



# Tax Collection and Management (Wales) Act 2016

2016 anaw 6

## PART 3

### TAX RETURNS, ENQUIRIES AND ASSESSMENTS

#### CHAPTER 7

#### RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

##### *Double assessment*

#### **62 Claim for relief in case of double assessment**

A person who believes that a devolved tax has been assessed on that person more than once in respect of the same matter may make a claim to WRA for relief against any double charge.

##### *Overpaid tax etc.*

#### **63 Claim for relief for overpaid tax etc.**

(1) This section applies where—

- (a) a person has paid an amount by way of a devolved tax but believes the devolved tax was not chargeable, or
- (b) a person has been assessed as chargeable to an amount of a devolved tax, or a determination has been made that a person is chargeable to an amount of a devolved tax, but the person believes the devolved tax is not chargeable.

(2) The person may make a claim to WRA for the amount to be repaid or discharged.

- (3) Where this section applies, WRA is not liable to give relief except as provided in this Part or by or under any other provision of this Act.
- (4) For the purposes of this section and sections 64 to 81, an amount paid by one person on behalf of another is treated as paid by the other person.

*Unjustified enrichment*

**64 Disallowing claims for relief under section 63 due to unjustified enrichment**

WRA need not give effect to a claim for relief made under section 63 if, or to the extent that, repayment or discharge of the amount would unjustly enrich the claimant.

**65 Unjustified enrichment: further provision**

- (1) This section applies where—
  - (a) there is an amount paid by way of a devolved tax which (apart from section 64) would fall to be repaid or discharged to any person (“the taxpayer”), and
  - (b) the whole or a part of the cost of the payment of that amount to WRA has, for practical purposes, been borne by a person other than the taxpayer.
- (2) Where, in a case to which this section applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any provisions relating to a devolved tax, that loss or damage is to be disregarded, except to the extent of the quantified amount, in the making of any determination—
  - (a) of whether or to what extent the repayment or discharge of an amount to the taxpayer would enrich the taxpayer, or
  - (b) of whether or to what extent any enrichment of the taxpayer would be unjust.
- (3) In subsection (2) “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted to the taxpayer from the making of the mistaken assumptions.
- (4) The reference in subsection (2) to provisions relating to a devolved tax is a reference to any provisions of—
  - (a) any enactment or EU legislation (whether or not still in force) which relates to the devolved tax or to any matter connected with it, or
  - (b) any notice published by WRA under or for the purposes of any such enactment.

**66 Unjustified enrichment: reimbursement arrangements**

- (1) The Welsh Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 64 except where the arrangements—
  - (a) contain such provision as may be prescribed by the regulations, and
  - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to WRA.

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- (2) In this section, “reimbursement arrangements” means any arrangements for the purposes of a claim under section 63 which—
- (a) are made by any person for the purpose of securing that the person is not unjustly enriched by the repayment or discharge of any amount in pursuance of the claim, and
  - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to WRA.
- (3) The provision that may be prescribed by regulations under this section to be contained in reimbursement arrangements includes in particular—
- (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
  - (b) provision for the repayment of amounts to WRA where those amounts are not reimbursed in accordance with the arrangements;
  - (c) provision requiring interest paid by WRA on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay WRA;
  - (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to WRA.
- (4) Regulations under this section may impose obligations on persons specified in the regulations—
- (a) to make the repayments to WRA that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c);
  - (b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d).
- (5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to WRA in accordance with the regulations and any such provision may allow for those matters to be determined by WRA in accordance with the regulations.
- (6) Regulations under this section may make provision for penalties where a person breaches an obligation imposed by virtue of subsection (4).
- (7) The regulations may in particular make provision—
- (a) about the circumstances in which liability to a penalty is incurred;
  - (b) about the amounts of penalties;
  - (c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of repayments which the person would have been liable to make to WRA if the obligation had been breached;
  - (d) about the procedure for assessing penalties;
  - (e) about reviews of or appeals against penalties;
  - (f) about enforcing penalties.
- (8) But the regulations may not create criminal offences.

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- (9) Regulations made by virtue of subsection (6) may amend any enactment (including this Act).
- (10) Regulations so made do not apply to a failure beginning before the day on which the regulations come into force.

*Other grounds for disallowing claims*

**67 Cases in which WRA need not give effect to a claim**

- (1) WRA need not give effect to a claim for relief made under section 63 if, or to the extent that, the claim falls within a case described in this section.
- (2) Case 1 is where the amount of a devolved tax paid, or liable to be paid, is excessive because of—
  - (a) a mistake in a claim, or
  - (b) a mistake consisting of making, or failing to make, a claim.
- (3) Case 2 is where the claimant is or will be able to seek relief by taking other steps under this Part.
- (4) Case 3 is where the claimant—
  - (a) could have sought relief by taking such steps within a period that has now expired, and
  - (b) knew or ought reasonably to have known, before the end of that period, that such relief was available.
- (5) Case 4 is where the claim is made on grounds that—
  - (a) have been put to the tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
  - (b) have been put to WRA in the course of a review by the claimant relating to the amount paid or liable to be paid that is treated as having been determined by the tribunal by virtue of section 184.
- (6) Case 5 is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
  - (a) the day on which a relevant appeal in the course of which the ground could have been put forward was determined by the tribunal (or is treated as having been so determined);
  - (b) the day on which the claimant withdrew a relevant appeal to the tribunal;
  - (c) the end of the period in which the claimant was entitled to make a relevant appeal to the tribunal.
- (7) In subsection (6), “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.
- (8) Case 6 is where the amount in question was paid or is liable to be paid—
  - (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by WRA, or
  - (b) in accordance with an agreement between the claimant and WRA settling such proceedings.
- (9) Case 7 is where—

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- (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to devolved tax, and
  - (b) the mistake occurred because liability was calculated in accordance with the practice generally prevailing at the time.
- (10) Case 7 does not apply where the amount paid, or liable to be paid, is devolved tax which has been charged contrary to EU law.
- (11) For the purposes of subsection (10), an amount of devolved tax is charged contrary to EU law if, in the circumstances in question, the charge to devolved tax is contrary to—
- (a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or
  - (b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).