

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Supplementary Provision

Chapter 3 – Investigation and Information

Section 59 - Powers of inspection

115. **Section 59** makes amendments to Part 4, Chapter 4 (Investigatory Powers of WRA: Inspections of Premises and Other Property) of TCMA for the purposes of LDT. This section of the Act and these notes should be read in conjunction with Part 4, Chapter 4 of TCMA and the explanatory notes (paragraphs 117 to 142) which accompany TCMA.
116. Section 103A of TCMA (as inserted by this Act) provides that WRA can enter and inspect a business premises (including business assets and relevant business documents that are on the premises) of a third party to check a landfill site operator's liability to LDT. Business premises are defined in section 111 of TCMA. WRA may only inspect documents which relate to matters relevant to the landfill site operator's liability to LDT. These powers can be exercised only if WRA has reason to believe that:
- a. A person has been involved in any capacity with a taxable disposal (this may include a waste transfer station or a waste carrier); and
 - b. The inspection is required in order to help WRA to check the position of another person's liability to LDT.
117. Failure to permit WRA to inspect under this power can give rise to a penalty under section 146 of TCMA.
118. It is envisaged that this power will be used by WRA where they have reason to believe that a landfill site operator has provided a self-assessment that is not a true reflection of their liability to tax, and where inspecting the third party's business premises would assist any connected investigation. It is anticipated that most third parties will co-operate voluntarily in such investigations without WRA needing to invoke this power.
119. Section 103B of TCMA (as inserted by this Act) provides that where WRA is investigating an unauthorised disposal (i.e. is a taxable disposal made other than at an authorised landfill site - see Part 4), WRA can enter property, including non-business premises, and carry out an inspection (including an inspection of assets and documents that are on the premises) if WRA has reason to believe that:
- a. A disposal has occurred at the premises; or
 - b. The occupier meets or may meet the charging condition (see section 47) in relation to LDT on the disposal that is being investigated.
120. This power will enable WRA to investigate unauthorised disposals in order to decide whether to issue a preliminary notice or charging notice under Part 4, Chapter 2 of the

Act. Again, failure to permit WRA to inspect under this power can give rise to a penalty under section 146 of TCMA.

121. There are a number of safeguards within Chapter 4 of TCMA which apply to WRA's use of its inspection powers in relation to LDT. For example, section 103(2) of TCMA states that WRA may only exercise its inspection powers with the agreement of the occupier of the premises or the approval of the Tribunal. Schedule 4 of this Act amends section 108(4) of TCMA to ensure that the tribunal may approve the inspection of premises:
 - a. Only where WRA can satisfy the tribunal that the applicable requirement in section 108(4A) of TCMA is met; and
 - b. In a case where WRA has applied for the tribunal's approval without giving notice of the application to the taxpayer or occupier of the premises, only where WRA can also satisfy the tribunal that giving the taxpayer prior notice of the application might hinder the assessment and collection of tax.
122. This section also makes a number of minor and consequential amendments to TCMA for the purposes of LDT.

Section 60 – Disclosure of information to WRA

123. **Section 60** allows information acquired by local authorities in Wales or Natural Resources Wales (NRW) to be disclosed to WRA to help WRA collect and manage LDT, and to investigate liability to tax where necessary.
124. **Section 60** does not authorise the disclosure of information to WRA if the disclosure would contravene the Data Protection Act 1998 or is prohibited by relevant sections of the Investigatory Powers Act 2016.
125. It is envisaged that this power of disclosure may be used where, as part of their day-to-day functions, a local authority or NRW identifies any activity, such as an unauthorised disposal, which could give rise to a liability to LDT. This power allows these bodies to pass on information relating to the activity and any associated potential liability to WRA so that it can be used in a tax investigation or tax enforcement action.
126. The Welsh Ministers may by regulations specify other individuals or organisations that are allowed to share information with WRA under this section. These could, for example, include public bodies such as National Park Authorities.
127. It is not envisaged that local authorities and NRW will routinely share information with WRA about authorised landfill sites and their operators. These operators should already be providing WRA with all of the information it needs through the tax registration system and their regular tax returns. However, where local authorities or NRW believe that information may be of interest to WRA in relation to the collection or management of the tax, it may be possible for this information to be shared with WRA, and this may lead to a tax investigation.
128. The use and disclosure of information held by WRA is dealt with in Part 2 of TCMA, which includes special provision to safeguard the disclosure of protected taxpayer information. These rules allow for sensitive tax payer information held by WRA to be disclosed to other persons or organisations in specified circumstances only. These circumstances include those in which the disclosure is made for the purposes of a criminal investigation or criminal proceedings, or to prevent or detect crime, or to assist in civil proceedings.