



# Landfill Disposals Tax (Wales) Act 2017

2017 anaw 3

## PART 5

### SUPPLEMENTARY PROVISION

#### CHAPTER 6

##### SPECIAL CASES

VALID FROM 25/01/2018

##### *Corporate groups*

#### **77 Designation of group of companies**

- (1) WRA may designate two or more bodies corporate as a group for the purposes of the tax.
- (2) A designation is made by issuing a notice to each member of the group.
- (3) The notice must specify—
  - (a) the bodies corporate that are members of the group;
  - (b) the member of the group that is the representative member;
  - (c) the date on which the designation takes effect.
- (4) The effects of designating a group are that—
  - (a) the representative member of the group is to be treated for the purposes of the tax as the operator of each authorised landfill site of which a member of the group is the operator;
  - (b) accordingly, a relevant amount that a body corporate 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;

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- (c) all of the following are jointly and severally liable for any of the relevant amount that remains unpaid after the date by which the representative member was required to pay it—
  - (i) each body corporate that was a member of the group at the time of the act or omission that gave rise to the requirement to pay the amount, and
  - (ii) any other body corporate that was a member of the group on the date by which the representative member was required to pay the amount.
- (5) WRA may designate a group of bodies corporate only on the application of one or more of those bodies.
- (6) An application to designate a group must be made in writing; and the body or bodies making the application must satisfy WRA that it is made with the agreement of every other proposed member of the group.
- (7) If WRA refuses an application to designate a group, it must issue a notice of its decision to the body or bodies that made the application.
- (8) In this section, “relevant amount” means—
  - (a) an amount of tax;
  - (b) a penalty under an enactment relating to the tax;
  - (c) interest on an amount within paragraph (a) or (b).

## **78 Conditions for designation as member of group**

- (1) A body corporate may be designated as a member of a group only if—
  - (a) it carries out taxable operations or intends to do so, and
  - (b) it is under the same control as every other member of the group.
- (2) Two or more bodies corporate are under the same control if—
  - (a) one of them controls all of the others,
  - (b) one body corporate or individual controls all of them, or
  - (c) two or more individuals carrying on business in partnership control all of them.
- (3) For the purposes of subsection (2)—
  - (a) one body corporate (“A”) controls another body corporate (“B”) if—
    - (i) A is empowered by or under an enactment to control B's activities, or
    - (ii) A is B's holding company;
  - (b) an individual or individuals control a body corporate if they would, if they were a company, be the body's holding company.
- (4) In subsection (3), “holding company” has the meaning given by section 1159 of, and Schedule 6 to, the Companies Act 2006 (c. 46).

## **79 Variation or cancellation of designation**

- (1) Where two or more bodies corporate have been designated as a group, WRA may—
  - (a) vary the designation of the group by—
    - (i) adding or removing a member;
    - (ii) changing the representative member;

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- (b) cancel the designation of the group.
- (2) But WRA must—
  - (a) vary the designation of a group by removing a member if it is satisfied that the member does not meet the conditions in section 78(1);
  - (b) cancel the designation of the group if it is satisfied that the group does not have two or more members that meet those conditions.
- (3) The variation or cancellation of a designation is made by issuing a notice to each member of the group (including, in the case of a variation to add or remove a member, each member that is added or removed).
- (4) The notice must—
  - (a) set out the details of the variation or cancellation, and
  - (b) specify the date on which it takes effect.
- (5) WRA may vary or cancel the designation of a group—
  - (a) on an application made in writing under this section, or
  - (b) on its own initiative.
- (6) An application to vary or cancel the designation of a group may be made by the representative member of the group; but the representative member must satisfy WRA that the application is made with the agreement of every other member of the group (including, in the case of an application to vary the designation by adding a member, the member that would be added if the variation were made).
- (7) An application to vary the designation of a group by removing a member may also be made by the member that wishes to be removed; in which case that member must satisfy WRA that every other member of the group has been notified of the application.
- (8) If WRA refuses an application to vary or cancel a designation, it must issue a notice of its decision to the body corporate that made the application.

## **80 Reviews and appeals relating to designation of groups of companies**

In section 172 of TCMA (appealable decisions), in subsection (2), after paragraph (j) (inserted by section 58 of this Act) insert—

- “(k) a decision relating to the designation of a group of bodies corporate for the purposes of landfill disposals tax.”

## **81 Power to make further provision about designation of groups of companies**

- (1) Regulations may add to, repeal or otherwise amend any provision made by an enactment relating to the tax about the designation of groups of bodies corporate.
- (2) The regulations may (among other things) make provision about the bodies corporate that may be designated as members of a group and about the effects of designation.

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VALID FROM 25/01/2018

*Partnerships and unincorporated bodies*

**82 Registration of partnerships and unincorporated bodies and changes in membership**

- (1) This section applies where two or more persons carry on a landfill business in partnership or as an unincorporated body.
- (2) WRA may register the persons in their own names or in the name of the partnership or body.
- (3) Where the persons are registered in the name of the partnership or body and its membership changes, the persons who are members after the change continue to be registered in that name if at least one of them was a member before the change.
- (4) A person who ceases to be a member of a partnership or unincorporated body is to be treated as continuing to be a member until the date on which notice of the change in membership is given to WRA under section 36.
- (5) Subsection (4) applies for the purposes of any enactment relating to the tax, but is subject to section 36(3) of the Partnership Act 1890 (c. 39) (liability of estate on death or bankruptcy).

**83 Duties and liabilities of partnerships and unincorporated bodies**

- (1) Where anything is required or permitted to be done under an enactment relating to the tax by or in relation to persons carrying on business in partnership, it must be done by or in relation to every person who is a partner at the time when it is done or required to be done.
- (2) But anything that is required or permitted to be done by every partner may instead be done by any of them; and if the partnership's principal place of business is in Scotland, it may also be done by any other person authorised by the partnership.
- (3) Where anything is required or permitted to be done under an enactment relating to the tax by or in relation to persons carrying on business as an unincorporated body, it must be done by or in relation to every person who is a managing member of the body at the time when it is done or required to be done.
- (4) But anything that is required or permitted to be done by every managing member of the body may instead be done by any of them.
- (5) The managing members of an unincorporated body are—
  - (a) each member of the unincorporated body holding office as president, chairman, treasurer, secretary or any similar office;
  - (b) if there is no such office, each member holding office as a member of a committee by which the affairs of the body are managed;
  - (c) if there is no such office or committee, each member of the body.
- (6) A liability to pay a relevant amount as a result of anything done or omitted to be done by persons carrying on business in partnership or as an unincorporated body is

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a joint and several liability of every person who is a member of the partnership or body at the time when the thing is done or omitted to be done.

(7) But where—

- (a) persons carry on a landfill business in partnership or as an unincorporated body, and
- (b) a person is a member of the partnership or body for only part of an accounting period,

the person's personal liability for tax chargeable in respect of the accounting period is the proportion of the liability relating to the business of the partnership or body that is just and reasonable in the circumstances.

(8) In this section, “relevant amount” means—

- (a) an amount of tax;
- (b) a penalty under an enactment relating to the tax;
- (c) interest on an amount within paragraph (a) or (b).

#### **84 Power to make further provision about partnerships and unincorporated bodies**

Regulations may add to, repeal or otherwise amend any provision made by an enactment relating to the tax about cases where persons carry on business in partnership or as an unincorporated body.

#### *Change in persons carrying on landfill business*

VALID FROM 01/04/2018

#### **85 Death, incapacity and insolvency**

- (1) This section applies where a person (“A”) carries on a landfill business of another person (“B”) who has died, become incapacitated or become subject to an insolvency procedure.
- (2) A must give WRA notice of—
  - (a) the fact that A is carrying on the landfill business, and
  - (b) the nature and date of the event that has led to A carrying it on.
- (3) The notice must be given before the end of the period of 30 days beginning with the day on which A began to carry on the landfill business.
- (4) WRA may treat A as if A were B for the purposes of the tax, with effect from the time when A began to carry on the landfill business; and WRA may do so whether or not A has given notice under subsection (2).
- (5) WRA must issue a notice to A (and, if appropriate, to B) of a decision to treat A as B.
- (6) If WRA treats A in that way, A is not required to be registered, or to apply for registration, by virtue of that treatment.
- (7) If—

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- (a) B ceases to be incapacitated or subject to an insolvency procedure, or
  - (b) A ceases to carry on the landfill business of B,
- A must give WRA notice of the cessation and the date on which it occurred.
- (8) The notice must be given before the end of the period of 30 days beginning with that date.
- (9) WRA must cease to treat A as B if—
- (a) WRA is satisfied that either of the conditions in subsection (7) is met (whether or not A has given notice under that subsection), or
  - (b) WRA cancels the registration of B.
- (10) WRA must issue a notice to A (and, if appropriate, to B) of a decision to cease to treat A as B.
- (11) For the purposes of this section, a person becomes subject to an insolvency procedure if—
- (a) the person is made bankrupt;
  - (b) a company voluntary arrangement takes effect in relation to the person under Part 1 of the Insolvency Act 1986 (c. 45);
  - (c) the person enters administration or goes into liquidation or receivership;
  - (d) any corresponding event occurs which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

VALID FROM 01/04/2018

## **86 Power to make further provision about death, incapacity and insolvency**

- (1) Regulations may add to, repeal or otherwise amend any provision made by an enactment relating to the tax about cases where a person who has carried on a landfill business dies, becomes incapacitated or becomes subject to an insolvency procedure.
- (2) The regulations may (among other things) make provision—
- (a) about the circumstances in which a person becomes, or ceases to be, incapacitated or subject to an insolvency procedure;
  - (b) about duties, liabilities and entitlements relating to the tax where a person has died, become incapacitated or become subject to an insolvency procedure;
  - (c) which applies whether or not anyone else carries on a person's landfill business after the person dies, becomes incapacitated or becomes subject to an insolvency procedure.

## **87 Power to make provision about transfers of businesses as going concerns**

- (1) Regulations may make provision for securing continuity in the application of any enactment relating to the tax where a landfill business is transferred from one person to another as a going concern.
- (2) The regulations may (among other things) make provision—
- (a) requiring WRA to be notified of the transfer;

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- (b) for any liability or duty of the transferor relating to the tax to become a liability or duty of the transferee;
  - (c) for any entitlement of the transferor to the discharge or repayment of an amount of tax, whether arising before or after the transfer, to become an entitlement of the transferee;
  - (d) for anything done before the transfer by or in relation to the transferor to be treated for the purposes of the tax as having been done by or in relation to the transferee;
  - (e) about duties to keep and preserve records.
- (3) The regulations may make provision that applies subject to conditions, and may in particular—
- (a) provide that the application to a transferor and transferee of any provision made under subsection (2)(b) to (e) requires the approval of WRA;
  - (b) make provision about the making and determination of applications for approval.
- (4) The regulations may make provision for—
- (a) penalties in respect of failures to comply with the regulations;
  - (b) reviews and appeals.
- (5) The regulations may amend or apply (with or without modifications) any enactment relating to the tax.

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**Commencement Information**

**II** S. 87 in force at 18.10.2017 by S.I. 2017/955, art. 2(g)

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