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WELSH STATUTORY INSTRUMENTS

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**2017 No. 1022 (W. 260)**

**TAXES, WALES**

**The Tax Collection and Management  
(Administration) (Wales) Regulations 2017**

*Made* - - - - 23 October 2017  
*Laid before the National  
Assembly for Wales* - - 26 October 2017  
*Coming into force in accordance with regulation 1(2)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by 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<sup>(1)</sup>.

**PART 1**

**General**

**Title and commencement**

1.—(1) The title of these Regulations is the Tax Collection and Management (Administration) (Wales) Regulations 2017.

(2) These Regulations come into force on 1 April 2018 except for regulations contained in Parts 1 and 2 which come into force on 21 November 2017.

**Interpretation**

2. In these Regulations—

“the TCM Act” (“*y Ddeddf CRhT*”) means the Tax Collection and Management (Wales) Act 2016;

“document” (“*dogfen*”) means information, a document or part of a document;

“document in dispute” (“*dogfen y mae anghydfod yn ei chylch*”) is a document over which there is a dispute between WRA and a person who has been given an information notice as to whether the document is subject to legal professional privilege;

“notice recipient” (“*derbynnydd yr hysbysiad*”) means the taxpayer who is given a notice under section 86 of the TCM Act or third party who is given a notice under section 87 or 89 of the TCM Act, or a person authorised to act on their behalf; and

“working day” (“*diwrnod gwaith*”) means any day other than a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(2).

## PART 2

### WRA

#### Delegation of functions

3. The Natural Resources Body for Wales is prescribed as a person to whom WRA may delegate any of its functions in relation to landfill disposals tax under section 14(1) of the TCM Act.

#### Specification of planning period

4. The period beginning with 1 April 2018 and ending on 31 March 2019 is prescribed as the first planning period for the purposes of section 27(7)(a) of the TCM Act.

## PART 3

### Rates of interest

#### Meaning of “Bank of England rate”

5.—(1) In this Part, the “Bank of England rate” that applies to a day is the official bank rate as last announced at the meeting of the Bank of England Monetary Policy Committee held prior to that day.

(2) But where a day falls within 3 working days of a meeting at which an announcement referred to in paragraph (1) was made, the “Bank of England rate” for that day means the rate as determined under that paragraph as if that meeting had not taken place.

#### Late payment interest rate

6. The late payment interest rate for the purposes of section 157 of the TCM Act is the percentage per annum found by applying the following formula—

$$\text{Bank of England rate} + 2.5$$

#### Repayment interest rate

7. The repayment interest rate for the purposes of section 161 of the TCM Act is the higher of—

- (a) 0.5% per annum; and
- (b) the Bank of England rate.

## PART 4

### Resolution of disputes as to whether a document is subject to legal professional privilege

#### Application of this Part

8. This Part applies where—
- (a) WRA has issued an information notice to a person to provide information or produce a document—
    - (i) during the course of correspondence; or
    - (ii) during the course of an inspection under Part 4 of the TCM Act, and
  - (b) there is a dispute between WRA and the notice recipient as to whether a document which has been requested is subject to legal professional privilege.

#### Requirement to provide information and produce documents not in dispute

9. Nothing in this Part affects—
- (a) any requirement under an information notice to provide information or produce a document which is not in dispute; or
  - (b) the powers under Part 4 of the TCM Act to inspect premises and other property.

#### Procedure where information notice given in correspondence is in dispute

- 10.—(1) The following procedure applies where there is a dispute falling within regulation 8(a)
- (i).
    - (2) On receipt of the information notice, the notice recipient must—
      - (a) specify in a list each document required under the information notice which is in dispute, with a description of the nature and contents of that document; and
      - (b) serve that list on WRA by the date given in the information notice for producing the document.
    - (3) But no description of a document is required where such a description would itself give rise to a dispute over privilege.
    - (4) Within 20 working days of receiving the list referred to in paragraph (2), WRA must notify the notice recipient of any document on the list that it requires to be produced and which it considers is not privileged.
    - (5) On receipt of notification under paragraph (4), the notice recipient must—
      - (a) produce any document which he or she agrees is not privileged; and
      - (b) to the extent that the status of any document remains in dispute, make an application to the tribunal.
    - (6) An application under paragraph (5)(b) must be—
      - (a) accompanied by a copy of the documents which remain in dispute; and
      - (b) made within a reasonable time to be agreed between the notice recipient and WRA, but in any event no later than 20 working days after the date of the notification given by WRA under paragraph (4).

### **Procedure where information notice given during inspection of premises is in dispute**

- 11.**—(1) The following procedure applies where there is a dispute falling within regulation 8(a) (ii).
- (2) On receipt of the information notice, the notice recipient must—
- (a) indicate to WRA each document required under the information notice which is in dispute; and
  - (b) place any document in dispute in an appropriate container which prevents the contents being visible.
- (3) The container must be—
- (a) sealed, labelled and signed by the notice recipient;
  - (b) countersigned by WRA; and
  - (c) retained by WRA.
- (4) Within 42 working days of receiving the container, WRA must—
- (a) deliver the container to the tribunal with the seal intact together with an application to the tribunal; and
  - (b) send a copy of that application to the notice recipient.

### **Compliance with information notice**

**12.** Where a notice recipient complies with the procedure set out in this Part, that person is to be treated as having complied with the information notice in relation to any document in dispute until the tribunal determines the status of the document or until an agreement has been reached under regulation 14.

### **Finding of the tribunal**

- 13.**—(1) When an application is made under regulation 10(5)(b) or 11(4), the tribunal must—
- (a) resolve the dispute by confirming whether and to what extent the document is or is not privileged; and
  - (b) direct which part or parts of a document (if any) must be disclosed.
- (2) The tribunal must ensure that any document in dispute is not inappropriately disclosed to any person pending the tribunal's determination.

### **Resolution of disputes by agreement**

**14.** A dispute falling within this Part may be resolved at any time by WRA and the notice recipient reaching an agreement, whether in writing or otherwise.

23 October 2017

*Mark Drakeford*  
Cabinet Secretary for Finance and Local  
Government, one of the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for various matters relating to the administration of the devolved taxes.

Regulation 3 prescribes the Natural Resources Body for Wales as a person to whom the Welsh Revenue Authority (“WRA”) may delegate any of its functions in relation to landfill disposals tax.

Regulation 4 establishes that WRA’s first planning period (for the purposes of its corporate plan) will commence on 1 April 2018 and end on 31 March 2019.

Part 3 of these Regulations provides for the rates of late payment interest and repayment interest. Regulation 5 provides that the rates of interest are calculated by reference to the Bank of England rate as last announced at the latest meeting of the Bank of England Monetary Policy Committee. But where that meeting has taken place within 3 working days of the date on which interest is to be calculated, the rates of interest are calculated as if that latest meeting did not take place.

Part 4 sets out the procedures which apply for the determination of disputes as to whether information or a document requested by WRA under the powers conferred by Part 4 of the Tax Collection and Management (Wales) Act 2016 (“the TCM Act”) is protected by legal professional privilege.

Regulation 9 makes clear that any information or document requested by WRA which is not in dispute must be provided to WRA in accordance with the notice which has been issued.

Regulation 10 establishes the procedure for disputes relating to any information or document requested by WRA in the course of correspondence. In these cases, the person in receipt of the notice (“the notice recipient”) must compile a list of any documents which they consider are privileged. Regulation 10(2)(b) requires the notice recipient to serve that list on WRA by the date specified in the notice.

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, 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.

Regulation 12 provides that a notice recipient is to be treated as having complied with the information notice in relation to any document in dispute pending the decision by the tribunal or until an agreement has been reached between the notice recipient and WRA.

Regulation 13 requires the tribunal to resolve the dispute and direct the disclosure of any document (or any part of a document) which it concludes is not privileged.

Regulation 14 provides that the notice recipient and WRA may agree to resolve the dispute at any point prior to the tribunal reaching its decision.

In accordance with regulation 1(2), Parts 1 and 2 will come into force on 21 November 2017, while the remaining provisions will come into force on 1 April 2018.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.