

## **Explanatory Memorandum to the Tax Collection and Management (Administration) (Wales) Regulations 2017**

This Explanatory Memorandum has been prepared by the Welsh Revenue Authority Implementation Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tax Collection and Management (Administration) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM  
Cabinet Secretary for Finance and Local Government

26 October 2017

## **1. Description**

These Regulations deal with a number of administrative matters relating to the operation of the Welsh Revenue Authority (“WRA”) and the collection and management of the two devolved taxes, in particular:

- a. The delegation of functions by WRA;
- b. The specification of WRA’s first corporate planning period;
- c. The late payment and repayment interest rates; and
- d. The process of resolving disputes about whether documents sought by the WRA are protected by legal professional privilege.

These Regulations will come into force in two tranches:

- a) Parts 1 and 2 will come into force on 21 November 2017 to enable WRA to delegate its functions to NRW and submit its first corporate plan to the Welsh Ministers before 1 April 2018,
- b) Parts 3 and 4 will come into force on 1 April 2018, which will be the date that WRA will begin collecting and managing the devolved taxes.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

There are no matters of special interest for the Committee.

## **3. Legislative background**

The powers enabling these Regulations to be made are contained in sections 14(1), 27(7)(a), 101(3) and (4), 163(1) and (2), and 189(1)(b) of the Tax Collection and Management (Wales) Act 2016 (TCMA).

- a. Section 14(1) TCMA gives the WRA the power to delegate any of its functions to a person listed in regulations made by the Welsh Ministers.
- b. Section 27(1) TCMA requires the WRA to prepare a corporate plan, which must be submitted to the Welsh Ministers. Section 27(7)(a) TCMA provides that the first corporate planning period is the period prescribed in regulations made by the Welsh Ministers.
- c. Section 101(3) and (4) TCMA enables the Welsh Ministers to make regulations in relation to disputes as to whether particular documents are protected by legal professional privilege.
- d. Section 163(1) and (2) TCMA enables the Welsh Ministers to set late payment and repayment interest rates.

These Regulations are subject to the negative procedure.

#### 4. Purpose & intended effect of the legislation

These Regulations make further provision in relation to a number of administrative matters relating to the operation of the WRA and the collection and management of the two devolved taxes.

- a. In summer 2016, the Cabinet Secretary for Finance and Local Government announced that WRA would lead on the collection and management of both land transaction tax (LTT) and landfill disposals tax (LDT), and that WRA will work directly with Natural Resources Wales (NRW) on compliance and enforcement matters relating to LDT. Regulation 3 lists NRW as a person to whom the WRA may delegate any of its functions in relation to LDT.
- b. Section 27(1) TCMA will require WRA to prepare a corporate plan for approval by the Welsh Ministers for each planning period. Section 27(9) requires WRA to submit the first corporate plan within six months of its establishment. Following approval by the Welsh Ministers, WRA must publish a plan and lay a copy of the plan before the National Assembly for Wales. Regulation 4 prescribes WRA's first corporate planning period as the one-year period from 1 April 2018 to 31 March 2019. In accordance with section 27(7)(b), each subsequent corporate plan will cover a three year period.
- c. It is common practice for tax collection bodies to charge interest rates on late payment of taxes. Section 163 TCMA provides the Welsh Ministers with the power to set the late payment interest rate for late payments received by the WRA, and the repayment interest rate for the late repayment of amounts by WRA to the taxpayer.

In line with the rates of interest currently applied by HMRC and Revenue Scotland, Regulations 6 and 7 will respectively set the late payment interest rate at the Bank of England base rate plus 2.5, and the repayment interest rate as the higher of the Bank of England base rate and 0.5%.

- d. Part 4 of the Regulations sets out the procedure to be followed where there is a dispute between WRA and the recipient of an information notice ("the notice recipient") about whether a document which has been requested by WRA is protected by legal professional privilege.

Regulation 10 sets out the procedure which must be followed in the event of a dispute about a document requested in the course of correspondence:

- i. on receipt of the information notice, the notice recipient must provide a list of the documents in dispute with a description of their contents, and serve that list on WRA on the date specified in the information notice;
- ii. within 20 working days of receiving the list, WRA must notify the notice recipient of any documents that it requires to be produced and which it considers are not privileged.

- iii. on receipt of this notification, the notice recipient will have 20 days to make an application to the tribunal to consider and resolve the dispute.

The Regulations replicate the existing procedure followed by HMRC, Revenue Scotland and their respective notice recipients, but the time period in which the notice recipient must prepare the list has been shortened to take into account the additional requirement imposed on WRA to obtain tribunal approval when issuing taxpayer notices.

Regulation 11 provides for the procedure where a document is requested by WRA during the course of an inspection of premises. In these cases, the notice recipient must place any document in dispute in an appropriate container, such as a sealed envelope, which must be given to WRA. Regulation 11(4) requires WRA to make an application to the tribunal to consider and resolve the dispute within 42 working days.

The Regulations replicate the existing procedure followed by HMRC, Revenue Scotland and their respective notice recipients.

## **5. Consultation**

The Welsh Government published the White Paper “Collection and management of devolved taxes in Wales” in September 2014. The White Paper considered the options and opportunities for the policy and subsequent legislation on the collection and management of future Welsh taxes. The consultation respondents broadly agreed that powers similar to those available to HMRC would need to be made available to the WRA.

More recently, stakeholder engagement has been undertaken with HMRC, Revenue Scotland, the Wales Audit Office and the Law Society. Their views have been taken into account when developing these Regulations.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

#### **Option 1: Do Nothing**

Under this option, the Regulations would not be introduced.

#### **Option 2: Introduce the Regulations.**

Under this option, Regulations (as described in Part 1 of this Explanatory Memorandum) would be introduced. This is the preferred option.

### **Costs & benefits**

#### **Option 1: Do not introduce the Regulations**

This is the 'Do Nothing' option and as such there are no additional costs or benefits associated with this option. The following are implications of this option:

- a. If WRA was unable to delegate functions to NRW, WRA would need to bring in resources to undertake the full range of compliance and enforcement activities in relation to LDT. As WRA would otherwise be funding NRW LDT resources under a delegation, such a move would be relatively cost neutral. However, removing the option to delegate would deprive WRA of the main operational benefits of such an arrangement. Firstly, given the close links between LDT and environmental law, NRW's experience and knowledge of the waste sector means they are well placed to identify and assess compliance risk. NRW also have direct relationships with landfill site operators, so understand their behaviours and working practices, and have a wealth of expertise and experience in landfill compliance issues. The impact for WRA would be the need to acquire this expertise via other means, having to invest more in specialist skills and training to deliver similar performance – all of which would carry a cost implication. Furthermore, the absence of a delegation here would impact customers, for whom a less joined up approach may lead to increased administrative burden and reduced certainty over their affairs.
- b. If a first corporate planning period is not set, the WRA will be unable to meet its duty of preparing a corporate plan for approval by the Welsh Ministers.
- c. If late payment interest rates are not set, this may lead to more instances of late payments as a financial disincentive for such behaviour would be removed. This would afford those taxpayers who do not comply with their obligations an unfair timing and cash flow advantage, and reduce the amount of revenue collected by WRA at the correct time. Conversely, not

setting late repayment interest rates would mean taxpayers were not compensated for WRA retaining funds that should be repaid.

- d. By not introducing the Regulations in relation to legal professional privilege, WRA would not have a robust process in place for resolving disputes. This could lead to uncertainty for WRA and the notice recipient, and may lead to lengthy or unresolved disputes.

## **Option 2: Introduce the Regulations**

### **Costs**

- a. The cost to NRW to deliver the delegated functions was also set out in the RIA for the TCMA. The RIA identified set-up costs of between £100,000 and £180,000 and recurrent annual costs of between £200,000 and £315,000 in NRW. The cost of NRW undertaking this work is not expected to be materially different to if the compliance and enforcement work were undertaken directly by WRA.
- b. The cost to WRA to prepare and publish a corporate plan was included in the administrative costs set out in the RIA published alongside the TCMA.
- c. There will be an additional cost (relative to the Do Nothing option) to organisations and individuals making a late payment to the WRA. As noted above, the proposed rates of interest are in line with those currently applied by HMRC and Revenue Scotland. The rates are therefore no different to those the taxpayers are currently used to. There is potential for costs to arise as a result of late repayment interest on payments made by WRA, however, this will be the exception rather than the rule as the WRA systems will be designed to avoid late payments. It is likely that the total interest paid out for late repayments would be less than the total interest received as a result of late payments.
- d. There will be no additional costs associated with the introduction of a process for dealing with disputes over whether documents are protected by legal professional privilege.

<http://www.assembly.wales/laid%20documents/pri-ld10293-em-r/pri-ld10293-em-r-e.pdf>

### **Benefits**

- a. The Regulations will enable WRA to delegate functions to NRW. Given their existing work with the waste management sector, delegating the compliance work for LDT to NRW is considered to be the most cost-effective option.
- b. Setting the first corporate planning period from 1 April 2018 to 31 March 2019 will allow sufficient time for WRA to prepare, submit and receive

approval from Welsh Ministers for its first plan. It would also allow WRA to gain and draw from operational experience before embarking on the preparation and publication of a subsequent three-year corporate plan.

- c. The rate of interest for late payments is intended to provide an incentive to taxpayers to pay their tax on time and so maintain revenue streams and funding for public services. The interest rate for repayments by WRA has to be lower than that available on the market to reduce the risk of taxpayers overpaying and 'parking' funds with WRA.
- d. The Regulations provide clarity to all parties around the process which will be followed in cases where there is a dispute between WRA and a notice recipient about whether documentation is protected by legal professional privilege.

### **Post implementation review**

It is anticipated that TCMA will be reviewed within three to five years when the question of who is best placed to collect and manage is reviewed. The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 will be reviewed by May 2023 and the Landfill Disposals Tax (Wales) Act 2017 will follow the same timeline. These Regulations will be considered as part of those reviews.

## APPENDIX A

### The Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No