Tax Collection and Management (Wales) Act 2016

2016 anaw 6

PART 3

TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1

OVERVIEW

37 Overview of Part

This Part is about the assessment of devolved taxes and includes provision about—

(a) keeping records;
(b) tax returns;
(c) enquiries by WRA into tax returns;
(d) determinations by WRA of devolved tax due where no tax return is made;
(e) assessments by WRA of devolved tax due where there is no enquiry;
(f) claims for relief from double assessment and for repayment of devolved tax;
(g) the making of claims.

Status: *Point in time view as at 18/10/2017. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Tax Collection and Management (Wales) Act 2016, PART 3. (See end of Document for details)*

CHAPTER 2

TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

VALID FROM 01/04/2018

38 Duty to keep and preserve records

(1) A person who is required to make a tax return must—
- (a) keep any records that may be needed to enable the person to make a correct and complete tax return, and
- (b) preserve those records in accordance with this section.

(2) The records must be preserved until the end of the later of the relevant day and the day on which—
- (a) an enquiry into the tax return is completed (see section 50), or
- (b) if there is no enquiry, WRA ceases to have power to enquire into the tax return (see section 43).

(3) "The relevant day" means—
- (a) the sixth anniversary of the day on which the tax return is made or, if the tax return is amended, of the day on which notice of the amendment is given under section 41, or
- (b) any earlier day that may be specified by WRA.

(4) Different days may be specified for different purposes under subsection (3)(b).

(5) The records required to be kept and preserved under this section include—
- (a) details of any relevant transaction (including relevant instruments relating to any transaction: in particular, any contract or conveyance, and any supporting maps, plans or similar documents);
- (b) details of any activity subject to devolved tax;
- (c) records of relevant payments, receipts and financial arrangements.

(6) The Welsh Ministers may by regulations—
- (a) provide that the records required to be kept and preserved under this section do, or do not, include records of a description prescribed by the regulations;
- (b) prescribe descriptions of supporting documents that are required to be kept under this section.

(7) Regulations under this section may make provision by reference to things specified in a notice published by WRA in accordance with the regulations (and not withdrawn by a subsequent notice).

(8) "Supporting documents" includes accounts, books, deeds, contracts, vouchers and receipts.

VALID FROM 01/04/2018

39 Preservation of information etc.

[F1(1)] The duty under section 38 [F2or 38A] to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by regulations made by the Welsh Ministers.

[F3(2) But this is subject to any requirement specified under section 21(7) (water discount record) or 43(2) (landfill disposals tax summary) of LDTA.]

Textual Amendments

F1 S. 39 renumbered as s. 39(1) (1.4.2018) by Landfill Disposals Tax (Wales) Act 2017 (anaw 3), s. 97(2), **Sch. 4 para. 2(a)**; S.I. 2018/35, art. 3

F2 Words in s. 39 inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 7**; S.I. 2018/34, art. 3

F3 S. 39(2) inserted (1.4.2018) by Landfill Disposals Tax (Wales) Act 2017 (anaw 3), s. 97(2), **Sch. 4 para. 2(b)**; S.I. 2018/35, art. 3

Commencement Information

I1 S. 39 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

[F4 39A Power to make regulations about records

The Welsh Ministers may by regulations provide that the records required to be kept and preserved under this Chapter do, or do not, include records of a description prescribed by the regulations.]

Textual Amendments

F4 S. 39A inserted (18.10.2017) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 8**; S.I. 2017/953, art. 2(j)

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VALID FROM 01/04/2018

CHAPTER 3

TAX RETURNS

Filing date

40 Meaning of "filing date"

In **[**[F5]the Welsh Tax Acts**]**, the "filing date"**[**[F6]—

(a) in relation to a tax return for land transaction tax, is the day by which the return is required to be made under LTTA;

(b) in relation to a tax return for landfill disposals tax, has the meaning given by section 39(4) of LDTA.**]**

Textual Amendments

F5 Words in s. 40 substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 9**; S.I. 2018/34, art. 3

F6 S. 40(a)(b) substituted for words (1.4.2018) by Landfill Disposals Tax (Wales) Act 2017 (anaw 3), s. 97(2), **Sch. 4 para. 3**; S.I. 2018/35, art. 3

Commencement Information

I2 S. 40 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

Amendment and correction of tax returns

41 Amendment of tax return by taxpayer

(1) A person who has made a tax return may amend it by giving notice to WRA.

(2) An amendment under this section must be made before the end of the period of 12 months beginning with the relevant date (referred to in section 42 as the "amendment period").

(3) The relevant date is—

(a) the filing date, or

(b) such other date as the Welsh Ministers may by regulations prescribe.

(4) This section is subject to sections 45(3) and 50.

42 Correction of tax return by WRA

(1) WRA may correct any obvious error or omission in a tax return.

(2) A correction under this section—

(a) is made by issuing a notice to the person who made the tax return, and

(b) is regarded as effecting an amendment of the tax return.

(3) The reference in subsection (1) to an error includes, for instance, an arithmetical mistake or an error of principle.

(4) A correction under this section must be made before the end of the period of 9 months beginning with the day on which the tax return was made.

(5) A correction under this section has no effect if the person who made the tax return rejects it by—
   (a) during the amendment period, amending the tax return so as to reject the correction, or
   (b) after that period, giving a notice rejecting the correction.

(6) A notice under subsection (5)(b) must be given to WRA before the end of the period of 3 months beginning with the day on which the notice of correction is issued.

VALID FROM 01/04/2018

CHAPTER 4

WRA ENQUIRIES

Notice and scope of enquiry

43 Notice of enquiry

(1) WRA may enquire into a tax return if it issues notice of the intention to do so (a "notice of enquiry") to the person who made the tax return before the end of the **[**[F7]enquiry period (but see subsection (1B)).**]**

[[F8](1A) The enquiry period for a tax return is the period of 12 months beginning with the relevant date.

(1B) But WRA may enquire into a tax return after the expiry of the enquiry period if—
   (a) the tax return is made in respect of a land transaction,
   (b) after the tax return is made, a further return is made in respect of the same land transaction,
   (c) WRA has issued a notice of enquiry into the further return, and
   (d) WRA believes it is necessary to enquire into the tax return mentioned in paragraph (a).**]**

(2) **[**[F9]For the purposes of subsection (1A),**]** the relevant date is—
   (a) if the tax return was made after the filing date, the day on which the tax return was made, or
   (b) otherwise, the filing date,

   but if the tax return is amended under section 41, the relevant date is the day on which the amendment was made.

(3) A tax return that has been the subject of one notice under this section may not be the subject of another, except a notice issued

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[[F10](a) as a result of an amendment of the tax return under section 41, or

(b) by virtue of subsection (1B)**]**.

[[F11](4) In subsection (1B), “"further return”” means a further return made under LTTA.**]**

Textual Amendments

F7 Words in s. 43(1) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 12(a)**; S.I. 2018/34, art. 3

F8 S. 43(1A)(1B) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 12(b)**; S.I. 2018/34, art. 3

F9 Words in s. 43(2) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 12(c)**; S.I. 2018/34, art. 3

F10 S. 43(3)(a)(b) substituted for words in s. 43(3) (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 12(d)**; S.I. 2018/34, art. 3

F11 S. 43(4) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 12(e)**; S.I. 2018/34, art. 3

Commencement Information

I3 S. 43 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

44 Scope of enquiry

(1) An enquiry into a tax return extends to anything contained in the tax return, or required to be contained in the tax return, that relates—

(a) to the question whether the person who made the tax return is chargeable to the devolved tax to which the tax return relates, [F12]...

(b) to the amount of devolved tax chargeable on the person who made the tax return,

[[F13](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.**]**

(2) But if a notice of enquiry is issued as a result of the amendment of a tax return under section 41 after an enquiry into the tax return has been completed, the enquiry is limited to—

(a) matters to which the amendment relates, and

(b) matters affected by the amendment.

Textual Amendments

F12 Word in s. 44(1) omitted (1.4.2018) by virtue of The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 10(a)**

F13 S. 44(1)(c)(d) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 10(b)**

Commencement Information

I4 S. 44 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

Amendment of tax return during enquiry

45 Amendment of tax return during enquiry to prevent loss of tax

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

(a) that the amount stated in the tax return as the amount of devolved tax **[**[F14]chargeable**]** is insufficient, 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 to make good the insufficiency.

[[F15](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.**]**

(2) If the enquiry is one that is limited by section 44(2) to matters arising from an amendment of the tax return,

[[F16](a)**]** subsection (1) applies only so far as the insufficiency is attributable to the amendment **[**[F17], and

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

(3) Where a notice is issued under subsection (1) **[**[F18]or (1A)**]**, the person who made the tax return may no longer amend it under section 41.

(4) The person who made the tax return must pay any amount, or additional amount, of devolved tax payable as a result of the amendment before the end of the period of 30 days beginning with the day on which notice of the amendment is issued.

(5) For the purposes of this section and **[**[F19]sections 45A and 46**]** the period during which an enquiry into a tax return is in progress is the whole of the period—

(a) beginning with the day on which notice of enquiry into the tax return is issued, and

(b) ending with the day on which the enquiry is completed (see section 50).

Textual Amendments

F14 Word in s. 45(1)(a) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 13(a)**; S.I. 2018/34, art. 3

F15 S. 45(1A) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 11(2)**

F16 Words in s. 45(2) renumbered as s. 45(2)(a) (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 11(3)(a)**

F17 S. 45(2)(b) and word inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 11(3)(b)**

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F18 Words in s. 45(3) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 11(4)**

F19 Words in s. 45(5) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 13(b)**; S.I. 2018/34, art. 3

Commencement Information

I5 S. 45 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

Referral during enquiry

46 Referral of questions to tribunal during enquiry

(1) At any time when an enquiry is in progress the person who made the tax return and WRA may jointly refer any question arising in connection with the subject-matter of the tax return to the tribunal.

(2) The tribunal must determine any question referred to it.

(3) More than one referral may be made under this section in relation to an enquiry.

47 Withdrawal of referral

WRA or the person who made the tax return may withdraw a referral made under section 46.

48 Effect of referral on enquiry

(1) While proceedings on a referral under section 46 are in progress in relation to an enquiry—

(a) no closure notice may be issued in relation to the enquiry (see section 50), and

(b) no application may be made for a direction to issue a closure notice (see section 51).

(2) Proceedings on a referral are in progress where—

(a) a referral has been made and has not been withdrawn, and

(b) the question referred has not been finally determined.

49 Effect of determination

(1) A determination under section 46 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.

(2) WRA must take the determination into account—

(a) in reaching conclusions on the enquiry, and

(b) in the formulation of any amendments of the tax return that may be required to give effect to those conclusions.

(3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary issue in an appeal.

Completion of enquiry

50 Completion of enquiry

(1) An enquiry is completed when WRA issues a notice (a "closure notice") to the person who made the tax return stating—
  (a) that the enquiry is complete, and
  (b) the conclusions reached in the enquiry.

(2) A closure notice must either—
  (a) state that in WRA's opinion no amendment of the tax return is required, or
  (b) make the amendments of the tax return required to give effect to WRA's conclusions.

(3) Where a closure notice is issued which makes amendments of a tax return, the person who made the tax return may no longer amend it under section 41.

(4) The person who made the tax return must pay an amount, or additional amount, of devolved tax chargeable as a result of an amendment made by a closure notice before the end of the period of 30 days beginning with the day on which the notice is issued.

51 Direction to complete enquiry

(1) The person who made the tax return may make an application to the tribunal for a direction that a closure notice is to be issued within a specified period.

(2) The tribunal must give a direction unless satisfied that WRA has reasonable grounds for not giving a closure notice within that period.

VALID FROM 01/04/2018

CHAPTER 5

WRA DETERMINATIONS

52 Determination of tax chargeable if no tax return made

(1) This section applies where—
  (a) WRA has reason to believe that a person is chargeable to a devolved tax,
  (b) the person has not made a tax return in relation to the devolved tax chargeable, and
  (c) the relevant filing date has passed.

(2) "The relevant filing date" means the date by which WRA believes a tax return was required to be made.

(3) WRA may make a determination (a "WRA determination") of the amount of devolved tax to which the person is, in WRA's opinion, chargeable.

(4) Notice of the determination must be issued to the person.

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(5) The person must pay the devolved tax payable **[**[F20]in accordance with**]** the WRA determination before the end of the period of 30 days beginning with the day on which notice of the determination is issued.

(6) No WRA determination may be made more than 4 years after the relevant date.

(7) The relevant date is—

(a) the relevant filing date, or

(b) such other date as the Welsh Ministers may by regulations prescribe.

Textual Amendments

F20 Words in s. 52(5) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 16**; S.I. 2018/34, art. 3

Commencement Information

I6 S. 52 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

53 Determination superseded by tax return

(1) If, after a WRA determination has been made, the person whom WRA had reason to believe was chargeable to a devolved tax makes a tax return with respect to the tax, the return supersedes the determination.

(2) But subsection (1) does not apply to a tax return made—

(a) more than 4 years after the power to make a WRA determination first became exercisable, or

(b) more than 12 months after the day on which the notice of the determination was issued,

whichever is the later.

(3) Where—

(a) proceedings have been begun for the recovery of any devolved tax charged by a WRA determination, and

(b) before the proceedings are concluded the determination is superseded by a tax return,

the proceedings may be continued as if they were proceedings for the recovery of so much of the devolved tax charged by the tax return as is required to be paid and has not yet been paid.

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CHAPTER 6

WRA ASSESSMENTS

Assessment of loss of tax or of excessive repayment

54 Assessment where loss of tax

If WRA comes to the view that—

(a) an amount of devolved tax that ought to have been assessed as devolved tax chargeable on a person has not been assessed,

(b) an assessment of the devolved tax chargeable on a person is or has become insufficient, or

(c) relief in respect of a devolved tax has been claimed or given that is or has become excessive,

WRA may make an assessment of the amount or further amount that ought in its opinion to be charged in order to make good the loss of devolved tax.

55 Assessment to recover excessive repayment of tax

(1) If an amount of a devolved tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid devolved tax.

(2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.

56 References to "WRA assessment"

In this Act, "WRA assessment" means an assessment under section 54 **[**[F21], 55 or 55A**]**.

Textual Amendments

F21 Words in s. 56 substituted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 13**

Commencement Information

I7 S. 56 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

Making WRA assessments

57 References to the "taxpayer"

In sections 58 to 61, "taxpayer" means—

(a) in relation to a WRA assessment under section 54, the person chargeable to the devolved tax,

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(b) in relation to a WRA assessment under section 55, the person mentioned there.

58 Conditions for making WRA assessments

(1) A WRA assessment—
(a) may be made only in the two cases specified in subsections (2) and (3), and
(b) may not be made in the circumstances specified in subsection (4).

(2) The first case is where the situation mentioned in section 54 or 55 was brought about carelessly or deliberately by—
(a) the taxpayer,
(b) a person acting on the taxpayer's behalf, or
(c) a person who was a partner in the same partnership as the taxpayer.

(3) The second case is—
(a) where WRA has ceased to be entitled to issue a notice of enquiry into a tax return, or has completed its enquiries into a tax return, and
(b) at the time when it ceased to be so entitled or completed those enquiries, it could not reasonably have been expected to be aware of the situation mentioned in section 54 or 55 on the basis of information made available to it before that time.

(4) No WRA assessment may be made if—
(a) the situation mentioned in section 54 or 55 is attributable to a mistake in the tax return as to the basis on which the devolved tax liability ought to have been calculated, and
(b) the mistake occurred because the tax return was made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

59 Time limits for WRA assessments

(1) No WRA assessment may be made more than 4 years after the relevant date **[**[F22]in any case involving a situation mentioned in section 54, 55 or 55A(a) or (b)**]**.

(2) But a WRA assessment of a taxpayer in any case involving a situation mentioned in section 54 **[**[F23], 55 or 55A(a) or (b)**]** brought about carelessly by the taxpayer or a related person may be made up to 6 years after the relevant date.

(3) And a WRA assessment of a taxpayer in any case involving a situation mentioned in section 54 **[**[F24], 55 or 55A(a) or (b)**]** brought about deliberately by the taxpayer or a related person may be made up to 20 years after the relevant date.

(4) A WRA assessment under section 55 is not out of time if it is made within the period of 12 months beginning with the day on which the repayment in question was made.

[[F25](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.**]**

(5) If the taxpayer has died—

(a) any WRA assessment on the personal representatives must be made before the end of the period of 4 years beginning with the date of the death, and

(b) a WRA assessment is not to be made in respect of a relevant date more than 6 years before that date.

(6) Any objection to the making of a WRA assessment on the ground that the time limit for making it has expired can only be made on a review of or appeal against the assessment.

(7) In this section—

"related person" ("*person cysylltiedig*"), in relation to the taxpayer, means—

(a) a person acting on the taxpayer's behalf, or

(b) a person who was a partner in the same partnership as the taxpayer;

"relevant date" ("*dyddiad perthnasol*") **[**[F26], in relation to a WRA assessment in a case involving a situation mentioned in section 54 or 55,**]** means—

(za) **[**[F27]if a tax return has not been made, the date by which WRA believes a tax return was required to be made,**]**

(a) if **[**[F28]a tax return**]** was made after the filing date, the day on which the tax return was made, or

(b) otherwise, the filing date.

[[F29]"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.**]**

Textual Amendments

F22 Words in s. 59(1) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 16(2)**

F23 Words in s. 59(2) substituted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 16(3)**

F24 Words in s. 59(3) substituted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 16(4)**

F25 S. 59(4A) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 16(5)**

F26 Words in s. 59(7) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 16(6)(a)**

F27 Words in s. 59(7) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 19(a)**; S.I. 2018/34, art. 3

F28 Words in s. 59(7) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 19(b)**; S.I. 2018/34, art. 3

F29 Words in s. 59(7) inserted (1.4.2018) by The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (S.I. 2018/101), reg. 1(2), **Sch. para. 16(6)(b)**

Modifications etc. (not altering text)

C1 S. 59 applied (with modifications) (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 7 para. 43(3)**; S.I. 2018/34, art. 3

Commencement Information

I8 S. 59 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

60 Situations brought about carelessly or deliberately

(1) This section applies for the purposes of sections 58 and 59.

(2) A situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that situation.

(3) Where—

(a) information is provided to WRA,

(b) the person who provided the information, or the person on whose behalf it was provided, discovers some time later that the information was inaccurate, and

(c) that person fails to take reasonable steps to inform WRA,

any situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(4) References to a situation brought about deliberately by a person include a situation brought about as a result of a deliberate inaccuracy in a document given to WRA.

61 Assessment procedure

(1) Notice of a WRA assessment must be issued to the taxpayer.

(2) The amount payable in accordance with a WRA assessment must be paid before the end of the period of 30 days beginning with the day on which the notice of the assessment is issued.

(3) After notice of the assessment has been issued to the taxpayer, the assessment may not be altered except in accordance with the express provisions of any enactment.

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.

Modifications etc. (not altering text)

C2 Pt. 3 Ch. 7 applied (with modifications) (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 6 para. 14(2)**; S.I. 2018/34, art. 3

Commencement Information

I9 S. 62 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

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 **[**[F30]WRA**]** 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 **[**[F31]the Welsh Tax Acts**]**.

(4) For the purposes of this section and sections **[**[F32]63A**]** to 81, an amount paid by one person on behalf of another is treated as paid by the other person.

Textual Amendments

F30 Word in s. 63(1)(b) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 23(a)**; S.I. 2018/34, art. 3

F31 Words in s. 63(3) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 23(c)(ii)**; S.I. 2018/34, art. 3

F32 Word in s. 63(4) substituted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 23(d)**; S.I. 2018/34, art. 3

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Changes to legislation: *There are currently no known outstanding effects for the Tax Collection and Management (Wales) Act 2016, PART 3. (See end of Document for details)*

Commencement Information

I10 S. 63 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

[F33 63A Claim for relief in respect of land transaction tax: regulations ceasing to have effect

(1) If—

(a) by virtue of section 26(2) of LTTA the tax bands and tax rates specified in rejected regulations apply to a chargeable transaction, and

(b) in consequence, the amount of land transaction tax chargeable in respect of the transaction is greater than the amount that would otherwise have been chargeable,

the buyer in the transaction may make a claim to WRA for the discharge or repayment of the amount of land transaction tax that would not have been chargeable had the rejected regulations not been made.

(2) Where WRA decides to give effect to a claim under subsection (1) it must also discharge or repay any penalty or interest related to the amount of tax discharged or repaid.

(3) Any penalty or interest is related to an amount of tax for this purpose to the extent that it—

(a) is attributable to the amount, and

(b) would not have been incurred but for the application to the transaction in question of the tax bands and tax rates specified in the rejected regulations.

(4) A claim under subsection (1) must be made before the end of the period of 12 months beginning with the later of—

(a) the date on which the rejected regulations cease to have effect, or

(b) the filing date for a tax return containing an assessment of tax chargeable calculated using the tax bands and tax rates specified in the rejected regulations.

(5) A claim under subsection (1) is to be treated as if it were an amendment made under section 41 to the assessment of tax chargeable contained in a tax return.

(6) In this section—

“"chargeable transaction”” (“"*trafodiad trethadwy*”") has the meaning given by section 17 of LTTA;

“"rejected regulations”” (“"*rheoliadau a wrthodir*”") has the meaning given by section 26(1)(a) of that Act.**]**

Textual Amendments

F33 S. 63A inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 24**; S.I. 2018/34, art. 3

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Unjustified enrichment

64 Disallowing claims for relief due to unjustified enrichment

WRA need not give effect to a claim for relief made under section 63 or 63A 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.

(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.

(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.

Commencement Information

I13 S. 66 in force at 18.10.2017 by S.I. 2017/954, **art. 2**

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 **[**[F36]or election**]**, or

(b) a mistake consisting of making, or failing to make, a claim **[**[F37]or election**]**.

[[F38](2A) In subsection (2), “"election”” means an election made under paragraph 3, 5 or 12 of Schedule 15 to LTTA (social housing reliefs).**]**

(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—

(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).

[[F39](12) Case 8 is where—

(a) the claim is made in respect of an amount of landfill disposals tax, and

(b) an amount of landfill disposals tax that the claimant is required to pay has not been paid.**]**

Textual Amendments

F36 Words in s. 67(2)(a) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 28(b)**; S.I. 2018/34, art. 3

F37 Words in s. 67(2)(b) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 28(c)**; S.I. 2018/34, art. 3

F38 S. 67(2A) inserted (1.4.2018) by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), s. 81(2)(3), **Sch. 23 para. 28(d)**; S.I. 2018/34, art. 3

F39 S. 67(12) inserted (1.4.2018) by Landfill Disposals Tax (Wales) Act 2017 (anaw 3), **ss. 45**, 97(2); S.I. 2018/35, art. 3

Commencement Information

I14 S. 67 in force at 1.4.2018 by S.I. 2018/33, **art. 3**

CHAPTER 8

PROCEDURE FOR MAKING CLAIMS ETC.

68 Making claims

(1) A claim under section 62 , 63 or 63A must be made in such form as WRA may determine.

(2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.

(3) The form of claim may require—

(a) a statement of the amount of devolved tax that will be required to be discharged or repaid in order to give effect to the claim;

(b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct;

(c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).

(4) A claim for repayment of devolved tax may not be made unless the claimant has documentary evidence that the devolved tax has been paid.

(5) A claim under section 63 may not be made by being included in a tax return.

69 Duty to keep and preserve records

(1) A person making a claim under section 62 or 63 must—

(a) have kept any records that are needed to enable the person to make a correct and complete claim, and

(b) preserve those records in accordance with this section.

(2) The records must be preserved until the latest of the following—

(a) (except where paragraph (b) or (c) applies) the end of the period of 12 months beginning with the day on which the claim was made;

(b) where there is an enquiry into the claim, or into an amendment of the claim, the day on which the enquiry is completed;

(c) where the claim is amended and there is no enquiry into the amendment, the day on which WRA ceases to have power to enquire into the amendment.

(3) The Welsh Ministers may by regulations—

(a) provide that the records required to be kept and preserved under this section include, or do not include, records of a description prescribed by the regulations;

(b) prescribe descriptions of supporting documents that are required to be kept under this section.

(4) Regulations under this section may make provision by reference to things specified in a notice published by WRA in accordance with the regulations (and not withdrawn by a subsequent notice).

(5) "Supporting documents" includes accounts, books, deeds, contracts, vouchers and receipts.

Commencement Information

I16 S. 69(3)(4) in force at 18.10.2017 by S.I. 2017/954, **art. 2**

70 Preservation of information etc.

The duty under section 69 to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or

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(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by regulations made by the Welsh Ministers.

71 Amendment of claim by claimant

(1) A person who has made a claim under section 62 , 63 or 63A may amend the claim by giving notice to WRA.

(2) No such amendment may be made—
- (a) more than 12 months after the day on which the claim was made, or
- (b) if WRA issues a notice under section 74, during the period—
  - (i) beginning with the day on which the notice is issued, and
  - (ii) ending with the day on which the enquiry under that section is completed.

72 Correction of claim by WRA

(1) WRA may by issuing notice to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).

(2) No such correction may be made—
- (a) more than 9 months after the day on which the claim was made, or
- (b) if WRA issues a notice under section 74, during the period—
  - (i) beginning with the day on which notice is issued, and
  - (ii) ending with the day on which the enquiry under that section is completed.

(3) A correction under this section has no effect if, within the period of 3 months beginning with the day following that on which the notice of correction is issued, the claimant gives a notice to WRA rejecting the correction.

73 Giving effect to claims and amendments

(1) As soon as practicable after a claim is made, amended or corrected—
- (a) WRA must issue notice of its decision to the claimant, and
- (b) where WRA decides to give effect to the claim or amendment (whether in part or in full), it must do so by discharge or repayment of devolved tax.

(2) Where WRA enquires into a claim or amendment—
- (a) subsection (1) does not apply until a closure notice is issued under section 75, and then it applies subject to section 77, but
- (b) WRA may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as it thinks fit.

74 Notice of enquiry

(1) WRA may enquire into a person's claim or amendment of a claim if it issues to the claimant notice of its intention to do so (a “notice of enquiry”) before the end of

the period of 12 months beginning with the day after the day on which the claim or amendment was made.

(2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

75 Completion of enquiry

(1) An enquiry is completed when WRA issues a notice (a "closure notice") to the claimant stating—
  (a) that the enquiry is complete, and
  (b) the conclusions reached in the enquiry.

(2) A closure notice must either—
  (a) state that in the opinion of WRA no amendment of the claim is required, or
  (b) if in WRA's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

(3) In the case of an enquiry into an amendment of a claim, subsection (2)(b) applies only so far as the deficiency or excess is attributable to the amendment.

76 Direction to complete enquiry

(1) The claimant may make an application to the tribunal for a direction that a closure notice is to be issued within a specified period.

(2) The tribunal must give a direction unless satisfied that WRA has reasonable grounds for not issuing a closure notice within the specified period.

77 Giving effect to amendments under section 75

(1) Within 30 days after the day on which a notice under section 75(2)(b) is issued WRA must give effect to the amendment by making such adjustment as may be necessary, whether—
  (a) by way of assessment on the claimant, or
  (b) by discharge or repayment of devolved tax.

(2) An assessment made under subsection (1) is not out of time if it is made within the time mentioned in that subsection.

78 Time limit for making claims

A claim under section 62 or 63 must be made within the period of 4 years beginning with the day after the filing date for the tax return to which the payment by way of devolved tax, or the assessment or determination, relates.

79 The claimant: partnerships

(1) This section is about the application of section 63 in a case where either—
  (a) (in a case falling within section 63(1)(a)) the person paid the amount in question in the capacity of a partner in a partnership, or

(b) (in a case falling within section 63(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity.

(2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under section 63 in respect of the amount in question.

(3) The relevant persons are the persons who would have been liable as partners to pay the amount in question had the payment been due or (in a case falling within section 63(1)(b)) had the assessment or determination been correctly made.

80 Assessment of claimant in connection with claim

(1) This section applies where—

(a) a claim is made under section 63,

(b) the grounds for giving effect to the claim also provide grounds for a WRA assessment on the claimant in respect of the devolved tax, and

(c) such an assessment could be made but for a relevant restriction.

(2) In a case falling within section 79(1)(a) or (b), the reference to the claimant in subsection (1)(b) of this section includes any relevant person (as defined in section 79(3)).

(3) The following are relevant restrictions—

(a) section 58;

(b) the end of a time limit for making a WRA assessment.

(4) Where this section applies—

(a) the relevant restrictions are to be disregarded, and

(b) the WRA assessment is not out of time if it is made before the final determination of the claim.

(5) A claim is not finally determined until—

(a) the claim, or

(b) the amount to which it relates,

can no longer be varied (whether on review, appeal or otherwise).

81 Contract settlements

(1) In section 63(1)(a), the reference to an amount paid by a person by way of devolved tax includes an amount paid by a person under a contract settlement in connection with devolved tax believed to be payable.

(1A) In section 63A(1), the reference to repayment of an amount of land transaction tax includes repayment of an amount paid by a person under a contract settlement in connection with that amount of land transaction tax.

(2) The following provisions apply if the person who paid the amount under the contract settlement (“the payer”) and the person by whom the devolved tax was payable (“the taxpayer”) are not the same person.

(3) In relation to a claim under section 63 in respect of that amount—

(a) the references to the claimant in section 67(5), (6) and (8) have effect as if they included the taxpayer, and

(b) the references to the claimant in sections 67(9) and 80(1)(b) have effect as if they were references to the taxpayer.

(4) In relation to a claim under section 63 or 63A in respect of that amount, references to devolved tax in sections 68, 73 and 77 include the amount paid under the contract settlement.

(5) Where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a WRA assessment on the taxpayer in respect of the devolved tax—

(a) WRA may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment, and

(b) the obligations of WRA and the taxpayer are discharged to the extent of the set-off.

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