

Draft Regulations laid before the National Assembly for Wales under section 94(6) of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

LANDFILL TAX, WALES

**The Landfill Disposals Tax
(Administration) (Wales)
Regulations 2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Landfill Disposals Tax (Wales) Act 2017 (“the 2017 Act”) establishes a new tax, to be known as landfill disposals tax. The tax is to be charged on taxable disposals, which are defined in Chapter 2 of Part 2 of the 2017 Act.

These Regulations make provision in connection with the administration of the tax.

Part 1 provides that the Regulations come into force on the day on which section 2 of the 2017 Act comes into force. This is the day on which the tax will begin to be charged on taxable disposals.

Part 2 makes provision about mixtures of materials that consist entirely of fines. Fines are particles produced by a waste treatment process that involves an element of mechanical treatment.

A mixture of materials that meets requirements 1 to 6 in section 16 of the 2017 Act is ordinarily treated as a qualifying mixture of materials to which the lower rate of landfill disposals tax applies. Where the mixture consists entirely of fines, however, the mixture must also meet the requirements in regulation 4 in order for the lower rate of tax to apply to a taxable disposal of the mixture. These requirements include a requirement relating to loss on ignition (LOI) testing.

Regulation 5 sets out general LOI testing requirements with which operators of authorised landfill sites must comply in order for mixtures of fines to be treated as qualifying mixtures of materials.

Regulations 6 and 7 confer powers on the Welsh Revenue Authority (WRA) in relation to LOI testing, and regulations 8 to 11 make provision in connection with penalties that may be imposed on operators in relation to failures to comply with certain requirements under these Regulations.

Part 3 gives operators of authorised landfill sites an entitlement to a tax credit, known as customer insolvency credit, where a customer becomes insolvent before having paid the operator for carrying out a taxable disposal.

Regulation 14 sets out the requirements that must be met in order for the entitlement to arise. Regulation 18 sets out the manner in which the amount of the entitlement to credit is to be calculated. Regulations 19 and 20 specify the manner in which an amount of credit may be claimed and the manner in which credit may be given.

A person who makes a claim for credit must hold and preserve the evidence specified in regulation 22 and must also keep a customer insolvency credit record in accordance with regulation 23.

A person who has benefited from an amount of credit may be required to make payments to WRA in certain circumstances. Those circumstances are specified in regulations 24 and 25.

Regulations 26 and 27 and the Schedule to these Regulations make a number of amendments and modifications to the Landfill Disposals Tax (Wales) Act 2017 and the Tax Collection and Management (Wales) Act 2016 in connection with tax credits.

A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy of the assessment can be obtained from the Welsh Treasury, Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is available on the Welsh Government website at www.gov.wales.

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2018 No. (W.)

LANDFILL TAX, WALES

The Landfill Disposals Tax
(Administration) (Wales)
Regulations 2018

Made ***

*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 17, 54 and 93 of the Landfill Disposals Tax (Wales) Act 2017⁽¹⁾.

A draft of these Regulations has been laid before and approved by a resolution of the National Assembly of Wales, in accordance with section 94(6) of that Act.

PART 1

PRELIMINARY

Title and commencement

1.—(1) The title of these Regulations is the Landfill Disposals Tax (Administration) (Wales) Regulations 2018.

(2) These Regulations come into force on the day on which section 2 of the Landfill Disposals Tax (Wales) Act 2017 comes into force.

(1) 2017 anaw 3.

Interpretation

2. In these Regulations, “LDTA” means the Landfill Disposals Tax (Wales) Act 2017.

PART 2

MIXTURES OF MATERIALS CONSISTING ENTIRELY OF FINES

General

Interpretation of this Part

3. In this Part—

“direction” (“*cyfarwyddyd*”) means a direction issued by WRA under regulation 6 that has not been withdrawn;

“LOI percentage” (“*y ganran colled wrth danio*”) means the amount of non-qualifying material contained in a mixture of materials consisting entirely of fines, as indicated by the percentage of the mass of those fines lost on ignition;

“LOI test” (“*prawf colled wrth danio*”) means a test to determine the LOI percentage of a mixture of materials consisting entirely of fines;

“non-qualifying material” (“*deunydd anghymwys*”) means material that is not qualifying material;

“the WRA notice” (“*yr hysbysiad ACC*”) means a notice published by WRA under section 17(5) of LDTA that has not been withdrawn by a subsequent published notice.

Requirements in respect of mixture of materials consisting entirely of fines

4.—(1) The following requirements must be met (in addition to requirements 1 to 6 in section 16 of LDTA) in order for a mixture of materials consisting entirely of fines to be treated as a qualifying mixture of materials.

Requirement 1

The operator of the authorised landfill site at which a taxable disposal of the mixture is made must have taken the steps specified in the WRA notice.

Requirement 2

The operator must hold the evidence specified in the WRA notice regarding the taking of those steps.

Requirement 3

If a LOI test has been carried out on a sample of the taxable disposal, the LOI percentage indicated by the test must not have exceeded 10% (but see paragraph (3)).

Requirement 4

The mixture contained in the taxable disposal must not be prohibited from being treated as a qualifying mixture of materials by virtue of regulation 5(3).

(2) WRA may determine that requirement 2 is to be treated as having been met if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if that requirement had been met, are proved by other documentary evidence provided to it.

(3) The WRA notice may specify circumstances in which a LOI test which indicates that the LOI percentage exceeds 10% may be ignored.

General requirements in respect of LOI testing

5.—(1) The operator of an authorised landfill site must comply with the following requirements in order for mixtures of materials consisting entirely of fines to be treated as qualifying mixtures of materials when they are disposed of at the site.

Requirement 1

The operator must carry out a LOI test on the mixtures—

- (a) at the times and intervals specified in the WRA notice, unless the operator is directed to do otherwise under regulation 6, or
- (b) if the operator is so directed, at the times and intervals specified in the direction.

Requirement 2

The operator must, in carrying out each LOI test—

- (a) heat a sample of the mixture that is being tested to a temperature of 440°C for a minimum of 5 hours, and
- (b) comply with any other requirement in the WRA notice that relates to the carrying out of the test.

Requirement 3

Where—

- (a) a LOI test is carried out on a sample of a mixture, and
- (b) the LOI percentage indicated by the test exceeds 10%,

the operator must take the steps specified in the WRA notice.

Requirement 4

The operator must—

- (a) keep the evidence specified in the WRA notice in relation to each LOI test carried out by the operator, and

- (b) preserve it for the period specified in the notice.

(2) WRA may determine that the operator is to be treated as having complied with requirement 4 if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with the requirements, are proved by other documentary evidence provided to it.

(3) Where the operator fails to comply with a requirement mentioned in paragraph (1), mixtures of fines contained in taxable disposals of a description specified in the WRA notice are prohibited from being treated as qualifying mixtures of materials.

WRA power to direct operators to carry out LOI tests

6.—(1) WRA may by notice direct the operator of an authorised landfill site to carry out a LOI test on any mixture of materials—

- (a) which appears to WRA to consist entirely of fines,
- (b) which is of a description specified in the direction, and
- (c) which is present at the site.

(2) A direction given under this regulation may be varied or withdrawn by notice at any time.

WRA power to take samples and carry out LOI tests

7.—(1) WRA may—

- (a) take a sample of any mixture of materials at an authorised landfill site which appears to WRA to consist entirely of fines, and
- (b) carry out a LOI test on the sample.

(2) Where WRA does so, it must—

- (a) carry out the test by heating a sub-sample of the sample to a temperature of 440°C for a minimum of 5 hours,
- (b) issue a notice of the LOI percentage determined by the test to the operator of the site,
- (c) retain—
 - (i) no less than 1kg of the sample, and
 - (ii) a record of the LOI test result,
- (d) preserve the retained portion of the sample for a period of 3 months beginning with the filing date for the relevant tax return, and
- (e) preserve the record of the LOI test result for the period that a person who is required to

make a tax return would be required to keep the record under section 38 of TCMA (duty to keep and preserve records).

(3) In paragraph (2)(d), “the relevant tax return” is the tax return for the accounting period in which the tax chargeable on the disposal of the mixture is accounted for.

Penalties

Penalty for failure to comply with requirements relating to evidence

8.—(1) An operator of an authorised landfill site who—

- (a) treats a mixture of materials consisting entirely of fines as a qualifying mixture of materials in accounting for the tax chargeable on a taxable disposal, but
- (b) fails to comply—
 - (i) with requirement 2 in regulation 4 (in relation to that disposal), or
 - (ii) with requirement 4 in regulation 5 (in relation to that mixture),

is liable to a penalty not exceeding £3,000.

(2) But the operator is not liable to a penalty under this regulation in respect of the failure if WRA is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with those requirements, are proved by other documentary evidence provided to it.

Assessment and payment of penalties

9.—(1) Where an operator of an authorised landfill site becomes liable to a penalty under regulation 8, WRA must—

- (a) assess the penalty, and
- (b) issue a notice to the operator of the penalty assessed.

(2) An assessment of a penalty may be combined with an assessment to tax.

(3) An assessment of a penalty under regulation 8 must be made within the period of 12 months beginning with the day on which WRA first believed that the operator was liable to the penalty.

(4) An operator of an authorised landfill site to whom notice of a penalty is issued under this regulation must pay the penalty before the end of the period of 30 days beginning with the day on which the notice of the penalty is issued (but see section 182 of TCMA (payment of penalties in the event of review or appeal)).

Supplementary provision about penalties

10.—(1) A person is not liable to a penalty under regulation 8 in respect of anything if the person has been convicted of an offence in relation to it.

(2) If a person liable to a penalty under regulation 8 has died, any penalty that could have been assessed on the person may be assessed on the person's personal representatives.

(3) A penalty assessed in accordance with paragraph (2) is to be paid out of the person's estate.

Other supplementary provision

Supplementary provision about WRA notices and directions

11.—(1) WRA may make different provision for different purposes in—

- (a) the WRA notice, and
- (b) any direction given by WRA under regulation 6.

(2) The provision may include (among other things) transitional provision applicable to operators of authorised landfill sites who, immediately before the day on which section 2 of LDTA comes into force, were registered under section 47 of the Finance Act 1996.

PART 3

CUSTOMER INSOLVENCY CREDIT

General

Customer insolvency credit

12.—(1) This Part makes provision for a tax credit in respect of the tax.

(2) The credit is to be known as customer insolvency credit.

Interpretation of this Part

13.—(1) In this Part—

“claim” (“*hawliad*”) means a claim in accordance with this Part for an amount of customer insolvency credit;

“claimant” (“*hawlydd*”) means a person who makes a claim;

“customer” (“*cwsmer*”), in relation to a taxable disposal, means the person for whom the disposal is made;

“landfill invoice” (“*anfoneb dirllenwi*”) has the meaning given in section 41(8) of LDTA.

(2) References in this Part to a payment from a customer include a payment from another person acting on behalf of the customer.

Entitlement to credit

Circumstances giving rise to entitlement to credit

14.—(1) A person (“the claimant”) is entitled to customer insolvency credit in respect of a taxable disposal if the following requirements are met.

Requirement 1

The disposal has been made at an authorised landfill site.

Requirement 2

The claimant—

- (a) was registered as the operator of the site at the time of the disposal, and
- (b) made the disposal or permitted the disposal to be made.

Requirement 3

The disposal was made for consideration in money for another person (“the customer”) to whom the claimant—

- (a) is not connected, and
- (b) was not connected at the time of the disposal.

Requirement 4

The claimant has issued a landfill invoice to the customer in respect of the taxable disposal—

- (a) within the period of 14 days beginning with the day on which the disposal was made, or
- (b) within any longer period specified in a notice issued to the claimant under section 41(6) of LDТА.

Requirement 5

The claimant—

- (a) has accounted for the amount of tax chargeable in respect of the disposal in a tax return, and
- (b) has paid the amount of tax payable under section 42(1) or (1A) of LDТА in respect of the return.

Requirement 6

The customer—

- (a) has become insolvent within the period of 12 months beginning with the date on which the landfill invoice was issued, and
- (b) has failed to pay the claimant the whole or part of the consideration due in respect of the disposal.

Requirement 7

The claimant has been unable to recover the unpaid consideration, despite having taken reasonable steps to do so.

Requirement 8

The claimant—

- (a) has set off against the amount of unpaid consideration any debt owed by the claimant to the customer which may be set off against that amount, and
- (b) has reduced the amount of unpaid consideration by the value of any enforceable security that the claimant holds in relation to the customer,

but an amount of consideration remains outstanding in respect of the disposal.

(2) Despite paragraph (1), a person is not entitled to customer insolvency credit in respect of a taxable disposal—

- (a) if the person has previously benefited from any amount of customer insolvency credit in respect of the disposal, or
- (b) if a landfill invoice has been issued in respect of the disposal after the end of the later of the periods mentioned in requirement 4.

(3) In this Part, references to outstanding consideration, in relation to a taxable disposal, are references to the amount of consideration mentioned at the end of requirement 8.

Supplementary provision relating to entitlement to credit

15.—(1) This regulation makes supplementary provision for the purposes of regulation 14.

(2) Sections 1122 and 1123 of the Corporation Tax Act 2010⁽¹⁾ (connected persons) apply for the purpose of determining whether or not the claimant is connected with the customer as mentioned in requirement 3, and section 1122 of that Act has effect as if after subsection (8) there were inserted—

“(9) A person (“A”) is connected with any person who is an employee of A or by whom A is employed.

(10) For the purposes of this section, any director or other officer of a company is to be treated as employed by that company.”

(3) Where the customer has made a payment to the claimant, regulation 16 applies for the purpose of determining whether, and to what extent, the payment

(1) 2010 c.4.

is to be treated as being allocated to pay the consideration due in respect of the disposal (and consequently whether the customer has failed to pay the whole or part of the consideration for the disposal as mentioned in requirement 6).

(4) Regulation 17 applies for the purpose of determining whether the customer has become insolvent as mentioned in requirement 6.

(5) In requirement 8, “security” means—

- (a) in relation to Wales, England and Northern Ireland, any mortgage, charge, lien or other security;
- (b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off);
- (c) in relation to any country or territory outside the United Kingdom, anything that has an effect corresponding to anything mentioned in sub-paragraph (a) or (b).

(6) Regulation 21(3) applies for the purpose of determining whether the claimant has previously benefited from an amount of customer insolvency credit in respect of the disposal as mentioned in regulation 14(2).

Consideration for taxable disposal: allocation of payments

16.—(1) Where—

- (a) a claimant receives a payment from a customer for whom a taxable disposal has been made, and
- (b) the customer owes a debt to the claimant in respect of the consideration for the disposal,

the payment is normally to be treated as being allocated to that debt.

(2) But where the customer also owes a debt to the claimant in respect of one or more matters (whether or not relating to taxable disposals) other than the consideration for the disposal, the payment is to be treated instead—

- (a) as being allocated to the debt that arose earliest; and
- (b) if the amount of the payment exceeds that debt, as being subsequently allocated to the other debts in the order of the dates in which they arose.

(3) Where the effect of paragraph (2) is to require a payment (or part of a payment) to be allocated to two or more debts arising on the same day, the amount of payment that is to be treated as being allocated to a

particular debt arising on that day is to be calculated in accordance with the following formula—

$$Allocation = TP \times \frac{D}{TD}$$

where—

- (a) “Allocation” is the amount of the allocation;
- (b) TP is the total amount of payment to be allocated under paragraph (2) to the debts arising on that day;
- (c) D is the amount of the particular debt in question;
- (d) TD is the total amount of all of the debts which—
 - (i) arose on that day, and
 - (ii) are owed by the customer to the claimant.

(4) Where a landfill invoice has been issued in respect of more than one taxable disposal, each debt in respect of the consideration for each disposal is to be treated as arising on the same day (namely, the day after that by which the invoice must be paid); and paragraphs (2) and (3) apply accordingly.

Customer insolvency

17.—(1) A customer becomes insolvent for the purposes of regulation 14 if—

- (a) a company voluntary arrangement takes effect in relation to the customer under Part 1 of the Insolvency Act 1986⁽¹⁾;
- (b) an administration order (within the meaning of Schedule B1 to that Act) is made, or a receiver or manager, or an administrative receiver, is appointed in relation to the customer;
- (c) a creditors’ voluntary winding up (within the meaning of Part 4 of that Act), or a winding up by the court under Chapter 6 of Part 4 of that Act, is commenced in relation to the customer;
- (d) a debt relief order is made in relation to the customer under Part 7A of that Act;
- (e) an individual voluntary arrangement takes effect in relation to the customer under Part 8 of that Act;
- (f) a bankruptcy order (within the meaning of Part 9 of that Act) is made in relation to the customer;

(1) 1986 c.45.

- (g) any corresponding event occurs that has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

(2) In this Part, references to an insolvency event are references to an event described in paragraph (1)(a) to (g).

Amount of credit

Calculation of amount of customer insolvency credit

18.—(1) The amount of customer insolvency credit to which a person is entitled in respect of a taxable disposal is to be calculated in accordance with the following formula—

$$Credit = T \times \frac{OC}{C}$$

where—

- (a) “Credit” is the amount of the customer insolvency credit;
- (b) T is the amount of tax which the person has accounted for in respect of the disposal in a tax return, subject to paragraphs (2) and (3);
- (c) OC is the amount of the outstanding consideration in respect of the disposal (see regulation 14(3)), subject to paragraph (3);
- (d) C is the consideration for the disposal, subject to paragraph (3).

(2) Where the amount of tax accounted for in respect of the disposal is increased, the increase is to be ignored.

(3) Where the amount of tax chargeable on the disposal is less than the amount of tax accounted for in respect of the disposal (ignoring any increase)—

- (a) T is the amount of tax chargeable on the disposal;
- (b) C and OC are each to be reduced by an amount equal to the difference between the two amounts of tax.

Claiming credit

Claims by persons carrying out taxable operations

19.—(1) A registered person who is entitled to customer insolvency credit in respect of a taxable disposal may claim the credit in a tax return made in respect of—

- (a) the first qualifying accounting period, or
- (b) any subsequent accounting period.

(2) The first qualifying accounting period is the accounting period in which the period of 6 months, beginning with the date of the relevant insolvency event, expires.

(3) The claim is to be made in the tax return—

- (a) by setting off the amount of the credit against the amount of tax that the person would otherwise be required to pay under section 42(1) of LDTA in respect of the relevant accounting period, and
- (b) if the amount of the credit exceeds that amount of tax, by stating the amount of the excess credit.

(4) Where an amount of excess credit is stated in the tax return in accordance with paragraph (3)(b)—

- (a) WRA may set off that amount against any amount of tax that the person is required to pay but has not yet paid, and
- (b) if any amount of excess credit remains, WRA must pay the person an amount equal to that remaining amount.

(5) But WRA is not required to make a payment under paragraph (4)(b) unless and until each tax return that the person is required to make in respect of the tax has been made.

(6) In this regulation—

“the relevant insolvency event” (“*y digwyddiad ansolfedd perthnasol*”) means the insolvency event that gave rise to an entitlement to credit in respect of the taxable disposal;

“the relevant accounting period” (“*y cyfnod cyfrifyddu perthnasol*”) means the accounting period in respect of which the tax return containing the claim is made.

Claims by other persons

20.—(1) A person who—

- (a) is not registered, and
- (b) is entitled to customer insolvency credit in respect of a taxable disposal,

may claim the credit by making an application to WRA in writing.

(2) An application under paragraph (1) may not be made before the expiry of the period of six months beginning with the date of the relevant insolvency event.

(3) If WRA is satisfied that—

- (a) the person is not registered,
- (b) the person is entitled to an amount of customer insolvency credit, and

- (c) the entitlement to the credit has not been transferred to any other person,

WRA must pay the person an amount equal to the amount of the credit.

(4) In this regulation, “the relevant insolvency event” means the insolvency event that gave rise to an entitlement to credit in respect of the taxable disposal.

Supplementary provision relating to claims

21.—(1) A claim for customer insolvency credit in respect of a taxable disposal must be for the entire amount (as opposed to only part of the amount) of the credit in respect of that disposal.

(2) Where a person is entitled to customer insolvency credit in respect of more than one taxable disposal, a claim may be in respect of each of those disposals, or in respect of only one or some of them.

(3) Where—

- (a) an amount of customer insolvency credit is set off, under regulation 19(3)(a) or (4)(a), against an amount of tax that a person would otherwise be required to pay, or
- (b) an amount equal to an amount of customer insolvency credit is paid to a person under regulation 19(4)(b) or 20(3),

the person is to be treated, for the purposes of this Part, as having benefited from that amount of credit.

Evidence and record keeping

Evidence in support of claims

22.—(1) A claimant must—

- (a) on the day the claim is made, hold the evidence specified in paragraph (2) in respect of each taxable disposal to which the claim relates, and
- (b) preserve that evidence for a period of 6 years beginning with that day.

(2) The evidence is—

- (a) a copy of the landfill invoice issued in respect of the disposal;
- (b) records or other documents showing that the claimant—
 - (i) has accounted for the disposal in a tax return, and
 - (ii) has paid the amount of tax payable under section 42(1) or (1A) of LDTA in respect of the return;
- (c) records or other documents relating to any payment made by the customer in respect of the consideration for the disposal;

- (d) records or other documents relating to—
 - (i) any debt owed by the claimant to the customer, or
 - (ii) any enforceable security held by the claimant in relation to the customer;
- (e) records or other documents relating to any steps taken to recover the outstanding consideration for the disposal.

Customer insolvency credit record

23.—(1) A claimant must maintain an up-to-date record of the claim (a “customer insolvency credit record”) throughout the recording period.

(2) The recording period begins with the day on which the claim is made, and ends with the date that is the sixth anniversary of the later of—

- (a) the day on which the claim was made, and
- (b) the day on which the record of the claim was most recently updated.

(3) The record must contain the following information in respect of each taxable disposal to which the claim relates—

- (a) the amount of tax chargeable on the disposal;
- (b) the consideration for the disposal;
- (c) the tax return in which the disposal was accounted for, and the date on which any tax payable in respect of the return was paid;
- (d) the identifying number of the landfill invoice issued in respect of the disposal, and the date on which it was issued;
- (e) in the case of a disposal of material for which a written description is required by virtue of section 34(1)(c)(ii) of the Environmental Protection Act 1990(1), the written description;
- (f) the amount paid in respect of the consideration for the disposal, including any payment treated as being allocated to that debt by virtue of regulation 16 (whether before or after the making of the claim), and the amount of outstanding consideration;
- (g) any steps taken to recover the outstanding consideration for the disposal.

(4) The record must also contain the following information—

- (a) the total amount of the claim;

(1) 1990 c.43. Section 34(1) has been amended by S.I. 2000/1973, S.I. 2007/3538, S.I. 2010/675 and S.I. 2011/988. There are other amendments to section 34(1) which are not relevant to these Regulations.

- (b) the tax return in which the claim was made;
- (c) the total amount of outstanding consideration in respect of which the claim is made.

(5) Where a claimant makes more than one claim, the records that must be maintained under this regulation must be kept in a single account (to be known as “the customer insolvency credit summary”).

Recovery of credit

Recovery in the event of customer payment

24.—(1) This regulation applies where a claimant—

- (a) has benefited from an amount of customer insolvency credit in respect of a taxable disposal (see regulation 21(3)), and
- (b) subsequently receives a payment from the customer which, by virtue of regulation 16, is treated as being allocated, in part or in whole, to the debt owed in respect of the consideration for the disposal.

(2) The claimant must pay WRA, before the end of 30 days beginning with the day on which the claimant receives the customer payment, an amount calculated in accordance with the formula in paragraph (3).

(3) The formula is—

$$Payment = RCredit \times \frac{P}{OC}$$

where—

- (a) “Payment” is the amount of the payment that must be made to WRA;
- (b) “RCredit” is the relevant amount of customer insolvency credit;
- (c) P is the amount of payment that is treated as being allocated to the debt owed in respect of the consideration for the disposal, as described in paragraph (1)(b);
- (d) OC is—
 - (i) the amount treated as OC for the purposes of calculating the amount of credit in respect of the disposal under regulation 18(1), less
 - (ii) any amount received from the customer that has already been treated as P under this regulation.

(4) The relevant amount of customer insolvency credit is—

- (a) the amount of credit calculated in respect of the disposal under regulation 18(1), less
- (b) any amount that the claimant has already been required to pay WRA in respect of the disposal under this regulation.

Recovery in the event of failure to keep records or other evidence

25.—(1) This regulation applies where a claimant—

- (a) has benefited from an amount of customer insolvency credit as a result of a claim (see regulation 21(3)), but
- (b) has failed to comply with a requirement under regulation 22 or 23 in relation to the claim.

(2) WRA must—

- (a) assess the amount of customer insolvency credit from which the claimant has benefited in respect of the claim, and
- (b) issue a notice to the claimant—
 - (i) specifying the amount assessed, and
 - (ii) requiring the person to pay WRA an amount equal to that amount.

(3) The claimant must pay WRA the amount specified in the notice before the end of the period of 30 days beginning with the day on which the notice is issued.

(4) WRA is not required to issue a notice under paragraph (2) if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the records or other evidence required under regulation 22 or 23, are proved by other documentary evidence provided to it.

(5) A claimant to whom a notice is issued under paragraph (2) is not required to pay WRA the amount specified in the notice if—

- (a) the claimant produces documentary evidence to WRA, within the period of 30 days beginning with the day on which the notice is issued, regarding the facts which would have been proved by the records or other evidence required under regulation 22 or 23, and
- (b) WRA issues a further notice to the claimant stating that the evidence proves, to its satisfaction, the facts that it reasonably requires to be proved.

Amendments and modifications to primary legislation

Amendments to the Landfill Disposals Tax (Wales) Act 2017 and the Tax Collection and Management (Wales) Act 2016

26. The Schedule makes amendments to LDTA and TCMA(1).

(1) 2016 anaw 6.

Modifications to the Tax Collection and Management (Wales) Act 2016

27. Sections 74 to 77 of TCMA (enquiries into claims) apply to claims under regulation 20 as to claims under section 62, 63 or 63A of that Act but as if—

- (a) in section 74, the references to an amendment of a claim were omitted,
- (b) in section 75, subsection (3) were omitted, and
- (c) in section 77(1)(b), the reference to the discharge or repayment of devolved tax were to the payment of an amount in respect of a tax credit.

Cabinet Secretary for Finance, one of the Welsh Ministers

Date

AMENDMENTS TO PRIMARY
LEGISLATION: TAX CREDITS

PART 1

AMENDMENTS TO THE LANDFILL
DISPOSALS TAX (WALES) ACT 2017

1. LDTA is amended as follows.

2. In section 37 of LDTA (cancellation of registration), in subsection (4)—

- (a) the words from “all of the tax that the person is required to pay” to the end become paragraph (a);
- (b) at the end of that paragraph insert “, and
 - (b) all of the tax credit to which the person is entitled and which the person has claimed—
 - (i) has been set off against an amount of tax that the person would otherwise be required to pay, or
 - (ii) has been paid to the person.”

3. In section 42 of LDTA (payment of tax), after subsection (1) insert—

“(1A) But if an amount of tax credit is set off against that amount of tax in accordance with regulations made under section 54, the amount of tax that the person is required to pay by that date is the amount that remains outstanding after the set-off (if any).”

4. In section 43 of LDTA (duty to maintain landfill disposals tax summary), in subsection (1) —

- (a) omit the “and” at the end of the paragraph (a);
- (b) after paragraph (a) insert—
 - “(aa) the amount of tax credit claimed by the person, and”.

5. In section 77 of LDTA (designation of group of companies), in subsection (8)—

- (a) after paragraph (b) insert—
 - “(ba) an amount payable in respect of a tax credit;”;
- (b) in paragraph (c), for “or (b)” substitute “, (b) or (ba)”.

6. In section 83 of LDTA (duties and liabilities of partnerships and unincorporated bodies), in subsection (8)—

(a) after paragraph (b) insert—

“(ba) an amount payable in respect of a tax credit;”;

(b) in paragraph (c), for “or (b)” substitute “, (b) or (ba)”.

7. In section 96 of LDTA (interpretation), in subsection (1), insert at the appropriate place—

“tax credit” (“*credyd treth*”) means a tax credit under regulations made under section 54;”.

PART 2

AMENDMENTS TO THE TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

8. TCMA is amended as follows.

9. In section 37 of TCMA (overview of Part 3), in paragraph (e), for “where there is no enquiry” substitute “and of amounts payable in respect of tax credits”.

10. In section 44 of TCMA (scope of enquiry), in subsection (1)—

(a) omit the “or” after paragraph (a);

(b) after paragraph (b) insert—

“(c) to the question whether the person who made the tax return is entitled to a tax credit claimed in the tax return, or

(d) to the amount of tax credit to which the person is entitled.”

11.—(1) Section 45 of TCMA(1) (amendment of tax return during enquiry to prevent loss of tax) is amended as follows.

(2) After subsection (1) insert—

“(1A) If, during the period when an enquiry into a tax return is in progress, WRA forms the opinion—

(a) that the amount of tax credit claimed in the tax return is excessive, and

(1) Section 45 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), Schedule 23, paragraph 13.

- (b) that, unless the return is immediately amended, there is likely to be a loss of devolved tax,

WRA may by notice issued to the person who made the return amend it so that the amount claimed is no longer excessive.”

(3) In subsection (2)—

- (a) the words from “subsection (1) applies” to the end become paragraph (a);
- (b) at the end of that paragraph insert “, and
 - (b) subsection (1A) applies only so far as the excessive amount is attributable to the amendment.”

(4) In subsection (3), after “subsection (1)” insert “or (1A)”.

12. After section 55 of TCMA insert—

“Assessment in relation to tax credit

55A. If WRA comes to the view that—

- (a) an amount of tax credit that has been set off against an amount of tax that a person would otherwise have been required to pay—
 - (i) ought not to have been set off, or
 - (ii) has become excessive,
- (b) an amount that has been paid to a person in respect of a tax credit—
 - (i) ought not to have been paid, or
 - (ii) has become excessive, or
- (c) an amount that a person is required to pay to WRA in respect of a tax credit has not been paid,

WRA may make an assessment of the amount that ought in its opinion to be paid to WRA in order to remedy that matter.”

13. In section 56 of TCMA (references to “WRA assessment”), for “or 55” substitute “, 55 or 55A”.

14. In section 57 of TCMA (references to the “taxpayer”), in paragraph (b), after “section 55” insert “or 55A”.

15.—(1) Section 58 of TCMA(1) (conditions for making WRA assessments) is amended as follows.

(2) In subsection (1), in paragraph (a)—

- (a) for “three” substitute “four”;

(1) Section 58 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 18.

(b) for “and (3A)” substitute “, (3A) and (3B)”.

(3) After subsection (3A) insert—

“(3B) The fourth case is where WRA has come to the view that a situation described in section 55A has arisen.”

16.—(1) Section 59 of TCMA(1) (time limits for WRA assessments) is amended as follows.

(2) In subsection (1), after “relevant date” insert “in any case involving a situation mentioned in section 54, 55 or 55A(a) or (b)”.

(3) In subsection (2), for “or 55” substitute “, 55 or 55A(a) or (b)”.

(4) In subsection (3), for “or 55” substitute “, 55 or 55A(a) or (b)”.

(5) After subsection (4) insert—

“(4A) No WRA assessment may be made in a case involving a situation mentioned in section 55A(c)—

(a) if WRA has issued a notice to the taxpayer requiring payment of the amount in question, after the period of 12 months beginning with the day after that by which the payment was required, and

(b) otherwise, after the period of 12 months beginning with the day on which WRA became aware that the taxpayer was required to pay the amount in question.”

(6) In subsection (7)—

(a) in the opening words of the definition of “relevant date”, after “(*dyddiad perthnasol*)” insert “, in relation to a WRA assessment in a case involving a situation mentioned in section 54 or 55,”;

(b) at the end insert—

““relevant date” (*dyddiad perthnasol*), in relation to a WRA assessment in a case involving a situation mentioned in section 55A(a) or (b), means—

(a) where the tax credit in question was claimed in a tax return made on or before the filing date, the filing date;

(b) where the tax credit in question was claimed in a tax return made after the filing date, the day on which the tax return was made;

(1) Section 59 was amended by LTTA, Schedule 23, paragraph 19.

- (c) where the tax credit in question was claimed by any other means, the day on which the claim was made.”

17. In section 81D of TCMA⁽¹⁾ (definitions relating to the general anti-avoidance rule), in the definition of “tax advantage”—

- (a) omit the “and” after paragraph (d);
- (b) at the end of paragraph (e) insert “, and
- (f) tax credit or increased tax credit.”

18.—(1) Section 84 of TCMA (meaning of “tax position”) is amended as follows

(2) In subsection (1), in paragraph (b)—

- (a) after “penalties”, in the first place it occurs, insert “tax credits”;
- (b) after “penalties”, in the second place it occurs, insert “and amounts payable in respect of tax credits”.

(3) In paragraph (c) of that subsection, after “devolved tax” insert “or any amount in respect of a tax credit”.

19. After section 84 of TCMA insert—

“Meaning of “prejudice to the assessment or collection of devolved tax”

84A. In this Part, references to prejudice to the assessment or collection of devolved tax include prejudice to the assessment or collection of any amount payable in respect of a tax credit.”

20. In section 93 (power to obtain contact details for debtors), in subsection (2)—

- (a) omit the “or” after paragraph (c);
- (b) after paragraph (d) insert—
 - “(e) a payment in respect of a tax credit, or
 - (f) interest on a payment in respect of a tax credit,”.

21. In section 100 of TCMA (taxpayer notices following a tax return), in subsection (5)—

- (a) omit the “or” after paragraph (b);
- (b) after paragraph (c) insert—
 - “(d) an amount of tax credit to which the person is not entitled may have been claimed, or

(1) Section 81D was inserted by section 66 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

(e) a claim for tax credit may be or have become excessive.”

22. In section 117 of TCMA (overview of Part 5), in subsection (1), in paragraph (a), after “devolved tax” insert “or amounts payable in respect of tax credits”.

23. In the heading to Chapter 2 of Part 5 of TCMA (penalties for failure to make returns or pay tax), at the end insert “OR AMOUNTS PAYABLE IN RESPECT OF TAX CREDITS”.

24. In section 122 of TCMA(1) (penalty for failure to pay tax on time), in Table A1, in item 2 in column 3, for “stated in” substitute “payable as a result of”.

25. After section 122A of TCMA(2) insert—

“Penalty for failure to pay amount payable in respect of tax credit

Penalty for failure to pay amount payable in respect of tax credit on time

123A.—(1) This section applies where a person is required to pay an amount as a result of a WRA assessment made under section 55A.

(2) The person is liable to a penalty if he or she fails to pay the amount on or before the penalty date.

(3) The penalty date is the day falling 30 days after the day by which the amount was required to be paid.

(4) The penalty is 5% of the amount payable as a result of the WRA assessment.”

26.—(1) Section 126 of TCMA(3) (reasonable excuse for failure to make tax return or pay tax) is amended as follows.

(2) After subsection (2) insert—

“(2A) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to pay an amount payable in respect of a tax credit, the person is not liable to a penalty under section 123A in relation to the failure.”

(3) In subsection (3), in the words before paragraph (a), for “and (2)” substitute “, (2) and (2A)”.

(4) In the section heading, at the end insert “or amount payable in respect of tax credit”.

(1) Section 122 was substituted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 42.

(2) Section 122A was inserted LTTA, Schedule 23, paragraph 42 and section 123 was repealed by LTTA, Schedule 23, paragraph 43.

(3) Section 126 was amended by LTTA, Schedule 23, paragraph 45, and by LDTA, Schedule 4, paragraph 13.

27.—(1) Section 127 of TCMA⁽¹⁾ (assessment of penalties under Chapter 2) is amended as follows.

(2) In subsection (1), in paragraph (c), for “or transaction” substitute “, transaction or amount”.

(3) After subsection (6) insert—

“(6A) A supplementary assessment may be made in respect of a penalty under section 123A if an earlier assessment operated by reference to an underestimate of the amount payable in respect of the tax credit in question.

(6B) If an assessment in respect of a penalty under section 123A is based on an amount that is found by WRA to be excessive, WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.”

(4) In subsection (7), for “or (6)” substitute “, (6) or (6B)”.

28.—(1) Section 128 of TCMA⁽²⁾ (time limit for assessment of penalties under Chapter 2) is amended as follows.

(2) In subsection (2)—

(a) omit the “or” after paragraph (a);

(b) at the end of paragraph (b) insert “, or

(c) in the case of a failure to pay an amount payable in respect of a tax credit, the penalty date.”

(3) In subsection (3), after paragraph (b) insert—

“(c) in the case of a failure to pay an amount payable in respect of a tax credit, the end of the appeal period for the assessment of the amount in respect of which the penalty is assessed.”

(4) After subsection (4) insert—

“(4A) In subsection (2)(c), “penalty date” has the meaning given by section 123A(3).”

(5) In subsection (5) omit “(a) and (b)”.

29. In section 129 of TCMA (penalty for inaccuracy in document given to WRA), in subsection (2)—

(a) omit the “or” after paragraph (b);

(b) at the end of paragraph (c) insert “, or

(d) a false or inflated claim for a tax credit.”

(1) Section 127 was amended by the Land Transaction and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 46, and by LDTA, Schedule 4, paragraph 14.

(2) Section 128 was amended by LTTA, Schedule 23, paragraph 47.

30. In section 132 of TCMA(1) (penalty for deliberate inaccuracy in document given to WRA by another person), in subsection (2)—

- (a) omit the “or” after paragraph (b);
- (b) at the end of paragraph (c) insert “, or
- (d) a false or inflated claim for a tax credit.”

31. In section 133 of TCMA(2) (penalty for failure to notify under-assessment or under-determination), after subsection (1) insert—

“(1A) A person is also liable to a penalty where—

- (a) a WRA assessment under section 55A understates the amount that the person is required to pay to WRA, and
- (b) the person has failed to take reasonable steps to notify WRA, within the period of 30 days beginning with the day on which the notice of assessment is issued, that it is an under-assessment.”

32.—(1) Section 135 of TCMA (potential lost revenue: normal rule) is amended as follows.

(2) In subsection (1), after “devolved tax” insert “or tax credit”.

(3) In subsection (2)—

- (a) omit the “and” after paragraph (a);
- (b) at the end of paragraph (b) insert “and
- (c) an amount which WRA would have been required to set off against a person’s liability to tax, or to pay to a person, had the inaccuracy or under-assessment not been corrected.”

33. In section 136 of TCMA (potential lost revenue: multiple errors), in subsection (2)—

- (a) for “or transaction”, in the first place it occurs, insert “, transaction or claim for tax credit”;
- (b) for “or transaction, in the second place it occurs, insert “, transaction or claim for tax credit”.

34. In section 139 of TCMA (reduction in penalty under Chapter 3 for disclosure), in subsection (2) —

- (a) omit the “or” after paragraph (b);
- (b) after paragraph (c) insert—

(1) Section 132 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 49.

(2) Section 133 was amended by LTTA, Schedule 23, paragraph 50.

- “(d) an inaccuracy which is relevant to a person’s entitlement to a tax credit or liability to pay an amount in respect of a tax credit,
- (e) a supply of false information, or withholding of information, which is relevant to a person’s entitlement to a tax credit or liability to pay an amount in respect of a tax credit, or
- (f) a failure to disclose an under-assessment in respect of a person’s liability to pay an amount in respect of a tax credit.”

35. In section 141 of TCMA(1) (assessment of penalties under Chapter 3), in subsection (1), in paragraph (c), for “or transaction” substitute “, transaction or claim for tax credit”.

36.—(1) Section 151 of TCMA (tax-related penalty for failure to comply with information notice or obstruction) is amended as follows.

- (2) In subsection (1), in paragraph (c)—
 - (a) the words from “the amount of devolved tax” to “is likely to pay,” become sub-paragraph (i);
 - (b) at the end of that sub-paragraph insert “or
 - (ii) the amount that the person has paid, or is likely to pay in respect of a tax credit,”.

- (3) In subsection (3)—
 - (a) the words “the amount of devolved tax” become sub-paragraph (i);
 - (b) at the end of that sub-paragraph insert “, or
 - (ii) the amount in respect of a tax credit,”.

37. After section 157A of TCMA(2) insert—

“Late payment interest on amounts payable in respect of tax credit

157B.—(1) This section applies to an amount payable in respect of a tax credit.

(2) If the amount is not paid on or before the date by which it is required to be paid, the amount carries interest (referred to in this Part as “late payment interest”) at the late payment interest rate for the period—

(1) Section 141 was amended by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 51.
 (2) Section 157A was inserted by LTTA, Schedule 23, paragraph 58.

- (a) beginning with the late payment interest start date, and
- (b) ending with the date of payment.

(3) Where the amount is payable as a result of a WRA assessment in a case involving a situation mentioned in section 55A(a) or (b), the late payment interest start date is—

- (a) if the tax credit in question was claimed in a tax return, the day after the filing date for the tax return;
- (b) if the tax credit in question was claimed by any other means, the day after that on which an amount equal to the amount was paid to a person in respect of the claim.

(4) Where the amount is payable as a result of a WRA assessment in a case involving a situation mentioned in section 55A(c), the late payment interest start date is the day after that by which the amount was required to be paid.

(5) But where section 160 applies, the late payment interest start date for the purposes of this section is the date specified in that section.”

38. In section 158 of TCMA(1) (late payment interest: supplementary, in subsection (1), for “and 157A” substitute “, 157A and 157B”.

39. In section 160 of TCMA (late payment interest start date: death of taxpayer), in subsection (1), in paragraph (a), for “chargeable to an amount of devolved tax or penalty relating to devolved tax” substitute “who is—

- (i) chargeable to an amount of devolved tax or penalty relating to devolved tax, or
- (ii) required to pay an amount in respect of a tax credit,”.

40.—(1) Section 161 of TCMA (repayment interest on amounts payable by WRA) is amended as follows.

(2) In subsection (2)—

- (a) omit the “or” after paragraph (a);
- (b) at the end of paragraph (b) insert “, or
- (c) an amount in respect of a tax credit.”

(3) In subsection (4), in paragraph (b), for “(2)(a) or (b)” substitute “(2)(a), (b) or (c)”.

41. In section 164 of TCMA (meaning of “relevant amount” in Part 7), after paragraph (d) insert—

(1) Section 158 was substituted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, Schedule 23, paragraph 58.

“(e) an amount payable in respect of a tax credit;

(f) interest on an amount payable in respect of a tax credit.”

42.—(1) Section 169 of TCMA(1) (proceedings in magistrates’ court) is amended as follows.

(2) In subsection (4)—

(a) after “a penalty” insert “or an amount payable in respect of a tax credit”;

(b) for “or penalty” substitute “, penalty or other amount”.

(3) In subsection (5)—

(a) after “a penalty” insert “or on an amount payable in respect of a tax credit”;

(b) for “or penalty” substitute “, penalty or other amount”.

43. In section 172 of TCMA(2) (appealable decisions), in subsection (2), after paragraph (k) insert—

“(l) a decision relating to a tax credit in respect of landfill disposals tax.”

44. In the heading to Chapter 3A of Part 8 of TCMA, after “DEVOLVED TAX” INSERT “ETC”.

45. After section 181I(3) insert—

“Application of this Chapter to amounts payable in respect of tax credit

181J.—(1) This Chapter applies to the payment and recovery of amounts relating to tax credits—

(a) as if references to an amount of devolved tax (including amounts of landfill disposals tax) were references to an amount payable in respect of a tax credit,

(b) as if references to interest on an amount of devolved tax were references to interest on an amount payable in respect of a tax credit, and

(c) as if references to devolved tax being charged or chargeable on a person were

(1) Section 169 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 60.

(2) Section 172(2) was amended by LTTA, Schedule 23, paragraph 62, and by LDTA, sections 24, 38, 58 and 80 and Schedule 4, paragraph 16.

(3) Chapter 3A (including section 181I) was inserted by LTTA, Schedule 23, paragraph 63.

references to an amount being payable by a person in respect of a tax credit.”

46. In section 183A of TCMA(1) (suspension of repayment pending further appeal), in subsection (1), in paragraph (a)—

- (a) the words from “an amount” to “repaid by WRA,” become sub-paragraph (i);
- (b) after that sub-paragraph insert “or
 - (ii) an amount paid by a person in respect of a tax credit is to be repaid by WRA,”.

47. In section 192 of TCMA(2) (interpretation), in subsection (2), insert at the appropriate place —

““tax credit” (“*credyd treth*”) means a tax credit under regulations made under section 54 of LDTA;”.

48. In section 193 of TCMA(3) (index of defined expressions), insert at the appropriate place—

Tax credit (“ <i>credyd treth</i> ”)	section 192(2)
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(1) Section 183A was inserted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 65.

(2) Section 192 was amended by LTTA, Schedule 23, paragraph 70 and by LDTA, Schedule 4, paragraph 19.

(3) Section 193 was amended by LTTA, Schedule 23, paragraph 71 and by LDTA, Schedule 4, paragraph 20.