

## Dogfennau Ategol – Y Pwyllgor Cyllid

---

Lleoliad: I gael rhagor o wybodaeth cysylltwch a:  
Ystafell Bwyllgora 2 – y Senedd **Bethan Davies**  
Dyddiad: Dydd Iau, 17 Medi 2015 Committee Clerk  
Amser: 08.45 0300 200 6565  
[SeneddCyllid@Cynulliad.Cymru](mailto:SeneddCyllid@Cynulliad.Cymru)

Noder bod y dogfennau a ganlyn yn ychwanegol i'r dogfennau a gyhoeddwyd yn y prif becyn Agenda ac Adroddiadau ar gyfer y cyfarfod hwn

---

### 5 Y Bil Casglu a Rheoli Trethi (Cymru): Trafod y dystiolaeth

(10.15 – 10.30)

(Tudalennau 1 – 64)

#### Dogfennau atodol:

Tax Collection and Management (Wales) Bill: Consultation Responses

TCM 01 Grŵp Diwygio Trethi Incwm Isel (Saesneg yn Unig)

TCM 02 Archwilydd Cyffredinol Cymru

TCM 03 CLA Cymru (Saesneg yn Unig)

TCM 04 Sefydliad Bevan (Saesneg yn Unig)

TCM 05 Un Llais Cymru (Saesneg yn Unig)

TCM 06 Ombwdsmon Gwasanaethau Cyhoeddus Cymru

TCM 07 Deloitte (Saesneg yn Unig)

TCM 08 Ffederasiwn y Busnesau Bach (FSB) Cymru (Saesneg yn Unig)

TCM 09 Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr (ICAEW) (Saesneg yn Unig)

TCM 10 Sefydliad Siartredig Trethiant (CIOT) (Saesneg yn Unig)

TCM 11 Cyfoeth Naturiol Cymru (Saesneg yn Unig)

TCM 12 Monmouthshire Mediation Practice (Saesneg yn Unig)

TCM 13 Cyllid a Thollau EM (HMRC) (Saesneg yn Unig)

TCM 14 Cymdeithas y Cyfreithwyr (Saesneg yn Unig)

TCM 15 Cymdeithas Llywodraeth Leol Cymru (WLGA) (Saesneg yn Unig)



# **Y Pwyllgor Cyllid**

Bil Casglu a Rheoli Trethi (Cymru)

## **Ymatebion i'r Ymgynghoriad Medi 2015**

.....

### **Finance Committee**

Tax Collection and Management (Wales) Bill

### **Consultation Responses September 2015**

\*Ar gael yn Gymraeg /Available in Welsh

	<b>Organisation title (Welsh)</b>	<b>Organisation title (English)</b>
TCM 1	Grŵp Diwygio Trethi Incwm Isel	Low Incomes Tax Reform Group (LITRG)
TCM 2	Archwilydd Cyffredinol Cymru	Auditor General for Wales *
TCM 3	CLA Cymru	CLA Cymru
TCM 4	Sefydliad Bevan	Bevan Foundation
TCM 5	Un Llais Cymru	One Voice Wales
TCM 6	Ombwdsmon Gwasanaethau Cyhoeddus Cymru	* Public Services Ombudsman for Wales
TCM 7	Deloitte	Deloitte
TCM 8	Ffederasiwn y Busnesau Bach (FSB) Cymru	Federation of Small Businesses (FSB) Wales
TCM 9	Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr (ICAEW)	Institute of Chartered Accountants in England and Wales (ICAEW)
TCM 10	Sefydliad Siartredig Trethiant (CIOT)	Chartered Institute of Taxation (CIOT)
TCM 11	Cyfoeth Naturiol Cymru	Natural Resources Wales
TCM 12	Monmouthshire Mediation Practice	Monmouthshire Mediation Practice
TCM 13	Cyllid a Thollau EM (HMRC)	HM Revenue and Customs (HMRC)
TCM 14	Cymdeithas y Cyfreithwyr	The Law Society
TCM 15	Cymdeithas Llywodraeth Leol Cymru (WLGA)	Welsh Local Government Association (WLGA)



**Consultation on an inquiry into the Tax Collection and Management (Wales) Bill  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We are pleased that the Tax Collection and Management (Wales) Bill contains provision for the introduction of a Taxpayers' Charter. The Bill signifies that the Charter should clearly state the standards of behaviour and values that the Welsh Revenue Authority (WRA) will use when interacting with Welsh taxpayers and vice versa. The WRA must ensure that the Charter is publicised upon the devolution of Land Transaction Tax and Landfill Disposals Tax.
- 1.2 The functions of the WRA are wide-ranging which is to be expected as it is not yet known how the devolution of Welsh taxes will unfold over time. For the Welsh Government and Welsh taxpayers to have confidence in a new tax authority it is essential that there is sufficient funding in place to enable the WRA to work effectively, efficiently and build up a good and trusting relationship with the National Assembly and the general public.
- 1.3 Any 'digital by default' approach must have proper regards to the needs of those who are unable to use computers or access the internet.
- 1.4 WRA guidance must be written with the unrepresented taxpayer in mind as its audience. Taxpayers must be able to rely on the guidance provided they have followed it in good faith.

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 We welcome this opportunity to respond to the Finance Committee's consultation into the general principles of the Tax Collection and Management (Wales) Bill. It is important that the legislation contains the fundamental principles on how tax should be collected and managed in Wales even though it has yet to be decided which taxes will be devolved alongside Land Transaction Tax and Landfill Disposals Tax. We understand that there will be separate consultations regarding the legislation and guidance on penalties for the two new devolved taxes.
- 3.2 As explained in 2.1 above, LITRG primarily focuses on income tax and although that is currently not being devolved to Wales, we understand that the framework for the collection and management of devolved taxes may include income tax if this is devolved in the future. Therefore our comments on the principles of the Tax Collection and Management (Wales) Bill focus on developing a tax system which will be fit for purpose if income tax is devolved. Consequently our response primarily focuses on the formation and role of the WRA.
- 3.3 LITRG is an initiative of the CIOT; we support the CIOT's separate submission. Our response focuses on points of concern that have direct relevance for the low-income taxpayer.
- 3.4 We are pleased that the Welsh Government has recognised and agreed 'that where there is no good policy reason (for example, on the grounds of a focus on Welsh needs or efficiency)

to diverge from the UK tax administration, Welsh tax collection and management arrangements should replicate current UK operational processes and arrangements'.<sup>1</sup> This should minimise any changes and result in a more consistent approach for taxpayers who will be using both the Welsh and UK tax systems.

#### **4 Part 2 – The Welsh Revenue Authority**

- 4.1 We are pleased that staff who will be appointed to the WRA will be independent from the National Assembly, Government and Local Authorities. The WRA should be held accountable for its performance by the Welsh Government and therefore there should be no conflicts or perceived conflicts of interest. We support the decision that the WRA has power to set up non-voting committees which will enable them to receive advice and support from experts in particular areas of tax; this is imperative as it is unknown how Welsh taxes will develop in the future.
- 4.2 The functions of the WRA are wide-ranging and include providing ministers and taxpayers with information and advice, resolving complaints and disputes and promoting compliance with the tax system. For the WRA to be effective and achieve these objectives there needs to be sufficient resources and funding in place. It is good that the Bill provides flexibility to enable Welsh Ministers to provide appropriate funding for the WRA so that it can carry out its functions.<sup>2</sup> We consider that funding should be monitored on a regular basis as if there is insufficient funding this could potentially result in taxpayers losing confidence with the new system which may lead to less compliance, placing additional burdens on the WRA and possibly affecting any decisions to devolve further taxes in the future.
- 4.3 We understand the reasons for the WRA delegating some of the collection and management tax processes for Land Transaction Tax and Landfill Disposal Tax. We have raised concerns in our previous responses<sup>3</sup> regarding delegation and we are pleased that the Tax Collection and Management (Wales) Bill addresses most of these concerns by stating that the WRA has

---

<sup>1</sup> Paragraph 23 of Explanatory Memorandum – Tax Collection and Management (Wales) Bill:  
<http://www.assembly.wales/laid%20documents/pri-ld10293-em/pri-ld10293-em-e.pdf>

<sup>2</sup> Tax Collection and Management (Wales) Bill, Part 2 section 22:  
<http://www.assembly.wales/laid%20documents/pri-ld10293/pri-ld10293-e.pdf>

<sup>3</sup> See LITRG responses at:  
<http://www.litr.org.uk/Resources/LITRG/Documents/2014/12/141210%20LITRG%20response%20Collection%20and%20management%20of%20devolved%20taxes%20in%20Wales%20FINAL.pdf> and  
[http://www.litr.org.uk/Resources/LITRG/Documents/2015/04/150423\\_LITRG%20Inquiry%20into%20the%20collection%20of%20devolved%20taxes%20FINAL.pdf](http://www.litr.org.uk/Resources/LITRG/Documents/2015/04/150423_LITRG%20Inquiry%20into%20the%20collection%20of%20devolved%20taxes%20FINAL.pdf)

ultimate responsibility for any delegated processes,<sup>1</sup> that the delegated body must comply with the WRA's functions, that the delegation agreements may be varied and revoked at any time and that the WRA must publish information regarding these delegated processes. One concern we have raised which has not been addressed by the Bill or the Explanatory Memorandum is confirmation that any organisations performing collection of taxes will not be remunerated on a 'payment by results' basis. We would recommend that any organisation responsible for tax debt collection is paid independently of the amount they are able to collect.

4.4 One area we consider to be fundamental to the introduction of a new devolved tax system is a Taxpayers' Charter, as this should provide guidance and protection to unrepresented and vulnerable taxpayers. It is heartening to see that the Tax Collection and Management (Wales) Bill requires the WRA to produce a Charter, which must include standards of behaviour and values to which the WRA will aspire when dealing with taxpayers and also what is expected from devolved taxpayers when they deal with the WRA. LITRG would like to be involved in any future consultations which will address the format and wording of this new Charter. We agree with the Bill that the Charter should be reviewed and revised where necessary and that monitoring the WRA's standards of behaviour will be included as part of their Annual Report. We think it is important that the Charter is ready and its purpose publicised before 1 April 2018 as the Charter will only be effective and of value if devolved taxpayers are aware of it. The WRA must be provided with adequate funding to promote and embed the Taxpayers' Charter in due course.

4.5 The Tax Collection and Management (Wales) Bill explains how the WRA will be accountable to Welsh Ministers through the submission of a corporate plan for approval and Annual Reports. This level of public disclosure and accountability is reassuring but for it to work most effectively the Annual Reports must be prepared and published within a fairly short length of time, to enable any changes in processes to occur as soon as possible. The Bill refers to preparing the report 'as soon as it is reasonably practicable',<sup>2</sup> however as there is no definition of what is 'reasonably practicable' we recommend that a time limit of four months after the accounting year end is also included within the legislation to ensure that there are no lengthy delays.

## 5 Digital by default approach

---

<sup>1</sup> Tax Collection and Management (Wales) Bill Part 2, Section 13 Paragraph 6b:  
<http://www.assembly.wales/laid%20documents/pri-ld10293/pri-ld10293-e.pdf>

<sup>2</sup> Tax Collection and Management (Wales) Bill Part 2, Section 27 Paragraph 1:  
<http://www.assembly.wales/laid%20documents/pri-ld10293/pri-ld10293-e.pdf>

5.1 The Explanatory Memorandum mentions that it is probable that a ‘digital by default’ approach will be taken and that this could be seriously problematic for disadvantaged groups such as people with visual impairments or devolved taxpayers living in rural areas with poor internet connections. We would strongly recommend that other options are made available rather than just a ‘one size fits all’ approach using only digital payment and filing methods. This should then mean that the tax collection systems are fairer to all devolved taxpayers and would follow the principles set out by the Finance Minister which stated that the tax system ‘be fair to businesses and individuals who pay them’. LITRG were involved in the *LH Bishop & Others v HMRC* [2013] UKFTT 522 (TC)<sup>1</sup> case which established that while HMRC have a right to mandate the format of returns, in doing so they have to have regard to individuals’ human rights and similar principles.

## 6 Welsh Revenue Authority guidance

6.1 WRA guidance will always be required in respect of all taxes and management of taxes. For the unrepresented taxpayer, WRA guidance will explain the tax system and the approach of WRA— they are unlikely to read the legislation behind the guidance. It is essential that WRA guidance is written with the unrepresented taxpayer in mind as its audience. The guidance must be written in plain language; while it must be easy to understand, it must not simplify the law to such an extent that is misleading or incorrect. Taxpayers should be able to rely on WRA guidance, provided they have acted in good faith. Access to guidance is also of prime importance. Not all taxpayers will be able to access guidance on the WRA website. It is essential that WRA considers properly how to ensure that unrepresented and digitally excluded taxpayers in particular can obtain WRA guidance easily.

LITRG  
24 August 2015

---

<sup>1</sup> The case of *LH Bishop Electrical Ltd and Others v HMRC Commissioners* [2013] UKFTT 522 (TC): <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html#7>



Archwilydd Cyffredinol Cymru  
Auditor General for Wales

24 Heol y Gadeirlan / Cathedral Road  
Caerdydd / Cardiff CF11 9LJ  
Ffôn / Tel: [REDACTED]  
E-bost / Email: [REDACTED]  
www.wao.gov.uk

Ms Jocelyn Davies AC  
Cadeirydd, y Pwyllgor Cyllid  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd CF99 1NA

Dyddiad: 7 Medi 2015  
Ein cyf: HVT/2383/fgb  
Tudalen: 1 o 1

Annwyl Jocelyn

**Y BIL CASGLU A RHEOLI TRETHI (CYMRU):  
YMGYNGHORIAD AR YR EGWYDDORION CYFFREDINOL**

Diolch am y gwahoddiad i ddarparu tystiolaeth i'r Pwyllgor Cyllid ar egwyddorion cyffredinol y Bil Casglu a Rheoli Trethi (Cymru).

Wrth ymateb i alwad y Pwyllgor am dystiolaeth, mae fy sylwadau'n canolbwyntio'n bennaf ar y rhannau hynny o'r Bil sy'n berthnasol i arfer fy swyddogaethau. Rwyf hefyd wedi cynnig sylwadau ar rai o'r cymalau sy'n rhoi sylw i weithrediad Awdurdod Cyllid Cymru, ar sail ein profiadau wrth sefydlu Swyddfa Archwilio Cymru yn unol â Deddf Archwilio Cyhoeddus (Cymru) 2013.

Mae fy sylwadau penodol a nodir yn yr Atodiad amgaeedig yn cyfeirio'n bennaf at Ran 2 y Bil felly.

Efallai y bydd hefyd o ddiddordeb i'r Pwyllgor mai fy mwriad ar hyn o bryd yw cyhoeddi adroddiadau cryno ar gynnydd y sefyllfa o ran paratodau Llywodraeth Cymru ar gyfer gweithredu datganoli cyllidol i Gymru, gan gynnwys darpariaethau'r Bil hwn pan fydd wedi'i ddeddfu.

Ar hyn o bryd, rwy'n rhagweld y byddaf yn cyhoeddi'r cyntaf o'r adroddiadau hynny yn ystod hydref 2016, ac adroddiad dilynol yn ystod hydref 2017. Dylai'r adroddiadau hyn gynnig cyfle i nodi unrhyw broblemau gyda pharodrwydd a chraffu arnynt a rhoi sylw iddynt cyn cychwyn arfaethedig y ddeddfwriaeth a fydd yn cyflwyno trethi datganoledig ar 1 Ebrill 2018.

Edrychaf ymlaen at ymddangos gerbron eich Pwyllgor ar 15 Hydref 2015 i ddarparu tystiolaeth lafar ar y materion hyn.

Yn gywir



**HUW VAUGHAN THOMAS**  
**ARCHWILYDD CYFFREDINOL CYMRU**

*Amg: Atodiad*

## YMATEB ARCHWILYDD CYFFREDINOL CYMRU I YMGYNGHORIAD Y PWYLLGOR CYLLID AR EGWYDDORION CYFFREDINOL Y BIL CASGLU A RHEOLI TRETHI (CYMRU)

### Cymal 3

1. Mae Cymal 3(1)(d) y Bil yn ei gwneud yn ofynnol i Awdurdod Cyllid Cymru (ACC) ei hun enwebu un neu ddau o'i gyflogeion i fod yn aelodau o ACC. Mae hyn yn ymddangos braidd yn gylchol ac yn golygu bod y „bwrdd“ yn dewis ei aelodau ei hun. Efallai y byddai'n fwy priodol i aelod-gyflogeion ACC gael eu henwebu gan y Prif Weithredwr ar gyfer cymeradwyaeth gan y bwrdd.

### Cymal 9

2. Mae'r cymal hwn yn cynnig cryn ryddid i ACC allu rheoleiddio ei weithdrefn ei hun, gan gynnwys cworwm. Mae'n bosibl y gallai hyn ganiatáu iddo weithredu heb reolaeth yr aelodau anweithredol a benodir gan Weinidogion Cymru. Er mwyn atal hyn, gallai cymal 9 gynnwys darpariaeth bod yn rhaid i'r cworwm a bennir gan ACC ei gwneud yn ofynnol bod mwyafrif o aelodau anweithredol yn bresennol.

### Cymal 12

3. Byddai'r cymal hwn yn caniatáu i ACC fabwysiadu dull sy'n ei ymbellhau o'i swyddogaethau, gan alluogi iddo awdurdodi ei staff i gyflawni pob un o'i swyddogaethau i ba raddau bynnag, heb ystyriaeth bellach gan ACC ei hun. Yn fy marn i, byddai'n gyson ag egwyddorion llywodraethu da pe bai rhai swyddogaethau pwysig (fel cymeradwyo: y Cynllun Corfforaethol; yr Adroddiad Blynyddol; y Cyfrifon blynyddol; a'r Datganiad Treth blynyddol) yn cael eu cadw ar gyfer ACC ei hun ac na ellid eu dirprwyo i'w staff.

### Cymal 14

4. O ystyried y ffaith fod isadran 6 y cymal hwn yn caniatáu i rai cyfarwyddiadau beidio â chael eu cyhoeddi os bydd Gweinidogion Cymru o'r farn y byddai gwneud hynny'n niweidio swyddogaethau ACC, byddai o gymorth pe bai cymal 14 yn cynnwys gofyniad i Weinidogion Cymru anfon yr holl gyfarwyddiadau a roddir i ACC at yr Archwilydd Cyffredinol hefyd. Byddai hyn yn sicrhau fy mod yn cael fy hysbysu am bob cyfarwyddyd o'r fath (ac wedyn yn gallu ystyried y goblygiadau archwilio posibl) ar yr adeg pan y'u gwneir, yn hytrach na darganfod am y rheini na chawsant eu cyhoeddi yn ddiweddarach wrth gynnal fy archwiliad blynyddol.

### Cymal 25

5. Nid oes dyddiad terfyn wedi'i bennu i'r ACC gyhoeddi'r Siarter cychwynnol. Efallai y byddai'n briodol pennu dyddiad terfyn o'r fath o gofio swyddogaeth bwysig y siarter o ran pennu'r safonau ymddygiad a gwerthoedd y bydd ACC yn ymdrechu i'w bodloni.

## **Cymal 26**

6. Mae Cymal 26(2)(b) yn ei gwneud yn ofynnol i'r cynllun Corfforaethol nodi'r "canlyniadau y gellir mesur i ba raddau y cyflawnwyd y prif amcanion drwy gyfeirio atynt". Fodd bynnag, mae nifer o "ganlyniadau" ansoddol yn anodd eu mesur yn eu hanfod, ac felly nid yw bob amser yn bosibl penderfynu a yw canlyniad penodol wedi'i gyflawni. Efallai y byddai'n fwy priodol felly defnyddio term fel "mesurau perfformiad allweddol" yn hytrach na "canlyniadau". Nodaf hefyd nad oes dyddiad terfyn i Weinidogion Cymru gymeradwyo Cynllun Corfforaethol ACC o dan gymal 26 y Bil.

## **Cymal 27**

7. Ar hyn o bryd, rhaid paratoi'r Adroddiad Blynyddol "cyn gynted ag y bo'n rhesymol ymarferol ar ôl diwedd pob blwyddyn ariannol". Fodd bynnag, byddai'n o gymorth i mi arfer fy swyddogaethau o ran ACC pe bai'n ofynnol i'r Adroddiad Blynyddol gael ei lunio erbyn y dyddiad terfyn ar gyfer cyflwyno cyfrifon ACC fan bellaf, sef 31 Awst yn y flwyddyn ariannol sy'n dilyn yr un y mae'n cyfeirio ati. Byddai cyhoeddi'r Adroddiad Blynyddol ochr yn ochr â'r Cyfrifon Blynyddol a'r Datganiad Treth Blynyddol yn cynyddu atebolrwydd, tryloywder a chraffu ar weithrediadau ACC yn sylweddol.

## **Cymal 30**

8. Credaf y byddai'n briodol ail-eirio cymal 30(2)(b) i gydnabod y byddaf yn cyflwyno dau adroddiad i'r Cynulliad Cenedlaethol: y naill yn ymwneud â chyfrifon blynyddol ACC a'r llall yn ymwneud â'r Datganiad Treth blynyddol. Nid wyf o'r farn y byddai cyflwyno un adroddiad yn briodol, o gofio natur wahanol y Datganiad Treth a chyfrifon blynyddol ACC. Byddai'r trefniadau adrodd yn adlewyrchu wedyn y sefyllfa o ran archwiliad blynyddol y Rheolwr a'r Archwilydd Cyffredinol (RhAC) o CThEM.
9. Rwyf o'r farn y byddai'n briodol ail-eirio cymal 30(3)(a) yn "yr aed i'r gwariant y mae'r cyfrifon yn ymwneud ag ef yn gyfreithlon ac yn unol â'r awdurdod sy'n ei lywodraethu, a". Byddai hyn yn sicrhau bod geiriad y ddarpariaeth archwilio'n gyson â geiriad y ddarpariaeth archwilio ar gyfer Gweinidogion Cymru a nodir yn adran 131 Deddf Llywodraeth Cymru 2006.
10. Credaf y dylwn hefyd grybwyll bod elfen orfodol swyddogaethau archwilio'r Archwilydd Cyffredinol o ran y Datganiad Treth o dan gymal 30(4) yn fwy cul na'r gofynion cyfatebol ar y RhAC o ran trethi'r DU (adran 2 Deddf Adran y Trysorlys a'r Adran Archwilio 1921). Fodd bynnag, mae darpariaethau cymal 30 (a 31) yn rhoi'r rhyddid i AGW ddefnyddio dull yr un mor gynhwysfawr a thrylwyr.
11. Y ddyletswydd ar y RhAC o dan adran 2 Deddf 1921 yw canfod a luniwyd rheoliadau a gweithdrefnau digonol i sicrhau gwiriad effeithiol o'r gwaith o asesu, casglu a dyrannu refeniw yn briodol. Rhaid bodloni'r RhAC hefyd bod y rheoliadau a'r gweithdrefnau hyn yn cael eu cyflawni'n briodol. Mae'r ddeddfwriaeth yn ei gwneud yn ofynnol felly i'r RhAC fod yn fodlon bod systemau CThEM yn ddigonol ac yn effeithiol ar gyfer gwirio bod trethi'n cael eu hasesu, eu casglu a'u dyrannu'n briodol.

12. Mae'r ddyletswydd o dan gymal 30(4) y Bil yn ei gwneud yn ofynnol dim ond bod yr Archwilydd Cyffredinol yn fodlon bod ACC wedi casglu trethi'n gyfreithlon (ac mai dim ond alldaliadau cyfreithlon a wnaed). Mae hon yn fwy cul na'r ddyletswydd ar y RhAC; mae honno'n ei gwneud yn ofynnol dim ond i asesu pa un a yw'r arian sydd wedi cael ei gasglu mewn gwirionedd wedi cael ei gasglu'n gyfreithlon; nid yw'n ei gwneud yn ofynnol i AGW edrych ar systemau ACC yn gyffredinol a pha un a ydynt yn effeithiol ai peidio. Ni fyddai'r Bil yn ei gwneud yn ofynnol felly i'r Archwilydd Cyffredinol fod yn fodlon bod systemau ACC yn effeithiol o ran casglu'r holl dreth y mae ganddo hawl i'w chasglu. Gallai'r sefyllfa godi lle'r oedd ACC yn methu â chasglu treth oherwydd bod ganddo weithdrefnau gwael ar gyfer nodi pryd y mae treth yn ddyledus, ond ni fyddai'r Bil yn rhwymo'r Archwilydd Cyffredinol i ystyried hyn wrth archwilio'r Datganiad Treth.
13. Yn fy marn i, nid yw gofynion mwy cul cymal 30(4) yn atal yr Archwilydd Cyffredinol rhag gwneud sylwadau ar effeithiolrwydd systemau ACC pe bai'n dymuno gwneud hynny. Y cwbl mae'n ei olygu yw na fyddai wedi ei rwymo i wneud hynny trwy rinwedd cymal 30(4). O'm rhan i, er na allaf siarad ar ran unrhyw olynnydd, byddwn yn dueddol o arddel dull ehangach yn unol â'r un y mae'r RhAC yn ei ddefnyddio ar gyfer datganiadau treth y DU.
14. O ran cymal 30, credaf y dylwn hefyd grybwyll, yn absenoldeb unrhyw ddarpariaethau ffioedd yn y Bil, ei bod yn ymddangos bod archwilio'r Datganiad Treth y tu allan i ddarpariaethau codi ffioedd Swyddfa Archwilio Cymru. Yn ôl Adran 23(2) Deddf Archwilio Cyhoeddus (Cymru) 2013, "Caiff SAC godi ffi mewn perthynas ag archwilio cyfrifon neu ddatganiad o gyfrifon person". Er efallai fod lle i ddadlau, ymddengys nad yw'r Datganiad Teth yn "gyfrifon neu ddatganiad cyfrifon person". Bydd angen i Amcangyfrif SAC dalu cost yr archwiliad os na fydd ffi'n daladwy.
15. Unwaith eto, nid wyf o'r farn bod hon yn broblem wirioneddol, ar yr amod nad yw Llywodraeth Cymru a'r Cynulliad yn dymuno'n benodol i SAC godi ffioedd am archwilio'r Datganiad Ymddiriedolaeth. I mi, byddai'n fwy priodol ariannu cost y Datganiad Ymddiriedolaeth trwy'r broses Amcangyfrif, gan y byddai hyn yn cyfateb i arfer y RhAC ac nid yw'r Datganiad Treth yn ddatganiad o gyfrifon endid y mae arfer cyfrifeg arferol yn ei gwneud yn ofynnol datgelu ffi archwilio ar ei gyfer.

### **Cymal 32**

16. Dywed Cymal 32(3)(a) yn benodol ei bod yn bosibl y bydd gan brif weithredwr ACC gyfrifoldebau am y cyfnod o amser a nodir gan Weinidogion Cymru "mewn perthynas â llofnodi cyfrifon". Yn fy marn i, byddai'n briodol crybwyll cyfrifon blynyddol ACC a'r Datganiad Treth blynyddol yn benodol yn yr isadran honno, gan nad wyf o'r farn y byddai llofnodi'r Datganiad Treth yn dod o dan y diffiniad o "lofnodi cyfrifon".

### **Cymal 190**

17. Mae'n ymddangos i mi bod y diffiniad o "flwyddyn ariannol" yn isadran 2 y cymal hwn yn briodol ac y bydd yn golygu na fydd angen i mi gynnal archwiliad llawn o ACC ar gyfer y flwyddyn ariannol sy'n dod i ben ar 31 Mawrth 2018, cyn belled ag y bo ACC yn cael ei sefydlu ar neu ar ôl 1 Ionawr 2018. Fodd bynnag, pe bai ACC

yn cael ei sefydlu ym mis Tachwedd 2017, er enghraifft, byddai hyn yn golygu y byddai angen archwiliad llawn er gwaethaf y ffaith mai pum mis yn unig fyddai'r cyfnod archwilio.

**7 Medi 2015**



# Consultation Response

## Tax Collection and Management (Wales) Bill

### Call for Evidence

Date: 7 September 2015

### Introduction

1. The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners and those with an economic, social and environmental interest in rural land and the rural economy. CLA Cymru has 3,500 members in Wales who between them own and manage about half of the rural land in Wales. Our membership is engaged in all sectors of the rural economy and includes farmers, landowners and around 250 types of rural business.
2. We welcome this opportunity to respond to the call for evidence by the Finance Committee. In commenting on the Tax Collection and Management (Wales) Bill we have focused on our areas of concern.

### General Comments

3. We welcome the statement made by Welsh Ministers that there will be no divergence from the UK tax administration, Welsh tax collection and management arrangements where there is no good policy reason to do so.
4. Page 43 of the explanatory memorandum addresses the issue of Costs to Businesses but the analysis seems unclear. For example, paragraph 152 says the cost of these changes 'is not anticipated to be a significant amount for businesses and it will reduce quickly', whereas paragraph 153 says 'the costs are not quantifiable'.
5. The Rural Proofing Checklist on page 50 of the explanatory memorandum only identifies one major issue for Rural Businesses in relation to the requirement for Broadband for delivery of the service. It says:

*"It is probable that a digital by default approach will be taken and this could have an impact in rural areas with poor Internet connection."*

6. We would caution against the adoption of a digital by default approach as this will discriminate against taxpayers or their advisers based in rural areas who do not have the capacity to deal with the WRA digitally due to non-existent or slow broadband connectivity. We recognise that the ability to file tax returns electronically can be beneficial to the taxpayer and the relevant revenue authority, such as the WRA or HMRC as a well designed system can aid completion and thus compliance and enable the taxpayer or their

agent to receive and instant acknowledgement of receipt. However, there are still many taxpayers or their agents who do not have the ability to file electronically. To impose any requirements to support a digital by default approach will inevitably mean that unnecessary expense will be incurred in having to instruct intermediaries to do so on their behalf. Before any system that imposes a 'digital by default' approach can be introduced it will be essential for the WRA to ensure that:

- There is appropriate free software available on the WRA website, since even where people do have the necessary hardware and internet connection already, it is wrong to force them over to a system which they cannot use without involving them in extra annual expenditure for commercial software.
  - Even more significantly, the WRA must make available the facility to submit attachments (in common file formats) with online returns where additional information is required and the "white space" on a return form itself is insufficient to provide an adequate explanation or disclosure, or it may be incapable of presenting information in a sensibly formatted way (e.g. information in a table). There should be no limitation on the number of attachments that can be included.
  - Public confidence must be gained in the absolute security of any online system. A single breach of security would dent this confidence and discourage electronic filing.
7. In a significant number of cases the provisions of the Bill are to be supplemented by regulations which have not yet been published in draft form. This makes it difficult to assess the full impact of the legislation contained in the Bill. Regulations are generally not subject to the same level of Assembly scrutiny as primary legislation. While we understand the logistical pressures that compel the use of regulations to supplement primary legislation, we feel that it is important that regulations should be published in draft form and should be the subject of a consultation so that there is adequate consideration given to their effectiveness. We also recommend that the default position is that the regulations should be made by a positive approval procedure rather than the negative resolution procedure.

## **Part 2: The Welsh Revenue Authority (WRA)**

8. We agree with the approach taken by the Welsh Government that the collection and management should be undertaken by a body that is operationally separate from Welsh Ministers.
9. We note that the responsibility for the appointment of the chairperson and non-executive members of the board are to be appointed by Welsh Ministers. Although paragraph 38 of the explanatory memorandum indicates that the non-executive members of the WRA will be appointed in accordance with the Code of Practice for Ministerial Appointments to Public bodies (the Nolan principles) if it is not clear that the application of the Nolan principles will also extend to the chairperson. In any event the commitment to comply with the Nolan principles should be set out in clause 3 of the Bill.

10. We also recommend that the non-executive members appointed have experience of tax law and/or tax administration (such as professionally qualified lawyers, accountants or chartered tax advisers with experience of advising taxpayers) as they will be able to provide valuable insights to the WRA. Such non-executive directors should be appointed through open competition for their experience, ability and diversity of skills.
11. As we noted in our response to the White Paper on the collection and management of taxes, HM Revenue & Customs (HMRC) faces a huge challenge applying complex and lengthy tax legislation in a fair and consistent way and has substantial resources to assist it in this task. On 30 June 2015 the Finance Minister announced her preferences as to the bodies the WRA would delegate its powers to. Whilst we are reassured that the initial intention is for the WRA to work with HMRC on the new Land Transaction Tax to *“support the development of Welsh tax expertise and capability, providing a smooth transition”* we are concerned that this may be reviewed and the decision taken for the WRA to take over the collection and management of tax itself rather than allowing HMRC to continue to operate on behalf of the WRA under delegated powers. The WRA will be a much smaller body than HMRC and may struggle to acquire staff with appropriate expertise to manage Welsh taxes particularly as the existence of the WRA would just spread the limited pool of people, expertise and funding even further. Sharing expertise as currently proposed would be the most beneficial and cost effective way forward.

### Part 3: Tax returns, Enquiries and Assessments

12. This chapter refers to a person who has made a tax return. Whilst we can see that such an obligation will rest with the relevant taxpayer, in reality, in many instances a return will be held on the taxpayers behalf by their ‘agent’. The Bill would be clearer if the term “the person who made the tax return” were defined since this is a term used later in the Bill.
13. Clause 40 deals with the correction of a tax return. The Bill gives the WRA power to correct any error or omission in the return. The Bill also gives the WRA power to correct an ‘error of principle’. Such an error of principle could simply be a different interpretation of the law. It is then up to the taxpayer to give notice to the WRA that the corrections is rejected. We are pleased to see that the Bill gives a period of 3 months in which to reject any correction, whereas they only have 30 days in relation to any correction by HMRC. This longer period will better enable taxpayers to seek professional advice as to their position before making a decision as to whether to accept or reject any such corrections.
14. In clause 41 the term “person who made the return” is used. It is not clear if this is a reference to the taxpayer or the person who actually filed the return. We anticipate that in relation to the land transactions tax, the taxpayer will not file the return themselves as this will be done by the solicitor or licensed conveyancer who handles the property transaction. Will such a notice be sent to the taxpayer and their lawyer in these circumstances.
15. If the WRA were to correct a return some months after a transaction was completed, it is likely that the professional dealing with the matter will have closed their file. The notice should be served to both the taxpayer *and* any agent who acted on their behalf to submit the return.



16. Clause 43 provides that the WRA may during an enquiry issue a notice amending a return and requiring the payment of any insufficiency in tax payable. The clause provides that any further sum due *must* be paid in 30 days. Yet it is not clear what steps the taxpayer can take if they do not agree with the WRA on the amount of tax due, particularly as clause 44 requires both the WRA and taxpayer to jointly refer a question to a tribunal for determination. What happens if agreement cannot be reached as to whether a referral should be made? Is a decision of the WRA to refuse to make a joint referral appealable?
17. It is disappointing that the only way a taxpayer can compel the WRA to complete an enquiry is to make an application to the Tribunal. We believe that consideration should be given to an alternative process that avoids the cost of tribunal proceedings.
18. Clause 71 requires the WRA to either issue a notice of decision or give effect to a claim for overpaid tax “as soon as practicable”. It is not clear what this means. This will create uncertainty as to how long a taxpayer may wait for a decision or repayment. We recommend that a time limit be set as to how long the WRA has to make a decision so that the taxpayer does not suffer undue delay in receiving sums due to them from the taxpayer.

#### **Part 4: Investigatory Powers of WRA**

19. Clause 99 provides that regulations will be made to establish a procedure to resolve any dispute as to whether any information or a document (requested in an information notice) is subject to legally professional privilege. Legal professional privilege is a fundamental human right and it is imperative that any regulations should be the subject to consultation before being laid before the Welsh Assembly. We note that these regulations as with the majority of regulations to give effect to the Bill are to be passed by the negative procedure. This will inevitably mean that they will be passed with minimal scrutiny by legislators if any. We consider that these important regulations to ensure the protection of taxpayers rights should be passed by way of affirmative resolution.

---

**For further information please contact:**

Louise Speke  
 Chief Tax Adviser  
 CLA, 16 Belgrave Square  
 London SW1X 8PQ

Tel: 020 7235 0511  
 Fax: 020 7235 4696  
 Email: [louise.speke@cla.org.uk](mailto:louise.speke@cla.org.uk)  
[www.cla.org.uk](http://www.cla.org.uk)

Rebecca Williams  
 Director Wales  
 CLA, Tŷ Cymru,  
 Presteigne Enterprise Park, Presteigne  
 Powys LD8 2UF

Tel: 01547 317085  
 Email: [rebecca.williams@cla.org.uk](mailto:rebecca.williams@cla.org.uk)

---



# **Tax Collection and Management (Wales) Bill**

## **A response by the Bevan Foundation**

1.1 The Bevan Foundation develops ideas that change Wales and improve people's lives. We use evidence to produce innovative solutions, and share knowledge and experience to shape public policy and practice. We are a registered charity and are independent of government or any political party. We welcome the opportunity to contribute to the Finance Committee's consultation on the Tax Collection and Management (Wales) Bill.

1.2 The Bevan Foundation is developing proposals for new taxes which could change the behaviour of businesses, organisations and individuals, and help to create a fairer, more prosperous and sustainable Wales. We are specifically interested in taxes which improve corporate accountability for any social, economic or environmental 'harm', and which are not regressive in their impact.

## **2. The need for legislation**

2.1 We welcome the introduction of the Bill as it will provide a legal framework for the collection and management of devolved taxes in Wales. We believe that the tax raising powers the Assembly gained from the Wales Act 2014 provide it with significant potential to bring about social good, and a sound legal framework is therefore necessary.

2.2 We also appreciate that the Bill does not restrict the WRA's capacity to take on further responsibilities, meaning that it can support the introduction, collection and management of new taxes in addition to those which have already been proposed (Land Transaction Tax (LTT) and Landfill Disposals Tax (LDT)). Nevertheless we would welcome clarification that WRA will have powers to collect and manage new taxes (Wales Act 2014 (section 6, which adds to Part 4A of the Government of Wales Act, s. 116C)).

## **3. General Principles**

3.1 The Welsh Government has a unique opportunity to design a tax system afresh, and consider how it wants to raise taxes and funding. The principles which underpin this

system will provide a framework for Wales' tax and funding system, so they must be robust and comprehensive to cope with new taxes and the devolution of additional tax powers.

3.2 We welcome the principles included in the explanatory memorandum, namely to:

- be fair to businesses and individuals who pay them;
- be simple, with clear rules which seek to minimise compliance and administration costs;
- support growth and jobs that in turn help tackle poverty; and,
- provide stability and certainty for tax payers.

3.3 We suggest that there are additional principles which should be considered, and in particular:

- Efficiency – a tax should be cost-effective to collect and manage
- Transparency – the purpose and rationale for tax should be clear

3.4 We would also suggest that the principle of 'supporting jobs and growth', important though this is, should be broadened to the principle of 'meeting the specific needs of Wales'. We suggest this because a tax might support, for example, good health or the carbon emissions.

3.5 We welcome that proposal that tax policies should not diverge from UK operational processes and arrangements without good reason. In the event that new taxes are introduced in addition to LTT and LDT, it is important that the issue of comparability of operational processes and arrangements does not obstruct compliance.

#### **4. Welsh Revenue Authority**

4.1 We agree that a Welsh Revenue Authority (WRA) is needed to be responsible for the legal, operational and management function of devolved taxation in Wales.

4.2. We welcome that the WRA can delegate operational and management functions as this acknowledges that other bodies may be better suited to carrying them out.

4.3 It is important that the legal responsibility for tax collection management remains with the WRA, and that responsibility for tax policy remains with Welsh Government Ministers as it has the potential to support (or harm) other policy areas.

4.4 Regarding oversight of the WRA, more consideration should be given to the role of the Finance Committee and the Assembly in relation to scrutiny. This is especially important as the responsibilities of the body are likely to grow in proportion to the number of devolved taxes collected in Wales, and that it may not be able to mirror the processes of HMRC in the case of new taxes.

4.5 There should be a clear responsibility for the WRA to communicate why any devolved taxes should be paid and why they are at the rate they will be set at. This responsibility should complement the responsibilities already outlined in the bill, especially in relation to compliance and avoidance, and it should also be included in the charter.

4.6 The WRA has the potential to take a 'digital by default' approach to the operation and management of new taxes, and this should be explored further.

4.7 Although the impact of LTT and LDT is due to be explored further in the tax-specific legislation, it is worth considering where responsibility for assessing the impact of taxes should lie. It seems unlikely that the WRA will have the capacity to assess this for all devolved taxes given its anticipated size, so this should be highlighted as part of the 'management' functions which it can delegate.

4.8 It remains unclear if new taxes will be expected to cover the costs they incur for the WRA, or if money can be allocated for this separately. It is possible to introduce taxes that are more expensive to collect and manage than the revenue they bring in, but it still might be desirable to introduce such as tax. It is not apparent from this Bill whether such a tax would be legal.

## **5. Charter of Standards and Values**

5.1 We welcome the inclusion of a charter of standards and values, and hope that it is devised after consultation with a range of stakeholders, including representation of those who will not be affected by the devolution of LTT and LDT.

5.2 The WRA should seek to avoid some of the administrative failings that have plagued HMRC, and this should be considered during the charter's formation.

5.3 For the charter to be a meaningful document, it is important that it is widely distributed and that the WRA is scrutinised on its compliance with it.

Bevan Foundation  
145a High Street, Merthyr Tydfil CF47 8DP  
[www.bevanfoundation.org](http://www.bevanfoundation.org)  
[info@bevanfoundation.org](mailto:info@bevanfoundation.org)  
Registered charity no. 1104191

7<sup>th</sup> September 2015

Tax Collection and Management (Wales) Bill

One Voice Wales is recognised by the Welsh Government as the national representative body for community and town councils in Wales. It represents the sector on the Local Government Partnership Council and over three-quarters of the 735 community and town councils are already in membership, with numbers growing year on year. As well as our representative role, we also provide support and advice to councils on an individual basis and have previously launched, with Welsh Government support, a modular training programme for councillors, which continues to deliver effectively. We believe strongly that community councils are well-placed to develop the economic, social and environmental well-being of the areas they serve and, as such, are active and proactive in debating key issues such as energy policies, environmental issues and strategic planning. Our sector will support and co-operate with the developments that this bill and associated future bills will herald in terms of the changes needed.

One Voice Wales does not possess the specific expertise or specialist knowledge in order to be able to make detailed observations in relation to this bill, but members have studied the documentation contained in the consultation brief and are happy with and supportive of the approach being developed by the National Assembly for Wales.

Dr. Del Morgan  
Swyddog Datblygu/Development Officer  
Un Llais Cymru/One Voice Wales



**Tystiolaeth Ombwdsmon Gwasanaethau Cyhoeddus Cymru  
i Bwyllgor Cyllid y Cynulliad ar y  
Bil Casglu a Rheoli Trethi (Cymru)**

1. Fel Ombwdsmon Gwasanaethau Cyhoeddus Cymru, yr wyf yn ymchwilio i gwynion gan aelodau o'r cyhoedd eu bod wedi dioddef caledi neu anghyfiawnder drwy gamweinyddu neu fethiant gwasanaeth ar ran corff o fewn fy awdurdodaeth. Fel y cyfryw, mae gennyf bersbectif unigryw ar ddarpariaeth gwasanaethau cyhoeddus yng Nghymru, wedi ei llywio gan farn aelodau o'r cyhoedd sydd wedi bod yn anfodlon â'r gwasanaeth a gawsant. Lle mae achosion yn datgelu gwersi ehangach, mae'n bwysig bod y rhain yn cael eu cyfathrebu fel y gellir gwella darpariaeth gwasanaeth a lleihau anfodlonrwydd yn y dyfodol.
2. Yr wyf yn croesawu'r cyfle i ddarparu tystiolaeth mewn perthynas ag ymchwiliad y Pwyllgor Cyllid i mewn i egwyddorion cyffredinol y Bil Casglu a Rheoli Trethi (Cymru).
3. Yn fy rôl fel Ombwdsmon, ni fyddai'n briodol imi gynnig sylwadau ar y mwyafrif helaeth o gynnwys y Bil. Fodd bynnag, y mae yna un elfen benodol yr wyf yn dymuno rhoi sylwad arno gan y bydd yn cael effaith uniongyrchol ar fy swyddfa, a dyna'r bwriad i ddod ag Awdurdod Cyllid Cymru fel corff o fewn awdurdodaeth Ombwdsmon Gwasanaethau Cyhoeddus Cymru
4. Mae fy staff a minnau wedi bod yn trafod y mater hwn gyda swyddogion Llywodraeth Cymru. Gallaf gadarnhau i Bwyllgor Cyllid y Cynulliad fy mod yn fodlon ar, ac yn wir yn croesawu'r cynnig hwn. Mae'n gyson â'r agwedd o ddod â phob corff cyhoeddus datganoledig o fewn awdurdodaeth Ombwdsmon Gwasanaethau Cyhoeddus Cymru. Ar sail profiad yr Ombwdsmon Seneddol, sydd hyd yn hyn wedi bod gyfrifol am edrych ar gwynion o'r math hwn, nid wyf yn rhagweld y bydd effaith sylweddol o ran adnoddau ar fy swyddfa.

**Ombwdsmon Gwasanaethau Cyhoeddus Cymru  
Medi 2015**

\*\*\*\*\*

Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Delivered by email to:  
[seneddfinance@assembly.wales](mailto:seneddfinance@assembly.wales)

08 September 2015  
Our ref: WJID/SJJ/MC

Dear Sir

## **Consultation on the Tax Collection and Management (Wales) Bill**

We refer to the draft guidance and legislation introduced on 13 July 2015 and entitled "Tax Collection and Management (Wales) Bill". We welcome the opportunity to comment. Our comments below are designed to assist the National Assembly for Wales achieve the implementation of the Bill in a clear and simple way with the minimum of incremental administration.

### The main powers

In our view, the framework from Part 3 of the draft Bill onwards concerning enquiries, investigatory powers, penalties etc. appears to be based on current UK legislation concerning self-assessment taxes (such as corporation tax) and we believe is a sufficient framework in respect of operation of the Land Transactions Tax in Wales. However, we do not believe that the broad nature of the legislation is sufficient with regards to Landfill Tax. It is our view that further legislation would be required, mirroring the provisions of the current UK Landfill Tax legislation, to ensure that the Welsh Revenue Authority ("WRA") can manage the collection of Landfill Tax in Wales.

The legislation appears to be drafted broadly in order to incorporate further taxes, which may be devolved to Wales at a later date, e.g. corporation tax and income tax. This seems to us to be a sensible approach.

### Secondary v. Primary legislation

As a policy matter, we believe secondary legislation should be used for administrative matters only. The



draft Bill sets out regulatory powers in three areas which belong, in our view, in primary legislation:

- Power to amend the conditions under which protected taxpayer information is disclosed (clause 17(2))
- Power to amend provisions relating to what are to be classed as appealable decisions (clause 170(7)) and
- Power to confer further investigative, detention and seizure powers (clause 183(1)(2)).

#### Time To Pay (“TTP”) arrangements and financial hardship

We support HMRC’s TTP initiative, which allows financially viable customers who cannot pay their tax on the due date to make payment(s) over a period that they can afford. Arrangements are tailored (based on objective criteria) to the ability of the customer to pay, and allow HMRC to collect more tax in a more cost-effective manner. We strongly recommend that consideration is given to including similar arrangements in the Bill.

#### Other

We have included additional points of detail regarding the draft legislation and explanatory notes which require consideration at Appendix 1.

If you would like to discuss any of these points further please do not hesitate to contact the undersigned or Wayne Harvey (wharvey@deloitte.co.uk).

Yours faithfully



WJI Dodwell  
Deloitte LLP  
Enc

## Appendix – points of detail regarding the draft guidance and legislation

There are a handful of aspects of the draft legislation that we suggest could be made clearer, and these are set out below:

- Clause 5 - Terms of non-executive membership does not require any of the non-executive members to have a minimum level of tax knowledge or expertise. We believe that the WRA would benefit from members of the board having representation from experienced tax professionals.
- It is not clear from Clause 11 as to who will carry out the functions of the WRA; confirmation should be given as to the split of functions between the executive and non-executive members (to the extent that non-executive members have explicit functions)
- In considering the delegation of the functions of the WRA, Clause 13(1) does not provide any restrictions on whom these functions may be delegated to. There are restrictions in Clause 3 as to who can become a member of the WRA but there appears to be no restriction on who can carry its functions by way of delegation. We would have expected that minimum requirements might be specified.
- The Welsh Ministers are required to approve payments to committee (or sub-committee) members for their services as Clause 7(3); however no such approval appears to be required in respect of payments for delegated functions at Clause 13(7). It is recommended that clarification be given as to with whom this authority rests.
- The WRA is required to produce a Tax Statement providing the amount of money collected by it during the financial year. We believe that further clarification should be given as to the information to be presented in the Tax Statement. It would be useful to the stakeholders of the Tax Statement for this to include *inter alia* breakdowns of the amounts collected by tax, the sector in which the tax payer operates and months of collection.
- HMRC currently require the majority of tax payments to be made electronically. If it is the intention of the WRA to collect taxes in this manner then this should be set out in the legislation.
- In the Explanatory Notes, paragraph 115 refers to clause 101(1) when discussing the protection of communication with tax advisors. The reference here should be to clause 100(1).



## **General Principles of the Tax Collection and Management (Wales) Bill FSB Wales**

FSB Wales welcomes the opportunity to present its views on the National Assembly for Wales Finance Committee consultation on the General Principles of the Tax Collection and Management (Wales) Bill. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees, FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

### **Introduction**

Our September 2013 survey of FSB members showed that on average our members spend between £1,001 and £3,000 per year on professional fees, software costs and staff time managing the payment of taxes<sup>1</sup>. This is a significant cost to small businesses. We believe that the mechanisms adopted in Wales, as a result of the devolution of taxation set out in the Wales Act 2014, should not place additional reporting burdens on Welsh small businesses. It is crucial that the Finance Committee fully consider the implications of arrangements for the collection and management of devolved taxation for small businesses as part of its review of the Tax Collection and Management (Wales) Bill.

### **The Welsh Revenue Authority**

FSB Wales supports the establishment of a Welsh Revenue Authority as a Non-Ministerial Department, as proposed by Welsh Government in its White Paper in 2014. This follows the Scottish Government's decision to set up Revenue Scotland in response to the devolution of taxes, which our colleagues in FSB Scotland have also supported. In our previous evidence to the Committee, however, we have argued that the Welsh Revenue Authority should only be created following a full evaluation of the likely cost and of any alternative mechanisms<sup>2</sup>.

In our previous written and oral evidence to the Finance Committee during its Review of the Management and Collection of Devolved Taxes<sup>3</sup>, we argued that in order to truly reflect the nature of the Welsh economy, at least one place on the Welsh Revenue Authority (WRA) should be reserved for a member with specific current small business experience. We are therefore disappointed that the Bill makes no such provision. Furthermore, we note the Bill makes provision for the WRA to establish sub-committees. Given the importance of small businesses to the Welsh economy, we strongly believe that a standing sub-committee should be established to specifically consider the impact of tax collection and management decisions by the WRA on small businesses, and that the legislation should make specific provision for such a committee.

---

<sup>1</sup> FSB (September 2013). *Member Survey*: <http://www.fsb.org.uk/news.aspx?rec=8351>

<sup>2</sup> <http://senedd.assembly.wales/documents/s38981/FIN4-07-15%20Paper%20%20-%20Federation%20of%20Small%20Businesses%20Wales%20Consultation%20Response.pdf>

<sup>3</sup> <http://senedd.assembly.wales/documents/s39559/23%20April%202015.pdf>



In our previous evidence to the Committee we have argued that provision should be made for the WRA to exist for a period of time as a 'shadow authority'. This will afford the WRA the opportunity to identify any initial operational issues during the period of transition.

### **The Role of the National Assembly for Wales Finance Committee**

With the devolution of taxation to Wales a clear distinction should be made between the functions of the Finance Committee and Public Accounts Committee, and that the roles of these committees should reflect additional devolved responsibility. With this in mind we argue that the Finance Committee should be renamed the Treasury Committee and have general oversight of the Welsh Consolidated Fund, including the collection of Welsh taxes. The Public Accounts Committee should be responsible more specifically for value for money in public expenditure and detailed scrutiny of public service delivery.

We welcome the requirement for the WRA to lay a copy of its corporate plan before the National Assembly for Wales, though as we have indicated in our previous evidence, we believe the Treasury Committee of the National Assembly for Wales should have a strong role in scrutinising the work of the WRA. Provision should, therefore, be made in the Bill for closer scrutiny of the corporate plan by the Treasury Committee than that which is currently identified within the Bill. Prior to approving the corporate plan, Welsh Ministers should fully consider the position of the Treasury Committee with regard to the draft corporate plan laid before it. We believe similar arrangements should be made in respect of the Annual Report of the WRA. The Treasury Committee should be given additional expert advice should this be necessary in the exercising of these functions.

### **Powers of the WRA**

With respect to the powers identified within the Bill for the WRA to inspect businesses premises, we are concerned how this might apply where the headquarters of companies that incur devolved taxes are located outside of Wales. On this, as on other issues, we believe it is important that the WRA maintain a close working relationship with HMRC. Unless arrangements are made to permit the WRA to pursue investigations in relation to larger businesses whose headquarters are located outside of Wales, then the legislative impact will be unduly and unfairly felt by small businesses.

### **Penalties**

We believe that the Welsh Government should make provision within the Act for the level of any and all penalties enforced to be on a graduated scale, proportional to the turnover of the business that incurs them. The impact of fixed penalties are likely to be more keenly felt by small and medium sized businesses than larger businesses, and, unless the legislation makes provision for size of business, its impact will be unfair. This is an important consideration, particularly given the scale of tax avoidance by large multi-national companies.

Our 2013 survey of FSB members on the collection and management of taxation showed that after cash flow problems, the most significant reasons for the late payment of taxes arises from communication difficulties, such as understanding of what is required and confusion over payment



dates<sup>4</sup>. In levying penalties, and in making provision for appeals, the WRA should give specific consideration to the particular challenges faced by small businesses in this respect. Small businesses commonly do not have dedicated finance teams to manage company taxation compliance, and often need to prioritise trading activities to keep their businesses operating.

## **Final Considerations**

We are disappointed that the Bill does not make provision for the WRA to undertake tax impact assessments, and in our previous evidence we argued for such a provision to be made in respect of any further changes to devolved taxation. We believe this will permit important future proofing of the WRA, as the number of devolved taxes are likely to grow incrementally.

We welcome the provision in the Bill that one of the main functions of the WRA is to resolve complaints and disputes relating to devolved taxes. We believe, however, that more specific reference should be made in the Bill to an expectation of a high level of responsiveness. In our ongoing discussions with members we have found that small businesses have found real difficulty in engaging with HMRC, and believe that the WRA should be set up with an explicit expectation to avoid such difficulties.

---

<sup>4</sup> FSB (September 2013). *Member Survey*: <http://www.fsb.org.uk/news.aspx?rec=8351>



### **Federation of Small Businesses Wales**

1 Cleeve House  
Lambourne Crescent  
Llanishen  
CARDIFF CF14 5GP

Telephone: 029 2074 7406

Email: [policy.wales@fsb.org.uk](mailto:policy.wales@fsb.org.uk)

Web: [www.fsb.org.uk/wales](http://www.fsb.org.uk/wales)

### **The Federation of Small Businesses Wales**

The FSB Wales is non-profit making and non-party political. The Federation of Small Businesses is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has 200,000 members across 33 regions and 194 branches. FSB Wales currently has around 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees meaning FSB Wales is in constant contact with small businesses at a grassroots level in Wales.

### **Lobbying**

From the Press and Parliamentary Affairs Office in Cardiff, FSB Wales campaigns with AMs, MPs and MEPs in Cardiff Bay, Westminster and Brussels in order to promote our members' interests. FSB Wales also works closely with local, regional and national media outlets to highlight our members' concerns. Development Managers work alongside members in our regions to further FSB Wales influence at a regional level. More widely, the FSB has Press and Parliamentary Offices in Westminster, Glasgow, Belfast and Brussels to lobby the respective Governments.

### **Member Benefits**

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business organisation in the UK.

### **Vision**

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK.

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.



TAXREP 41/15  
(ICAEW REPRESENTATION  
115/15)

---

## Tax Collection and Management (Wales) Bill 2015

ICAEW welcomes the opportunity to comment on the *Tax Collection and Management (Wales) Bill* published by the Welsh Government on 13 July 2015.

This response of 7 September 2015 has been prepared on behalf of ICAEW jointly by the Tax Faculty and the ICAEW's Director for Wales, supported by input from a working party of members based in Wales.

The Tax Faculty is a leading authority on taxation and internationally recognised as a source of expertise. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

### Contents

	Paragraphs
Introduction	1 – 4
Specific comments on the Bill	5 – 17
Other comments	18 – 19
Ten Tenets for a Better Tax System	Appendix 1

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 142,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Copyright © ICAEW 2015  
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact ICAEW Tax Faculty: [taxfac@icaew.com](mailto:taxfac@icaew.com)

[icaew.com](http://icaew.com)



## Introduction

1. We welcome the opportunity to comment on the Bill introduced on 13 July 2015. We will also be happy to present these points orally or expand upon them in writing if requested.
2. We are pleased to see that the majority of our previous advice and recommendations have been incorporated into the Bill and wish to acknowledge the open and effective way in which the Welsh Government has conducted its development fully taking into account the views expressed through the various consultation processes it has adopted.
3. We consider that the devolvement of these taxes has provided the Welsh Government with a real opportunity to review their relevance and appropriateness to Wales and to improve the efficiency of tax collection through simplification wherever possible. To date it has been evident that these objectives are being pursued and we will continue to support Welsh Ministers in this endeavour.
4. We welcome the drafting of the Bill so that all of the substantive provisions are included in the body of the Bill rather than relegated to Schedules. This aids clarity and we recommend this approach should always be adopted in future Bills.

## Specific comments on the Bill

### Part 2, Welsh Revenue Authority (WRA)

5. We support the development of a Board to oversee the performance of the WRA made up of a majority of non-executive members, one of whom will be Chair. It is critical that these non-executive members have both the skills and the knowledge to provide appropriate governance for the WRA and therefore include those with a strong understanding of taxation, business processes and the economy in particular.
6. We are pleased to note the ability of the WRA to establish committees and sub committees to fulfil its functions which can include individuals who are not members of the Board. This will allow the WRA to supplement the skills and knowledge of the Board members themselves to ensure a greater coverage and understanding of the effect, or potential effect, of their work and gather more directly the views of those involved in business and the economy as a whole.
7. We are disappointed that in clause 11 of the bill covering primary responsibilities there is no mention of ensuring a “quality” service to the public and Government. Whilst this section requires an efficient and effective complaints and disputes procedure there is no mention of the same for the collection and management systems. It is our view the primary responsibilities should include the development of efficient and effective tax collection systems (whether operated directly or indirectly) which are user friendly for the taxpayer and simple in operation and regulation. The objective of which would be to encourage and maximise the collection of taxes and minimises the opportunity for avoidance or evasion or disputes and appeals.
8. It may be implicit in para 2(a) of clause 11 but we consider it should be explicit that the WRA has a role to provide Welsh Ministers with an independent assessment of the effects of any policies which they may adopt that may affect tax collection. They should also provide feedback of the actual effects of policies adopted through a formal reporting mechanism.
9. Para 2(b) of clause 11 is a key role and perhaps requires some expansion regarding the main objectives of this function. Maximising taxpayer’s acceptance of the regulations and compliance to the rules is, in our view, a primary function of the WRA. Consequently it should have a duty to “ensure” the information provided is appropriate and sufficient for these purposes and also that it conducts appropriate consultation when seeking to introduce new

regulation or changes to the tax system. Once again this is well covered for penalties but not for the core tax collection system.

### **Clause 16 et seq, Confidentiality of Taxpayer's Information**

10. This topic is comprehensively covered but the issue of consent in clause 17 1(a) 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.
11. Where disclosure is made without consent under the other listed permitted situations, we believe that there should there be a duty to advise the taxpayer of this action and the reasons why.
12. Similarly, we believe it should it be a requirement that the duty of confidentiality is passed onto and accepted by the receiving organisation or individual where appropriate.

### **Clause 22, Funding**

13. Clause 22(1) appears to give Welsh Ministers the ability to withdraw funding from WRA without any notice or consultation. Surely this is not the intention. This clause should be amended to clarify that it is Welsh Ministers who will decide the funding provided to the WRA but that this would be normally subject to a specific procedure. e.g. an annual basis and after consultation and discussion with the WRA itself. Also, if there is to be a major reduction in funding, the Bill should set out clear procedures and consultation processes to be followed.

### **Clause 23, Rewards**

14. Clause 23 gives power for the WRA to pay a reward to a person in return for a service which relates to any of its functions. It is not entirely clear as to who might receive such an award as compared to, for example, remuneration or payment for services rendered. We would welcome clarification as to the extent of this power and where it would be appropriate to apply it.

### **Clause 25, Taxpayers' charter**

15. We support the inclusion of a Taxpayers' Charter that sets out the rights and responsibilities of both taxpayers and WRA.
16. We believe that a Charter should aim to do more than merely reflect aspirations about how HMRC should behave and what service standards taxpayers might expect. We believe that good tax compliance is encouraged by an efficient and effective tax administration service and the Charter should reflect this commitment. It needs to have some practical value and a reasonable set of service standards and behaviours that taxpayers can use and rely upon in their dealings with the revenue authority.

### **Part 8, Reviews & Appeals**

17. As stated previously we anticipate a role of the WRA will be to make the collection system and tax regulations user friendly to the taxpayer and thereby minimise the level of necessary reviews or appeals against the tax payable. Some measure of performance should be put in place regarding disputes which demonstrates the WRA's success or otherwise in this area.
18. We welcome the statement in the Explanatory notes which states "The WRA will seek to get things right first time, working collaboratively with taxpayers, communicating clearly and effectively and providing appropriate explanations of decisions." We are not sure this aspiration is truly reflected in the Bill itself and believe the wording should be amended to reflect this aspiration more clearly.

## Other comments

### **Service standards**

19. It is essential that WRA puts customer service and efficient delivery at the heart of its process designs and implementation. The Welsh Government might wish to consider, for example, whether it would be appropriate to be seen to have a more local presence that taxpayers could access when they had problems.
20. We believe it is important that whatever approach is adopted and whoever provides the actual management and operation of the taxes (whether by WRA or a subcontractor), there should be a clear level of agreed service standards. If any operations are subcontracted such standards should be built in to any agreement.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](http://icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )



## **Finance Committee of the National Assembly of Wales – call for evidence on the Tax Collection and Management (Wales) Bill**

### **Response by the Chartered Institute of Taxation**

#### **1 Introduction**

- 1.1 The Chartered Institute of Taxation (CIOT) is pleased to comment on the Tax Collection and Management (Wales) Bill (the Bill) in response to the Finance Committee's Call for Evidence. We have endeavoured to keep our submission short, in line with the Committee's requirements; we would be pleased to amplify our points orally or in writing.
- 1.2 We consider that the Bill has been developed with open and effective consultation. We commend the wide-ranging consultation including the consultative forums and for allowing a proper timescale for responses to be developed.

#### **2 Avoidance and evasion**

- 2.1 We note that Welsh Ministers have confirmed that they wish to see more evidence of the scale, scope and nature of tax avoidance in relation to SDLT and LFT within Wales, to ensure that legislative and operational approaches to tackling tax avoidance are clear, robust, and proportionate. These issues are therefore under consideration in the context of consultations on LTT and LFT. We support this approach with some caveats; it would be disappointing if this approach led to the inclusion in LTT of an equivalent to Finance Act 2003 sections 75A-C, legislation that has been found to be flawed and unworkable both in practice and in the tribunals<sup>1</sup>.

<sup>1</sup> See *Project Blue Limited and the Commissioners for Her Majesty's Revenue and*

2.2 We consider that there is merit in trying principles-based drafting where necessary combined with specific targeted anti-avoidance rules. Traditionally UK tax law, particularly in an 'avoidance' context, has been written in great detail, leading to complexity and often to loopholes that then require further legislation.

### **3 The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).**

3.1 This is a key area of concern. 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 (albeit with the affirmative procedure because of its potential significant effect). These four areas are:

- Power to amend the conditions under which protected taxpayer information is disclosed (clause 17(2))
- Power to amend the amount and assessment of penalties charged to taxpayers (clause 154)
- Power to amend provisions relating to what are to be classed as appealable decisions (clause 170(7)) and
- Power to confer further investigative, detention and seizure powers (clause 183(1) (2)).

3.2 It is our view that such powers belong properly in primary legislation. Although a limited power to make inflationary adjustments to penalties, for example, would be appropriate in secondary legislation it is important to ensure that matters such as substantive changes to penalties are seen as fairly imposed and properly legitimised by the Assembly, rather than simply by administrative decision.

### **4 Use of terminology in the Bill common to UK tax legislation**

4.1 As set out in the policy background of the Explanatory Memorandum, Welsh Ministers have agreed that where there is no good policy reason to diverge from UK tax administration, current operational processes and arrangements will be adopted in the Welsh context. Therefore, in the interests of certainty, where terms used in Bill are the same as those used in equivalent UK legislation (for example 'reasonable' in the sense of 'reasonable excuse' 'reasonable grounds' or 'reasonable care' etc), it would be helpful - unless it is stated elsewhere- to acknowledge in the Bill itself that UK jurisprudence should be regarded as binding precedent, unless the Assembly indicates

otherwise in the legislation.

## **5 Part 2: The Welsh Revenue Authority (WRA)**

- 5.1 We are pleased to note that the WRA has the freedom to establish non-voting committees in order to fulfil its functions. The involvement of committee members with particular tax expertise and experience in business and practice will build confidence in the Authority. Such committees provide also the opportunity for exercising valuable oversight of fundamental aspects of the management of devolved taxes such as evaluating proposed changes and monitoring WRA adherence to the Charter of standards and values.
- 5.2 The main functions of the WRA (clause 11) are reasonable as far as they go although we consider that the duty to provide information and assistance relating to devolved taxes to devolved taxpayers, their agents and other persons might emphasise more robustly the need for good communication with taxpayers. As we noted in our consultation response, frequent and clear communication is important, ideally with a good mix of communication methods, in order to reach all taxpayers. A compliance culture depends upon good communication.
- 5.3 We note that clause 15 provides for the use of information by WRA and persons to whom the WRA has delegated any of its functions. This power is subject to any international obligation of the United Kingdom which restricts or prohibits the use of information. We note that a similar provision in the Revenue Scotland and Tax Powers Act 2014 is subject in addition to 'any other enactment' (section 17(b)). Is the apparent omission of that specific qualification intentional?
- 5.4 Clause 23 provides that the WRA may pay a reward to a person in return for a service which relates to any of its functions. This seems a very wide scope and we think it should be restricted to matters such as rewarding informers, if that is the intention.'
- 5.5 We are pleased that the Charter of standards of values has been given statutory force and that there is parity of obligations between the WRA and the taxpayer. We are concerned though that the standard is aspirational in terms of the behaviours and values contemplated; we think it would be better framed in terms of the 'behaviour and values expected of the Welsh Revenue Authority'. It would be appropriate to frame the expectations of taxpayers similarly.
- 5.6 The WRA must review the Charter 'from time to time'. Although we recognise the value of flexibility (and the need to balance limited resources) we would prefer a more defined process and timeline or trigger for review. Failure to do so runs the risk of undermining the status of the Charter. Again a standing committee could offer the mechanism for a governance/ compliance function in relation to the Charter and a defined review process with a reporting timeline.

- 5.7 As an important safeguard the Charter should apply to any person to whom the WRA has delegated any of its functions explicitly, even if this is implicit.
- 5.8 We endorse the response of the Low Incomes Tax Reform Group particularly in relation to producing and publishing a Charter in readiness for 1 April 2018.
- 5.9 The timings for producing the Corporate Plan (clause 26) and Annual Report (clause 27) are a little vague. Timely production needs to be tied into the political timetable to ensure that these documents perform an effective function.

## **6 Part 3: Tax returns, enquires and assessments**

- 6.1 We note that the record keeping obligation in clause 36 appears to diverge from the UK provisions in section 12B of the Taxes Management Act 1970 in that clause 36(3) refers to the sixth anniversary of the day on which the tax return is made (rather than the fifth). If so, it is unclear why this should be so given the intention to maintain consistency?

## **7 Part 4: Investigatory Powers of WRA**

- 7.1 In relation to information notices we welcome the protection for 'journalistic information' (clause 96) although we note that this term could be usefully defined. Similarly the protection for personal records (clause 97), privileged communications between legal advisers and clients (clause 99) and for the extension of protection to communications between a tax adviser and client. The latter protection is provided under clause 100 (2) to a '*tax adviser*' (*'cynghorwr treth'*) [*that*] *means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person)*. There may be some ambiguity around the meaning of 'appointed' (by way of example 'appointed' might mean the existence of an engagement letter between client and adviser, or perhaps that notification has been made to the Authority that the adviser is acting as agent). Therefore some clarificatory guidance on what is meant by 'appointed' would be helpful.

## **8 Part 5: Penalties**

- 8.1 We are concerned that provision is made in the Bill for a regulatory power to change penalty provisions. As noted above, although the secondary legislation will be subject to the affirmative procedure, changes to the penalty regime should be in primary legislation.



- 8.2 We note that HMRC issued a discussion document earlier this year<sup>2</sup> on a potential fundamental change of approach to the imposition of penalties. The CIOT's response is at <http://tinyurl.com/nvzw9xw>.

## 9 Part 8 : Reviews and Appeals

- 9.1 We are disappointed that there is no provision giving the WRA power to postpone the collection of tax when an appeal is made even in the case of (objectively tested) hardship. Whatever is promised by way of interest if the taxpayer wins, it will not provide full recompense unless the rate is set above the current commercial savings rate.
- 9.2 From a wider perspective (not limited to appeals to the tribunal), we consider that consideration should be given to adopting Time To Pay (TTP) arrangements similar to those used by HMRC.
- 9.3 In common with legislation in the rest of the UK, the Bill provides for circumstances in which reference to the tribunal is made by either the taxpayer or the WRA (or jointly) as part of the operation of the management of devolved taxes. These include not only appeals against assessments but also a limited number of applications that are made to the tribunal on other matters for example third party notices (clause 85), inspection of business premises (clauses 101, 104 and 106) and an application to impose a penalty for failure to comply with information notice (clause 149). In this context we note the current Ministry of Justice consultation *Court and Tribunal Fees - Consultation* that includes fee proposals relating to the First-tier Tribunal (Tax Chamber) and Upper Tribunal (Tax and Chancery).
- 9.4 Any imposition of fees on an application to the tribunal will need to be considered from the perspective of the management of Welsh devolved taxes if referrals are likely to be significant.

---

<sup>2</sup> <https://www.gov.uk/government/consultations/hmrc-penalties-a-discussion-document>

## **10 The Chartered Institute of Taxation**

10.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation  
8 September 2015

## Finance Committee inquiry into the general principles of the Tax Collection and Management (Wales) Bill

### Submission by Natural Resources Wales

#### 1.0 Introduction

- 1.1 We welcome the opportunity to provide our views and recognise that the transfer of tax-raising powers to Welsh Government represents a significant step in devolution in Wales.
- 1.2 The principles and process around tax collection and management is highly technical, and outside of our current expertise. However we continue to work with Welsh Government to ensure that the design and implementation of Welsh Landfill Disposals Tax is effective and best-suited to Welsh needs. Our response to this call for evidence is therefore focussed on broad principles of tax collection and management in relation to Welsh Landfills Disposal tax and potential implications for Natural Resources Wales.
- 1.3 We are represented on Welsh Government's Wales Landfill Tax Project Board, and Landfill Tax Technical Experts Group. Through these groups we have been looking at the potential role and opportunities for Natural Resource Wales in relation to Welsh Landfill Disposals Tax.

#### 2. Role of Natural Resources Wales

- 2.1 The purpose of Natural Resources Wales is to ensure that the natural resources of Wales are sustainably maintained, used and enhanced, now and in the future.
- 2.2 Natural Resources Wales works as a regulator, partner and advisor to businesses, non-governmental organisations, local authorities and communities to help deliver Welsh Government and European Union policies and priorities.
- 2.3 Natural Resources Wales is responsible for regulating the waste industry and is principal adviser to WG, adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources. We take an ecosystem approach to promoting integrated natural resource management that delivers social, economic and environmental benefits for the people of Wales.
- 2.4 Natural Resources Wales is also the designated monitoring authority for The Recycling, Preparation for Reuse and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 and Landfill Allowances Scheme (Wales) Regulations 2004.

#### 3. General Principles and need for the legislation

- 3.1 We support the introduction of this Bill and recognise its necessity in establishing the legal framework required for the future collection and management of devolved taxes in Wales.
- 3.2 The White Paper on devolved tax collection and management confirmed that Natural Resources Wales (NRW) would be considered as potential partners to work with the WRA in the delivery of tax collection and management functions in relation to Landfill Disposals Tax. Our ability to undertake such a role requires that Welsh Revenue Authority has the ability to delegate their functions, which the Section 13 of the Bill provides.
- 3.3 The UK Landfill Tax introduced in 1996 was the UK's first environmental tax and is a key mechanism in enabling the UK to meet its targets, for the landfilling of biodegradable municipal

waste, set out in the Landfill Directive. Landfill Tax is a tax on the disposal of waste at landfill, which provides a strong incentive for waste producers to produce less waste, recover more value from waste, for example, through recycling or composting and to use more environmentally friendly methods of waste management. Through increasing the cost of landfill, other advanced waste treatment technologies with higher gate fees are made to become more financially attractive. The effectiveness of this tax in changing behaviour has been demonstrated by the reduction of waste disposed at Landfill sites in Wales. Since 2000 the amount of waste disposed at landfills in Wales has reduced from 4.5 million to 2.1 million tonnes in 2013.

- 3.4 The proximity of major urban areas on both sides of the Welsh and English Borders means that potential flows of waste could easily be reversed simply by relatively small changes in differential rates. It is important therefore that the Welsh Disposals Tax is introduced and we believe there are significant potential benefits to continued consistency between Welsh Government and the UK and Scottish Governments.

#### **4. Implementation and financial implications of the Bill**

- 4.1 The provisions of the Bill and in particular delegating any functions from the Welsh Revenue Authority to Natural Resources Wales will have a financial implication. We indicated in our response to the Welsh Government's consultation on the white paper "Collection and management of devolved tax in Wales" that we did not wish to be considered for the collection and management role at this time, but recognising there are potential synergies between our existing regulatory role and the forthcoming landfill disposals tax regime, we committed to explore opportunities to deliver a more effective compliance and enforcement regime in Wales, working on the expectation that any additional role would be fully funded.
- 4.2 We continue to work with Welsh Government to explore the following three elements in relation to our potential role and the future collection and management of landfill disposals tax in Wales:
- information sharing opportunities,
  - policy opportunities,
  - compliance and enforcement responsibilities
- 4.3 Following National Assembly for Wales passing this Bill we anticipate more intensive discussions will begin with Welsh Government. We recognise that any potential financial implications from being involved in a compliance and enforcement role will be dependent on
- i. the scale and scope of any role in delivering functions and the anticipated required service standards,
  - ii. the future development of legislation and associated policy decisions.
- 4.4 We understand that the forthcoming regulations would also be subject to a further Regulatory Impact Assessment. This process would refine cost estimates and provide us with greater certainty on any likely costs that would be incurred.
- 4.5 We welcome the opportunity to provide oral evidence if invited to do so by the Finance Committee.

#### **For more information**

Please contact: Isobel Moore Head of Business, Regulation and Economics  
Natural Resources Wales  
Tŷ Cambria, 29 Newport Road  
Cardiff CF24 0TP  
02920 466118

[Isobel.Moore@cyfoethnaturiolcymru.gov.uk](mailto:Isobel.Moore@cyfoethnaturiolcymru.gov.uk)

## Response to Consultation on the Tax Collection and Management (Wales) Bill

Please find below our response to the Consultation which focuses on the Dispute Resolution aspects of devolved tax in Wales. The submission is made in our role as independent Civil and Commercial Mediators involved in mediating a wide variety of civil and commercial disputes. A note on our practice appears, for information, at the end of this response.

### Section 1 - General Comments on the Bill and Dispute Resolution

1.1 The Bill envisages the foundation of the Welsh Revenue Authority (WRA), a body separate from the Welsh Ministers. It provides for the WRA to have powers of information gathering and investigation, penalties and fines, civil and criminal enforcement, and, importantly, appeal rights and administrative justice. It also provides for mechanisms for review of and appeal from WRA decisions in certain circumstances. In making our comments below, we refer to the content of the Explanatory Memorandum rather than the provisions of the Bill itself, for ease of discussion of the concepts that we believe the Finance Committee needs to take into account in developing the dispute resolution processes for devolved tax.

It is important to note that our comments at this stage apply only to appropriate disputes – that is, to disputes which do not require determination of a point of law and which the draft legislation categorises as capable of review or appeal.

1.2 The Explanatory Memorandum states:

22 *In developing the tax arrangements for Wales, the Finance Minister has confirmed that the following principles should be followed in the development of tax policy and legislation:*

- be fair to businesses and individuals who pay them;*
- be simple, with clear rules which seek to minimise compliance and administration costs;*
- support growth and jobs that in turn help tackle poverty; and,*
- provide stability and certainty for tax payers.*

23 *In preparing for the Bill, an analysis of the existing UK tax legislation and Scottish tax legislation has been undertaken. The Welsh Ministers have agreed that where there is no good policy reason (for example, on the grounds of a focus on Welsh needs or efficiency) to diverge from the UK tax administration, Welsh tax collection and management arrangements should replicate current UK operational processes and arrangements.*

This general statement of principles has considerable relevance to the way in which the WRA deals with disputes. It would, we think, be fair to say that tax authorities are not looked upon with fondness by taxpayers, whether individuals or businesses, and that fairness, simplicity, stability and certainty are not traditionally concepts associated with tax collection. We applaud the objective that these principles should apply to the development of tax policy and legislation in Wales but in our view the Bill misses an opportunity to fully follow them through by failing to include provision for referral to **Alternative Dispute Resolution (ADR) by a neutral third party at an early stage** when suitable disputes between taxpayer and WRA arise. For detailed comments as to suitability of disputes for ADR and the value of neutral third party involvement, please see Section 2 onwards.

1.3 The Memorandum goes on to say:

41 *The WRA's general function is to collect and manage devolved taxes, it also has the following particular functions relating to devolved taxes: .....*

- the provision of information and assistance to taxpayers, their agents and other appropriate persons;*
- efficiently** *resolving complaints and disputes;*
- promoting tax compliance with the law and protecting against tax evasion and tax avoidance. Exercising its powers to carry out compliance and enforcement functions (e.g. imposing and collecting*

*interest or penalties, taking criminal enforcement action, gathering information, and making enquiries into a taxpayer's affairs);*

*responsibility for the preparation, management and monitoring of a Charter of Standards and Values;*  
.....

*operating **an effective** complaints and disputes process, including an internal review process and utilising the tribunals appeals process as appropriate.*

Providing for early referral to neutral third party Alternative Dispute Resolution would in our view allow for the objectives of efficiency and effectiveness to be met in the most time and cost effective manner. Again, for detailed comments please see Section 2 onwards, below.

1.4 The delegation of functions is already contemplated by the legislation and the use of ADR in resolving disputes could be dealt with at a later stage by way of a delegation of dispute resolution powers. However, it seems to us that Wales has an opportunity to put in place a system which allows real engagement between the taxpayer and the tax authority from the outset and that incorporation of provision for ADR in the primary legislation would be a clear demonstration of the principles of fairness and simplicity referred to at paragraph 1 above.

*42. Chapter 2 of Collection and Management of Devolved Taxes in Wales set out the Welsh Ministers' thinking around tax collection and management functions and how they could be delegated if required. The WRA will retain legal responsibility for the exercise of its functions and the discretion over whether to delegate, for how long and to what extent. The partner(s) to which functions can be delegated will be named through subordinate legislation. The Bill provides that information about delegations and any directions issued in relation to them are subject to publication unless to do so would prejudice the effective exercise of WRA's functions.*

1.5 The current dispute resolutions contained in Part 8 are described in the Memorandum as follows:

**Reviews and Appeals (Part 8)**

*66. Wales does not have its own judicial system and having considered the available options, the Welsh Ministers consider the best way forwards with regards to simplicity, stability and certainty is to use the existing Ministry of Justice administered two-tier tax tribunal system as this will meet immediate needs. The intention is to underpin arrangement by a Memorandum of Understanding.*

*67. **The aim will be to avoid disputes at all in so far as is possible, and this optimum situation will be worked towards with the implementation of this Bill. The WRA will seek to get things right first time, working collaboratively with taxpayers, communicating clearly and effectively and providing appropriate explanations of decisions.***

*68. In cases where a dispute does arise, the aim will be to resolve matters as informally and cost effectively as possible, whilst recognising that in some cases, particularly where there is a point of principle or legal uncertainty, that a more formal decision may be necessary and/or desirable in order to resolve matters.*

*69. When an issue initially arises between WRA and the taxpayer, the WRA will seek to informally resolve matters by explaining the reasons for the decision as fully and clearly as possible and seeking to listen and respond to any concerns of the taxpayer. **If a WRA decision is defined as being appealable, the Bill provides that if someone can show that they are or will be affected by that decision, they will be entitled to exercise the review and appeal rights.***

*70. **The Bill provides for a settlement process that may occur in lieu of an internal review. In essence, WRA and the taxpayer can conclude an agreement between themselves. A concluded agreement is treated as final in the same way as a tribunal determination (except there will be no further appeal rights attached to a settlement agreement). There is however, a 30 day 'cooling off' period provided for in the Bill, during which the taxpayer may withdraw from the agreement.***

*71. In common with the Revenue Scotland model of dispute resolution, the internal review is a stage in the process that is available between informal discussion with the WRA and an appeal to the tribunal. This stage is carried out by and within the WRA, similar to the settlement process above, but with a greater degree of formality and independence. The use of the internal reviews process is not compulsory but WRA will aim to encourage its use by developing a cost-effective, fair and respected system that is seen as an effective means of avoiding the external appeals process.*

*72. The Bill also sets out the basis on which a review can be requested and the format of how this can occur.*

Avoiding disputes by clear communication and collaboration is an objective which will undoubtedly appeal to taxpayers, and one which we would all benefit from following in our daily lives! Our communications are, however, only as clear as our command and understanding of the languages we use. Our languages leave us open on a daily basis to a great deal of misinterpretation and miscommunication, no matter how clear we think we are being. The majority of disputes arise through misunderstanding and our experience as commercial mediators informs our view that **mediation by a neutral third party mediator is the simplest and most efficient way of clearing up misunderstanding and allowing the parties to a dispute to move forward to a sensible, workable, settlement.**

## **Section 2 Overview of ADR and its uses**

2.1 We focus in this section on Mediation, since this is our primary area of ADR experience. However, we do not overlook the importance of negotiation between the parties as well as facilitated negotiation on which we include comments in Section 3 below.

2.2 Mediation allows effective communication between the parties to a dispute via a neutral third party, the mediator. The mediation process is confidential and without prejudice. It is these factors, together with the parties' trust of the mediator, that bring about open discussion of the parties' positions and full exploration of possible solutions to the dispute. Separate confidential sessions with the mediator allow the parties to speak freely and explore a range of options in private before sharing some or all of those options with the other party. The without prejudice nature of the process means that in the event that agreement is not reached, neither party can rely on information disclosed during the mediation in any litigation which then takes place, but they will have the benefit of having examined their positions honestly during the mediation and are likely to go to any litigation with a more realistic view of the likely outcome.

2.3 Confidentiality can be extended to the terms of any settlement agreement reached as a result of successful mediation, though there may of course be policy reasons why it may be necessary to disclose or publish the outcome. This needs to be made clear prior to any mediation.

2.4 The mediation process works best, in our opinion, when the mediator meets face to face with the parties. It is possible to mediate by telephone or in some circumstances online. However disputes which involve reliance on written evidence (as many tax disputes will) mean that even with the ability to share documentation online it is still most effective for the mediator to see and be able to discuss the relevant paperwork face to face with the parties.

2.5 This does not, however, mean that the process is slow or long drawn out. Most mediations – even in large scale commercial cases – can be completed a day or less. Of course, time must be spent preparing for mediation but this time is less about preparation of large amounts of evidence and more about the parties considering carefully and being ready to discuss the reasons why the dispute has arisen and the outcome which they hope to achieve. Even if a mediation fails this is rarely time wasted - it is a useful exercise in preparing for any subsequent litigation.

2.6 Mediation is particularly helpful in cases which are fact-intensive which would lead to protracted and expensive litigation. Often the cases have been long running resulting in entrenched positions. There may be

uncertainty regarding the interpretation of complex tax laws with the result that there is considerable litigation risk.

2.7 A single framework for mediation within a dispute resolution process ensures consistency and transparency.

2.8 In summary, the process of mediation permits both sides to review their positions through discussion with the mediator, reality testing and consideration of options for settlement. It allows for honest and frank consideration by each side of the strengths and weaknesses of their position because of the confidentiality of the private sessions. Barriers to settlement can be broken down more quickly and effectively than in other forms of dispute resolution.

### **Section 3 Mediation and Facilitated Negotiation in relation to tax disputes**

3.1 The Finance Committee will have considered the use by HMRC of facilitated negotiation and mediation as part of its Litigation and Settlement Strategy. We believe that while facilitated negotiation as offered by HMRC (negotiation through an appropriately qualified HMRC employee with no prior involvement in the particular dispute) is a useful internal dispute resolution tool, offering taxpayers the possibility of involvement of a neutral third party with no connection to the tax authority would allow far greater engagement of the taxpayer in the process. Our experience as mediators is that even the most reluctant parties to a dispute will engage fully in the process if given the opportunity to speak confidentially to a mediator who has their trust. In our view, it is difficult to see how this can be true where the third party facilitator is part of the tax authority.

3.2 An important consideration is the timing of any referral to either facilitated negotiation or ADR. We recognise that there is a balance to be struck between the duty of the tax authority to collect in all tax properly due and the time and cost of dealing with disputes which may or may not result in a good percentage recovery for the tax authority. This is no different from the position of any commercial organisation which has duties to employees and shareholders to maximise income while at the same time recognising the need to be pragmatic in certain cases of debt recovery.

3.3 For the tax authority, mediation can offer a way of rapidly releasing funds tied up in unpaid tax bills while for the paying party it offers the opportunity of engaging in a process designed to allow both parties to be heard and to be involved in a mutually acceptable solution

3.4 Early referral to a third party neutral mediator can offer both sides to a tax dispute the opportunity to review their position before it becomes entrenched as a result of continued rehearsing of arguments. It is recognised by many tax lawyers that factual arguments can become increasingly convoluted causing disputes to run and run; early involvement of a skilled mediator can prevent this happening and allow both parties to find a way forward.

3.5 Time and money spent by the tax authority enforcing decisions is likely to be reduced where mediated settlements are reached. A settlement which is workable and sustainable is the object of mediation and has the benefit of being one which is less likely to be breached by the parties to it.

3.6 The opportunity to engage in mediation increases a party's feeling that it has a real chance of being heard in situations where disputes arise. This increases the perception of a fair economy which in turn makes investment in the area attractive and benefits the wider economy.

### **Section 4 Mediation and Facilitated Negotiation in the proposed legislation**

4.1 The Welsh Ministers have the opportunity to benefit from the experience of HMRC to date in using ADR but also to put in place dispute resolution mechanisms which offer the possibility of

- Fully supporting the objectives of fairness, simplicity, efficiency and effectiveness of the processes of the WRA
- Giving a fresh image of fairness and collaboration to the WRA which is likely to be of benefit in the aim of attracting business investment in Wales



- Time and cost effective resolution of a high percentage of disputes between tax payers and the WRA.

4.2 Offering the option of third party neutral mediation on application by the taxpayer would in our view provide invaluable support to the WRA, enabling it to fulfil its primary role of administering devolved taxes. We would suggest that mediation be incorporated as a first tier option for dispute resolution. The Finance Committee may even consider automatic referral to mediation after an initial period of negotiation between a tax payer and the WRA results in stalemate. This may seem radical, but could have the effect of drastically reducing time otherwise spent in negotiation of individual disputes, freeing up staff to continue with their other roles.

4.3 The confidentiality and flexibility of the mediation process offers the benefit of settlement without setting precedents. However, there may be situations where publication of settlements would be necessary or beneficial. The status of settlements would need to be made clear in the legislation and provision made for transparency/publication where appropriate.

4.4 The method of appointing external mediators would need to be established. For efficiency and consistency, we would suggest that a panel of mediators appointed annually would be one option. There are a number of mediation associations who could be approached for tendering purposes. Welsh speaking mediators would clearly need to be available. These are all matters which will require further consideration.

#### **Section 5 Note on Monmouthshire Mediation Practice - [www.monmediation.co.uk](http://www.monmediation.co.uk)**

Alyson Houghton and Elizabeth Ashford are qualified solicitors who now practise full time as Civil and Commercial Mediators. We specialise in providing professional mediation services for a wide range of disputes between individuals, businesses and public sector organisations. We are trained by ADR group, one of the UK's leading mediation training and referral bodies.

We are also joint chair of the Association of Wales & Border Counties Mediators [www.walesmediators.com](http://www.walesmediators.com) which provides mediation across the whole of Wales and the bordering Counties, is accredited by the Civil Mediation Council and a member of the National Mediation Providers Association [www.nmpa.org.uk](http://www.nmpa.org.uk).

In 2014 Alyson and Elizabeth sat on the Steering Group advising Skills for Justice and funded by the Welsh Assembly Government which considered the possibility of establishing a Centre of Excellence for Dispute Resolution in Wales. The recommendations, which were strongly in favour of such an initiative, were endorsed by Sir Alan Ward, Chair of the Civil Mediation Council and had cross party support.

We feel that there is now an opportunity for the Welsh Ministers to build on the work done by the Assembly to date on dispute resolution in Wales by incorporating provisions for Mediation the draft Bill.

**HMRC evidence to the Welsh Assembly Finance Committee –  
the Tax Collection and Management (Wales) Bill**

Background

1. The Welsh Government has asked HMRC to administer their Land Transaction Tax (LTT) when this is introduced in place of Stamp Duty Land Tax (SDLT) in Wales in April 2018. HMRC has agreed to carry out this work and looks forward to working with the Welsh Government, the Welsh Revenue Authority (WRA) and the National Assembly for Wales in introducing the new tax.

HMRC's existing powers

2. HMRC was legally established by the Commissioners for Revenue and Customs Act 2005 (CRCA). This sets out the functions of the Commissioners and also legislates in a number of other areas, including HMRC's information powers.
3. Following the creation of HMRC, the Review of HMRC Powers, Deterrents and Safeguards was put in place – this ran from 2005 to 2012. This was a programme of consultation and legislative change to provide a modern framework of law and practice for tax administration. Its aim was to secure the benefits of the merger of HM Customs and Excise and the Inland Revenue by aligning powers, deterrents and safeguards across the taxes and duties administered by HMRC, where it made sense to do so. The resulting legislation spanned a number of Finance Acts, but the key provisions (including those not derived from the Review of Powers) are found in the following Acts:

- Tax returns, enquiries and assessments and Investigatory Powers (Parts 2-4 of the Taxes Management Act 1970 (TMA) and Part 6 of the Finance Act (FA) 2007. Further powers include information and inspection powers (Schedule 36 to FA 2008), data-gathering powers (Schedule 23 to FA 2011) and powers in relation to dishonest tax agents (Schedule 38 to FA 2012).

For Income Tax, the legislation contains a requirement for taxpayers to notify their chargeability to tax within six months of the end of the tax year and for certain taxpayers to submit returns. HMRC have a one year period from the date the return is received to commence an enquiry. This timeframe may be extended where the return is received after its due date, or is amended by the taxpayer.

HMRC has a duty to collect the correct amount of tax as required by statute, but can apply limited discretion, where this results in the highest net return. HMRC may also remit duties where the customer has a legitimate expectation that HMRC will act in a certain way, where it is stipulated it will do so. Collection and management powers allow HMRC to consider a concession from the strict letter of the law. Such discretionary powers are limited in use.

- Penalties (The main cross-tax penalties provisions are at section 97 of and Schedule 24 to FA 2007, Chapter 3 of Part 7 of and Schedules 40 and 41 to FA 2008 and sections 106 and 107 of and Schedules 55 and 56 to FA 2009 (as amended by subsequent FAs). Penalties are applied where customers fail to meet their obligations. There are many different penalties, but they break down into three broad areas:
  - penalties for failing to meet a time-bound obligation, such as submitting a return or making a payment by a specified deadline. Such penalties are generally automated;
  - penalties for failing to meet a regulatory obligation such as notifying taxable status or not complying with a regulatory regime, for instance by handling goods subject to unpaid excise duty; and
  - behavioural-based penalties for submitting inaccurate returns and documents.

Other penalties exist that fall outside these groups, including penalties for failure to keep certain records, or those that are specific to particular taxes and systems.

- Interest (Schedules 53 and 54 to FA 2009, Schedule 9 to F(No.3)A 2010)  
The law requires a person to pay the correct amount due under an enactment to HMRC by the due and payable date. HMRC charges interest when the person does not fulfil this obligation and pays interest when the person pays too much. Interest is recompense for the loss of use of money over time. It is not a penalty. To compensate either party for the loss of use of money, HMRC:
  - charges interest when a person pays late – this is known as late payment interest; and
  - pays interest on overpayments and repayments – this is known as repayment interest.
- Payment and enforcement (Chapter 5 of Part 7 of FA 2008)  
For any tax charge, there must be a due date to prevent postponement of payments ad infinitum. For any payment that is made, an effective date of payment must be determined in order to establish whether a payment is made on time or not. Where an effective date of payment is not the same or prior to the due date there may be interest and /or penalties due from the taxpayer. The purpose of such is to compensate HMRC for a loss of timely access to the money and to deter delayed payment. It is not for the purpose of raising additional revenue.
- Reviews and appeals.  
Where taxpayers disagree with an appealable decision made by HMRC they can ask HMRC to review the decision or make an appeal to an independent tax tribunal, or take both actions. Cases may proceed from the tax tribunal to higher courts. For direct taxes the taxpayer may apply to HMRC to postpone the tax due pending the outcome of the appeal, while for other taxes tax can be stood over only on the grounds of hardship. Each tax has its own legislation for this (for example Part 5 of TMA or Part 5 of the VAT Act 1994). HMRC also has powers to make secondary legislation in connection with review and appeals under section 124 of FA 2008. Appeals in respect of certain taxes must also be notified to HMRC.
- Investigation of criminal offences (Part 6 of FA 2007)  
HMRC is not a prosecuting authority in its own right and cases are taken through the Courts by the Crown Prosecution Service. HMRC usually reserves criminal investigations for cases where HMRC needs to send a strong deterrent message, or where the conduct involved is such that only prosecuting an offender is appropriate. However, HMRC has the discretion to undertake a criminal investigation in any geographical location, and across any tax regime, for which the Commissioners for HMRC have responsibility. Criminals, including organised criminals, seek to attack the UK's tax and duty systems to steal taxpayer's money. To counter this HMRC needs similar criminal investigation powers to those that are available to other law enforcement agencies. In particular it needs powers to:
  - apply for orders requiring information to be produced - production orders;
  - apply for search warrants;
  - make arrests; and
  - search suspects and premises following arrest.In England and Wales these powers are made available through the Police and Criminal Evidence Act 1984 (PACE). FA 2007 amended PACE for all HMRC criminal investigations.

Not all the powers in PACE are made available to HMRC. For example, HMRC does not take fingerprints, charge or bail suspects. This has to be done by the police. Some of the powers in PACE are modified for HMRC. For example, a search warrant may allow HMRC to search persons found on the premises without the need for arrest. This allows HMRC to search a bookkeeper who may have evidence in a briefcase or laptop when a company's premises are searched but who is not considered a suspect.

4. It should be noted that particular rules apply to the operation of SDLT, which differ from some of the wider provisions above. These are set out in Schedule 10 to FA 2003. Similarly, further provisions about Landfill Tax can be found in Part 3 of FA 1996.
5. Additionally, while this sets out the position at present, HMRC is currently in the process of moving towards greater use of digital technology in its interactions with taxpayers. This may well necessitate changes to our existing approach and provide opportunities to carry out enforcement activity in different ways. Our digital plans will transform the way we operate and serve our customers.
6. HMRC's compliance strategy is based on three basic principles: Promote, Prevent and Respond. It is designed to make it easier for our customers to get things right first time, rather than chasing them to meet their tax and payments obligations after they have dealt with us.
  - **Promote** is about ensuring customers have the information they need to get their tax and entitlements right first time; that they clearly understand their obligations and risks they face through non-compliance; designing out careless errors; looking for risk; and giving active help to customers to meet their obligations.
  - **Prevent** is about exploiting our digital channels and using what we know about customers to identify risks as they arise and intervening to give customers the opportunity to correct their mistakes (in registration or filing) when they transact with HMRC, and before we make payments or repayments.
  - **Respond** is about tailoring our enforcement and compliance activities and interventions to address specific customer behaviours and compliance risks. We will use technology where we can to automate tasks and to support the successful investigation of non-compliant behaviours. Our activities will be more personalised as a result of our increased ability to analyse customer information.
7. HMRC are also exploring how penalties need to change in the future so that they better reflect the principles of Promote, Prevent and Respond and work as effectively as possible in the digital environment. As part of this work we will consider how non-financial sanctions and behavioural nudges could support improvements in compliance as well as ensuring that financial penalties are well-targeted and drive behavioural change. Our current thinking is based around five principles which we consider should underpin any new penalty regime. They are:
  - The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues.
  - Penalties should be proportionate to the offence and may take into account past behaviour.
  - Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant.
  - Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner.

- Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.
8. Any changes to HMRC's penalty regimes would follow the usual policy development process and need primary and secondary legislative changes. As part of that process, we would follow the tax impact assessment process, and build a good understanding of the possible impact on our customers – businesses and individuals – the Exchequer and HMRC. Any changes made would take account of HMRC's developing IT capability and the wider transformation of the way in which we administer taxes.

#### Digitalisation

9. In line with the development of social media and business technology across the world, the UK tax system is moving towards greater digitalisation whereby individuals and businesses will have Digital Tax Accounts in which data will be uploaded (by customers and or/HMRC), in many cases more frequently than data is currently provided by statutory returns. The Digital Account will become the way by which tax liability is calculated and notified to customers. Digitalisation also enables convergence of processes and possibly statutory reporting/payment dates across a range of differing taxes.
10. To support the move to digitalisation, we are currently reviewing the tax administration framework in order that it both reflects the changes in the way that data is reported to HMRC, and the greater alignment of process/payment across differing taxes. Crucially, the reporting of data in real time and the advent of Digital Tax Accounts will enable HMRC to apply "promote" and "prevent" in a more targeted way by messaging to customers' Digital Accounts in order to influence positive behaviour. Data in real time will also enable the quicker identification of serious non-compliance and we are currently considering how most effectively to respond in real time to such non-compliance and what changes will be needed to the current administrative framework to accommodate compliance interventions in a digital environment. This work will also provide an opportunity for cost saving for both customers and the Government.

#### Administering the Land Transaction Tax

11. Section 7(13) of the Wales Act 2014 amended CRCA to make clear that functions conferred on HMRC relating to devolved taxes are not functions of HMRC, meaning that the UK legislative framework under which HMRC operates more generally will not apply to HMRC's administration of LTT. This will be governed by the provisions in the Tax Collection and Management (Wales) Bill and any future legislation amending this or made under powers within the Bill. It is worth noting that HMRC may still carry out SDLT compliance activity in Wales after April 2018 in relation to transactions that took place before that date, which would continue to be governed by its existing powers
12. HMRC's initial intention is to adapt its existing SDLT system to operate the devolved tax and also to use existing staff working on SDLT to carry out administration activities (for example, processing returns, following-up errors etc). SDLT is largely administered by HMRC from an office in Birmingham where an experienced operational team carries out this activity.
13. HMRC will also be carrying out some compliance work on LTT, which will be carried out by a specialist LTT team working closely with the operational team and the WRA. The Welsh Government has set out that WRA will undertake complex compliance, avoidance and enforcement work for LTT – HMRC will work with Welsh Government to establish how the two organisations can most readily work together on these cases.

14. HMRC will be discussing the requirements for administering LTT with the Welsh Government in more detail in the autumn and will support the Welsh Government in producing initial costings ahead of the Stage 1 debate on the Bill. These costs will continue to be developed and refined on an ongoing basis.

#### Tax Collection and Management (Wales) Bill

15. HMRC welcomes the fact that much of the content of the Bill builds on the existing UK Government legislation that applies for the same purposes. This will make the transition to the new tax more straightforward for customers and follows the approach taken in Scotland. HMRC's processes and the legislation that underpins them are well-understood by advisers and professional bodies and were the subject of a lengthy period of consultation.
16. There are some minor differences in approach, for example in areas such as enquiry powers. However, this is a natural consequence of devolution and similar minor differences also exist between UK legislation and the Revenue Scotland and Tax Powers Act 2014.
17. HMRC has not currently identified any potential barriers to implementation. HMRC has not begun detailed work in developing systems changes to implement the LTT as yet, so there is time to accommodate any differences in approach here and in the legislation to implement LTT. Additionally, many aspects in the Bill, such as differences in enquiry powers, will not require systems changes but, instead, will be addressed via guidance for staff.

#### **HM Revenue & Customs September 2015**

### **The Law Society of England and Wales**

1. The Law Society of England and Wales ("the Law Society") is the representative body for more than 166,000 solicitors in England and Wales. The Law Society negotiates on behalf of the profession, and lobbies regulators, government and others.
2. The Law Society plays an active role in law reform, the effective operation of legal institutions and access to justice in England and Wales. The Law Society has specialist law committees including the tax law committee comprising 15 expert tax practitioners and the conveyancing and land law committee.
3. The Law Society Wales Office delivers the Law Society's aims in Wales, working with Welsh institutions; influencing and responding to the devolution of law-making; and promoting and supporting the legal community in Wales. There is a dedicated Wales committee which includes academics and lay members as well as practitioners.

### **Background**

4. The Welsh Government has engaged closely with experts and industry on the new tax regime for Wales, this has provided for issues to be raised and considered at an early stage. The open approach has allowed for consideration of legislation beyond the confines of a formal consultation procedure and civil servants are learning and developing. This close working will bear fruit when the individual taxes come to be enacted.
5. The Welsh Government's intention has been to encourage business and has been open in its discourse on new Welsh taxes. In launching the Tax Collection and Management (Wales) Bill ("the Bill") the Minister for Finance and Government Business said "our tax arrangements for Wales are based on four clear principles – fairness; simplicity; supporting jobs and growth; and stability and certainty".<sup>1</sup>
6. The Finance Committee's own pre-legislative inquiry has informed the process with regard to the foundations for Welsh taxes.
7. As a representative body we have been closely involved with the groundwork for this new revenue function in Wales. We sit on the Finance Minister's Tax Advisory Group, have members on the Welsh Government's tax forums as well as on their specialist advisory groups. In terms of our discourse with members, we have engaged individually, in groups and through seminars. We use our own lines of communication to the profession through targeted mailings, weekly Professional Update reports and the Law Society's Gazette and are delivering this message to members across the jurisdiction in both Wales and England.
8. The solicitors profession is adaptable, however, it is important in terms of our ability to ensure that members across both England and Wales are aware of the extent of devolution and also the impact of devolution, that we have clear messages coming from the Welsh Government, from the National Assembly for Wales and more broadly the media.

---

<sup>1</sup> [Minister for Finance and Government Business Monday 13 July 2015](#)

## Overview of the Bill

10. The Welsh Government is in a position where Scotland 'went first' so that the legislation to accommodate new devolved taxes has been drawn up within the UK very recently and as the Land and Buildings Transaction and Scottish Landfill taxes have already come into effect there is practical as well as legislative experience from which to learn.
11. As the Bill draws on current UK legislation as well as Scottish provisions on the fundamental requirements for a Welsh tax regime the extent of 'novel' drafting is narrow. Our responses to Welsh Government consultations and evidence to the Finance Committee's own pre-legislative scrutiny set out our views on many of the provisions in the Bill and so are not repeated here.<sup>2</sup>
12. This response does not focus on all the individual parts of the Bill as the provisions have been developed over time and many operate to replicate existing law. Below are observations on particular provisions and wider comments for the Finance Committee to consider.

## Welsh Revenue Authority

13. The status and provisions of the Welsh revenue authority ("WRA") are welcomed. The main concerns relate to communication and scrutiny.
14. The WRA's role and functions must be clear and clearly communicated. The WRA's identity and the brand for Welsh taxes must be made known to the public. This is important if an agent is appointed which is provided for in the Bill and is a particular issue if HM Revenue and Customs ("HMRC") acts as agent for WRA. HMRC could be dealing with the same tax payer but the relationship will be regulated by different provisions and charters.
15. Looking at the scrutiny of WRA by the National Assembly for Wales ("NAW"), we would propose a formal process is put in place to ensure that that WRA is truly answerable. This could be accommodated through Standing Orders of the National Assembly or possibly better delivered through the inclusion of a set procedure in the Bill to ensure a robust and accessible process exists.
16. Such a procedure could require direct accountability through a named NAW committee "where this new body would be expected to account for the way that it's operated in a more transparent way" [para 97] as was discussed during our evidence session with the Finance Committee and this would be welcomed.<sup>3</sup>
17. We think that it is important that a Taxpayer's Charter is regarded as having some operational significance. So, for example, it is perceived by some UK taxpayers that, despite comments in the Charter operating in the UK, where they conduct particular lines of business they are assumed to be "dodging taxes" rather than assumed to be compliant with their obligations until demonstrated otherwise. In addition it would be helpful if non-compliance with the Charter had an adverse impact on in relation to the operation of the WRA rather than just being seen to be aspirational.

<sup>2</sup> [Response to White Paper pub. Feb 2015](#) and [Record of Proceedings 29 April 2015](#).

<sup>3</sup> [Record of Proceedings 29 April 2015](#) at para 97



19. In its report the Finance Committee recommended that "stakeholders are represented on the board of the [WRA]" but there is no provision for this in the Bill.<sup>4</sup>
20. In taking evidence on its inquiry the Finance Committee heard from the chief executive of Revenue Scotland that there is a "devolved tax collaborative" in Scotland and it may be appropriate to include statutory provision for a similar body in Wales.<sup>5</sup> A tax professionals forum could be developed to scrutinise tax policy-making in Wales.

### **Information**

21. Effective information governance will be of paramount importance not only for efficient administration but also to protect the confidentiality of sensitive data. As the Poynter Review of information security at HMRC and the Cabinet Office Data Handling Procedure in Government Final Report both made clear in the wake of the HMRC data breach in 2007 when two discs containing personal details of all UK families claiming child benefit went missing, information governance has in the past been relatively neglected. The establishment of the WRA is an opportunity to apply best practice from the outset.

### **Penalties**

22. It needs to be recognised that there are clear tensions in designing an effective tax system and yet manage to develop high quality administrative services that support tax collection. Despite a lot of adverse comment in newspapers, the UK benefits from a very high rate of voluntary compliance, perhaps encouraged by sanctions, but in general the level of compliance has not markedly increased as a result of additional penalties, etc.
23. The major areas of concern with the current UK penalty regime are:-
- penalties arising for taxpayers when they could not have known they were in default;
  - time based or other penalties which have the effect of deterring rather than encouraging compliance; and
  - a system with very little flexibility which is not tailored to a taxpayer's needs and so which does not promote compliance.
24. The level of penalties should not be set such as to, in practice, "encourage" a taxpayer to concede a case where there is a good argument but the risk of the level of penalties makes it impracticable to consider an appeal. The level of penalties are noted.
25. In addition, HMRC has recently issued a discussion document on penalties. HMRC are placing their review of the penalty regime firmly in the context of their digital plans, which it is said will make it easier for taxpayers to comply with their tax obligations and allow the use of more accurate data across all taxes and this is informing their policy moving forward. See further below regarding keeping pace with UK legislation.

<sup>4</sup> [Finance Committee Report May 2015](#)

<sup>5</sup> [Record of Proceedings 29 April 2015](#)

### **Tax Tribunal**

27. We agree with the proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system as it is important that taxpayers have access to an effective form of appeal and the tribunals will continue to be relevant for other taxes applicable in Wales.

### **Secondary Legislation**

28. The powers for the Welsh Government to make regulations under both the affirmative and negative procedures in this Bill are extensive. Although NAW has looked to appoint a specialist adviser it may be more appropriate to establish a committee of experts. The level of input required to advise on the Bills to accommodate the two proposed taxes added to the operational regulations and the Charter in due course is likely to be beyond that of an individual.

### **Further Comments**

29. The Bill does not set out any general provisions for tax avoidance and therefore we assume provisions, if any, will be included in the legislation for individual taxes.
30. Stamp duty land tax only came into effect in 2003. Since this time there has been some bedding in and in order to ensure that the right people were engaged with that process the stamp duty land tax working together stakeholder group was established. The group includes professional bodies, tax law specialists and advisers, as well as internal agencies, HMRC and Government representatives. This group doesn't deal with individual issues or cases, but, is concerned with the operation of the tax which has been useful for all those working within what was for everyone a new regime and in terms of online activity was developing at the same time.
31. Finally, regarding consistency of approach there is a balance to be struck. Looking at the Bill the provisions are clearly drawn from both existing UK tax law and from the Revenue Scotland and Tax Powers Act 2014. There is merit in establishing an approach which is consistent with the rest of the UK however Wales has no control over changes by other legislators and governments. The annual finance bills introduced to the UK Parliament provide a vehicle, and an opportunity, for the UK government to make changes. As new law is made for other parts of the UK then the pursuit of consistency will be challenging. Fundamental changes will require a new Bill in Wales. The choice between consistency and innovation is finely balanced and a matter for future governments.

Please refer any questions regarding this response to:

**Kay Powell LLM** Solicitor / Cyfreithiwr

Policy Adviser / Ymgynghorydd Polisi

**The Law Society / Cymdeithas y Cyfreithwyr**

Capital Tower / Twr y Brifddinas

Greyfriars Road / Heol Y Brodyr Llwydion

Cardiff / Caerdydd

CF10 3 AG

**T** 029 2064 5254 **F** 029 2022 5944

email: [kay.powell@lawsociety.org.uk](mailto:kay.powell@lawsociety.org.uk)

## **Finance Committee Consultation on the Tax Collection and Management (Wales) Bill**

### **Introduction**

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three fire and rescue authorities and the three national park authorities are associate members. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

### **WLGA's general position in the new tax environment**

2. The WLGA has long been supportive of greater devolution as we believe that decisions about services and how they are delivered, managed and funded should be taken as close to the point of delivery as possible. The ability for the Welsh Government to be responsible for these elements of taxation in Wales will enhance accountability with the electorate.

## **General Principles of the Tax Collection and Management (Wales) Bill**

### **Part 2: The Welsh Revenue Authority (WRA)**

3. Our view is that the WRA will become a key player in our financial landscape and will have substantial powers available to it. We would agree that the new body should be independent of the Welsh Government and that there is strong accountability to National Assembly. The body should be open to interaction with a wide range of stakeholders. A non-executive Board with a chief executive responsible would seem appropriate, this being an understood and effective model for public sector bodies across the UK and consistent with the Nolan principles (the Code of Practice for Ministerial Appointments to Public Bodies) and international best practice.
4. It is important that the size of the authority and its costs are proportionate to the scale of the taxes that are devolved to Wales, although we recognise that there is a minimum size and cost to establishing the authority. We also recognise that whatever is established needs to be suitable for the potential for devolution of further taxes.

5. We are generally content with the provisions in the Bill in relation to the membership of the WRA but would add that non-executive members should out-number executive members. In addition, while section 6 sets out how Welsh Ministers may remove a person from the WRA it does not specifically deal with the removal of the non-executive chair person.
6. We agree with the main functions of the WRA and agree strongly that the WRA should be able to delegate any of its functions to other bodies in order to minimise the costs of establishing, collecting and managing these taxes. The ability to delegate some functions to bodies that are already experienced in collecting and managing taxes is extremely important.
7. We consider the confidentiality of protected taxpayer information to be of paramount importance and are content that sections 16 to 19 provide adequate protection of such information to taxpayers. 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.
8. The WRA, like any other public body must be open, transparent and accountable to taxpayers and must have robust governance and audit arrangements in place. As set out in the Bill, we agree that these arrangements should include the preparation and publication of:
  - A charter of standards and values;
  - A corporate plan;
  - An annual report;
  - A statement of accounts;
  - A tax statement.
9. The WRA must be accountable to Welsh Ministers, the National Assembly for Wales and Welsh taxpayers through audit by the Auditor General for Wales and be within the scope of the Public Services Ombudsman.

### **Part 3: Tax returns, enquiries and assessments**

10. Any authority charged with collecting taxes or any other debt, needs to have well established processes in order to be able to assess the tax that is due, to investigate where it believes there may be fraud, error or criminal activity and to respond appropriately to non-payment of the tax.
11. Where an authority has these powers, it is important that there are safeguards in place for those taxpayers that are willing to pay the tax but are not in a

position to make that payment and that the officers involved are fully aware of the options available to them in those circumstances.

12. Part of the management of such situations would involve ensuring that the taxes are well publicised and well understood by potential taxpayers so that they can be taken into account when making plans. Where there is provision made for WRA or Welsh Ministers to set different requirements from those set out in the Bill, these requirements should also be established, publicised and well understood in advance of the transactions which give rise to the tax return taking place in order that taxpayers have adequate notice of the requirements to preserve records.
13. It is reasonable to expect taxpayers to preserve any records and supporting documents that relate to a tax return for sufficient time as to allow any enquiry into the tax return, and that these records may be preserved in any form, as set out in the Bill. Similarly the provisions in relation to enquiries, amendments, referral to tribunal and WRA determination and assessment of a tax liability are also reasonable, but, as set out above, safeguards are needed where the taxpayer is willing to pay the tax but is not in a position to make the payment in full or in part.
14. It is important that taxpayers are able to reclaim overpaid tax, whether as a result of a double assessment or where the tax is not chargeable. The provisions included within the Bill set out in great detail the where claims may be disallowed and the procedure to be followed in making claims.

#### **Part 4: Investigatory Powers of WRA**

15. Any authority charged with collecting taxes or any other debt, needs to have the appropriate powers to investigate. Such powers should be conferred on the WRA and the WRA should then be able to delegate that function to another body where an existing experienced resource could be utilised. Any investigatory powers should include the power to require information and documents from relevant people and to inspect premises and other property.

#### **Part 5: Penalties**

16. Any body that has tax management and collection responsibilities needs also to have a range of sanctions such as penalties available to it in order to manage errors and non-compliance effectively. Any penalties and actions need to be well understood and need to be proportionate to the tax due. WLGA consistently sets out that those who are due to pay tax should do so in order to

be fair to both other taxpayers but also to those who need and use the public services that are funded as a result of the collection of those taxes. It is important that there is a clear and consistent message that all tax due will be pursued and that appropriate penalties will be enforced where there is failure to pay tax due whether that is as a result of not making tax returns or actively avoiding or evading the payment of tax.

17. As the existing enforcement regime operated by HMRC will no longer apply to Wales once the Welsh devolved tax system is established it is vital that a replacement enforcement regime is established as part of that tax system.
18. It is important that any penalty regime is consulted upon widely prior to its introduction and the publication of the Bill is the first opportunity to comment on the details of proposals for the penalty regime. It is important that any system of penalties is clear, accessible and geared to be proportionate with the amount of tax due.

#### **Part 6: Interest**

19. It is an appropriate part of the sanction regime that interest would be chargeable on tax due or on penalties due but not paid at the appropriate time as set out in Part 6 of the Bill.

#### **Part 7: Payment and enforcement**

20. The arrangements set out in Part 7 of the Bill in relation to payment and enforcement appear to be reasonable, comprehensive and would allow the WRA to take appropriate action should a payment due become an unpaid debt.

#### **Part 8: Reviews and appeals**

21. For the protection of taxpayers, it is important that the devolved tax system also establishes appropriate procedures for the review of, and appeal against, decisions made by the WRA. These procedures need to be clear, well established and well understood.
22. It is appropriate that the intention is to use the existing Ministry of Justice two-tier tax tribunal system in relation to reviews and appeals, underpinned by a Memorandum of Understanding as this provides all stakeholders with greater simplicity, stability and certainty, particularly through the transition period.

23. The primary aim of avoiding dispute if at all possible, complimented by a system of informal resolution or internal review will help to minimise the number of formal reviews and appeals that are taken forward.

### **Part 9: Investigation of Criminal Offences**

24. While there have not been any criminal investigations in relation to Stamp Duty Land Tax (SDLT) or Landfill Tax (LFT) in Wales in the last 12 months, there is a need to establish arrangements for criminal enforcement in Wales. The WLGA supports the Bill's provisions for enforcement arrangements that are consistent with UK arrangements, minimising complexity and misunderstanding for stakeholders and reinforcing messages that avoidance and evasion will not be tolerated.

### **Potential barriers to implementation**

25. The introduction of legislation in relation to tax and the establishment of the Welsh Revenue Authority are complex issues. While the two taxes to be devolved from April 2018 are relatively small, there is nevertheless the need to establish legislation and bodies that are suitable for a potentially larger role in the future.

### **Financial implications**

26. Given that the UK Government will make a reduction to the Welsh block grant allocation to reflect the devolution of SDLT and LFT there are significant implications to the Welsh Government's budget and, in turn, public services in Wales, should these taxes not be replaced in Wales. For these same reasons, it is imperative that the most cost effective model is sought for the collection and management of these taxes in Wales in order to minimise the administrative burden and to maximise the amount of tax available to fund public services.
27. In particular, care must be taken when setting up the WRA that its establishment is not so large as to place an unnecessary burden on already scarce public resources while ensuring that it is adequate to undertake its role and responsibility appropriately.



## **Appropriateness of powers in the Bill for Welsh Ministers to make subordinate legislation**

28. The utilisation of subordinate legislation is essential to allow the new Welsh tax system to be flexible and able to respond quickly to new circumstances when necessary. However, it is important that suitable safeguards are put in place such as consultation requirements with stakeholders.

---

**Author:** Mari Thomas

**Email:** [REDACTED]

**Tel:** [REDACTED]

***To be cleared by:*** Councillor Aaron Shotton, WLGA Spokesperson for Finance & Resources