

# **TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5 - Penalties**

##### *Sections 134-138 – Potential lost revenue*

162. Some penalties are determined as a percentage of the “potential lost revenue”, which is defined by sections 135 to 138.
163. [Section 135](#) provides the “normal rule” for the calculation of potential lost revenue as the additional amount payable (either to or from WRA) in respect of tax as a result of correcting an inaccuracy or under-assessment.
164. Where a person is liable to a penalty under section 129 for more than one inaccuracy, section 136 provides that if a calculation of potential lost revenue depends on the order in which inaccuracies are corrected then careless inaccuracies are to be corrected before deliberate inaccuracies. In calculating potential lost revenue, account is to be taken of any overstatement in a document given by the same person in the same tax period.
165. When calculating potential lost revenue in respect of a document given by or on behalf of a person, no account will be taken of a potential overpayment by another person except where specifically allowed for in any enactment. The section also provides the meaning of understatement and overstatement.
166. [Section 137](#) provides that where an inaccuracy has the result of a loss being recorded wholly for the purpose of reducing the amount of devolved tax payable then the normal rule for calculating potential lost revenue (provided by section 135) will apply. Subsection (2) provides that where an inaccuracy has the result of a loss being recorded partially for the purpose of reducing the amount of tax payable then potential lost revenue will be calculated: a) with reference to the part of the loss used to reduce the amount of tax payable; and b) 10% of the loss that has not been used to reduce the amount of tax payable. This applies where no loss would have been recorded apart from the inaccuracy and also to where a different loss would have been recorded because of the inaccuracy. Where the nature of the loss, or the person’s circumstances, means there is no reasonable prospect of the loss being used to reduce a tax liability of any person, there will be no penalty.
167. [Section 138](#) provides that where an inaccuracy results in an amount of tax being declared later than it should have been, the potential lost revenue is 5% of the delayed tax for each year of the delay. If the delay is less than one year then the potential lost revenue is a percentage equivalent to 5% per year for each separate period of delay. This section does not apply to cases where the inaccuracy gives rise to a loss wrongly recorded or quantified (see section 137).