimbursement arrangements to be put in place. The arrangements that these regulations would put in place would be designed to prevent the taxpayer from being unjustly enriched and a claim for relief would not be allowed if those regulations were not complied with.
68. **Section 67** provides a list of situations (other than unjust enrichment) in which the WRA does not need to give effect to a claim for relief under section 63.

Sections 68-73 – Procedure for making claims, keeping and preserving records and amending and correcting claims

69. **Section 68** requires a person wishing to make a claim for relief in circumstances of double assessment (section 62) or for overpaid tax (section 63) to do so in the manner determined by the WRA. A claim must provide a declaration by the claimant that the details provided are correctly stated. The WRA may also require details of the amount of devolved tax to be discharged or repaid and supporting information to determine the correctness of the claim. A claim under section 63 may not be made by being included in a tax return.
70. **Section 69** requires a person making a claim to keep all necessary and relevant records to support the claim and to preserve records in accordance with the time periods specified. The Welsh Ministers may make regulations to determine which records and supporting documents need to be kept and preserved. Sub-section (5) defines supporting documents. Section 70 establishes how the duty placed on a taxpayer to preserve information may be satisfied. Section 71 provides for a person making a claim to amend it provided that it is done by notice and within the stated time period.
71. **Section 72** allows the WRA to amend a claim to correct any obvious mistakes or omissions. The WRA must tell the claimant in writing if it makes an amendment to correct a mistake in a claim and the claimant can reject the amendment by the WRA

if they give notice to the WRA. Details of time limits are set out in the provisions. Section 73 requires the WRA to give effect to a claim as soon as practicable after it has been made.

Section 74 – 77 WRA enquiry into a claim

72. Section 74 provides for the WRA to enquire into a claim or an amendment to a claim, provided that it does so within 12 months of the claim being made and that it informs the claimant of its intention to do so. A claim can only be the subject of one notice of enquiry.
73. A Section 75 closure notice is issued by the WRA to complete an enquiry and informs the claimant of the WRA's conclusions and amends the claim if required. Under section 76 a claimant can ask the tribunal to direct the WRA to give a closure notice within a specified time scale. In this situation, the tribunal must direct the WRA to issue the closure notice within a specific time unless it is satisfied by the WRA that there are reasonable grounds for not doing so. Section 77 requires the WRA to act on the conclusions of the closure notice within 30 days.

Section 78 – Time limit for making claims

74. This section provides that claims for relief from double assessment or overpayment of tax made under section 62 or 63 must be made within 4 years of the date the tax return was required and must be made separately from any tax return made to the WRA (if a return is yet to be made anything that could be included in a claim can be done in a tax return anyway).

Section 79 – The claimant: partnerships

75. This section provides that where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax had the assessment or determination been correct.

Section 80 – Assessment of claimant in connection with claim

76. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for the WRA to make an assessment on the claimant in respect of the tax, then the WRA can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is finally determined (e.g. following the result of a review or appeal).

Section 81 – Contract settlements

77. This section applies to section 63 (Claim for relief for overpaid tax etc.) in circumstances where an amount paid by way of devolved tax has been paid pursuant to a contract settlement and the person who paid WRA is not the person who was the taxpayer liable for that tax. Section 81 sets out the implications on a claim under section 63 of such an arrangement..