

Finance Committee

The Tax Collection and Management (Permitted Disclosures) (Wales) Regulations 2017

01. This Statutory Instrument is being considered by the Finance Committee under Standing Order 27.8A.

Background and Purpose

02. The Regulations amend section 18(1) of the Tax Collection and Management (Wales) Act 2016 (the Act), to allow a relevant official (as defined by section 17(2) of the Act) to disclose protected taxpayer information (as defined by section 17(3) of the Act), to Her Majesty's Revenue and Customs (HMRC) and to Revenue Scotland. This can happen where the disclosure is in connection with the functions of HMRC, Revenue Scotland, or the Welsh Revenue Authority.

Procedure

03. Affirmative

Merits Scrutiny

04. No points are identified for reporting under in respect of this instrument.

Policy Scrutiny

Statement of policy intent

05. To support the Committee's scrutiny of the Tax Collection and Management (Wales) Bill, Welsh Government provided information on the policy intent for the delegated powers within the Bill.

06. All regulations tabled by the Welsh Government are in accordance with related policies in the statement.

07. The statement gave Welsh Ministers the power by regulations (section 17(2)) to amend permitted disclosures (section 17(1)) in the TCM Act. This power would be used to enable information sharing between bodies for the purpose of supporting wider public service delivery.

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Assembly consultation

08. The Welsh Local Government Association (WLGA) in its consultation response to the Tax Collection and Management Bill noted:

There also needs to be consideration of how public bodies might share certain information in order to minimise tax avoidance or evasion. The regulations should provide explicit powers to ensure that information sharing is permitted.

Reporting point: The inclusion of information sharing with public bodies has **not been included** in TCMA regulations.

09. The Institute of Chartered Accountant in England and Wales (ICAEW) commented:

...the issue of consent in clause 17 1(a) (permitted disclosures) does need to be **tightened up** to define exactly what constitutes consent. If this is not done then disputes may arise regarding the evidence or otherwise that consent has been given. Where disclosure is made without consent under the other listed permitted situations, we believe that there **should be a duty to advise the taxpayer** of this action and the reasons why.

10. The Chartered Institute of Taxation (CIOT) was concerned about regulations relating to permitted disclosures:

In our view secondary legislation should be used only for procedural and administrative matters. There are four areas where a regulatory power is prescribed in the Bill that extends beyond the scope of procedure or administration. [One area is] the power to amend the conditions under which protected taxpayer information is disclosed (clause 17(2)). It is our view that such powers **belong properly in primary legislation**.

11. This statement was supported by Deloitte's response.

Welsh Government consultation

12. No comments were made regarding permitted disclosures in the consultation.

UK regulations

13. No notable differences between regulations introduced by Scottish Government and Welsh Government in relation to permitted disclosures to HMRC.



14. However, Scottish Government also included a regulation which amended Section 18(2) of the Commissioners for Revenue and Customs Act 2015 that would enable HMRC to disclose taxpayer information to Revenue Scotland instead of Scottish Ministers. This has **not been included** in Welsh Government regulations. Consequently, there would be permitted disclosures between HMRC and Welsh Ministers but not the WRA.

Reporting point: There would be permitted disclosures between HMRC and Welsh Ministers but not the WRA.

Government Response

Reporting point: The inclusion of information sharing with public bodies has not been included in TCMA regulations.

15. TCMA permits the disclosure of protected taxpayer information to public bodies, in certain circumstances. Section 18 TCMA permits the disclosure of this information by a relevant official (as defined by section 17(2) TCMA) to other persons (including public bodies) if it is for one of the purposes described in section 18 (e.g. for the purposes of a criminal investigation, or if permitted or required by another enactment). TCMA appropriately limits the circumstances in which disclosures are permitted to ensure that the most sensitive taxpayer information is appropriately used and protected.

16. Section 18 TCMA does not restrict another public body from disclosing information to WRA. In these cases, the legislation underpinning that other public body will normally determine whether the information can be disclosed. Information sharing powers can also be found in other enactments, for example, section 60 of the Landfill Disposals Tax (Wales) Act 2017 provides local authorities and the Natural Resources Body for Wales with the power to disclose information to WRA for the purpose of assisting it in the collection and management of landfill disposals tax.

Reporting point: There would be permitted disclosures between Her Majesty RC and Welsh Ministers but not the Welsh Revenue Authority.

17. As stated in the report, section 18(2) (j) of the Commissioners for Revenue and Customs Act 2005 enables information to be disclosed to the Welsh Ministers by Her Majesty's Revenue and Customs. This section has recently been amended by paragraph 64 of Schedule 6 to the Wales Act 2017 to replace the reference to "the



Welsh Ministers” with a reference to “the Welsh Revenue Authority”, and is due to come into force on 1 April 2018. As such, it is not necessary to amend the 2005 Act in these Regulations.

Committee View

18. The Committee notes the Welsh Government’s response and recommends that the Government or the Welsh Revenue Authority publish suitable guidance materials to assist interested parties in navigating the devolved taxation regime.

