

Welsh Tax Acts (Power to Modify) Bill: Written Response to Call for Evidence

This report provides written evidence prior to presenting oral evidence to the Finance Committee on Friday 11 February, 10.30-11.30 on the proposed Welsh Tax Acts (Power to Modify) Bill laid before Senedd Cymru in December 2021.

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Purpose of the Bill (summary)

Since 2018, Wales received devolved tax powers for two specific taxes: Land Transaction Tax (LTT) (replacing stamp duty land tax) and Landfill Disposals Tax (LDT) (replacing landfill tax). In addition, Wales, was given partial devolved tax powers to set the rates for income tax from 2019.

Wales currently has three main Welsh-specific Tax Acts (The Tax Collection and Management (Wales) Act 2016, The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and The Landfill Disposals Tax (Wales) Act 2017), which provides the legal basis and powers for the Welsh Revenue Authority (WRA) to operate and exercise LTT and LDT.

The motivation behind the proposed new ‘Welsh Tax Acts etc. (Power to Modify) Bill’ (referred to as ‘the Bill’ from hereafter in this document) is that the Welsh Government recognises the need for “greater flexibility and agility” (Welsh Government Consultation, 2020¹) to make changes to Welsh tax legislation on a quicker basis than is currently being conducted, in particular those cases created by “external factors or pressures” (*ibid.*). Section 1(1)1 of the Bill, in its current form at the time of writing, sets out four purposes for which such changes to any of the Welsh Tax Acts are necessary. These are:

- a) “ensuring that landfill disposals tax or land transaction tax is not imposed where to do so would be incompatible with any international obligations (of the United Kingdom);
- b) protecting against tax avoidance in relation to landfill disposals tax or land transaction tax;
- c) responding to a change to a predecessor tax (stamp duty land tax and/or landfill tax) that affects, or may affect, the amounts paid into the Welsh Consolidated Fund under section 118(1) of the Government of Wales Act 2006 (c. 32);
- d) responding to a decision of a court or tribunal that affects, or may affect, the operation of any of the Welsh Tax Acts or regulations made under any of those Acts.”

¹ Welsh Government Consultation – summary of response: Enabling changes to the Welsh Tax Acts, published December 2020, available at: <https://gov.wales/sites/default/files/consultations/2020-12/enabling-changes-to-the-welsh-tax-acts-summary-of-response.pdf>, accessed on 03.01.2022

Response

This written response focuses on the practical and administrative implications of the proposed Bill from the taxpayers and tax practitioners' perspectives. It also refers to its implications on the Welsh tax authority, the WRA, to a degree.

1. Does the Welsh Government need the additional powers, proposed in this Bill, considering the existing powers it has to make changes to tax legislation?

The proposed Bill, if approved, introduces the power to enable Welsh Ministers to make amendments to certain parts of the existing Welsh Tax Acts when necessary or appropriate by regulations instead of primary legislation, and to take effect quickly.

Wales' devolved taxes and revenues are exposed to tax, economic and fiscal changes within the UK and internationally. This proposed Bill would allow the Welsh Government to respond to such factors so as to minimise any negative impact on tax revenues and funding towards public services. However, the consultation process before seeking approval for modifying the Tax Acts needs to be closely scrutinized and involve a wide range of relevant stakeholders (as further discussed at point 3 below).

There already exists general anti-avoidance rule enacted in legislation. However, this does not necessarily mean that it provides for all tax avoidance activities that are created either due to gaps, weaknesses or misinterpretation in existing legislation that facilitate tax avoidance behaviour. Thus, it is understandable why additional powers are needed to provide clarity and certainty to Welsh tax legislation.

2. Possible scenarios where the proposed approach would not work

The term 'tax avoidance' stated in the proposed Bill needs to be defined. This term is problematic and continues to be a bone of contention in academia and practice. Tax avoidance has a broad meaning: "avoidance can be regarded as a particularly nasty thing to do or, if it is an accident, it is a very sensible thing to do [to avoid an accident]" (Graham Aaronson, QC, 2013²). Tax avoidance can include the legal use of tax reliefs and allowances regularly used by taxpayers on a day-to-day basis, such as Individual Savings Accounts (ISAs). Thus, it is important that taxpayers and practitioners are given clear guidance and understanding as to what constitutes tax avoidance in the context of this proposed Bill to minimise uncertainty and unexpected sanctioning.

Thus, tax avoidance in the context of this Bill needs to be defined, to give clarity and assurance to taxpayers and tax practitioners. However, the term should not be overly prescribed as this could lead to too much detail, complexity and obscurity, in addition to the creation of new tax avoidance schemes and further tax planning opportunities.

Furthermore, Section 2, (1)(c), of the proposed Bill allows the provision for retrospective effects that do not impose or extend a liability to a penalty, suggesting tax liabilities could be imposed retrospectively to taxpayers. The Bill stipulates that Welsh Ministers "must publish a

² Draft Finance Bill 2013: Oral & Written Evidence, March 2013 pp12-13 (Q10)

statement of their policy with respect to the exercise of the power [...] that have retrospective effect” (Section 3(1)) and must do so before the end of a three-month period following the date on which the Bill receives Royal Assent (Section 3(2) and (3)). However, there is no provision to protect stakeholders who are affected by retrospective changes to the Tax Acts. The Bill should also include provisions requiring Welsh Ministers to give advance notice to stakeholders, such as taxpayers, tax practitioners and the WRA, about proposed changes in advance of such changes receiving Royal Assent. Advance notice would raise awareness and allow the opportunity to explain and justify the need for retrospective changes to these key stakeholders. Moreover, publishing an Advanced Notice could also allow an opportunity for the Government to explain the amount of tax revenue generated, or costs saved, if the retrospective changes were to take place and its impact on taxpayers and public services. This could encourage acceptance and mitigate undesirable taxpayer behaviour as a consequence.

Retrospective changes to the tax system undermine one of Adam Smith’s (1776)³ desirable characteristics of an effective tax system, that is ‘certainty’. However, this needs to be weighed against the costs to the taxpayer and public services if retrospective changes were not made. Thus, great care and attention is needed to justify making retrospective changes, and such changes should be subject to limited circumstances so as to not create instability and uncertainty within the tax system.

Indeed, retrospective changes may benefit certain groups of taxpayers whilst harming others. Thus, this Bill should consider the possibility of introducing transitional provisions for the latter, which again could encourage acceptance and tax compliance.

In the event that this Bill is approved, it is strongly advised that its operation and application to all applicable scenarios, over time, is reviewed for its effectiveness and efficiency at systematic intervals.

3. Does the implementation of this Bill enable appropriate scrutiny and effectiveness?

Section 2, sub-section (2) part (a), states that the proposed regulations set out in Section 1 of the Bill may make different provision for different purposes, and such provisions may be incidental, consequential, transitional and supplementary (amongst others).

Changes to tax legislation can cause (un)anticipated consequences for taxpayers, tax practitioners and the WRA. Whilst it is understandable that a key consideration of this Bill is to protect tax revenues and maintain essential public services, rapid changes to tax legislation could affect taxpayers’ resources (e.g., income and wealth) which could lead to poverty (which works against the Well-being of Future Generations (Wales) Act 2015, which requires public bodies in Wales to consider long-term impacts of their decisions and prevent poverty and inequality). It could also impact on taxpayer and public attitudes, perceptions and behaviour toward the tax system in Wales.

³ Adam Smith, in his book ‘The Wealth of Nations’, published in 1776 identified four desirable characteristics for designing an effective tax system, referred to as the ‘Canons of Taxation’: equity, certainty, convenience and efficiency.

In principle, making changes to tax legislation in urgent cases allows Welsh Ministers the flexibility to be able to react and respond to external factors quickly, potentially making the tax system more effective and efficient – this being another of Adam Smith’s desirable characteristics of an effective tax system. However, this ‘fast track’ process would need to have strict and systematic scrutinization: Once approved, it may not be possible to quickly amend if later found flawed or deficient; and if amended, an increase in complexity is created by the introduction of amended legislation and regulations.

According to Adam Smith certainty is an important desirable characteristic of an effective tax system. Welsh taxpayers and tax practitioners⁴ need certainty on what is taxable, how much tax is payable, and when tax needs to be paid. Certainty helps taxpayers plan their financial activities and budget to ensure success in life and industry (which chimes with the aims of the Well-being of Future Generations (Wales) Act 2015). Certainty also benefits Welsh Ministers and the WRA as it aids, to a certain degree, the prediction of taxpayer behaviour, the calculation of forecasted tax revenues to help fund public services which can also provide the basis of the annual Welsh Government Budget.

To achieve certainty in a tax system, taxpayers and tax practitioners need full awareness and understanding of the tax consequences of a financial transaction in advance. However, full certainty is not practically possible. This is because tax legislation is open to interpretation, and tax regulations tend to change after a transaction has been undertaken (e.g., annual increases in council tax liabilities on a home that an individual already resides in, or changes in Vehicle Excise Duty on a motor vehicle that has already been purchased by its owner). So, it is impossible to achieve a fully-certain tax system. Further, a tax system needs to be flexible in order to be effective (Adam Smith refers to this as ‘economic efficiency’) and to adapt to changing external factors.

However, where there is a process in which changes and decisions can be made, therein exists the possibility that wrong changes and decisions can occur. British Ministers have taken decisive actions in the past to improve the tax system, some of which have proven unsuccessful in achieving stated aims (e.g., the introduction of Poll Tax in the 1990s which led to mass riots and its removal, and tax credits in 2003/04 which led to mass overpayments (Closs-Davies *et al.*, 2021⁵). Part of this was caused by a “deficit of deliberation” (King and Crewe, 2013, p. 386⁶), which requires careful consideration, not being overly expeditious and conferring with appropriate counsel.

The procedures involved in modifying the Tax Acts proposed in this Bill (referred to as the ‘scrutinization process’ in this document from herein and onwards) need to strike an

⁴ Tax practitioners are professionals who advise citizens, including business owners, of their tax obligations and usually manage tax administration and compliance duties on their behalf.

⁵ Closs-Davies, S., Merkl-Davies, D. and Bartels, K. P., 2021, ‘Tax Credits as an accounting technology of government: “Showing my boys they have to work, because that is what happens”’, *Accounting, Auditing and Accountability Journal*, Vol. 34, No. 3, p.531-557

⁶ King, A., and Crewe, I., 2013, ‘The Blunders of our Governments’, Oneworld Publications, 10 Bloomsbury Street, London, UK.

appropriate balance between scrutinization, expediting, efficiency and effectiveness. These procedures should take into consideration the following:

- a. consideration and detailed analysis of predicting the potential changes and impact on taxpayer behaviour and tax revenue if and when proposed changes to the Tax Acts were to take hold. A change to tax legislation to, for instance, minimise tax avoidance (Section 1(1)(b) of the proposed Bill) may distort taxpayer behaviour. For example, a proposed change may increase tax avoidance activities before it becomes law; could create new tax avoidance schemes after it becomes law; or influence taxpayers to shift their activities (and thus, tax revenue) across the border to England or elsewhere. Thus, the potential impacts of any proposed modifications to the Tax Acts need to be clearly identified and understood during the scrutinization process to minimise any undesirable consequences to Welsh tax revenues as much as possible.
- b. The scrutinization process (the counsel) should incorporate Welsh and UK-wide stakeholders, ranging from relevant tax experts to non-tax experts, ensuring there are mechanisms in place allowing full access and transparency to the detail of any proposed changes, so that views and perspectives are considered from across a wide range of stakeholders. One of the main key priorities published by the Welsh Government in its Tax Policy Framework update 2021⁷ is to communicate and work collaboratively with the WRA, HMRC and experts to help ensure “consistency and coherence in the way we develop and deliver our tax policy priorities” (p. 12). Thus, it is imperative that those who administer any proposed tax changes are consulted.
- c. Whilst it is appreciated that harnessing and collecting views from different stakeholders might be challenging, especially within a strict timeframe, mechanisms should be put in place where Welsh Ministers can call upon a selection of representatives from key stakeholder groups, and that such representatives are renewed/replaced on a regular basis to ensure diversity and objective input. This not only helps the Welsh Government meet one of its key objectives of creating an “inclusive Wales” (Tax Policy Framework Update, 2021, p. 12), but also allows scrutinization and consideration of the practical implications of changes to tax on stakeholders of whom would be affected by such tax changes, especially vulnerable groups and business groups, so that errors or unintended consequences are anticipated before the proposed tax changes are enacted. This would also potentially mitigate, as far as possible, the need for subsequent amendments and avoidance of unnecessary costs.
- d. The period of scrutiny proposed in the Bill should not be fixed. It should be flexible to take into consideration the complexity and nature of each change, and to allow key stakeholders the opportunity to consider and provide evidence/input as part of the scrutinization process.

⁷ Tax Policy Framework Update, November 2021, Welsh Government, Available at: <https://gov.wales/tax-policy-framework-update-html>

4. What is the impact of this Bill on Welsh taxpayers and stakeholders?

The proposed Bill cannot modify certain parts of the Tax Acts; however, it does allow modifications to a wide range of areas. This includes: legislation that stipulates what is chargeable to LTT and LDT; what is exempt; tax reliefs available and claims; tax assessments and enquiries; and investigatory powers of the WRA. Changes to these areas can affect Welsh taxpayers, tax practitioners and the WRA.

As mentioned at point 1 above, certainty is a key characteristic of an effective tax system as compared to an uncertain tax system. Simplicity is also a desirable criterion for both taxpayers and tax practitioners and is becoming a growing issue due to increasing tax advisory service costs, the lack of digital literacy in the UK (Citizens Advice, 2016⁸) - as public services become increasingly digitised – job and income insecurity. Changes to tax legislation can create and increase complexity in an already fraught socio-economic environment.

Complexity makes it difficult for taxpayers to navigate through and understand tax legislation and their tax obligations. Taxpayers who are able to afford to pay for help and support turn to tax practitioners to help them manage their tax obligations. However, uncertainty, caused by changes to tax legislation, can lead to an increase in tax practitioner fees for taxpayers. This is because of the increased time and expertise needed to review new tax legislation, as well as tax practitioners training and updated tax software costs, which are ultimately passed on to clients (taxpayers) to pay by increasing their fees.

Taxpayers who cannot afford to pay for tax advisory services, in particular vulnerable individuals, either seek other sources of help and support to help them manage their tax obligations (e.g., third-sector organisations) or they end up meeting their tax obligations incorrectly, or not at all, and are consequently sanctioned (Closs-Davies *et al.*, 2021⁹). Thus, any changes to tax legislation must be clearly communicated to taxpayers, with additional help and guidance (free of charge) made available.

Taxpayers can approach the Welsh Revenue Authority (WRA) for advice and support about changes to tax legislation to help manage their tax obligations. However, some taxpayers are unaware of devolved tax powers in Wales and the WRA and the type of help and support available from the WRA (Rogers and Closs-Davies, 2019¹⁰). Thus, more needs to be done to raise awareness of devolved tax powers in Wales and of the WRA, to provide more certainty and assurance to taxpayers.

⁸ Citizens Advice, 2016, 'Digital capability Understanding the digital needs of face-to-face clients of Citizens Advice', Available at:

[https://www.citizensadvice.org.uk/Global/Public/Impact/Digitalcapabilityreport_final_July%20\(3\).pdf](https://www.citizensadvice.org.uk/Global/Public/Impact/Digitalcapabilityreport_final_July%20(3).pdf)

⁹ Closs-Davies, S., Merkl-Davies, D. and Bartels, K. P., 2021, 'Tax Credits as an accounting technology of government: "Showing my boys they have to work, because that is what happens"', *Accounting, Auditing and Accountability Journal*, Vol. 34, No. 3, p.531-557

¹⁰ Rogers, H., and S. C. Closs-Davies, 2019 'Funding Prosperity: Creating a new Tax System in Wales', *Federation of Small Businesses (FSB) Wales*, Available at: <https://www.fsb.org.uk/resources-page/funding-prosperity-creating-a-new-tax-system-in-wales-pdf.html>

Changes to tax legislation will also impact on the WRA and frontline staff who have to implement, operate and administer such changes into their existing processes and procedures, in addition to dealing with the potential increase in taxpayer and tax practitioner enquiries on these new changes. The availability of WRA resources and expertise need to be reviewed during the scrutinization process of proposed changes to tax legislation, to ensure that they are capable of operating such new changes in an efficient and effective manner. It is evidenced that an under-resourced tax authority can negatively impact on staff morale and wellbeing, staff turnover, performance and quality of services, that can also lead to an inefficient tax system (Closs-Davies *et al.*, 2020¹¹).

One of the challenges when striving to ‘simplify’, and not increase complexity within, tax legislation, not only includes finding ways of identifying ‘complexity’ and reducing it, but also involves unawareness of, inaccessibility to, and difficulties in understanding (changes to) tax legislation. Taxpayers need to be aware and understand (changes to) tax legislation if they are to accept it. In addition, a new tax or a change to tax legislation needs to be introduced with a narrative that explains its purpose, how it operates, who pays it, and how it is spent (Barone and Mocetti, 2011¹²). Otherwise, this could lead to undesirable consequences (avoidance, errors, fraud, under/over-payments) rendering the tax legislation inefficient. This could also lead to losing trust between taxpayers and the tax system (Danish Tax and Customs Administration, 2009a; 2009b¹³), and reduced feelings of moral obligation to pay tax (Wenzel, 2005¹⁴).

To sum up, unanticipated and unintended consequences can occur concerning taxpayers, tax practitioners and the WRA if changes to tax legislation are implemented in haste, without sufficient consultation with a wide range of relevant stakeholders, and without the provision of clear communication, information and guidance in advance of it being enacted and during its implementation.

5. An annual Welsh Finance Bill?

Covid-19 is a recent example of how external forces can create uncertainty to the economy and society and as a result, changes to the tax system and public services. An annual Finance Bill would be a useful legislative tool to allow the Welsh Government to react to external factors,

¹¹ Closs-Davies, S., Bartels, K. and Merkl-Davies, D., 2020, ‘The Frog in the Pan: Relational Transformation of Public Values in the UK Tax Authority’, *Accounting, Auditing and Accountability Journal*, Vol. 34, No. 7, p.1635-1663

¹² Barone, G. and Mocetti, S., 2011. ‘Tax morale and public spending inefficiency’, *International Tax and Public Finance*, Vol. 18, No. 6, pp.724-749.

¹³ Danish Tax and Customs Administration, 2009a, ‘Compliance with the Tax Rules by Businesses in Denmark’, Denmark, Copenhagen: SKAT; and Danish Tax and Customs Administration, 2009b, ‘Compliance with the Tax Rules by Private Individuals in Denmark’, Denmark, Copenhagen: SKAT

¹⁴ Wenzel, M., 2005, ‘Motivation or Rationalisation? Causal Relations between Ethics, Norms and Tax Compliance’, *Journal of Economic Psychology*, Vol. 26, No. 4, pp.491-508.

review and make appropriate changes on an annual basis to protect tax revenues and funding of public services.

In addition, the publication and announcement of an annual Finance Bill would promote the Welsh Government and its devolved tax powers, and increase engagement, with the public, taxpayers, UK parliamentarians, and international stakeholders.

Whilst the current devolved tax powers are limited, an annual Finance Bill would help provide certainty and clarity to taxpayers and tax practitioners if it were implemented and communicated effectively. In addition, an annual Finance Bill could potentially reduce compliance costs to taxpayers as it reduces the amount of time and money spent on searching for information and guidance from other multiple sources, as the Finance Bill would be the main point of reference.

Notwithstanding the above, considering the limited level of devolved tax powers in Wales, the cost and resources involved in creating and implementing an annual Welsh Finance Bill might be unjustified and inefficient at the current time. Unless other existing taxes (e.g., local taxes) or new taxes (e.g., plastic tax or tourism tax) were introduced and implemented under the Bill in the near future.

Written on 25.01.2022