

Explanatory Memorandum to the Tax Collection and Management (Reimbursement Arrangements) (Wales) Regulations 2018

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 (Reimbursement Arrangements) (Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
29 January 2018

1. Description

These regulations deal with the arrangements for reimbursing taxpayers for the overpayment or double payment of tax, the records that must be kept and the related penalties that may be incurred.

The Regulations will come into force on 1 April 2018.

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

There are no matters of special interest to the Committees.

3. Legislative background

The Welsh Ministers make these regulations in exercise of the powers conferred on them by sections 66(1), 69(3) and 188(1) of the Tax Collection and Management (Wales) Act 2016 (TCMA).

Section 66(1) TCMA enables the Welsh Ministers to make Regulations for reimbursement arrangements if a taxpayer makes a claim for overpaid tax.

Section 69(3) TCMA enables the Welsh Ministers to prescribe which records must be kept and preserved in relation to a reimbursement.

Section 188(1) TCMA enables the Welsh Ministers to make such incidental, consequential or supplemental provision as they think appropriate for the purposes of, or in connection with the Act.

These Regulations are subject to the negative procedure.

4. Purpose & intended effect of the legislation

The practical implications of these Regulations will apply only to Landfill Disposals Tax (LDT) at present, as it is the only devolved indirect tax (i.e. operators of landfill sites are liable for the tax and this cost is passed on to the local authorities and businesses who dispose of waste at the landfill sites).

The Regulations will deal with the arrangements for reimbursing a person who has made a claim to the WRA as a result of overpayment of tax. The intended effect of the Regulations is to ensure that the claimant is not unjustly enriched by the repayment. Unjustified enrichment may occur where the taxpayer has not ultimately borne the cost of the tax to be repaid but has already collected it from their customer.

The Regulations will set out the timeframe the claimant has to reimburse any reclaimed amount to their customer. The Regulations will also prescribe the records that need to be kept and preserved and the penalties for failing to do so. The following provisions will be included:

- a) Reimbursement must be made to the customer within 90 days of the repayment by WRA.
- b) There should be no deduction from the reimbursement by way of fee or charge;
- c) Reimbursement must be by cash, cheque or electronic transfer (by agreement);
- d) Any amount not reimbursed to the customer within 90 days should subsequently be repaid to WRA no later than 30 days after the end of the initial 90 day period;
- e) Any interest repaid by WRA should be reimbursed to the customer on the same basis as the original tax amount;
- f) The taxpayer must keep records and produce them to WRA.

The Regulations will also apply the penalty in section 143 TCMA in cases where a person fails to keep the requisite records in accordance with Regulation 6, and will introduce a penalty where a person fails to repay an amount in accordance with Regulation 5. Penalties would only be levied if there was non-compliance with the regulations and these are part of a suite of measures to act as a disincentive to deliberate non-compliance with the regulations. It is not anticipated to be a significant figure and the amounts will be consistent with the approaches taken in TCMA and the Landfill Disposals Tax (Wales) Act 2017.

Any interest that is earned as a result of an overpayment to WRA would not be retained by WRA. It would be returned to the landfill site operator when the reimbursement is made and the operator would include this in the repayment to the customer on the same basis.

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.

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 implications of not introducing these Regulations are:

- If the WRA is not able to impose a time limit on the taxpayer refunding its customer, it will not be able to assert control over when the repayment is made;
- If the WRA is unable to impose a time limit on the taxpayer returning the payment to the WRA if it fails to refund its customer, it will not be able to assert control over when that repayment is made.
- If the WRA is unable to set out the records that the taxpayer needs to keep, it will not be able to assert control over access to those records;
- If the penalties in relation to late repayments and record keeping are not set out in Regulations, the WRA will not have the relevant powers to impose those penalties. As a result, there will be no incentive for the landfill site operators to comply with the rules.

Option 2: Introduce the Regulations

Costs

There will be no additional or specific cost to the WRA for developing a process for reimbursement arrangements. This process will form part of the WRA's business as usual activity which will be met from the WRA operational costs budget.

Figures from HMRC show that in 2016/17 there were 22 claims for reimbursements across England and Wales and three penalties were imposed on taxpayers.

It is not envisaged that there will be significant additional costs to the taxpayer as a result of these Regulations. The implications of these Regulations would be::

- The taxpayer will be prevented from retaining a reimbursement for a period longer than that set out in the Regulations and potentially earning unjust interest on the sum.
- There may be a transaction charge if the taxpayer chooses to make the repayment using electronic transfer. However, the Regulations state that the repayment can be made via cash, cheque or electronic transfer, so the taxpayer has the right to choose the payment method in agreement with the customer;
- There will be no additional cost to the taxpayer for keeping records, however, failure to keep relevant records will result in a penalty. These penalties will be clearly set out in guidance. The Tax Collection and Management (Wales) Act 2016 and Landfill Disposals Tax (Wales) Act 2017 already place a requirement on operators to keep records. The requirements set out in these Regulations only relate to records about reimbursements therefore any additional administrative cost would be minimal?
- There will also be potential for a penalty to be imposed if the taxpayer fails to repay the customer within 90 days and also if they fail to repay the WRA within a further 30 days. These penalties will be clearly set out in guidance. Based on figures provided by HMRC, there is likely to be a negligible number of cases where penalties are imposed.

Benefits

These Regulations will set out a clear and fair process for dealing with reimbursements. They will ensure that there is clarity around the time in which repayments need to be made and the records that need to be retained (and for how long).

If the Regulations are not made, it could lead to landfill operators becoming unjustly enriched and landfill customers not receiving the refunds to which they are entitled.

Post implementation review

It is anticipated that the Tax Collection and Management (Wales) Act 2016 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
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No