These notes refer to the Tax Collection and Management (Wales) Act 2016 (c.6) which received Royal Assent on 25 April 2016

TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 - Reviews and Appeals

Sections 172 –Appealable decisions

199. Section 172 gives a person to whom an appealable decision applies a right to ask WRA to review a decision and a right to make an appeal to the tribunal and sets out which decisions of WRA are to be classed as appealable decisions. Subsection (3) lists those decisions which are carved out of subsection (2) so as to make them non appealable (including, a decision to issue a notice of enquiry (but the conclusions of an enquiry are appealable) and a decision to issue a taxpayer notice, or include a particular requirement in such a notice (which must have the prior approval of the tribunal). Subsection (4) removes the right to request a review of a decision to issue an information notice where the tribunal has already approved it (this avoids WRA being able to change a decision of the tribunal). Subsection (5) limits the grounds on which a review or appeal can be based in relation to information notices so that the grounds of appeal are consistent with the grounds on which such a notice may be issued in the first place. The Welsh Ministers have a regulation making power at subsection (7) to add, vary or remove a decision from either of the lists of appealable or non-appealable decisions in subsections (2) and (3) or to make provision about the grounds on which an appeal or review of a decision may be based.

Sections 173-177 – Reviews

200. Section 173 requires a request for a review to be made by giving notice to WRA. Such a request may not be sought where, in relation to the same decision, there is a WRA enquiry in progress, an appeal has been determined or is outstanding or the person has concluded a settlement agreement with the WRA.

201. Section 174 sets out a 30-day time limit within which a person must give a notice of request and the day on which this period begins will differ, according to which of the circumstances provided for in this section apply. For example, in many cases, a person will be given 30 days from the issue of a notice informing them of a decision, in accordance with subsection (2)(b). The notice of request that is given to WRA must specify the grounds of the review.

202. Section 175 allows for a notice of request to be made after the time stipulated at section 174 if the WRA agrees or if the tribunal gives permission. The tribunal rules will deal with the procedure for requests to the tribunal to permit a late review.

203. Section 176(1) places WRA under a duty to carry out a review of an appealable decision where a notice of request has been made that complies with the preceding review provisions at sections 173-175. Section 176(2) provides that the review may take such

form as appears appropriate to WRA in the circumstances but in deciding what is appropriate, subsection (3) requires WRA to have regard to steps taken before the review by WRA in reaching a decision and any person seeking to resolve disagreement about the decision.

204. When carrying out its review, WRA must take account of any representations made by the person requesting the review to WRA, provided that they are made at a stage that gives WRA a reasonable opportunity to consider them. The review may conclude that the WRA's decision is to be affirmed, varied or cancelled. Section 176(6) requires WRA to issue a notice of the conclusion of its review. This should be done within 45 days from the receipt of a person's notice of request unless a different time period is agreed between the parties. Subsection (7) provides that if WRA does not issue a notice of its conclusions within the time required by subsection (6), the review is deemed to have concluded that WRA's decision is upheld and WRA must issue a notice to that effect.

205. Section 177 provides for the conclusion of the review to be treated as if it was a tribunal determination (save that there will be no further right of review or appeal). This will not however be the effect of the conclusions of a review if a tribunal determination is subsequently made in relation to the decision, or if the WRA and the person who requested the review enter into a settlement agreement in relation to that decision.

Sections 178-181 – Appeals

206. Section 178(1) provides that an appeal against an appealable decision of WRA must be made to the tribunal, as defined at section 173. An appeal cannot be made if, in relation to the same decision, a WRA enquiry is in progress, a review has been requested and has not yet been concluded or the person seeking an appeal has concluded a settlement agreement with the WRA.

207. Section 179 sets out the time within which an appeal can be made, which is 30 days from a specified point in time, which differs depending on which of the circumstances set out in this section apply. For example, under subsection (3), where there has been a review of the decision by WRA, an appellant has 30 days beginning with the date on which the notice of conclusions (or deemed conclusions) is issued by WRA to the appellant in accordance with section 177(5).

208. Section 180 provides for a late appeal to be made after the relevant period has elapsed if the tribunal gives permission. The tribunal rules will deal with the procedure for requests to the tribunal to permit a late appeal. Where an appeal is made, section 181 requires the tribunal to affirm, vary or cancel the WRA decision that is the subject of the appeal.

Section 182-183 – Consequences of reviews and appeals

209. Section 182 sets out how the payment of penalties to which a person may be liable is treated during a review or an appeal. In essence, the effect of this provision is that the requirement to pay a penalty under section 154 will be suspended until 30 days after the conclusion of a review or final determination of an appeal. However, this suspension does not apply to any amount of penalty that is not in dispute.

210. The effect of section 183 is to suspend the requirement to comply with an information notice or a requirement in such a notice while a review or appeal of the relevant decision is taking place and to empower WRA or the tribunal to then specify a period for compliance if the outcome of a review or appeal is to affirm or vary a decision to issue an information notice or a requirement in it.

Section 184 – Settling disputes by agreement

211. Section 184 provides for how matters can be settled by agreement between the person to whom an appealable decision applies and the WRA. Subsection (1) defines what is meant by a "settlement agreement". Subsection (2) provides that the consequences of a settlement agreement are to be the same as if the tribunal had determined the outcome of an appeal (save to the extent specified at subsection (3)), unless the person notifies the WRA within 30 days that they wish to withdraw from the agreement. In order for a settlement agreement that was not concluded in writing to attract the consequences set out at subsection (2), subsection (5) provides that it needs to be confirmed in writing by the WRA to the person. It is possible for WRA and a person to whom an appealable decision applies to enter into a settlement agreement at any time save for when an appeal against the decision has been finally determined.