

SCHEDULE

AMENDMENTS TO PRIMARY LEGISLATION: TAX CREDITS

PART 2

AMENDMENTS TO THE TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

8. TCMA is amended as follows.

9. In section 37 of TCMA (overview of Part 3), in paragraph (e), for “where there is no enquiry” substitute “and of amounts payable in respect of tax credits”.

10. In section 44 of TCMA (scope of enquiry), in subsection (1)—

(a) omit the “or” after paragraph (a);

(b) after paragraph (b) insert—

“(c) to the question whether the person who made the tax return is entitled to a tax credit claimed in the tax return, or

(d) to the amount of tax credit to which the person is entitled.”

11.—(1) Section 45 of TCMA(1) (amendment of tax return during enquiry to prevent loss of tax) is amended as follows.

(2) After subsection (1) insert—

“(1A) If, during the period when an enquiry into a tax return is in progress, WRA forms the opinion—

(a) that the amount of tax credit claimed in the tax return is excessive, and

(b) that, unless the return is immediately amended, there is likely to be a loss of devolved tax,

WRA may by notice issued to the person who made the return amend it so that the amount claimed is no longer excessive.”

(3) In subsection (2)—

(a) the words from “subsection (1) applies” to the end become paragraph (a);

(b) at the end of that paragraph insert

“, and

(b) subsection (1A) applies only so far as the excessive amount is attributable to the amendment.”

(4) In subsection (3), after “subsection (1)” insert “or (1A)”.

12. After section 55 of TCMA insert—

“Assessment in relation to tax credit

55A. If WRA comes to the view that—

(a) an amount of tax credit that has been set off against an amount of tax that a person would otherwise have been required to pay—

(1) Section 45 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), Schedule 23, paragraph 13.

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- (i) ought not to have been set off, or
- (ii) has become excessive,
- (b) an amount that has been paid to a person in respect of a tax credit—
 - (i) ought not to have been paid, or
 - (ii) has become excessive, or
- (c) an amount that a person is required to pay to WRA in respect of a tax credit has not been paid,

WRA may make an assessment of the amount that ought in its opinion to be paid to WRA in order to remedy that matter.”

13. In section 56 of TCMA (references to “WRA assessment”), for “or 55” substitute “, 55 or 55A”.

14. In section 57 of TCMA (references to the “taxpayer”), in paragraph (b), after “section 55” insert “or 55A”.

15.—(1) Section 58 of TCMA⁽²⁾ (conditions for making WRA assessments) is amended as follows.

(2) In subsection (1), in paragraph (a)—

- (a) for “three” substitute “four”;
- (b) for “and (3A)” substitute “, (3A) and (3B)”.

(3) After subsection (3A) insert—

“(3B) The fourth case is where WRA has come to the view that a situation described in section 55A has arisen.”

16.—(1) Section 59 of TCMA⁽³⁾ (time limits for WRA assessments) is amended as follows.

(2) In subsection (1), after “relevant date” insert “in any case involving a situation mentioned in section 54, 55 or 55A(a) or (b)”.

(3) In subsection (2), for “or 55” substitute “, 55 or 55A(a) or (b)”.

(4) In subsection (3), for “or 55” substitute “, 55 or 55A(a) or (b)”.

(5) After subsection (4) insert—

“(4A) No WRA assessment may be made in a case involving a situation mentioned in section 55A(c)—

- (a) if WRA has issued a notice to the taxpayer requiring payment of the amount in question, after the period of 12 months beginning with the day after that by which the payment was required, and
- (b) otherwise, after the period of 12 months beginning with the day on which WRA became aware that the taxpayer was required to pay the amount in question.”

(6) In subsection (7)—

- (a) in the opening words of the definition of “relevant date”, after “(*“dyddiad perthnasol”*)” insert “, in relation to a WRA assessment in a case involving a situation mentioned in section 54 or 55,”;

(b) at the end insert—

(2) Section 58 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 18.

(3) Section 59 was amended by LTTA, Schedule 23, paragraph 19.

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““relevant date” (“*dyddiad perthnasol*”), in relation to a WRA assessment in a case involving a situation mentioned in section 55A(a) or (b), means—

- (a) where the tax credit in question was claimed in a tax return made on or before the filing date, the filing date;
- (b) where the tax credit in question was claimed in a tax return made after the filing date, the day on which the tax return was made;
- (c) where the tax credit in question was claimed by any other means, the day on which the claim was made.”

17. In section 81D of TCMA(4) (definitions relating to the general anti-avoidance rule), in the definition of “tax advantage”—

- (a) omit the “and” after paragraph (d);
- (b) at the end of paragraph (e) insert
“, and
- (f) tax credit or increased tax credit.”

18.—(1) Section 84 of TCMA (meaning of “tax position”) is amended as follows

(2) In subsection (1), in paragraph (b)—

- (a) after “penalties”, in the first place it occurs, insert “tax credits”;
- (b) after “penalties”, in the second place it occurs, insert “and amounts payable in respect of tax credits”.

(3) In paragraph (c) of that subsection, after “devolved tax” insert “or any amount in respect of a tax credit”.

19. After section 84 of TCMA insert—

“Meaning of “prejudice to the assessment or collection of devolved tax”

84A. In this Part, references to prejudice to the assessment or collection of devolved tax include prejudice to the assessment or collection of any amount payable in respect of a tax credit.”

20. In section 93 (power to obtain contact details for debtors), in subsection (2)—

- (a) omit the “or” after paragraph (c);
- (b) after paragraph (d) insert—
 - “(e) a payment in respect of a tax credit, or
 - (f) interest on a payment in respect of a tax credit,”.

21. In section 100 of TCMA (taxpayer notices following a tax return), in subsection (5)—

- (a) omit the “or” after paragraph (b);
- (b) after paragraph (c) insert—
 - “(d) an amount of tax credit to which the person is not entitled may have been claimed, or
 - (e) a claim for tax credit may be or have become excessive.”

22. In section 117 of TCMA (overview of Part 5), in subsection (1), in paragraph (a), after “devolved tax” insert “or amounts payable in respect of tax credits”.

(4) Section 81D was inserted by section 66 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

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23. In the heading to Chapter 2 of Part 5 of TCMA (penalties for failure to make returns or pay tax), at the end insert “OR AMOUNTS PAYABLE IN RESPECT OF TAX CREDITS”.

24. In section 122 of TCMA(5) (penalty for failure to pay tax on time), in Table A1, in item 2 in column 3, for “stated in” substitute “payable as a result of”.

25. After section 122A of TCMA(6) insert—

“Penalty for failure to pay amount payable in respect of tax credit

Penalty for failure to pay amount payable in respect of tax credit on time

123A.—(1) This section applies where a person is required to pay an amount as a result of a WRA assessment made under section 55A.

(2) The person is liable to a penalty if he or she fails to pay the amount on or before the penalty date.

(3) The penalty date is the day falling 30 days after the day by which the amount was required to be paid.

(4) The penalty is 5% of the amount payable as a result of the WRA assessment.”

26.—(1) Section 126 of TCMA(7) (reasonable excuse for failure to make tax return or pay tax) is amended as follows.

(2) After subsection (2) insert—

“(2A) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to pay an amount payable in respect of a tax credit, the person is not liable to a penalty under section 123A in relation to the failure.”

(3) In subsection (3), in the words before paragraph (a), for “and (2)” substitute “, (2) and (2A)”.

(4) In the section heading, at the end insert “or amount payable in respect of tax credit”.

27.—(1) Section 127 of TCMA(8) (assessment of penalties under Chapter 2) is amended as follows.

(2) In subsection (1), in paragraph (c), for “or transaction” substitute “, transaction or amount”.

(3) After subsection (6) insert—

“(6A) A supplementary assessment may be made in respect of a penalty under section 123A if an earlier assessment operated by reference to an underestimate of the amount payable in respect of the tax credit in question.

(6B) If an assessment in respect of a penalty under section 123A is based on an amount that is found by WRA to be excessive, WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.”

(4) In subsection (7), for “or (6)” substitute “, (6) or (6B)”.

(5) Section 122 was substituted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 42.

(6) Section 122A was inserted LTTA, Schedule 23, paragraph 42 and section 123 was repealed by LTTA, Schedule 23, paragraph 43.

(7) Section 126 was amended by LTTA, Schedule 23, paragraph 45, and by LDTA, Schedule 4, paragraph 13.

(8) Section 127 was amended by the Land Transaction and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 46, and by LDTA, Schedule 4, paragraph 14.

28.—(1) Section 128 of TCMA⁽⁹⁾ (time limit for assessment of penalties under Chapter 2) is amended as follows.

(2) In subsection (2)—

(a) omit the “or” after paragraph (a);

(b) at the end of paragraph (b) insert

“, or

(c) in the case of a failure to pay an amount payable in respect of a tax credit, the penalty date.”

(3) In subsection (3), after paragraph (b) insert—

“(c) in the case of a failure to pay an amount payable in respect of a tax credit, the end of the appeal period for the assessment of the amount in respect of which the penalty is assessed.”

(4) After subsection (4) insert—

“(4A) In subsection (2)(c), “penalty date” has the meaning given by section 123A(3).”

(5) In subsection (5) omit “(a) and (b)”.

29. In section 129 of TCMA (penalty for inaccuracy in document given to WRA), in subsection (2)—

(a) omit the “or” after paragraph (b);

(b) at the end of paragraph (c) insert

“, or

(d) a false or inflated claim for a tax credit.”

30. In section 132 of TCMA⁽¹⁰⁾ (penalty for deliberate inaccuracy in document given to WRA by another person), in subsection (2)—

(a) omit the “or” after paragraph (b);

(b) at the end of paragraph (c) insert

“, or

(d) a false or inflated claim for a tax credit.”

31. In section 133 of TCMA⁽¹¹⁾ (penalty for failure to notify under-assessment or under-determination), after subsection (1) insert—

“(1A) A person is also liable to a penalty where—

(a) a WRA assessment under section 55A understates the amount that the person is required to pay to WRA, and

(b) the person has failed to take reasonable steps to notify WRA, within the period of 30 days beginning with the day on which the notice of assessment is issued, that it is an under-assessment.”

32.—(1) Section 135 of TCMA (potential lost revenue: normal rule) is amended as follows.

(2) In subsection (1), after “devolved tax” insert “or tax credit”.

(3) In subsection (2)—

⁽⁹⁾ Section 128 was amended by LTTA, Schedule 23, paragraph 47.

⁽¹⁰⁾ Section 132 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 49.

⁽¹¹⁾ Section 133 was amended by LTTA, Schedule 23, paragraph 50.

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- (a) omit the “and” after paragraph (a);
 - (b) at the end of paragraph (b) insert
“and
 - (c) an amount which WRA would have been required to set off against a person’s liability to tax, or to pay to a person, had the inaccuracy or under-assessment not been corrected.”
- 33.** In section 136 of TCMA (potential lost revenue: multiple errors), in subsection (2)—
- (a) for “or transaction”, in the first place it occurs, insert “, transaction or claim for tax credit”;
 - (b) for “or transaction, in the second place it occurs, insert “, transaction or claim for tax credit”.
- 34.** In section 139 of TCMA (reduction in penalty under Chapter 3 for disclosure), in subsection (2) —
- (a) omit the “or” after paragraph (b);
 - (b) after paragraph (c) insert—
 - “(d) an inaccuracy which is relevant to a person’s entitlement to a tax credit or liability to pay an amount in respect of a tax credit,
 - (e) a supply of false information, or withholding of information, which is relevant to a person’s entitlement to a tax credit or liability to pay an amount in respect of a tax credit, or
 - (f) a failure to disclose an under-assessment in respect of a person’s liability to pay an amount in respect of a tax credit.”
- 35.** In section 141 of TCMA(12) (assessment of penalties under Chapter 3), in subsection (1), in paragraph (c), for “or transaction” substitute “, transaction or claim for tax credit”.
- 36.**—(1) Section 151 of TCMA (tax-related penalty for failure to comply with information notice or obstruction) is amended as follows.
- (2) In subsection (1), in paragraph (c)—
 - (a) the words from “the amount of devolved tax” to “is likely to pay,” become sub-paragraph (i);
 - (b) at the end of that sub-paragraph insert
“or
 - (ii) the amount that the person has paid, or is likely to pay in respect of a tax credit,”.
 - (3) In subsection (3)—
 - (a) the words “the amount of devolved tax” become sub-paragraph (i);
 - (b) at the end of that sub-paragraph insert
“, or
 - (ii) the amount in respect of a tax credit,”.
- 37.** After section 157A of TCMA(13) insert—

(12) Section 141 was amended by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 51.

(13) Section 157A was inserted by LTTA, Schedule 23, paragraph 58.

“Late payment interest on amounts payable in respect of tax credit

157B.—(1) This section applies to an amount payable in respect of a tax credit.

(2) If the amount is not paid on or before the date by which it is required to be paid, the amount carries interest (referred to in this Part as “late payment interest”) at the late payment interest rate for the period—

- (a) beginning with the late payment interest start date, and
- (b) ending with the date of payment.

(3) Where the amount is payable as a result of a WRA assessment in a case involving a situation mentioned in section 55A(a) or (b), the late payment interest start date is—

- (a) if the tax credit in question was claimed in a tax return, the day after the filing date for the tax return;
- (b) if the tax credit in question was claimed by any other means, the day after that on which an amount equal to the amount was paid to a person in respect of the claim.

(4) Where the amount is payable as a result of a WRA assessment in a case involving a situation mentioned in section 55A(c), the late payment interest start date is the day after that by which the amount was required to be paid.

(5) But where section 160 applies, the late payment interest start date for the purposes of this section is the date specified in that section.”

38. In section 158 of TCMA(**14**) (late payment interest: supplementary, in subsection (1), for “and 157A” substitute “, 157A and 157B”.

39. In section 160 of TCMA (late payment interest start date: death of taxpayer), in subsection (1), in paragraph (a), for “chargeable to an amount of devolved tax or penalty relating to devolved tax” substitute

“who is—

- (i) chargeable to an amount of devolved tax or penalty relating to devolved tax, or
- (ii) required to pay an amount in respect of a tax credit,”.

40.—(1) Section 161 of TCMA (repayment interest on amounts payable by WRA) is amended as follows.

(2) In subsection (2)—

- (a) omit the “or” after paragraph (a);
- (b) at the end of paragraph (b) insert
“, or
- (c) an amount in respect of a tax credit.”

(3) In subsection (4), in paragraph (b), for “(2)(a) or (b)” substitute “(2)(a), (b) or (c)”.

41. In section 164 of TCMA (meaning of “relevant amount” in Part 7), after paragraph (d) insert—

- “(e) an amount payable in respect of a tax credit;
- (f) interest on an amount payable in respect of a tax credit.”

(14) Section 158 was substituted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, Schedule 23, paragraph 58.

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42.—(1) Section 169 of TCMA(15) (proceedings in magistrates’ court) is amended as follows.

(2) In subsection (4)—

- (a) after “a penalty” insert “or an amount payable in respect of a tax credit”;
- (b) for “or penalty” substitute “, penalty or other amount”.

(3) In subsection (5)—

- (a) after “a penalty” insert “or on an amount payable in respect of a tax credit”;
- (b) for “or penalty” substitute “, penalty or other amount”.

43. In section 172 of TCMA(16) (appealable decisions), in subsection (2), after paragraph (k) insert—

“(l) a decision relating to a tax credit in respect of landfill disposals tax.”

44. In the heading to Chapter 3A of Part 8 of TCMA, after “DEVOLVED TAX” INSERT “ETC”.

45. After section 181I(17) insert—

“Application of this Chapter to amounts payable in respect of tax credit

181J.—(1) This Chapter applies to the payment and recovery of amounts relating to tax credits—

- (a) as if references to an amount of devolved tax (including amounts of landfill disposals tax) were references to an amount payable in respect of a tax credit,
- (b) as if references to interest on an amount of devolved tax were references to interest on an amount payable in respect of a tax credit, and
- (c) as if references to devolved tax being charged or chargeable on a person were references to an amount being payable by a person in respect of a tax credit.”

46. In section 183A of TCMA(18) (suspension of repayment pending further appeal), in subsection (1), in paragraph (a)—

- (a) the words from “an amount” to “repaid by WRA,” become sub-paragraph (i);
- (b) after that sub-paragraph insert

“or

(ii) an amount paid by a person in respect of a tax credit is to be repaid by WRA.”.

47. In section 192 of TCMA(19) (interpretation), in subsection (2), insert at the appropriate place —

““tax credit” (“*credyd treth*”) means a tax credit under regulations made under section 54 of LDTA;”.

48. In section 193 of TCMA(20) (index of defined expressions), insert at the appropriate place—

Tax credit (“ <i>credyd treth</i> ”)	section 192(2)
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(15) Section 169 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 60.
(16) Section 172(2) was amended by LTTA, Schedule 23, paragraph 62, and by LDTA, sections 24, 38, 58 and 80 and Schedule 4, paragraph 16.
(17) Chapter 3A (including section 181I) was inserted by LTTA, Schedule 23, paragraph 63.
(18) Section 183A was inserted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 65.
(19) Section 192 was amended by LTTA, Schedule 23, paragraph 70 and by LDTA, Schedule 4, paragraph 19.
(20) Section 193 was amended by LTTA, Schedule 23, paragraph 71 and by LDTA, Schedule 4, paragraph 20.

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