

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Supplementary Provision

Chapter 6 – Special Cases

Corporate groups

Sections 77 and 78 Designation of group of companies and Conditions for designation as member of group

147. *Section 77* allows WRA to designate two or more bodies corporate as a group for the purposes of the tax. The effect of a group designation is that the representative member of the group is treated for the purposes of the tax as the landfill site operator of the sites that are operated by the members of the group. Accordingly, an amount of tax, penalty or interest that a member of the group would otherwise be required to pay as a result of anything done or omitted to be done while it is a member of the group must instead be paid by the representative member. This section makes further provision in relation to the joint and several liability of group members.
148. To be designated as a group, an application needs to be made to WRA. WRA must be satisfied that the application is made with the agreement of every proposed group member. A group designation may only be made where all members of the group carry out taxable operations or intend to do so. All members of the group must be under the control of the same body corporate, individual or individuals. If WRA refuses a group application, it must issue notice of the refusal.

Section 79 – Variation or cancellation of designation

149. Where a group designation has been made, WRA may vary the designation by adding or removing a member of the group or by changing the representative member. WRA also has the power to cancel a group designation. WRA can vary or cancel a group designation on its own initiative or following an application by the representative member. An application to vary a group designation may also be made by any member of the group where that application relates to that member wishing to be removed from the group designation.
150. WRA must vary or cancel the group designation if it is satisfied that the conditions for designation are no longer met.
151. A variation or cancellation by WRA is made by issuing a notice to each member of the group, including those that are being added or removed from the group. If WRA refuses to vary or cancel the group designation it must issue notice of the refusal.

Section 80 – Reviews and appeals relating to designation of groups of companies

152. **Section 80** amends section 172(2) of TCMA so that the review and appeals procedures in Part 8 of that Act apply to decisions relating to the designation of a group for the purposes of LDT.

Partnerships and unincorporated bodies

Sections 82 to 84 – Registration and changes in membership of, duties and liabilities of and power to make further provision about partnerships and unincorporated bodies

153. **Section 82** provides that where two or more persons carry on a landfill business in partnership or as an unincorporated body, WRA may register the persons in their own names or in the name of the partnership or body. If the registration is completed in the name of the partnership or body and its membership changes, in order for the registration to remain valid at least one of the members must have been a member of the partnership or body before the change.
154. In accordance with section 36 of the Act, WRA must be informed of any changes to the membership of a partnership or unincorporated body and the effect of section 82(4) is that a person is treated as continuing to be a member of a partnership or body until WRA is notified otherwise.
155. **Section 83** provides that where anything is required or permitted to be done by or in relation to persons in a partnership or unincorporated body under this Act or TCMA, it must be done by or in relation to every person who is a partner in the partnership or a managing member of the body at the time when it is done or required to be done. However, anything required or permitted to be done by every partner or managing member may instead be done by any one of them.
156. A liability to pay an amount of tax, penalty or interest as a result of anything done or omitted to be done by persons carrying on business in a partnership or unincorporated body is a joint and several liability of every person who is a partner in the partnership or a member of the body at the time when the thing is done or omitted.
157. **Section 84** provides the Welsh Ministers with the power to make regulations which may add to, repeal or amend provision about cases where persons carry on business in partnership or as an unincorporated body.

Change in persons carrying on landfill business

Sections 85 and 86 – Death, incapacity and insolvency and Power to make further provision about death, incapacity and insolvency

158. **Sections 85 and 86** apply where a landfill site operator dies, becomes incapacitated or becomes subject to an insolvency procedure and another person carries on the landfill business of that operator. The provisions in section 85 require the person carrying on the landfill business to notify WRA before the end of 30 days beginning with the day on which the person began to carry on the landfill business. WRA may, once a notice is received or on their own initiative, treat the person carrying on the landfill business as if they are the landfill site operator for the purposes of the tax. This section also makes provision as to when such treatment must cease.
159. **Section 86** provides the Welsh Ministers with the power to make regulations which may add to, repeal or amend provision about cases where a person who has carried on a landfill business dies, becomes incapacitated or becomes subject to an insolvency procedure.

*These notes refer to the Landfill Disposals Tax (Wales) Act 2017 (c.3)
which received Royal Assent on 7 September 2017*

Section 87 – Power to make provisions about transfers of businesses as going concerns

160. **Section 87** provides the Welsh Ministers with the power to make provision in regulations about the application of the Act and TCMA in cases where a landfill business is transferred from one person to another as a going concern.