



Tax Collection and Management (Wales) Act 2016

2016 anaw 6

PART 4

INVESTIGATORY POWERS OF WRA

CHAPTER 3

RESTRICTIONS ON POWERS IN CHAPTER 2

97 Information notices: general restrictions

- (1) An information notice requires a person to produce a document only if it is in the person's possession or power.
- (2) An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the day on which the notice is issued, unless the notice is issued with the approval of the tribunal.
- (3) An information notice issued for the purpose of checking the tax position of a person who has died may not be issued more than 4 years after the person's death.
- (4) An information notice may not require a person to provide information or produce a document (or any part of a document) that relates to the conduct of a pending review or appeal relating to any tax (whether or not a devolved tax).

98 Protection for journalistic material

- (1) An information notice may not require a person to provide or produce journalistic material.
- (2) "Journalistic material" means information or a document which is—

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- (a) in the possession of someone who created or acquired it for the purposes of journalism, or
- (b) in the possession of someone who received it from another person who intended the recipient to use it for the purposes of journalism.

99 Protection for personal records

- (1) An information notice may not require a person to provide or produce personal records or information contained in personal records.
- (2) But an information notice may require a person—
 - (a) to produce a document (or a copy of a document) that is a personal record, omitting the information which (either alone or with other information) makes the document a personal record;
 - (b) to provide information contained in a document which is a personal record, other than the information which (either alone or with other information) makes the document a personal record.
- (3) “Personal records” means documentary and other records concerning an individual (“P”) (whether living or dead) who can be identified from those records and relating to—
 - (a) P’s physical or mental health,
 - (b) spiritual counselling or assistance given or to be given to P, or
 - (c) counselling or assistance given or to be given to P in relation to P’s personal welfare by a person who—
 - (i) by reason of an office or occupation has responsibilities for P’s personal welfare, or
 - (ii) by reason of an order of a court has responsibilities for P’s supervision.

100 Taxpayer notices following a tax return

- (1) Where a person has made a tax return for a tax period, a taxpayer notice may not be issued for the purpose of checking that person’s tax position for that period.
- (2) Where a person has made a tax return in relation to a transaction, a taxpayer notice may not be issued for the purpose of checking a person’s tax position in relation to that transaction.
- (3) Subsections (1) and (2) do not apply where (or to the extent that) either condition 1 or 2 is met.
- (4) Condition 1 is that a notice of enquiry has been issued in respect of—
 - (a) the tax return, or
 - (b) a claim (or an amendment of a claim) made by the person in relation to the tax period or the transaction to which the return relates,
 and the enquiry has not been completed.
- (5) Condition 2 is that, as regards the person, WRA has reason to suspect that—
 - (a) an amount that ought to have been assessed to a devolved tax for the tax period or in relation to the transaction may not have been assessed,

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- (b) an assessment to a devolved tax for the tax period or in relation to the transaction may be or have become insufficient, or
 - (c) relief from a devolved tax given or claimed for the tax period or in relation to the transaction may be or have become excessive.
- (6) Where any partner in a partnership has made a tax return, this section has effect as if that return had been made by each of the partners.
- (7) References in this section to a person who has made a tax return refer only to that person in the capacity in which the return was made.

101 Protection for privileged communications between legal advisers and clients

- (1) An information notice may not require a person—
- (a) to provide privileged information, or
 - (b) to produce any part of a document that is privileged.
- (2) Information or a document is privileged if a claim for legal professional privilege could be maintained in respect of it in legal proceedings.
- (3) The Welsh Ministers may by regulations make provision for the resolution by the tribunal of any dispute as to whether any information or document is privileged.
- (4) The regulations may, in particular, make provision for the custody of a document while its status is being determined.

102 Protection for tax advisers and auditors

- (1) An information notice may not require a tax adviser—
- (a) to provide information about a relevant communication, or
 - (b) to produce any part of a document which is the tax adviser's property and consists of a relevant communication.
- (2) In subsection (1)—
- “relevant communication” (“*gohebiaeth berthnasol*”) means a communication between—
- (a) a tax adviser and a person in relation to whose tax affairs the tax adviser has been appointed, or
 - (b) the tax adviser of a person and any other tax adviser of that person, the purpose of which is the giving or obtaining of advice about the person's tax affairs;
- “tax adviser” (“*cynghorwr treth*”) means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).
- (3) An information notice may not require a person who has been appointed as an auditor for the purpose of an enactment—
- (a) to provide information held in connection with the performance of the person's functions under that enactment, or
 - (b) to produce a document which is that person's property and which was created by that person or on that person's behalf for or in connection with the performance of those functions.

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- (4) Subsections (1) and (3) do not have effect in relation to—
- (a) information explaining any information or document which the person to whom the notice is issued has, as tax accountant, assisted any client in preparing for, or delivering to, WRA, or
 - (b) a document which contains such information.
- (5) In the case of an unidentified third party notice, subsections (1) and (3) do not have effect in relation to—
- (a) information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or
 - (b) a document which contains such information.
- (6) Subsections (1) and (3) have effect despite subsections (4) and (5) if the information in question has already been provided, or a document containing the information has already been produced, to WRA.
- (7) Where subsection (1) or (3) does not have effect in relation to a document by virtue of subsection (4) or (5), an information notice that requires the document to be produced has effect as if it requires that part or those parts of the document containing the information mentioned in subsection (4) or (5) to be produced.
- (8) In subsection (3), “enactment” also includes an enactment (whenever enacted or made) which is, or is contained in—
- (a) an Act of the Scottish Parliament,
 - (b) Northern Ireland legislation (within the meaning of the [Interpretation Act 1978 \(c. 30\)](#)),
 - (c) a Scottish instrument (within the meaning of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#)), or
 - (d) a statutory instrument (within the meaning of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33\)](#)).