

**Ymatebion i ymgynghoriad Papur Gwyn Llywodraeth
Cymru ynghylch *Casglu a rheoli trethi datganoledig yng
Nghymru***

**Responses to the Welsh Government's White Paper
consultation on *Collection and management of devolved
taxes in Wales***

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Ref/Cyf 01:

Name:



Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?:

No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

Not needed. Why do we need this for only 3 million people. We are part of the UK

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

Not needed. Why do we need this for only 3 million people. We are part of the UK

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

not needed. Why do we need this for only 3 million people. We are part of the UK

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

not needed. Why do we need this for only 3 million people. We are part of the UK

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

No

Question 9: What are your views on delegation? Are there any specific

issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

No

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s)

should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?: No

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

WAG should not be given these powers. Why do we need this for only 3 million people. We are part of the UK

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box:: (Checked)

Ref/Cyf 02:

Page used to send this email: /consultations/forms/devolved-taxes/

Name:



Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?:

Yes

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

The core set of duties are fine as things stand. They do not look like the Authority would be running before it could walk.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

An independent board is the way forward, reporting to, and being scrutinised by the Assembly Finance Committee.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

A charter is a good idea. As powers are updated, the charter needs to be kept up to date. Also, as house prices and indexes such as the RPI fluctuate, the charter needs updating to enable tax payers to be kept abreast of the latest updates.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important):

The most important considerations are the following: Keeping costs to a minimum (I favour an online service for this reason) Variables determined by circumstances - people have various circumstances that affect the amount/way they can pay taxes this needs to be taken into account Please do not adopt the existing UK tax structure - Wales is economically different and this needs to be taken into account

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

The Welsh Assembly and a single, independent Welsh Tax Agency.

Question 7: Are the proposed obligations

Yes. However, you need to take into account people with

on taxpayers appropriate? If not, what changes need to be taken into account?:

learning disabilities and people with little/no internet access.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

Yes. Inspectors/Collectors should not have the ability to arbitrarily hand out penalties and all penalties should be signed off by a person independent of the investigation.

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Delegation could be a good idea if done correctly, however, it should be to local councils. Enforcement of payment and penalties should not be delegated as there is always the opportunity for arbitrary problems to arise where a delegate cannot be effectively scrutinised. The last thing we want is a Welsh version of the ATOS scandal.

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

They are good ideas. The WRA could also consider a 'your taxes in action scheme' where people see the outcomes of paying tax, such as road/NHS improvements in order to encourage better payment rates.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

Penalties are necessary to fight non-compliance. However, penalties cannot be arbitrary and there should be a method of complaint or a way to challenge the penalties. All penalties should be signed off by an independent person who has no interest in the case.

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

No.

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

As the current approach works well, it should be brought across with Wales specific changes put in place such as prosecution in Welsh courts.

Question 14: Should Wales establish a specific tax disclosure regime for devolved

No. The amount of tax a person pays from certain devolved taxes should not be disclosed unless it is

taxes?: anonymous.

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?: Anonymity is key here as we do not want public scandals over silly things.

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?: Education, education, education.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?: Yes. Welsh issues are different to English and Scottish issues and we should take this into account.

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?: Wider. If these taxes are to work, then we need to make sure that they are collected and distributed accurately.

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?: Very. Businesses need confidence that the WRA would not abuse their position so an independent board is key. However, an independent board could be susceptible to undue influence from business interests, so it would have to be highly regulated.

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?: Yes.

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?: Yes. Anything that takes the pressure off people and does not make them feel like they are being punished is a good thing.

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?: Yes.

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to Mediation and ENE. These seem like the fairest methods as they allow a neutral viewpoint to be utilised in making the decision, it takes the power from both sides and

assist in resolving disputes and why?:

allows both to present their arguments in a fair environment.

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Yes. Until we can set up a Wales specific system we will have to use UK systems as a stop gap.

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Pay first is a good idea as long as it is regulated, maybe the tax could be held in a deposit scheme as per a residential lettings deposit. Penalties and interest charges should be postponed when there is a death involved and a house has been sold to pay funeral and other related costs.

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

I believe that the devolution of tax to Wales is a good thing and that income tax should be devolved along the lines of Scotland. This will only empower the Assembly and the Government and push the Welsh Government further towards fulfilling the name Government.

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box::

(Checked)

Ref/Cyf 03:

Page used to send this email: /consultations/forms/devolved-taxes/

Name: Tim Johns

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?: An unnecessary extra tier of administration

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?: A waste of public money

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?: It is being done to justify devolution. A fashionable but worthless activity

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).: If it ain't broke don't fix it. What will it cost? Will the taxpayer benefit?

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?: No. The option to devolve is there, but there is no benefit in taking up this option.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?: No

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?: Just more complication. Why?

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?: Leave it to the experts.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?: No

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?: No

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?: Existing legislation is adequate.

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?: No

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?: No need to comment any further.

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions

involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box: (Unchecked)

Ref/Cyf 04:

Page used to send this email:

/consultations/forms/devolved-taxes/

Name:



Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?:

No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

We don't need the proposed Authority, or the Welsh Assembly. Abolish the latter, thus saving untold millions of pounds.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt?

What additional safeguards might we consider beyond those already identified?:

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to

Ref/Cyf 05:

Dear sirs/mesdames

My views on the reform of taxation in Wales are these:

1. The valuations of house prices on which council tax are based should be recalculated every 3 years. This should be enshrined in law so that inconvenient revaluations cannot be avoided.
2. The number of band for council tax should be increased and the proportions adjusted so that the tax becomes progressive. There should be an appeal procedure for asset-rich income-poor individuals.
3. Ensure that all local authorities can place extra council tax charges on second/holiday homes proportional to the number of months unoccupied.
4. Change stamp duty so that it becomes a proportional tax. Align valuation bands with council tax bands. Examine Scottish experience in reforms to stamp duty.

Martyn Vaughan

Ref/Cyf 06:

If how the NHS Wales is run and is anything to go by I sincerely hope that Wales does not evolve more powers especially if it is run by Labour.

Margaret Wozencraft

Ref/Cyf 07:

Page used to send this email: /consultations/forms/devolved-taxes/

Name:

[REDACTED]

Email:

[REDACTED]

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?:

No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

I do not agree with a Welsh Revenue Authority being established.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

I do not agree with a Welsh Revenue Authority being established.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

I do not agree with a Welsh Revenue Authority being established.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

The cost of collecting these taxes.

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

The tax arrangements and collections should be left with the UK government to avoid any unnecessary layers of costs. More effort should be made improving the Barnett formulae to increase the funding provided to Wales from

the UK Government management of taxes.

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

I do not agree with a Welsh Revenue Authority being established.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

NO. Leave the collection arrangements as they are already with the UK Government.

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Leave all tax collection to the UK Government just try and improve the allocation of the collected taxes to Wales.

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

I do not agree with a Welsh Revenue Authority being established.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

NO.

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

NO.

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Leave them as they are to the UK Government under the current arrangements.

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?: NO.

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?: Leave them with the UK Government to enforce under current rules.

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?: Yes. Check peoples personal incomes from salaries, pay, dividends, profits and any other already established national tax gathering arrangements.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?: NO.

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?: Not necessary.

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?: Unimportant. Too costly and complicated.

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?: Leave arrangements as they are with the UK Government.

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?: NO.

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?: NO.

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?: None.

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?: NO.

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?: No value and No circumstances.

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?: Leave the Tax collection and other finance arrangements as they are with the UK Government. Save all the unnecessary costs/staff/introduction problems just to set up an arrangement in Wales which will ultimately mirror the UK Governments current arrangements. Concentrate more on getting a fairer improved allocation of funds from the UK Government. (Barnett Formulae 2 perhaps).

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box:: (Checked)

Ref/Cyf 08:

Page used to send this email: /consultations/forms/devolved-taxes/

Name: Raymond Greenwood

Email: ray.greenwood@btinternet.com

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?: Wales is relatively small so there will be too much leakage. I think that what usually happens will happen i.e. the rich, the feckless and the dishonest won't pay and the rest of us will pay more tax.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?: I think the costs will be far in advance of the £200,000 stated for the shadow run. The cost, which is wasted tax payer money, for the thing will be much greater. I doubt the competency and again say there will be too much leakage for the tax to be fair.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?: If you are determined to do this thing then Keep it simple.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).: Piggy back the UK tax system. A specifically Welsh approach will no doubt be wasteful of resources and open to abuse.

Question 6: In light of your response to question 5, which organisation(s) do you The Inland Revenue (HMRC) because they are used to doing it. It will be the least wasteful.

consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

I would prefer not to be taxed additionally but the obligations seem reasonable.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

I can foresee a whole load of problems. I think that with increasing frequency the average person has issues with the competency of HMRC. Having a Welsh tax will compound this greatly because it increases the number of parties involved in any reconciliation of dispute, plus the competency question.

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

I have no opinion or competency on this

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

I have no opinion or competency on this

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

I have no opinion or competency on this

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

I have no opinion or competency on this

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

I have no opinion or competency on this

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes? I have no opinion or competency on this

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised? I have no opinion or competency on this

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes? I have no opinion or competency on this

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes? I have no opinion or competency on this

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision? I have no opinion or competency on this

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel? I have no opinion or competency on this

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax? I have no opinion or competency on this

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution? I have no opinion or competency on this

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes? I have no opinion or competency on this

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?: I have no opinion or competency on this

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?: I have no opinion or competency on this

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?: I have no opinion or competency on this

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?: I think we will finish up paying more tax. The WG will largely waste the money either on mistaken schemes or they are hoodwinked by capitalists into paying too much (e.g for Cardiff Airport). The UK government will thereby shift some of the Welsh burden of taxation from the UK wide pot to the much narrower pot so they will be pleased. Sorry for being so negative but I am not very hopeful of this coming out well for anybody but the rich, the feckless and the dishonest.

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box:: (Unchecked)

Ref/Cyf 09:

Page used to send this email:

/consultations/forms/devolved-taxes/

Name:

[REDACTED]

Email:

[REDACTED]

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: Yes

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box:: (Checked)

Ref/Cyf 10:

Page used to send this email: /consultations/forms/devolved-taxes/

Name: Barbara Wright

Email: barbarawright1510@gmail.com

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?: I don't think Wales should have tax raising powers. There should be no increase in powers unless a referendum is held, and political parties stop pandering to nationalist, who are in minority.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?: Only that it shouldn't happen, I live in the north east of Wales, I may as well be in another country as far as Cardiff is concerned. The Welsh Assembly are in capable of managing the country now let alone any extra powers. We deserve better than this.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?: Another scheme to waste money, whilst vital services are struggling. People of Wales want better services, decent schools and health services not more layers of government. I fear it will mean a reduction in money from Westminster leaving Wales poorer.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).: Shouldn't happen

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?: none,

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?: no

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?: no

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?: no

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?: no

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?: should be no devolved taxes

Question 15: What are your views on the key issues in establishing a tax disclosure regime?

What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value

of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you (Unchecked) would prefer your response to be kept anonymous please tick the box::

Ref/Cyf 11:

Hi there,

Regarding the proposed name of the "Welsh Revenue Authority", I think this name is rather dry and bureaucratic. Why not emulate the Scottish name and go for the much cooler-sounding "Revenue Wales"?

Kind regards,

Kenneth MacArthur

Ref/Cyf 12:

Page used to send this email:

/consultations/forms/devolved-taxes/

Name:

[REDACTED]

Email:

[REDACTED]

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

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Ref/Cyf 13:

Page used to send this email: /consultations/forms/devolved-taxes/

Name: Jim Bowen

Email: jbowen@gmail.com

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

The closing date for replies is 15 December 2014. Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept anonymous please tick the box:: (Unchecked)

Ref/Cyf 14:

Page used to send this email: /consultations/forms/devolved-taxes/

Name:

[REDACTED]

Email:

[REDACTED]

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?:

No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

We do not need the expense of another layer of government to collect taxes in Wales when there is already a satisfactory body collecting for the UK.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

The Welsh Assembly Government do not seem able to cope with the responsibilities they already have without giving them more.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

As I am certain tax responsibility should NOT be devolved we will not need a Taxpayer's charter.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

This is a bad idea. I hope it never happens

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

None

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?:

No

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

None should be delegated

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

I repeat. This is a bad idea and should not happen.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

No

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

No

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

I DO NOT THINK WALES SHOULD BE GIVEN DEVOLVED TAX POWERS the rest of the questions are not relevant.

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance

schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value of adopting a "pay-first" principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments

that you would like to make?:

The closing date for replies is 15 December 2014.

Responses to consultations may be made public – on
the internet or in a report. If you would prefer your (Checked)
response to be kept anonymous please tick the box::

Ref/Cyf 15:

Page used to send this email: /consultations/forms/devolved-taxes/

Name:

[REDACTED]

Email:

[REDACTED]

Organisation (if applicable):

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?: No

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?:

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?:

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?:

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).:

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?:

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?:

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties

and collect debt? What additional safeguards might we consider beyond those already identified?:

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?:

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?:

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?:

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?:

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?:

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?:

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?:

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?:

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?:

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?:

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?:

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?:

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?:

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?:

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?:

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?:

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?:

I disagree with any further devolved powers for the Welsh Assembly/Government; any further devolution should be undertaken via a referendum

The closing date for replies is 15 December 2014.
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(Checked)

Ref/Cyf 16:

Page used to send this email: /consultations/forms/devolved-taxes/

Enw:



Ebost:



Sefydliad (lle bo'n berthnasol):

Ymaateb bersonol

Cwestiwn 1: A ydych chi'n cytuno â'r cynnig i sefydlu Awdurdod Cyllid Cymru fel Adran Anweinidogol, sy'n atebol i'r Cynulliad?:

Ydw

Cwestiwn 2: Beth yw'ch barn am y set graidd arfaethedig o ddyletswyddau i Awdurdod Cyllid Cymru?:

Yn dderbynniol

Cwestiwn 3: A oes gennych farn bellach ar y trefniadau arweinyddiaeth a llywodraethu arfaethedig ar gyfer sefydlu Awdurdod Cyllid Cymru?:

Mae'r enw a dewisodd Llywodraeth Yr Alban yn rhoi arweiniad - gwell fyddai enwi'r corff "Cyllid Cymru/Revenue Wales" 2.21. Mae'r papur yn aneglur ai defnyddio'r dulliau o gwyno cyfredol neu creu 'ombwdsmon' arbennig i drafod cywnion ynglyn a threthu. Gan fod bosibilrwydd y gall pwerau'r Cymulliad tyfu yn y dyfodol, mae ddadl y dyldid sefydlu corff cwynion trethi o'r cychwyn.

Cwestiwn 4: Beth yw'ch barn ar y cynigion i sefydlu Siarter Drethdalwyr? Pa gamau sy'n hanfodol i sicrhau bod y siarter yn parhau'n berthnasol ac effeithiol o ran cynnal perthynas adeiladol rhwng Awdurdod Cyllid Cymru a threthdalwyr?:

A oes tystiolaeth bod y Siarter Drethdalwyr gyfredol yn effeithiol? Byddai'n fuddiol esbonio sut y gweithredir Siarter o'r fath. Mewn ba amgylchiadau gall drethdalwr ei hawlio a pha gorff bydd yn atebol- yr Awdurdod Cyllid neu'r Llywodraeth? Beth bydd swyddogaeth Ombwdsmon yn hyn?

Cwestiwn 5: Beth yn eich barn chi yw'r ystyriaethau pwysicaf wrth benderfynu sut i ymdrin â chasglu a rheoli trethi datganoledig yng Nghymru, a pham? (Wrth ateb, cofiwch ystyried y ffactorau a nodwyd ym mharagraff 2.37, ond tynnwch sylw hefyd at unrhyw ffactorau eraill nad ydynt wedi'u cynnwys, sydd yn eich barn chi yn bwysig.):

Tegwch a thryloywder yn bennaf, gyda threfniadau effeithiol i gasglu trethi.

Cwestiwn 6: O ystyried eich ateb i gwestiwn 5, pa sefydliad(au) ddylai gasglu a rheoli trethi datganoledig yng Nghymru yn eich barn chi, a

Y mae gan y Prif Cyngorau llywodraeth leol profiad eang yn hyn, gan y cesglir Treth y Cyngor, Treth Busnes, Treth yr Heddlu a threthi cyngorau

pham?:

cymuned a threfi ganddynt. Y maent hefyd yn gweithredu fel asiant i'r DSS i ddosrannu budd-daliadau. Felly mae ganddynt perianwaith profiadaol a pharod i wethredu ar ran y corff newydd. Bwriad y Llywodraeth yw lleihau nifer y cyngorau felly bydd cysylltiadau buan ac effeithlon. Mae systemau Gwybodaeth Technoleg mewn bodolaeth gall fod yn gefn i wethredu systemau ychwanegol ac arbennigol ar gyfer trethi. O fudd economaidd Cymru, trwy ddefnyddio staff llywodraeth loel, gellid cadw swyddi trwy'r wlad er les i economi ardaloedd lleol a chyfrannu at gynnaladwyaeth trwy ddefnyddio systemau parod yn lle ychwanegu atynt.

Cwestiwn 7: A ydy'r rhwymedigaethau arfaethedig ar drethdalwyr yn briodol? Os nad ydynt, pa newidiadau y mae angen eu hystyried?:

Ydynt, ond mae angen sicrhau bod mesurau cryf yn erbyn osgoi talu trethi mewn bodolaeth.

Cwestiwn 8: A ydych chi'n cytuno â'n bwriad i freinio pwerau yn Awdurdod Cyllid Cymru i'w alluogi i gasglu gwybodaeth am drethdalwyr, arolygu safleoedd, cywiro ffurflenni treth a gallu cynnal ymchwiliadau, pennu cosbau a chasglu dyledion? Pa fesurau diogelu ychwanegol y gallem eu hystyried y tu hwnt i'r rhai sydd wedi'u nodi'n barod?:

Ydyw

Cwestiwn 9: Beth yw'ch barn ar ddirprwyo? A oes unrhyw faterion penodol y dylid eu cadw mewn cof wrth ystyried pa swyddogaethau y gellid eu dirprwyo neu na ddylid eu dirprwyo, ac wrth ddethol corff i ddirprwyo iddo?:

Teimlaf ei fod yn bwysig fod y dirprwyaeth dim ond i gorff cyhoeddus sy'n gwethredu ynol dealltwriaeth o foesau y sector gyhoeddus. Ofnaf y bydd perygl yn codi os roddir dirprwyaeth i gwmnïau sydd a gwenud elw fel a'u prif nod ac, efallai, sydd a'u swyddfeydd y tu allan o Gymru, felly'n amddiddadu'r wlad o swyddi, gwariant leol ac atebolrwydd. Gan fod gwybodaeth sensitif iawn yn cael ei drafod, mae angen yr ymddiriedaeth mwyaf yn y cyrff bydd yn gweithredu.

Cwestiwn 10: Beth yw'ch barn ynglŷn â chymrau eraill y dylai Awdurdod Cyllid Cymru eu cymryd i hyrwyddo ac annog cydymffurfio? Pwysleisio mae elw Cymru er fudd Cymru bydd hyn.

Cwestiwn 11: A ydych yn cytuno y dylid rhoi'r

Cytunaf.

pwerau i Awdurdod Cyllid Cymru i bennu cosbau (gweler paragraff 4.14) a bod yr amodau o ran pryd a sut y cânt eu defnyddio i gael eu nodi mewn ymgynghoriadau a deddfwriaeth ddiweddarach?:

Cwestiwn 12: A oes gennych unrhyw sylwadau am y ffordd y caiff cosbau eu pennu ar y funud, a allai fod o gymorth wrth inni ddatblygu ein dull ni o ymdrin â threthi Cymreig?:

Nag oes.

Cwestiwn 13: Beth yw'ch barn ar y dull sy'n cael ei gynnig i ymdrin â gorfodaeth droseddol a'r mesurau i ddiogelu'r cyhoedd?:

Dylai unrhyw trosedd mynd trwy'r gyfundrefn cyfreithiol yn ddi-wahan, fel pob trosedd arall.

Cwestiwn 14: A ddylai Cymru sefydlu cyfundrefn ddatgelu benodol ar gyfer trethi datganoledig?:

Bydd y brofiad o weithredu hyn yn esgor ar wersi am sut i ddatblygu'r system yng Nghymru.

Cwestiwn 15: Beth yw'ch barn ar y materion allweddol wrth sefydlu cyfundrefn ddatgelu at ddibenion treth? Beth yw'r manteision a'r risgiau a sut y gellid blaenoriaethu'r rhain?:

Dysgu o beth sy'n gweithio'n barod tryw'r byd a bod yn barod i addasu i ymateb i'r amgylchiadau yn y dyfodol

Cwestiwn 16: A oes unrhyw opsiynau, ar wahân i gyfundrefn ddatgelu at ddibenion treth, y gellid eu hystyried i helpu i roi gwybod i Awdurdod Cyllid Cymru am gynlluniau osgoi trethi posibl?:

Defnyddio gwybodaeth bydd ar gael (ee gan Cyngorau, os dewisir nhw) i ategu at wybodaeth yn erbyn osgoi talu trethi.

Cwestiwn 17: A oes angen Rheol Gyffredinol ar Atal Camddefnydd neu Reol Gyffredinol ar Atal Osgoi (GAAR) i Gymru ar gyfer trethi datganoledig?:

Oes, gan bwysleisio bod unrhyw ymgais i osgoi talu trethi yn annerbyniol ac yn atebol i gamau gan yr Awdurdod. Bydd hyn yn mynd ymhellach na canolbwynto ar yr achosion eithriadol.

Cwestiwn 18: A fydddech chi'n gweld GAAR i Gymru fel darpariaeth 'osgoi', ehangach, neu fel darpariaeth 'camddefnydd', gulach?:

Byddaf.

Cwestiwn 19: Pa mor bwysig yw panel annibynnol i roi mwy o sicrwydd i fusnesau ynglŷn â sut y byddai GAAR yn gweithio? Beth yw anfoneision panel annibynnol?:

Mae angen enill hygredd mewn unrhyw drefniant. Nid yw'n sicr beth bydd y gwerth ychwanegol mewn panel o'r fath, yn lle hytrach na cheu hygredd yn yr Awdurdod ei hun.

Cwestiwn 20: O ystyried y cysylltiadau clir rhyngddo â Threth ar Drafodiadau yn Ymwneud

Dylai

â Buddiannau mewn Tir, a ddylai GAAR gael ei ystyried ymhellach wrth ymgynghori ynglŷn â'r dreth honno a deddfu arni?:

Cwestiwn 21: A ydych yn cytuno â'n dull o osgoi anghydfodau treth a sicrhau datrysiad cynnar?: Ydwyf

Cwestiwn 22: A ydych yn meddwl y dylai mecanwaith/mecanweithiau Dull Amgen o Ddatrys Anghydfod gael ei gynnig/eu cynnig i helpu i geisio datrys anghydfodau treth yn gynnar?: Ydywf

Cwestiwn 23: Pa fecanwaith/fecanweithiau Dull Amgen o Ddatrys Anghydfod sy'n fwyaf tebygol o helpu i ddatrys anghydfodau treth a pham?: Rhai cyflym, gyda'r gost lleiaf ar lefel lleol.

Cwestiwn 24: A ydych yn cytuno â'n dull arfaethedig o ddefnyddio'r system tribiwnlysoedd treth ddwy haen bresennol sy'n cael ei gweinyddu gan y Weinyddiaeth Gyfiawnder, fel trefniant dros dro o leiaf?: Cytunaf, dros dro ond hoffwn gweld system gweinyddu cyfiawnder i Gymru a bod tribwynlysoedd yn rhan ohono.

Cwestiwn 25: Beth yw'ch barn ar werth mabwysiadu egwyddor "talun gyntaf" a sut y dylid ei chymhwyso i drethi penodol? Oes unrhyw amgylchiadau lle dylid gohirio cyn ei chymhwyso i dalu trethi ac unrhyw gosbau a thaliadau llog cysylltiol?: Nid ywf yn sicr bod hyn yn gyfiawn o dan y gyfraith gyffredinol. Gan mai'r gwladwriaeth, trwy'r Awdurdod, sy'n mynnu'r treth, mae'n deg i ddisgwyl y dylai'r dyletswydd o dalu gael ei ddangos yn eglur o dan y gyfraith ac yn yr amgylchiadau neilltuol cyn ddyfarnu bod treth yn dyladawy. Mae hyn yn gwirod'r rheol cyffelyb yn "ddieuog nes caiff ei ddyfarnu'n euog".

Cwestiwn 26: A oes gennych unrhyw faterion cysylltiol nad ydyn ni wedi ymdrin yn benodol â nhw neu sylwadau eraill yr hoffech eu gwneud?: Nag oes. Diolch am y cyfle i ymateb.

Y dyddiad cau ar gyfer ymateb yw 15 Rhagfyr 2014. Mae'n bosibl y bydd ymatebion i ymgynghoriad yn cael eu cyhoeddi - ar y rhyngrwyd neu mewn adroddiad. Pe bai'n well gennych i'ch ymateb gael ei gadw'n gyfrinachol, ticiwch y blwch:: (Checked)

**Collection and management of devolved taxes in Wales
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Introduction

- 1.1 We welcome this opportunity to respond to the Welsh Government's White Paper on the collection and management of devolved taxes. We agree that it is important to decide the fundamental principles on how tax should be collected and managed even though decisions on the taxes devolved to Wales only so far include Stamp Duty Land Tax and Landfill Tax.
- 1.2 Although LITRG primarily focus on income tax and that is currently not being devolved to Wales, we understand that the framework for the collection and management of devolved tax may include income tax if this is devolved in the future. Therefore our comments in this response focus on developing a tax system which will be fit for use if further taxes are devolved.
- 1.3 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.

2 Executive Summary

- 2.1 Proposals for an overarching tax system are laudable, as are the aims of ensuring that devolved taxes are fair to businesses and individuals; are simple with clear rules which seek to minimise compliance and administrative costs and provide stability and certainty to taxpayers.
- 2.2 We call on the Welsh Revenue Authority (WRA) to draw up a Taxpayers' Charter that has a statutory basis. This should set out the rights and obligations of taxpayers and WRA.

- 2.3 Most taxpayers want to be compliant but many who are unrepresented find the tax system complicated; providing information in plain language, in a variety of formats and through different channels will help to educate taxpayers which in turn will lead to greater compliance.

3 About Us

- 3.1 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.
- 3.2 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.
- 3.3 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.

4 Question 1. Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

- 4.1 We agree with the proposal to establish WRA as a Non-Ministerial Department. It is important that the body responsible for the collection and management of Welsh Taxes is seen as separate and independent from the makers of legislation.
- 4.2 The development of a separate public body would enable this organisation to grow in the future, if further taxes are devolved to the Welsh Government.
- 4.3 We consider it appropriate that an independent body should report regularly to the Welsh Government on its performance so it is accountable to the Welsh people via the Welsh Assembly. We also think there is merit in having an independent regulatory body within the Welsh Government to scrutinise the success of the WRA in achieving its core duties and following the Taxpayers' Charter.

5 Question 2. What are your views on the proposed core set of duties for the Welsh Revenue Authority?

5.1 We welcome the development and publication of the proposed core set of duties of the WRA. We comment below on some of the proposed core duties; on the others we have no comment to make.

5.2 *Collect all net tax revenue due, while exercising necessary caution in cases of exceptional hardship.*

5.2.1 LITRG have experience with taxpayers who suffer from tax debt problems; we welcome the recognition in the proposed core set of duties, that there may be occasions when collecting unpaid tax could cause significant hardship to both the taxpayer and their dependants. However, we have concerns that using the phrase 'collect all net tax' may not give sufficient discretion to collect less tax in cases of financial hardship. We would suggest that the duty should be to 'collect the highest net revenue practicable, while exercising necessary caution in cases of hardship' or 'to assess the correct amount due according to law and then collect the highest net revenue practicable, taking hardship and efficiency into account'. This would enable more discretion and flexibility when collecting tax revenue. We would expect WRA to also take fairness into account: a doctrine has developed through tax case law that there may be circumstances in which to collect the tax strictly due would constitute conspicuous unfairness amounting to an abuse of power¹. For example, where the taxpayer relies on a clear, unambiguous and unqualified statement by WRA that they will accept a particular method of computation, or tacit acquiescence in a course of action effectively precludes WRA from departing from it without proper warning.

5.2.2 We would expect WRA to ensure that any third party body acting on its behalf worked to a similar and consistent standard of duty and care. Regard should also be given to efficiency, as sometimes the cost of collection will outweigh the benefit.

5.3 *Provide information, guidance and support to assist taxpayers to be compliant.*

5.3.1 Taxpayers, especially those who are on low incomes and so cannot afford to be represented by tax agents, will need guidance especially with the introduction of devolved taxes, no matter how seamless the transition WRA strives to achieve. The information and guidance needs to be clear, accessible and well-publicised. It is important that WRA gives careful consideration as to how it will provide this information, guidance and support as taxpayers will have different needs and all must be provided for on a fair basis. We would stress the importance that information and guidance is available via various channels (such as print in

¹ See, for example, *R v Inland Revenue Commissioners, ex parte Unilever plc and Anor* [1996] STC 681.

both English and Welsh), including ones accessible to the digitally excluded¹ and those with disabilities.

- 5.3.2 The information, guidance and support must be written with the unrepresented taxpayer in mind as its audience. The guidance must be written in plain language so it is easy to understand, however it must not simplify tax law to such an extent that it is misleading or incorrect. It must also be updated on a timely basis, so taxpayers can be confident that they are acting in good faith.
- 5.3.3 WRA should also consider providing helplines to enable taxpayers to discuss any questions regarding the new Stamp Duty Land Tax (Welsh Tax on Transactions Involving Interests in Land (WTTIL)) and Landfill Tax. We refer to further comments on telephone helplines at 13.3.
- 5.3.4 Some taxpayers may take time to become familiar with a new tax collection and management system: WRA should recognise this and consider initially delaying penalties for late filing and basic errors. This approach has been used by HMRC with the introduction of Real Time Information.
- 5.4 ***Consult/engage widely with stakeholders in advance of proposed changes to taxes.***
 - 5.4.1 For the consultation process to be most effective we recommend that sufficient notice and time to respond is given to all interested stakeholders.
- 5.5 ***Seek to avoid disputes, but where they occur to resolve them quickly through consensus or other means.***
 - 5.5.1 It is important that WRA has a robust but flexible system so that it can approach and deal with any disputes as they arise. This duty is important as there will not be an annual Finance Act for the Welsh Government to use to amend any misrepresented tax legislation.
 - 5.5.2 It is important that taxpayers are not subject to the same dispute with different tax authorities. In this situation, the two tax authorities should liaise as it would be unfair on the taxpayer (and costly for the tax authorities) if they undergo an enquiry by WRA and then a further enquiry by HMRC.
- 5.6 ***Provide information and advice to the Welsh Government and/or the Assembly on tax administration and collection matters.***
 - 5.6.1 WRA will be best placed to provide information to the Welsh Government and the Welsh Assembly on tax collection and administration. However, other stakeholders should also be invited to provide information and advice about WRA's performance from their own

¹ We refer you to our report on digital exclusion, in particular pp16-24 on understanding digital exclusion http://www.litr.org.uk/Resources/LITRG/Documents/2012/05/digital_exclusion_-_litr_report.pdf

experience in assisting taxpayers; for example the CIOT and the voluntary charitable sector. This may become more relevant if income tax is devolved in the future.

5.7 *Establish and maintain high professional standards.*

- 5.7.1 These standards must be agreed and adhered to by any external body who WRA delegate its collection and management of taxes powers to.

6 Question 3. Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

- 6.1 Our preference would be for the board to be made up of both non-executive and executive directors. The board should include people who have experience of tax administration and the wider tax profession. It is important for the board and Chief Executive to take responsibility, as well as for there to be transparency. We welcome the proposal that WRA will be directly responsible to the Welsh Government.
- 6.2 WRA needs to maintain an element of flexibility regarding the number of its staff because it is unknown if any other taxes will be devolved to the Welsh Government in the future.

7 Question 4. What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a Charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

- 7.1 We fully support the proposal to establish a Taxpayers' Charter. We consider a Charter essential to set out what the WRA expects from itself and the taxpayer. The Charter should have legislative backing and should contain both rights and responsibilities for WRA and taxpayers, giving equal recognition to taxpayers' rights and obligations and setting them out clearly and with precision. A Taxpayers' Charter can be a useful tool, especially for unrepresented taxpayers – it is not only a safeguard for the taxpayer, but it is a simple means of communicating the obligations of taxpayers and WRA.
- 7.2 We would expect a Taxpayers' Charter to be comprehensive, fair to both taxpayer and WRA and available in a variety of formats to include people with disabilities and those who are digitally excluded.
- 7.3 It is important that both WRA staff and taxpayers are aware of the Taxpayers' Charter; it should be promoted before the devolution of WTTIL and Landfill Tax. The Charter can only be effective if people know about it and use it.
- 7.4 In order to keep a Charter relevant and effective it is imperative that if WRA decides to delegate any of its responsibilities for the collection and management of taxes to an external body then that body must also adopt and advocate the Charter and follow it.

- 7.5 We welcome the opportunity to be part of the consultation on the WRA's Taxpayers' Charter as LITRG's Chairman has experience of being on the HMRC's Charter Advisory Committee. We consider that we would be able to offer constructive feedback to enable WRA to produce a Charter which would support a constructive relationship between WRA and taxpayers.
- 7.6 For a Charter to work effectively and remain relevant it is important that it is reviewed regularly especially if more taxes are devolved to the Welsh Government. The Charter should be monitored, for example, by a Welsh equivalent of the Charter Advisory Committee. We support the proposal that legislation will require WRA to report on the effectiveness of the Taxpayers' Charter, as part its annual report.

8 Question 5. What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why?

- 8.1 We note that the Welsh Minister for Finance and Government Business states that the 'taxes we develop will: be fair to businesses and individuals who pay them; be simple, with clear rules which seek to minimise compliance and administrative costs' and 'provide stability and certainty for tax payers'. We agree with these key principles as a starting point in determining the approach to the collection and management of taxes.
- 8.2 The approach should be fair to taxpayers, regardless of their location in Wales. As currently only Stamp Duty Land Tax and Landfill Tax are being devolved, the taxpayer would benefit from a single consistent approach to the collection and management of taxes, rather than various different approaches which may be the case, if this responsibility is undertaken, for example, by local authorities.
- 8.3 Wherever possible, a simple, easy to understand approach should be used, but it is important to understand that a one-size fits all approach will not be workable. For example, the report states at 2.37 'the type of system adopted for tax payment and processing- on-line processing and payment can, after an initial investment, generally be cheaper to administer than a paper-based and/or a cash-based systems'. While we agree that there are many efficiencies in using on-line processing and payment, there must also be a system in place for taxpayers who do not have access to the internet or do not have the necessary skills or confidence to use on-line facilities for this type of transaction. This will become even more relevant if other taxes are devolved in the future. LITRG were involved in the *LH Bishop & Others v HMRC* [2013] UKFTT 522 (TC) ¹ 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.

¹ 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>

9 Question 6. In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

- 9.1 Any organisation providing a service to Welsh taxpayers must adhere to the duties drawn up by WRA. The WRA has ultimate responsibility for the collection and management of devolved taxes, and part of this responsibility is to ensure that third party organisations exercise compliance and operational duties effectively. We suggest that WRA should have a process of performance review and third party organisations fully comply with the requirements of the Taxpayers' Charter and WRA's duties. We would expect that upon request, a memorandum agreement of delegation between WRA and the third party organisation will be provided.
- 9.2 There should only be delegation to organisations with proper safeguards in place. There also needs to be appropriate training of staff.
- 9.3 We do not support any 'payments by results' to third parties with respect to debt collection. We understand and agree that WRA will want to collect outstanding tax which is due to the Welsh Government, however we are concerned that an external organisation which is profit-driven may have less regard to WRA's proposed core duty of 'exercising necessary caution in cases of exceptional hardship'.

10 Question 7. Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

- 10.1 The five key obligations seem appropriate to be included in the legislation. We have listed additional comments on the obligations below. We would anticipate that these obligations and the taxpayer rights (see 10.8) will be part of the Taxpayers' Charter.
- 10.2 ***i) Be required to notify WRA (or delegated body working on behalf of WRA) if they have a liability to pay a devolved tax*** – the legislation or guidelines should provide a clear deadline for the period of notification so taxpayers fully understand their obligations. There should also be an amount of flexibility exercised by WRA or the delegated body, for example, if the taxpayer has a 'reasonable excuse' as to why they have not fulfilled their reporting obligations. When considering what is 'reasonable', consideration must be given to each individual taxpayer's particular circumstances and abilities. Ultimately, WRA wants to encourage taxpayers to comply with their responsibilities and not be put off engaging with WRA if something goes wrong.
- 10.3 ***ii) self-assess their tax*** – there must be clear guidance and help provided for low-income taxpayers who cannot afford a tax adviser. Self assessment may be appropriate for WTTIIL and Landfill tax, however if income tax is devolved in the future then self assessment may not be an appropriate obligation for all taxpayers. For example, in the UK most income tax payers do not fall within the self assessment system.

- 10.4 ***iii) pay any taxes due within any specified time period*** – again, there should be agreed guidelines to assist taxpayers who may have missed payment deadlines due to exceptional circumstances, for example, a family bereavement.
- 10.5 ***iv) have tax records that contain sufficient detail to enable an accurate tax return and allow WRA to check accuracy, where appropriate*** – safeguards must also be put in place to protect taxpayers who may not have tax records not for reasons of negligence but because of exceptional circumstances such as loss of records due to a fire or flood.
- 10.6 ***v) retain tax related records in an accessible form for a specified minimum period of time*** – We would refer to point 10.5 above that there must be safeguards in place to protect taxpayers who are unable to fulfil this obligation due to unforeseen exceptional circumstances.
- 10.7 We would expect these proposed obligations to imply the taxpayer's ability to use an agent or voluntary organisation to fulfil these responsibilities on their behalf.
- 10.8 We note that only taxpayer obligations are listed, this should be balanced by a list of suggested taxpayer rights. At a minimum, we would suggest the following taxpayer rights – to be treated with respect; to be treated as honest; to be treated fairly; for WRA to act professionally and with integrity; taxpayer information to be protected; to be represented; to receive help and support to get things right; to be told in full about tax exemptions and allowances, taxpayer rights and safeguards and limitations on WRA powers granted or imposed by law.
- 11 Question 8. Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What safeguards might we consider beyond those already identified?**
- 11.1 We agree that it is important for WRA to have reasonable powers that they apply proportionately. We would suggest that as a minimum, there should be a limit on WRA's powers that are equivalent to those contained in Finance Act 2008, Schedule 36, Part 4.
- 11.2 It is important that there are safeguards in place to protect the taxpayer from conflicts of policy between HMRC policy and the devolved taxes. We consider that this could be an increasing area of concern in the future if income tax is devolved.
- 11.3 We agree that WRA need to have appropriate powers to collect information to determine what tax is due and then collect outstanding debts. However, as most taxpayers will try to calculate the correct amount of tax and pay it by the due date, it is appropriate that powers are not too onerous on the tax compliant majority. We welcome the recognition in the White Paper that the power to inspect does not equate to a power of search. Inspection powers should not extend to domestic premises even where it is necessary to enter them to

reach the business premises. It is important that taxpayers are made aware of these and other safeguards.

- 11.4 We welcome the proposal that in the event a taxpayer is willing to pay any outstanding tax but is unable to pay that 'WRA has the discretion to be able to respond to assist payment being made, for example, through the establishment of a repayment schedule'. In times of economic difficulty taxpayers, especially the self-employed, may struggle to pay their tax on time and for example, faced with the difficult choice of paying rent or their tax bill, will often defer paying tax. It is important that there is an opportunity for taxpayers to repay their tax debts over time and feel that they can be compliant in the tax system again.
- 11.5 We understand that WRA also need powers to ensure that all taxpayers are compliant and pay their outstanding tax debts including late payment interest and penalties. However, we note that 'The Welsh Government proposes adopting similar powers to those currently in place for HMRC'. We request that further consideration is made regarding the proposed power to enable HMRC to effectively by-pass the current legal system and take outstanding tax debts directly from taxpayers bank accounts (subject to a *de minimis* threshold). We have grave concerns about this proposal¹ and do not think WRA should adopt this policy, however following HMRC's response to the consultation dated 21 November 2014 we give a cautious welcome to these proposed new safeguards²
- 11.6 There must be appropriate use of powers by individuals who have received appropriate training, either as WRA staff or an external organisation. If powers are delegated, there needs to be extremely accurate information to ensure the correct people are pursued.
- 11.7 We recommend there are safeguards in place to protect the most vulnerable taxpayers. Good information and communication links between WRA and the delegated organisations are vital to safeguard these taxpayers. Examples of appropriate safeguards include discretion to amend or cancel penalties in exceptional circumstances and the flexibility to enable the voluntary and charity organisations to assist on behalf of a taxpayer without formal paperwork (the equivalent of Form 64/8) in place. There should also be good communication and publicity of safeguards to taxpayers generally.

¹ The LITRG response to the Direct recovery of debts consultation is detailed at <http://www.litr.org.uk/Resources/LITRG/Documents/2014/07/140729-litr-response-direct-recovery-of-debt.pdf>

² The LITRG response to the revised proposals to the Direct recovery of debts http://www.litr.org.uk/News/2014/PR_LITRG_offer_guarded_welcome_to_revised_proposals_drd_21_Nov

12 Question 9. What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegate?

- 12.1 As it is not yet known what future taxes may be devolved it is difficult to envisage all the functions a delegated body may be expected to fulfil. We strongly agree that WRA should have ultimate responsibility over the collection and management of devolved taxes and we support the proposal that WRA will be able to revoke the delegation of any powers as this enables flexibility for WRA to develop depending on any future changes to the devolved taxes.
- 12.2 There may be some confusion amongst taxpayers about who is responsible for particular functions regarding the collection and management of tax. For example, taxpayers in Wales currently deal with HMRC, but after April 2018 these taxpayers may be dealing with HMRC, WRA and the delegated bodies. This will be a significant change; so there must be clear communication explaining to the taxpayer which body is responsible for which tax. For example, consideration should be given for genuine mistakes such as if a taxpayer mistakenly returns documentation to HMRC instead of the WRA or delegated body – will a late filing penalty be imposed?
- 12.3 WRA must ensure that delegated bodies exercise their duties effectively and there should be a process of review for WRA to confirm this. It is imperative that any delegated body fully understands the Charter and all staff are adequately and appropriately trained and understand the WRA's objectives and taxpayers' rights and obligations. We would expect the delegated bodies to be subject to the same safeguards and quality control as WRA will implement. We also reiterate our concerns mentioned at 9.3 regarding the delegation of debt collection powers to external organisations.
- 12.4 There should be a process where by taxpayers can complain directly to WRA if they are unhappy with how the delegated body has treated them.

13 Question 10. What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

- 13.1 Most taxpayers want to be compliant, but for many tax is a subject perceived as too complicated and onerous, which can discourage them from sorting out their tax affairs. WRA can assist taxpayers by offering help, especially to unrepresented low-income taxpayers who are often vulnerable perhaps because of disability, old age or struggling to understand English or Welsh.
- 13.2 We approve of your suggestion in point 4.3 that 'support will be available to taxpayers and their agents through a variety of channels, formats and in Welsh and English, so as to ensure it is accessible to all'. Communication is essential to promote and encourage tax compliance. Use of on-line guidance is helpful but it is important that it is well-structured, and that the

connected search facility works well. We would refer you to point 5.3 for further detailed comments on communication.

- 13.3 Telephone helplines can provide additional support to taxpayers who are not able or do not feel confident using online guidance. Telephones must be answered by appropriately trained staff so they can assist the taxpayer effectively. We recommend that there is a statutory requirement that telephone helpline conversations are recorded so that in the event of a dispute there is clear evidence of what was actually said. It would also be useful to clarify the status of the guidance or advice provided by staff over the telephone, for example, whether the taxpayer can rely on it when completing a return. We would recommend that telephone helplines use 0300 telephone numbers as this reduces the cost to the taxpayer, and should encourage more calls for assistance at an earlier stage. We would recommend that helplines are sufficiently staffed at traditionally peak times in the tax year so calls can be answered promptly.
- 13.4 Paper and telephone filing and payment processes may be required by some taxpayers. WRA should consider how people with disabilities will be able to comply with their tax obligations.¹ We suggest that various formats, such as Braille, large print, textphone and text relay should be available, and interpretation services are available for those whose first language is not English or Welsh.
- 13.5 Educating taxpayers to understand their tax obligations is key to WRA's success in the collection and management of tax, especially if there are changes from the current HMRC system. However, we consider an education strategy is more successful if it takes a balanced-approach of using 'nudges' and encourages tax compliance rather than employing scare tactics as this can put taxpayers off engaging with the tax authorities. Information of deadlines and reminders of filing and payment obligations should be given to all taxpayers, in a format that suits them.
- 13.6 We support the suggestion of early consultation by WRA as taxation must be by consent, therefore it is imperative to get 'buy-in' from stakeholders. We consider it important to include stakeholders such as the voluntary and charity organisations, as well as taxpayers and their agents, as it is these organisations who often deal with vulnerable unrepresented taxpayers who may need additional support regarding future policy and administrative changes. We recommend that WRA works with tax charities such as LITRG, TaxAid and Tax Help for Older People as many unrepresented taxpayers tend to turn to these organisations for information and advice in preference to HMRC. LITRG would be willing to engage with WRA to ensure that the unrepresented taxpayer is treated fairly and in accordance with the WRA's Taxpayers' Charter.

¹ The case of *LH Bishop Electrical Ltd and Others v HMRC* is detailed at Commissioners: <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html#7>

14 Question 11. Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties and for the conditions for when and how these are used being set out in later consultation and legislation?

- 14.1 This response does not comment on penalties specifically to WTTIIL and Landfill Tax, however we make comments which relate to a penalty system being developed that may potentially in the future include income tax.
- 14.2 We would expect the framework and principles for penalties to be contained within primary legislation. We agree that there is a need to consider non-compliance measures for each new tax separately, as a one size fits all approach will not be applicable. It should be made clear what is expected from taxpayers and the potential penalties which may be levied if they do not apply. This information should be available in different formats and not just as a link to a website page.
- 14.3 We agree that there should be consultation on proposed penalties in due course. Any changes to the current penalty position must be notified to taxpayers when they use the new system so they are aware of the new rules.

15 Question 12. Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

- 15.1 If there are significant changes in the charge and administration of Stamp Duty Land Tax and Landfill Tax, WRA may wish to consider a period during the changeover where penalties are not issued. For example, following the introduction of Real Time Information HMRC have taken the approach of not issuing penalties for small businesses for a specific time period.
- 15.2 The purpose of a system of penalties is to deter. Logically, how is it possible to deter ignorance, fear and the human tendency to make genuine mistakes while taking every reasonable care? The only way to tackle these is through educational initiatives. Penalties should arguably be restricted to behaviours which WRA wants to deter.
- 15.3 We consider that penalties levied should reflect the intent behind the action. We think that WRA should not penalise taxpayers who almost comply (and wish to comply) in the same manner or to the same extent as taxpayers who fail to comply by a long margin. We agree with the UK distinctions drawn between a) mistakes made despite taking care, b) careless mistakes and c) deliberate mis-statements or concealment. Penalties need to be proportionate to the failure, amount of tax at stake, and non-compliance involved. In too many cases, penalties are given for simple genuine misunderstandings which lead to an incorrect return being filed. We recommend that where there was no intention to reduce tax, WRA should have the flexibility not to penalise.
- 15.4 Care should be taken when considering the use of fixed amounts for penalties, rather than percentages of the tax due or maximum amounts that may be mitigated, as absolute

amounts can be disproportionate. When applying late payment penalties, we recommend that the financial position of the taxpayer and any potential hardship is taken into account.

- 15.5 There needs to be a fair, proportionate, even-handed, predictable and transparent use of penalties. Reasons for discretion in reducing and cancelling penalties should also be included in primary legislation. There should also be an appeal process in place or an opportunity for mediation in case taxpayers consider they have been unfairly penalised.
- 15.6 Training should be in place for staff so they are able to take into account factors such as a taxpayer's disability or mental state of health when they are considering penalties and possible mitigation.

16 Question 13. What views do you have on the proposed approach to criminal enforcement and to public safeguards?

- 16.1 We support the proposal for WRA to adopt a consistent approach to criminal enforcement with existing UK arrangements and that new criminal laws follow current UK legislation; whether this is carried out directly by WRA or delegated to another body which has expertise in this area.
- 16.2 We agree that appropriate safeguarding measures must be put in place at the same time as the legislation. We welcome the Welsh Government putting in place arrangements that currently exist in the UK, which includes using the Independent Police Complaints Commission in the case of appeals made by taxpayers in relation to serious complaints against WRA. These arrangements should also be in place not just for WRA but any other bodies to whom the WRA delegate responsibility of the collection and management of taxes.

17 Question 14. Should Wales establish a specific tax disclosure regime for devolved taxes?

- 17.1 We consider that one of the best ways of tackling avoidance is to remove the opportunity and motivation for it, by ensuring that the tax system is as simple and as fair as possible. We would recommend that the intention of the legislation be set out within tax law rather than the proposed Explanatory notes and WRA guidance and examples.
- 17.2 We support the comments made by CIOT in their submission.

18 Question 15. What are views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

- 18.1 We support the comments made by CIOT in their submission.

19 Question 16. Are there any options, other than a tax disclosure regime, that might be considered to help to alert the Welsh Revenue Authority of possible tax avoidance schemes?

19.1 We support the comments made by the CIOT in their submission.

20 Question 17. Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

20.1 Whether a Welsh General Anti-Abuse rule or a Welsh General Anti-Avoidance Rule is used, we would recommend that dynamic guidance is provided, as guidance which is added to over time and is kept-up-date will assist taxpayers and their advisers.

20.2 We support the comments made by the CIOT in their submission.

21 Question 18. Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

21.1 We support the comments made by the CIOT in their submission.

22 Question 19. How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

22.1 We support the comments made by the CIOT in their submission.

23 Question 20. Given its clear links to a Tax on Transactions involving interest in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation of this tax

23.1 We have no comments on this question.

24 Question 21. Do you agree with our approach to avoiding tax disputes and achieving early resolution?

24.1 There needs to be efficient, effective and clear processes. Communication channels must be accessible and provide speedy communication with a view to achieving early resolution wherever possible.

- 24.2 A simple tax system will assist this, as it will minimise scope for misunderstandings. There should be transparency about how decisions are reached and how liabilities are calculated.
- 24.3 Information must be published clearly, and should include, for example, deadlines, responsibilities of the taxpayer, how to submit returns and pay tax. WRA or any delegated body must ensure that they send information to the correct taxpayer and address. Warnings and alerts should be sent to registered taxpayers.
- 24.4 We would recommend a system of Internal Review; which is modelled on the system of internal review used for direct tax rather than the mandatory model operated by the Department for Work and Pensions. This system of internal review is optional, impartial and time-limited, which allows the taxpayer to opt for a cost-free internal review as an alternative to going to the Tribunal. It also allows the taxpayer to still go to the Tribunal if they wish to appeal against the outcome of the review. Although the internal review would not be independent from WRA it would be impartial as the review teams are removed, both geographically and in terms of line management, from the original decision maker; and the review teams must observe a time limit or ask the taxpayer for more time to reach their decision.
- 24.5 By using a system of internal review, early resolution may be possible if officials are willing to listen and try to comprehend the perspective of the taxpayer and their level of understanding of the tax system. Officials should not assume a taxpayer has the same level of knowledge as a tax official or a tax adviser. This is particularly important when dealing with unrepresented taxpayers. There is often a perception by taxpayers that internal review is not objective and fair because it is not independent, therefore it is important to make the process transparent and provide a detailed explanation of the outcome.

25 Question 22. Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

- 25.1 Early experience of the Alternative Dispute Resolution (ADR) mechanism in the UK suggests that an independent, impartial and properly trained HMRC officer can have a useful function in gaining the trust of the taxpayer who has reached deadlock with an inspector during an enquiry.¹

26 Question 23. Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving tax disputes and why?

¹ See report on the Project Evaluation summary for the Alternative Dispute Resolution Mechanism <http://webarchive.nationalarchives.gov.uk/20130605115351/http://www.hmrc.gov.uk/news/adr-public-eval-report.pdf>

26.1 We consider that voluntary mediation is most likely to assist low income unrepresented taxpayers, as this mechanism of Alternative Dispute Resolution offers an opportunity to seek to resolve a dispute where there is personal deadlock between the taxpayer and an officer, or where an enquiry is dragging on without resolution and escalating costs for both the taxpayer and the tax department (HMRC or WRA). It is important that there is clarity so the process does not seem to the taxpayer to be 'all or nothing', 'black and white', or 'winner and loser'.

27 Question 24. Do you agree with our proposal to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

27.1 It would make most sense for appeals to be dealt with by the UK Chambers of the UK Tribunal (i.e. First Tier and Upper Tier). This would benefit cases as the existing expertise could be used. There is only a small pool of judges in Wales, and if the tribunals had to use only Welsh judges for devolved tax appeals, then there would be a significant loss of expertise. There could also be issues of capacity, meaning a delay in cases being heard. An option would be a core team of Welsh judges supplemented by existing tribunal judges and members.

28 Question 25. What are your views on the value of adopting a "pay-first" principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

28.1 We have concerns that adopting a "pay-first" principle could cause severe financial hardship in some cases. We would recommend it is possible to apply for postponement if making an appeal. Interest would be due if postponement is granted but then the appeal is dismissed, this should encourage the swift resolution of disputes by WRA.

28.2 However, if WRA proceed with no application for postponement of payment of disputed taxes then it might be reasonable for the taxpayer to expect a stronger remedy than repayment interest from WRA.

28.3 We support comments made by the CIOT in their submission in relation to the DOTAS and GAAR.

29 Question 26. Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

29.1 We would have expected the White Paper to address how complaints would be handled. This should be included in the Taxpayers' Charter and complaints should originally go to the delegated body to investigate and then to WRA if they are not successfully dealt with. We

would expect that the handling of complaints would form part of a publically available annual summary.

- 29.2 Taxpayer information should be kept confidential and not be disclosed to other public bodies and tax authorities unless in appropriate circumstances.
- 29.3 We would expect there to be an Equalities Impact Assessment, as this would be an opportunity to consider how the tax framework can be used to eliminate discrimination and provide equality of opportunity.
- 29.4 Finally, if income tax is to be devolved in the future, then thought should be given to the interaction between this tax and means-tested benefits.

LITRG
10 December 2014

**Welsh Government White Paper: Collection and management of devolved taxes in
Wales
Response by the Chartered Institute of Taxation**

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) is pleased to submit comments on the White Paper.
- 1.2 The comments are drawn from a survey of members of the CIOT and the Association of Taxation Technicians (ATT) based in Wales (including the CIOT and ATT South Wales Branch) and from members based elsewhere with an interest in Wales on the main questions in the White Paper. The views of members of the CIOT technical committees are also reflected.
- 1.3 The CIOT's Low Incomes Tax Reform Group (LITRG) is commenting separately on issues impacting the low income and unrepresented taxpayer. In addition the ATT is submitting a separate additional response on certain key aspects of the issues raised in the White Paper.
- 1.4 We welcome the opportunity to respond to the White Paper. We commend the wide-ranging consultation to date including the meetings of the consultative forum in Cardiff and Bangor and for allowing a proper timescale for responses to be developed.
- 1.5 Welsh devolution provides a real opportunity to put in place simpler legislation for the devolved taxes and to look at how HM Revenue & Customs (HMRC) operate to identify improvements to the system that could benefit Welsh taxpayers, agents and the Welsh Revenue Authority (WRA). However, any changes should be considered in the context of cross-border activity and the need to synchronise with the current UK regime. Also, we would point out that the following comments are based on current plans for devolution. Should these plans change the framework may need to be revisited.

2 Question 1. Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

- 2.1 Yes, the large majority of our members agreed with the proposal to establish the WRA as a non-Ministerial department (thereby ensuring operational independence and the sharing of expertise across other departments, as set out in the White Paper) provided that there are direct, clear lines of accountability to the Welsh Assembly with proper scrutiny.
- 2.2 We note that the WRA will have its own Accounting Officer to oversee the use of its funds in the implementation of tax policy. We look forward to further details of how this role will operate.
- 2.3 In addition, clarity on the WRA's role in tax policy making process will be important. As we note below in our answer to question 3, members of the board with tax expertise and experience in business and practice will build confidence in the Authority.
- 2.4 We think that the Assembly should establish an oversight committee with clear responsibilities to oversee and report on Welsh taxes and the performance of the WRA.

3 Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

- 3.1 The majority of respondents thought that the proposed core set of WRA's duties is largely appropriate but with some comments on the specific duties, particularly around collection and hardship, as set out below.

3.2 *Duty to collect all net tax revenue due, while exercising necessary caution in cases of exceptional hardship;*

A useful addition to this duty, that may be implicit, is to collect all net revenue due 'in accordance with the tax laws laid down by the Welsh Assembly'. Respondents strongly supported the recognition of hardship provided that the evaluation of hardship was based on objective criteria rather than dependent upon subjective decisions by individual case officers. One member thought that 'exceptional' is too high a bar. In particular, one member raised concerns over any powers to make automatic deduction from taxpayer bank accounts that may be exposed to error and subjective judgement. In addition, some respondents said that collection should not be at all costs. There is a balance to be struck, bearing down on the compliant to collect every last penny may actually discourage compliance as well as being inefficient in cost/benefit terms. One member pointed to aggressive tax collection techniques by debt collection agencies as counter-productive.

3.3 *Duty to provide information, guidance and support to assist taxpayers to be compliant;*

Respondents suggested that this duty does not emphasise sufficiently the need for communication with taxpayers. 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.

3.4 ***consult/engage widely with stakeholders in advance of proposed changes to taxes;***

The term ‘stakeholders’ would presumably encompass the professional bodies, but this could be explicit.

- 3.5 A further overarching suggestion from a respondent is that these duties should be articulated in a document (perhaps in a charter that is widely published to ensure ongoing accountability). One member suggested that the WRA should report publically on its duties and objectives. Again, a charter could offer a mechanism for doing so.

4 Question 3: Do you have any views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

- 4.1 There is a strong view from members that members of the board should include some representation from the tax profession with significant experience, gained in private practice, of how tax affects business. Board members should serve fixed terms. Members agreed that a board of about 6-9 members seems appropriate.
- 4.2 In terms of its budget, the WRA will be a small unit presumably with a relatively small budget and will therefore need support, for example for HR and finance functions.
- 4.3 One area raised is how the day-to-day reporting line to the Assembly Treasury will function.

5 Question 4: What are your views on proposals to establish a Taxpayers’ Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

- 5.1 Despite some expressions of scepticism about efficacy, members are generally strongly in favour of a charter codifying the relationship between the WRA and taxpayers. It offers a process that all parties can have a say in and sign up to. There was support for a “*Taxpayers’* charter’ rather than, say, a “*Customers’* charter’. (Members do not see themselves or their clients as ‘customers’ of a revenue authority; such a label tends to cause much irritation.)
- 5.2 We note the issue of the draft Model Taxpayer Charter produced by collaboration between three professional bodies: The Asia-Oceania Tax Consultants Association (AOTCA), Confédération Fiscale Européenne (CFE – of which the CIOT is a member organisation) and the Society of Trust and Estate Practitioners (STEP). It sets out a blueprint for a charter of taxpayer rights and responsibilities. In addition, HMRC consulted on a taxpayers’ charter in 2008 and 2009. In 2008, the CIOT issued a policy paper including a draft Taxpayers’ Charter¹, with the aim of opening a debate about the legal status and content.

¹ <http://www.tax.org.uk/tax-policy/public-submissions/2008/developing-a-new-charter-for-hmrc-and-its-customers-ciota-comments>

- 5.3 Respondents think the need is for a short focussed document avoiding the trap of too many targets. Any charter must be accessible and widely visible to be effective.
- 5.4 Legislative underpinning is seen as important (although we would not expect the charter itself to be enshrined in legislation) and a statutory requirement to report on its operation periodically. One respondent suggested a regular survey of a sample of taxpayers and agents to assess how the WRA performance measures against the charter. Some sort of regular evaluation exercise is clearly required.²
- 5.5 Any charter must be capable of being enforced. One option might be for the tribunal system to be obliged to take the charter into account when considering a case, and in particular when deciding on penalties.
- 5.6 The consultation is silent on a form of complaints procedure. It is perhaps best addressed through a charter.
- 5.7 The process of arriving at a charter is in some ways as important as the charter itself and should be arrived at through consultation with all stakeholders.

6 Question 5. What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why?

- 6.1 Devolution provides an opportunity to modernise by thinking what is possible, looking for new ways of enabling collection and management (while maintaining consistency with the UK systems to ensure synchronisation) rather than simply e-enabling the current procedures. For example, e-conveyancing for Wales could enhance both the conveyancing process and tax compliance by making compliance an embedded part of the conveyancing process. (We understand that a pilot project has been undertaken by a single Land Registry office in the past.)
- 6.2 Members support a simple standard national approach to devolved tax collection and management with an emphasis on minimising administrative burdens for business and particularly for businesses with cross border activity. Adopting the existing UK structure follows from this premise. It is recognised that some collection and management arrangements will be specific to individual devolved taxes (and need to be catered for as such) but a generic framework is appropriate.
- 6.3 A central plea from respondents is to 'keep it simple and easy to use'. The maintenance of a central contact particularly for larger businesses is thought to be an important factor, as individual contact, rather than non-personal interaction with systems, promotes compliance.

7 Question 6. In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

- 7.1 Respondents were mainly in favour of overall responsibility for management and collection lying with national rather than local bodies, therefore WRA or HMRC, or in the case of Landfill Tax, Natural Resources Wales.

² It is noted that HMRC established a Charter Advisory Committee to provide independent oversight.

8 Question 7. Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

- 8.1 The majority of respondents felt these obligations are the basic requirements of self-assessment and therefore appropriate. The only proviso is whether the obligations imply the taxpayer's ability to use an agent to fulfil their obligations, ideally this should be explicit.

9 Question 8. Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

- 9.1 Most members agree that the WRA's powers should be similar to those of HMRC. Taxpayers may run into difficulties if different collection and management powers apply to different parts of their operations. Respondents also raised the possible duplication of information-gathering by HMRC and WRA for different purposes with a consequential increase in the administrative burden.

- 9.2 Members are concerned about proportionality particularly in respect of the powers to collect debt and levy penalties.

- 9.3 Similarly with penalties, one respondent said that sometimes the balance appears to shift towards an assumption that taxpayer's default position is to avoid or evade taxes. Taxpayers in general comply with their obligations and want to pay their tax (as recognised at para 3.16 of the White Paper). There is little detail on safeguards in this section so the reference to 'additional' safeguards is a little puzzling. A review and appeals process is clearly essential. Some additional comments are below:

9.4 *Power to require taxpayer information and documentation*

- 9.4.1 The timescale for providing the information must be reasonable. We would also touch on the issue of legal professional privilege. Powers to require information should, of course, be constrained by privilege. The CIOT's view is that it should be the information or advice that is privileged in defined areas, irrespective of the status of the adviser. It seems odd that the same tax advice can be subject to privilege if given by a lawyer yet not by an expert tax adviser, who may well be far better qualified to give that advice and subject to at least as exacting professional obligations. We think this was recognised in the *Prudential*³ judgment in the Supreme Court.

- 9.4.2 In terms of the power to ask a third party for information about a known taxpayer, this is reasonable but the power should include an appeal right or at least a route for the third party to demonstrate why they cannot or should not provide the information.

9.5 *Power to inspect*

The proposals here seem sensible. Where businesses are run from home, or where records are stored at home, care will be needed in framing the power.

³ https://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0215_Judgment.pdf

10 Question 9. What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

- 10.1 Members are clear that the WRA should take ultimate responsibility for tax administration and collection matters. If aspects are devolved to others, the arrangements must be transparent with the WRA having systems in place to monitor the way the duties are carried out and to report on efficacy. An important example of this would be any outsourcing of debt collection. Delegates must also accept the same standards including those governing security of data and operating in accordance with any charter.

11 Question 10. What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

- 11.1 The importance of clear communication of responsibilities in promoting compliance is a strong message from our members. The WRA must be prepared to carry out the necessary 'PR' – making sure the message is clear that tax compliance is the norm, as recognised at para 4.2. The promise of support through a variety of channels and formats is particularly welcome. Both the recognition of the benefits of early consultation on change and a proportionate approach to compliance are commendable and put forward as priorities by our members.
- 11.2 One respondent suggested an easing back on 'nudge' techniques though, as they backfire if taxpayers lose respect for such strategies.
- 11.3 Engaging with the agent community and providing a facility for submitting queries or simply observations on areas of difficulty is part of good communication.
- 11.4 One further point that needs to be considered is whether there is any form of pre-clearance for transactions. No doubt resourcing is an issue but it would undoubtedly help compliance.

12 Question 11. Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

- 12.1 Members agree with this approach, making two additional important points; firstly, that the penalty regime should be in primary legislation and secondly, that penalties should not be applied to genuine mistakes.

13 Question 12. Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

- 13.1 Respondents point to unfairness in penalising genuine mistakes and also a lack of even-handedness in penalising in a current period but withholding refunds in respect of earlier periods of account.

- 13.2 At present respondents note that there is also some misunderstanding around the basis for mitigation of penalties.
- 13.3 One respondent referred to inequity in the way penalties are levied at high levels on the 'ordinary' taxpayer while reduced sanctions apply under disclosure initiatives such as the Liechtenstein Disclosure Facility.

14 Question 13. What views do you have on the proposed approach to criminal enforcement and to public safeguards?

- 14.1 Respondents agreed with the approach set out in the White Paper.

15 Question 14. Should Wales establish a specific tax disclosure regime for devolved taxes?

- 15.1 A majority of respondents support a specific DOTAS regime although some questioned whether DOTAS could be justified in cost/benefit terms noting that the need for a specific DOTAS regime should be judged in the context of any proposed GAAR and the legislative framework for the devolved taxes. If the statutory rules are clearly drafted, the need for DOTAS must be reduced.
- 15.2 One point worth noting is that the existing DOTAS regime for SDLT differs significantly from the direct taxes DOTAS regime, in particular hallmarks are not applicable to SDLT. SDLT DOTAS instead prescribes arrangements⁴ that must be notified with certain steps (such as claims for certain reliefs) that do not constitute prescribed arrangements for the purposes of the regime.
- 15.3 However, the lack of timely updating for changes to legislation means that the current SDLT DOTAS regime does not operate particularly well. Adopting the same regime for WTTIL would need to be considered against this background.

16 Question 15. What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

- 16.1 Subject to the point made above about the UK SDLT DOTAS system and the reservation about cost/benefits, we largely support the use of the UK DOTAS model. If DOTAS is adopted in Wales, the basic scheme of notifying within a short period against defined criteria/circumstances is workable and effective but it has to be policed and therefore resourced. The system has been developed and refined since 2004 and is well understood. The problem with the DOTAS system has been that some promoters seem to largely ignore the disclosure requirements, or manage to come up with reasons for non-disclosure that do not seem well-founded.
- 16.2 If Wales decides to have a DOTAS-style system, we think the key is prompt action on disclosures and action against those who appear to flout the system. The system needs to give clear signals that schemes are being tackled – by appropriate

⁴ Regulation 2 of the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005 (SI 2005/1868).

announcements and legislative action. If it becomes apparent that a scheme has not been disclosed, there must be appropriate efforts put into tracing the origins of the scheme and the promoter challenged. All of this is part of ensuring that the compliance culture is promoted and supported.

- 16.3 We would also draw your attention to our response to the recent consultation on proposals to strengthen DOTAS, where we cautioned against the creation of a system that would place unreasonable and excessive burdens on compliant advisers, and recommended that the Government consider changing the focus of the regime from tackling tax advantage schemes to tackling tax avoidance.⁵

17 Question 16. Are there any options, other than a tax disclosure regime, that might be considered to help to alert the Welsh Revenue Authority of possible tax avoidance schemes?

- 17.1 Keep the underlying taxes as simple as possible and the scope for avoidance is minimised is a consistent message from our respondents.
- 17.2 A further step suggested is to ensure that statutory business reliefs require a claim rather than simply allowing a relief to operate without any formal claim, effectively as an exemption. In the absence of a claim, a revenue authority has no means of checking the validity of the claim, or of evaluating the cost of a particular relief.

18 Question 17. Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18. Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

- 18.1 We support a General Anti-Abuse Rule, narrowly targeted along the lines of the provision introduced in the UK with the same safeguards. We are not in favour of the wider anti-avoidance rule because of the potential uncertainty it would engender for businesses operating both in Wales and cross-border.
- 18.2 A general anti-avoidance rule would need to be supported by a clearance system to give that certainty: we question whether the WRA would be able to deliver such a clearance system in the timescales required for commercial transactions. Even if a fee is charged for clearances, we would still have concerns about whether the infrastructure could be set up to respond quickly enough at the quality level required; it might also be seen as discriminatory against small businesses or ordinary taxpayers. Charging a fee for clearances carries operational complications in the context of commercial transactions, for example what happens when facts/ circumstances change, would a new fee be imposed, and where should the line be drawn between minor and substantive changes? In addition could (anonymised) clearances be publicised if paid for? It would be of benefit to the wider body of taxpayers to do so but payment might mean the product could not be made available to others.

19 Question 19. How important is an independent panel to provide more certainty

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<http://www.tax.org.uk/Resources/CIOT/Documents/2014/10/141023%20Strengthening%20the%20Tax%20Avoidance%20Disclosure%20Regimes%20-%20CIOT%20response.pdf>

for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

- 19.1 Respondents largely support the establishment of an independent panel to assist with the running of a GAAR.

20 Question 20. Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

- 20.1 We think the key here is not so much considering a wider GAAR type measure by reference to a specific tax but instead giving proper consideration of how it (and indeed anti-avoidance provisions generally) would be enforced and therefore characterise the approach the WRA. A GAAR should be an integral part of the tax system.

21 Question 21. Do you agree with our approach to avoiding tax disputes and achieving early resolution?

- 21.1 Members agree with these proposals – ‘early resolution and a simple regime are best’ as one respondent puts it. Keeping costs to a minimum in resolving disputes is a very important factor, similarly a process that both sides will use with confidence and understanding. We agree that retaining a right to appeal to the tribunal as a final resort is essential in ensuring confidence in the tax system.

22 Question 22. Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23. Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving tax disputes and why?

- 22.1 Respondents largely support this mechanism as a voluntary option. However one respondent thought the case had not necessarily been made and a well-funded unit providing an advance clearance system might represent better value for money.

23 Question 24. Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

- 23.1 Respondents agree that this is a sensible interim arrangement. It is simply not cost effective to have a separate Welsh tax tribunal. However we support a Welsh secretariat, meaning appeals on Welsh taxes heard in Wales using Welsh resident tribunal members although we appreciate that practical considerations may prevent this from being possible.

- 23.2 As we believe the tax tribunal system should be used, it follows that the tribunals’ costs regime (ie parties bear their own costs at the First- tier) is adopted. This has always concerned us to a degree as it means the small business or individual

taxpayer may feel they cannot pursue a case as they are exposed to considerable costs even if they win. Against that, a system of 'loser pays' might deter even more taxpayers. Overall, we think the tribunal's system is the best option; the safety net for taxpayers is that there should be alternative dispute resolution mechanisms that give low-cost routes before the tribunal is reached, as the White Paper suggests.

- 23.3 In connection with the costs of resolving a dispute, we would also point to the EU principle of effectiveness. If a taxpayer is impoverished in taking a case to mediation/tribunal that means the remedy is not effective. The point is of particular relevance for small businesses and individual taxpayers.

24 Question 25. What are your views on the value of adopting a 'pay-first' principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

- 24.1 The majority view from respondents was that the 'pay first' principle is more appropriate in DOTAS and GAAR cases but should not be applied generally. Hardship (considered objectively) is a key issue that should be considered in terms of denying access to justice because a taxpayer cannot afford to pay or is deprived of funds for a lengthy period. Therefore there should always be the possibility of postponement on grounds of 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.

25 The Chartered Institute of Taxation

- 25.1 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
10 December 2014



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Consultation on: Collection and management of devolved taxes in Wales

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation
(if responding on
behalf of that
organisation):

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes ☐ No ☐

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Chapter 3: Powers and duties

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes

☐

No

☐

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

Chapter 5: Addressing tax avoidance

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes

☐

No

☐

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Chapter 6: Resolving tax disputes

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Publication of responses

Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

☐

Returning this form

The closing date for replies is **15 December 2014**.

Please send this completed form to us by post to:

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or e-mail to: FinancialReformMailbox@wales.gsi.gov.uk

If you are sending your response by e-mail, please mark the subject matter:
Consultation on collection and management of devolved taxes in Wales

Ref/Cyf 20:

The Welsh Liberal Democrats are happy to support the white paper on the Collection and management of devolved taxes in Wales. I am pleased that we have finally reached this stage of our devolution journey.

We are in support of the establishment of the Welsh Revenue Authority, as a Non-Ministerial department, accountable to the Assembly. I also support the majority of the Welsh Government proposals that will enable Wales to have a fully - functioning, efficient and effective regime for the collection and management of Welsh Taxes.

Several of my queries have already been dealt with by the Minister for Finance. I have just a few remaining issues that need to be addressed:

- The WRA should be able to draw down money from the Welsh Consolidated Fund and the Wales Audit Office should be given the job of overseeing this process.
- To ensure the WRA are scrutinised by the Assembly through the Finance Committee.

We are looking forward to the introduction of the 'Collection and management of devolved taxes in Wales' Bill in July 2015.

Peter

RSPB Cymru

Jane Hutt
Minister for Finance & Government Business
Welsh Government
Tŷ Hywel
Cardiff
CF99 1NA

12 December 2014

Dear Minister,

Devolution of Landfill Tax

I am writing to you ahead of the closure of the consultation on the 'Collection and management of devolved taxes in Wales'. I wanted to highlight the importance of the Landfill Tax (and its current contribution to the existing Landfill Communities Fund) in providing funding for biodiversity initiatives and how it aids the Welsh Government meet its environmental responsibilities.

As you will be aware taxing waste directed to landfill encourages us to produce less waste whilst delivering positive environmental benefits. The Landfill Tax is a good working example of a hypothecated or 'ring-fenced' tax – it has compensated for an environmentally damaging activity by funding projects which improve the environment for the benefit of biodiversity and the communities who live near landfill sites. In particular, allowing landfill operators to contribute towards environmental projects through the Landfill Communities Fund (LCF) has enabled valuable biodiversity work to take place across Wales and delivered many positive environmental outcomes. Please refer to the case studies provided at the end of this letter for a number of examples of how protected sites in Wales have benefited from this funding. In addition, by addressing the major challenges that the environment faces we can also support jobs and sustainable economic activity. Local communities can benefit from wildlife-rich natural green spaces which will increase levels of physical activity, leading to increased public health and associated cost savings.

Wales, along with the rest of the UK and Europe, has committed to the renewed 2020 biodiversity targets set at Nagoya. At a time of economic austerity when funding for the natural environment is being squeezed ever more tightly, the LCF has been a lifeline for nature conservation, and is one of the few remaining funding streams for biodiversity work. Continuing the good practice of the LCF following the devolution of Landfill Tax would provide a much needed funding stream for projects which contribute to meeting the 2020 targets. Furthermore, it is worth noting that this has the added benefit of helping drive forward the Government's environmental objectives at no extra cost to the public purse, since Landfill Tax is classed as private money. This also puts successful applicants to the LCF in a unique position to make government money go further. For example, an organisation in receipt of funding from NRW could deliver more on a particular environmental project through having access to the private funding stream of the LCF. In addition, a successful application to the LCF can often be used as a tool to attract matched funding from other sources.

In section 1.16 of the White paper it considers the importance of these tax-raising powers. We would agree that these powers being available are important but even more importantly, what use is made of them to benefit Welsh needs and priorities. We urge you to recommend that if Landfill Tax is devolved, the Welsh Government should, at a minimum, strive to continue the good practice of the Landfill Communities Fund by

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rspb.org.uk



Mae'r RSPB yn aelod o BirdLife International, partneriaeth o gyrrff cadwraeth sy'n gweithio i sicrhau cartref i fyd natur o amgylch y byd.
The RSPB is a member of BirdLife International, a partnership of conservation organisations working to give nature a home around the world.

allowing landfill operators to pay a percentage of their Landfill Tax into an LCF or similar, in order to maximise the environmental benefits of this form of hypothecated taxation.

Yours sincerely,



Katie-jo Luxton
Director, RSPB Cymru

A copy of this letter has also been sent to Minister for Natural Resources, Carl Sargeant and submitted to the consultation inbox.

Examples of biodiversity projects benefiting from the landfill tax

Landfill tax funded RSPB projects have helped support action towards favourable condition of features of designated land.

For example, SITA Trust has supported the RSPB to deliver for the SSSIs/SAC on the Mawddach estuary through the removal of invasive non-native species (INNS) on designated land and also in a buffer zone to protect from further invasion. The project also included fencing work to allow recommended grazing management of the designated habitat, both fencing and INNS work were delivered through local contractors.

WREN has supported the RSPB to deliver wet reedbed and pond creation at Malltraeth marshes (part of Malltraeth Marsh SSSI) on Anglesey. The purchase of soft trak equipment enabled the maintenance of those new wet areas, as well as allowing ongoing work maintaining SSSI features, ensuring sustainability of the site and thus making it a very worthy investment

As well as meeting environment targets, the works delivered through the Landfill Communities Funds usually target areas with public access, thus benefitting local communities by making improvements to their local green space and often utilise local contractors, keeping the funding within the local economy.

Ref/Cyf 22:

National Association of Estate Agents

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes.

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

They represent the actions necessary to achieve the objectives.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

The proposals appear to be adequate.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

The establishment of a charter would enable clarity of thought.

Regular reviews of the timescales should be put in place to ensure it remains fit for purpose.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).

At all times, any actions or proposals on collecting Stamp Duty Land Tax or other property levies should be examined in the light of the housing market and affordability.

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

This should be HMRC.

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

At the current time they appear to be appropriate.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Yes we do but as always practicality and clarity must prevail. They should have tax powers that mirror those in the rest of the UK.

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

N/A

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Sufficient time should be taken to signpost the implications of non-compliance.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Yes, we do.

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?

No, as long as there is consistency.

Question 13: What are your views on the proposed approach to criminal enforcement and to public safeguards?

They are fine, as long as they are carried out in a considered and measured manner.

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes, we agree.

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

The key issue around establishing a tax disclosure regime is transparency, which is the biggest benefit to such an initiative.

However, such disclosures must be considered as it can pose a risk to competition if not carefully thought out.

Question 16: Are there any options, other than a tax disclosure regime, that might help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Not that we are aware.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Yes, to reflect current national practice.

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

It is a wider avoidance provision.

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

An independent panel ensures transparency. However an independent panel, by virtue of its independency, may not give constituency.

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

No it should not, it is sufficient as it stands.

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Yes we do.

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Yes, very much so. It is in line with common practice.

Question 23: Which Alternative Dispute Resolution mechanisms are most likely to assist in resolving disputes and why?

There are many mechanisms currently available; it would require further investigations to ascertain which is the most applicable.

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Yes, as long as it is only an interim arrangement.

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

We agree with the adoption of the “pay-first” principle, and we do not believe that there are any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed.

Question 26: Do have any related issues which we have not specifically addressed or other comments that you would like to make?

No, not currently.



Collection and management of devolved taxes in Wales

ICAEW welcomes the opportunity to comment on the consultation paper [*Collection and management of devolved taxes In Wales*](#) published by the Welsh Government on 23 September 2014.

This response of 12 December 2014 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.

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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.

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For more information, please contact ICAEW Tax Faculty: taxfac@icaew.com

icaew.com

MAJOR POINTS

Introduction

1. We welcome the opportunity to comment on the proposals in the Welsh Government's consultation document of 23 September 2014.
2. In principle we support the overall approach adopted by the Welsh Government in the paper.
3. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

General comments

Appropriate powers for Wales

4. The devolution of tax raising powers to Wales follows on from the earlier Holtham and later Silk Commission reports. It is important that these powers work well for Wales but in the context of a UK environment.
5. ICAEW welcomes the opportunity to support the Welsh Government in establishing an appropriate tax system for Wales and a professional and effective Welsh Revenue Authority (WRA).
6. The initial taxes to be devolved are stamp duty land tax (SDLT) and landfill tax. As a general principle, we believe that Welsh taxes should where possible be broadly consistent with the rest of the UK rules unless there are specific circumstances that require a different approach. Where a different approach is adopted, consideration needs to be given not just to the behavioural effect of any change but also how it might impact throughout the wider UK.
7. The Autumn Statement on 3 December 2014 has illustrated the difficulty in planning for devolved taxes when they are potentially subject to wide ranging changes at Westminster. While we had advocated the UK Government to change the SDLT slab system, the fact that the Chancellor has now done so is likely to force the Welsh Government to adopt a similar approach to its proposed tax on transactions involving land.
8. However, the changes in the Autumn Statement are only in relation to residential property: commercial property will remain on a slab system and we understand that there is no immediate intention to change it. In principle, therefore, the Chancellor's decision on residential property has resulted in adding further complexity and inconsistency to SDLT, and the Welsh Government might now wish to consider whether it should continue with a slab system for commercial property or adopt a progressive system for all property transactions in Wales.

Who should operate the devolved taxes?

9. A key question to be addressed at an early stage is who should actually operate taxes in Wales?
10. Currently the national tax authority, HM Revenue & Customs (HMRC), operates and administers the taxes that are to be devolved. The devolved tax transactions are usually administered and managed by solicitors (representing property purchasers) and landfill operators. In addition, there is a well-established business rates tax collection function spread amongst the local authorities. There is therefore potential to utilise the combined skills of all of these to build a viable administration system for both a property based transaction tax and a landfill tax.
11. As to which approach the Welsh Government wishes to adopt, much will depend upon how radical the Welsh Government wishes to be on tax. As a general principle, the more that any Welsh tax system diverges from the equivalent UK system, the more likely this would be operationally difficult for HMRC to administer and the more likely it would be that the Welsh

Government might wish to entrust its operation to another party that could provide a better service to the people of Wales.

12. It will be essential to balance the relative cost of collection with the actual tax take. It will need to be as cost effective as practical and we think this will be difficult to achieve particularly given that tax revenues are likely (as they now appear to be with both SDLT and landfill tax) to go down.
13. Systems need to be designed to be as flexible as possible with the capability to be scaled up as needed and integrated with any future devolved taxes. The Welsh Government might also wish to adopt a short term and a longer term approach, for example it might initially contract with HMRC to provide the necessary tax administration but at a later date the operation might be taken over by the WRA.
14. In our response to the detailed questions, we have supported the establishment of a number of independent bodies, for example a Charter Committee. However, we recognise that the establishment of these bodies needs to be considered in the light of available resources and the need for Welsh tax collection to be cost efficient. It may therefore be necessary to combine some of their roles and activities.

The principles of good taxation

15. We support the principles of tax policy set out by the Minister for Finance and Government Business, Jane Hutt AM, in her foreword to the consultation document. These principles are consistent with the ICAEW's ten principles that should underlie a good tax system. These are set out in the attached Appendix.
16. ICAEW's tax principles were also extensively referenced by the Treasury Committee in its report *Principles of Tax Policy* published on 15 March 2011 (HC 753, published on 15 March 2011). The Committee identified six principles of tax policy, that it should:
 - **be fair.**
 - **support growth and encourage competition.**
 - **provide certainty.** 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
 - **legal clarity:** Tax legislation should be in statute and subject to proper democratic scrutiny by Parliament
 - **Simplicity:** The tax rules should be simple, understandable and clear in their objectives
 - **Targeting:** It should be clear to taxpayers whether or not they are liable
 - **provide stability** - changes to the underlying rules should be kept to a minimum and policy shocks should both be avoided.
 - tax policy should be **practicable** and a person's tax liability should be easy to calculate and straightforward and cheap to collect.
 - The tax system as a whole must be **coherent**.
17. We believe these are a sound and principled basis upon which to design tax policy.
18. The UK tax system is far too complicated and this increases costs for taxpayers and the revenue authority. Given that resources will inevitably be limited there is a good case for Wales to keep its taxes simple and resist the temptation to make them unnecessarily complicated.

The need for balanced and proportionate powers

19. ICAEW supports reasonable and proportionate powers to ensure that taxes are collected efficiently and effectively. Any powers granted to Wales powers need to be balanced against the rights of taxpayers. There is now considerable concern that across the UK the balance may have shifted too far in favour of the revenue authority. This is, therefore, an opportunity for

the Welsh Government to ensure its powers are appropriate and proportionate. There is a case for only taking those powers that are currently needed to ensure the introduction of the two devolved taxes. Further powers could be added later as further taxes are devolved or further powers are found to be needed.

Taxpayers' Charter

20. In principle we support the Welsh Government's proposal to have a Taxpayers' Charter that's sets out the rights and responsibilities of both taxpayers and the WRA. However, we are not convinced that the current HMRC *Your charter* is necessarily the right model, not least because it does not really hold HMRC sufficiently to account.
21. We believe that a Charter should 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 reasonable set of service standards and behaviours that taxpayers can use and rely on in their dealings with the WRA.
22. We therefore suggest that, in addition to HMRC's model, the Welsh Government should examine the approaches and charters used in other jurisdictions. We have close contacts with professional bodies in other countries that have Charters and we would be happy to assist the Welsh Government explore further the approaches adopted elsewhere.
23. We have set out some more detailed comments on a Charter in our answers to Q4, see paragraphs 34 to 39 below.

Service standards

24. In order for the WRA to succeed, it needs to oversee the introduction of effective and efficient devolved taxes. One of the major problems our members have experienced since the merger of the Inland Revenue and HM Customs & Excise has been poor service standards. Since the merger HMRC's budgets have been cut and staff numbers reduced. HMRC has changed its business model from one based on a local presence to a remote organisation that relies upon call centres and post to interact with taxpayers.
25. While the development of digital services may solve some of these problems in the future, our members experience considerable frustration: it is often difficult to contact HMRC, too many processing mistakes are made and it is then difficult to get them put right.
26. 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.
27. 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.

RESPONSES TO CONSULTATION QUESTIONS

28. We set out below our detailed responses to the questions set out in the consultation document.

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority/Awdurdod Cyllid Cymru

- Q1 Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

29. Ultimately the Welsh Government needs to decide what approach would work best for Wales, but we believe it is vital that the WRA is properly accountable and responsible to Government Ministers and the Assembly. The decision to make the WRA a non-ministerial department appears to be based on the fact that HMRC is a non-Ministerial department. But is that the best approach and will it provide the level of accountability and responsibility needed?
30. We wonder whether Wales might be better served by making the WRA a ministerial department, thereby directly accountable and responsible to a Minister who in turn is directly accountable and responsible to the Assembly. Appropriate safeguards would be needed to ensure taxpayer confidentiality and for the Minister not to be able to access or influence individual taxpayers' affairs.
31. If the WRA is made a non-Ministerial department then we think its accountability and responsibility to the Assembly needs to be set out clearly. Further, the Assembly needs to ensure that it can hold the WRA properly to account.

Q2 What are your views on the proposed core set of duties for the Welsh Revenue Authority?

32. The set of core duties set out in paragraph 2.13 look reasonable. It will be important to ensure that its duties are clearly specified and that board members are assigned direct responsibilities that ensure that all aspects of the duties of the WRA are covered.

Q3 Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

33. The Board should have sufficient skills to achieve appropriate scrutiny including tax policymaking and the efficient operation of a tax system.
34. There should also be appropriate scrutiny by a number of non-executive directors.
35. We believe that WRA should also adopt the approach of HMRC and ensure that it has a board member responsible for tax assurance.

Q4 What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

36. In principle we support the introduction of a Taxpayers' Charter that sets out the rights and responsibilities of both taxpayers and the WRA.
37. The Welsh Government should examine the approaches adopted in other jurisdictions and not just by the *Your Charter* published by HMRC. In this regard, we understand that in 2015 the Scottish Government will be consulting on a proposed Charter, so the results from this consultation should be taken into account in framing a Charter for Wales.
38. HMRC is bound not only by *Your Charter* but also the Civil Service code of conduct (which contains principles similar to the five fundamental principles which bind our members and, via the pan-professional guidance *Professional Conduct in Relation to Taxation*, members of other participating professional bodies involved in tax), and HMRC's document *Purpose, Vision and Way*. These should also be taken into account when drafting a Charter.
39. We believe a Charter needs to be more than just a statement of aspirations. The Welsh Government would need to ensure that it is a practical document and can directly support taxpayers in their dealings with the WRA.

40. In order to promote the confidence of Welsh taxpayers in the WRA, the adoption of a Charter should be reinforced with a publicity campaign that also sets out how taxpayers can obtain redress when things go wrong.

41. The Charter needs to be kept under regular review by an independent body and the body should report on compliance with the code at least annually. Currently, there is a review underway of HMRC's *Your Charter* by the advisory committee, which is chaired by ICAEW staff member Ian Young. We recommend that the Welsh Government take account of its recommendations when drawing up its approach to a Charter.

Q5 What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important)

42. Tax policies need to be designed so that taxes can be effectively and efficiently managed by the WRA.

43. As for the specific points identified in para 2.37:

i) a single organisation rather than a number of organisations engaged in collection;

44. In principle this looks reasonable although consideration needs to be given to how much face to face contact might be needed, for example to vulnerable taxpayers.

ii) a consistent national approach to devolved tax collection and management rather than a variable local approach;

45. We support a consistent national approach across Wales.

iii) a simple standard approach to taxes rather than one with variables (tax reliefs) determined by different circumstances

46. In principle tax systems should be designed to be broadly based with low (and perhaps progressive) rates and a minimum of reliefs. A simple system should help to allow citizens to understand the taxes they pay and ensure the scope for different interpretations is limited, thereby reducing the potential for avoidance or abuse. If a tax is to be progressive then the increased rates should apply in a transparent way to any amount above the particular threshold, (i.e. not the type of 'slab system' that we saw in stamp duty land tax until the 3 December 2014 announcements).

iv) adopting the existing UK tax structure rather than developing a Welsh response to priorities;

47. It is important for the integrity of the UK and public support for the tax system that distortions between the various tax systems are kept to a minimum, not least because distortions may lead to unexpected behavioural consequences that may be damaging to Wales and the rest of the UK. That said, there is a need to do the right thing for Wales and we question whether it is right that Wales should adopt a tax code that is considered to be one of the longest and most complicated in the world.

v) the type of system adopted for tax payment and processing – on-line processing and payment can, after an initial investment, generally be cheaper to administer than a paper-based and/or a cash-based system.

48. In principle we agree but experience of digital services in the UK suggests that the WRA should be careful in assuming that a digital future is a panacea. It will be essential to ensure that digital services are developed in consultation with users. The systems should be designed to be so easy to use that they become the natural choice for both taxpayers and their agents.

Q6 In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

49. As noted in our general comments, the answer to this question will depend upon how far the Welsh tax system will deviate from the UK tax system.
50. The further any system departs from the UK system, the greater will be the incentive to use an organisation other than HMRC to administer and operate any tax.
51. We would suggest that the Government invites tenders for running any tax system, which should provide a benchmark for the likely operational costs. It is also important that service standards are an integral part of any selection process. The Welsh Government might decide to adopt a different approach to the operation of landfill tax to that adopted for the property transaction tax. The Government might also wish to look to a different approach over the longer term, for example contracting initially with HMRC but deciding to adopt a different provider at some stage in the future.

Chapter 3: Powers and duties

Q7 Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

52. The obligations set out in para 3.7 appear reasonable.

Q8 Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

53. Broadly the proposed approach appears reasonable. However, the Welsh Government will need to consider whether it wishes to continue with the current approach to legal professional privilege (LPP). LPP is the common law principle that documents created between a legally qualified adviser such as a solicitor and his or her client do not need to be disclosed to a third party such as HMRC unless specifically overridden by law or the taxpayer has given his permission.
54. In respect of 3.17 ii), we assume that the WRA would look to apply any measures for the direct recovery of debts in a way that is consistent with the revised approach outlined by the UK Government following the completion of the recent consultation exercise.

Q9 What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

55. WRA will need to have the power to delegate functions, not least given as it is likely to need to enter into a contract with HMRC to provide tax administration services even if only on an interim basis. Delegation needs to be used with considerable care. As the ultimate responsibility will rest with the WRA, it is essential that any delegatee operates within the legal powers the WRA, in particular confidentiality and the potentially criminal sanctions against HMRC staff for the unauthorised disclosure of data. HMRC is used to operating under such rules but other providers are unlikely to be under such obligations.

56. In addition, the WRA will need to establish its reputation as an effective and efficient organisation. If the WRA decides to delegate the tax administration powers, it will need to ensure that it has in place an appropriate service level agreement. The Assembly needs to have procedures in place so that it holds the WRA to account.

Chapter 4: Encouraging tax compliance

Q10 What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

57. We support the approach set out in paragraphs 4.2 to 4.7.
58. WRA should promote and encourage tax compliance by setting an example as an efficient and effective organisation that operates fairly and proportionately. It will need to balance the need to help and support taxpayers against the need to ensure that taxes are paid in a timely manner and tax avoidance and evasion are minimised.

Q11 Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

59. WRA should be provided with the power to levy penalties and we support the proposal for there to be further consultation on them in due course.
60. The imposition of penalties is a sensitive and potentially controversial area. WRA needs to adopt a balanced approach that is reasonable and proportionate. As mentioned earlier, in respect of the current UK position we are concerned that the balance is being shifted too far favour of HMRC.
61. WRA also needs to recognise that most taxpayers will be trying to get it right but sometimes they will make mistakes. As a general approach, we would favour WRA looking to support taxpayers and help them get it right rather than adopt a penalty based culture. We are concerned that the current approach might sometimes appear to taxpayers as 'shoot first and ask questions later'.

Q12 Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

62. Penalties are needed to deter non-compliance but there is a danger that they may discourage those who want to put their affairs in order from coming forward. Recent experience from the application of automatic penalties (for example late PAYE returns) suggests that they can mount up quickly and damage trust in the system. There is also a danger that a draconian penalty regime is used inappropriately, for example against vulnerable taxpayers who actually need help.
63. Again, a balance needs to be struck but the majority of taxpayers will wish to be compliant and the system should aim to support compliance among the majority. WRA should consider the use of incentives and support for that majority of taxpayers, with penalties usually reserved for the minority that, for whatever reason, have a poor compliance record.
64. A good penalty system should take account of a taxpayer's previous compliance records and recognise that most taxpayers will try and get it right but they will not do so all the time. Consideration could be given to mitigating penalties for taxpayers who are usually compliant but who might occasionally miss filing and payment deadlines. For example, taxpayers with a good compliance record might first receive a written warning about missing a deadline rather than an automatic penalty notice. Another approach would be to have a reduced penalty for a

first time breach. This might help to build support and confidence among the majority of compliant taxpayers that WRA is on their side but that it will come down harder on those who do not try and comply.

Q13 What views do you have on the proposed approach to criminal enforcement and to public safeguards?

65. The proposed approach set out in the document appears reasonable. Given that criminal enforcement is through the criminal justice system and, as far as we are aware, this is not to be devolved we think it is right that there should be a consistent approach throughout the UK. Tax fraud is wrong and there should be a clear and consistent approach adopted throughout the UK that it will not be tolerated. Taxpayers should not be able to exploit any differences in approach to tax fraud in different parts of the UK.

Chapter 5: Addressing tax avoidance

Q14 Should Wales establish a specific tax disclosure regime for devolved taxes?

66. In principle we think it should. Our understanding is that the DOTAS rules have been reasonably successful in bringing schemes to the attention of HMRC and we think it is reasonable that WRA should have a DOTAS rule in its anti-avoidance toolkit. We note in passing that Ireland, which has had a GAAR since the late 1980s but not a DOTAS rule, has in recent years also decided to introduce a DOTAS rule.

67. That said, our understanding is that in recent years the number of SDLT avoidance schemes that have been disclosed, and SDLT avoidance generally, have been much reduced. This reduction has come about partly as a result of the DOTAS rules and specific anti avoidance legislation introduced as a result, but partly no doubt due to other factors such as HMRC and the courts adopting a more pugnacious approach to countering avoidance. We therefore question whether in practice such a rule would make much difference.

Q15 What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

68. The key issues include:

- the need to build on existing practice and measures that have proved to work;
- the need to ensure that any measure is properly targeted at identifying tax avoidance arrangements;
- the need to have a clear action plan for addressing all arrangements that are disclosed;
- the need for action to be taken in a timely manner;
- the need to ensure that such activity is properly resourced in accordance with the perceived risk levels;
- ensuring that compliance burdens and costs on ordinary taxpayers are minimised;
- the need to ensure that ordinary planning arrangements are not affected;
- the extent to which LPP may be claimed (see our answer to Q8); and
- how any arrangements apply to those who are outside of the jurisdiction.

69. The benefits of having a disclosure scheme are to provide early intelligence about such schemes. But the onus will then be on WRA to do something about the information it has received through the disclosure. The risk is that such information obtained is not used quickly and effectively in any follow up action.

Q16 Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

70. The DOTAS system has now been in place for ten years and, while it has changed in that time, the underlying principles are now established and it must make sense to build on that.

71. The Finance Act 2014 contains rules to try and counter the activities of ‘high risk promoters’ of tax avoidance schemes – these might be a further useful tool against those who continue to promote aggressive tax avoidance schemes.

Q17 Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

72. Given that SDLT has been the focus for avoidance in the past, we can understand the desire to adopt some sort of GAAR provision. However, we understand that recent SDLT avoidance measures, for example in relation to sub-sale relief, appear to have succeeded in blocking most SDLT avoidance. Therefore, at this stage in the devolution process, not adopting a GAAR might be a low risk decision. If it was decided not to adopt a GAAR (of whatever form), the position should be kept under regular review and certainly reconsidered if further taxes were devolved.

Q18 Would you see a Welsh GAAR being a wider, ‘avoidance’ provision, or a narrower, ‘abuse’ provision?

73. This is a difficult question to answer given the UK has adopted an ‘abuse’ provision and Scotland has adopted a wider ‘avoidance’ provision and neither of them has yet been used in practice to counter tax avoidance schemes. We supported the introduction of the UK GAAR but have not commented specifically on the advantages and disadvantages of the proposed Scottish GAAR.

74. The UK Government has introduced a range of measures to combat tax avoidance and continues to do so, for example with the new diverted profits tax. There is some evidence that these measures are stemming the tide of aggressive tax avoidance schemes but the Government must remain vigilant.

75. Tax avoidance is now a high risk area for both taxpayers and their advisers. The rules in this area are highly complicated and specialist advice will usually be needed as there are now a considerable number of pitfalls. This is because, in addition to any GAAR and disclosure rules:

- the UK has numerous specific anti avoidance measures built into existing legislation (some of these also have a clearance mechanisms for bona fide transactions);
- there is a growing number of targeted anti avoidance rules;
- HMRC is investing resources into identifying and pursuing tax avoidance through litigation
- as a general rule the courts have little sympathy for tax avoidance schemes and HMRC currently wins about 85% of decided cases;
- schemes with a high degree of artificiality are often struck down in the courts because they fail on basic tax principles (for example, was there actually a trade or was the expenditure actually incurred?);
- even where the basic principles are met, there is a considerable body of jurisprudence on the principles set out in *Ramsay* and *Furness v Dawson* and amplified in later court decisions which mean that schemes that have artificial elements or lack economic substance will usually (but not necessarily always) fail;
- the introduction of the Finance Act 2014 measures on accelerated payments, follower notices and high risk promoters have fundamentally changed the risks and rewards of entering into tax avoidance schemes.

76. Given all of these other factors, tax avoidance has become extremely high risk and we question whether in most cases the differences in approach between the UK and Scotland will lead to different results.

77. On balance we believe it would be better to have one consistent UK wide approach rather than a patch work of different rules, so suggest that Wales should adopt the wider abuse rule and keep it under review. If it proves to be a problem it could always adopt a narrower avoidance rule at a later date.

Q19 **How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?**

78. In all our member feedback, the one thing businesses want above all is certainty. Given this overriding need, we supported the recommendation of Graham Aaronson (in his report on whether a GAAR should be introduced) that there should be an independent panel. The UK GAAR interim panel performed an important service to taxpayers by publishing comprehensive guidance on how the GAAR would work. The guidance included numerous examples of what the GAAR would and would not catch and its inclusion was well received by business and their advisers. However, other than this no cases have been brought before the independent panel.

79. The panel provides a level of independent oversight but, arguably, this is also the function of the independent Tribunal. One disadvantage is that the panel could be seen as merely adding another layer of costs and potentially further delays to the resolution of cases that are likely to end up in the Tribunal in any event. It is possible that over time this aspect of the panel's work could be subsumed more broadly within the appeals system, but we believe that the panel should be retained to oversee the operation of the GAAR and to publish updated guidance.

80. If the WRA adopted this approach and did not wish to establish its own panel, we believe it would be reasonable to ask that a suitably qualified person with experience of the devolved taxes in Wales be appointed to the panel or was co-opted to it for cases involving Welsh taxes.

Q20 **Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?**

81. Given the reduction in SDLT avoidance cases we are not convinced that a GAAR will now add much more clarity and it may merely increase uncertainty and compliance costs. That said, we would expect the matter to be considered as part of any future consultation on this tax.

Resolving tax disputes

Q21 **Do you agree with our approach to avoiding tax disputes and achieving early resolution?**

82. Yes. The key principles should be to settle disputes fairly, quickly and efficiently at the minimum possible cost to the parties.

Q22 **Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?**

83. In principle yes, but as it may not always be an appropriate approach we think it should be by agreement.

Q23 Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

84. Of the three methods listed in paragraph 6.7, a formal arbitration process might not sit comfortably with an extensive pre-existing tax code. The mediation process would therefore appear to be a better approach. The early neutral evaluation method might also have a valuable role to play. Given the comments we made above about the GAAR, if there is to be a GAAR panel this method might be a suitable approach for the panel to adopt.

Q24 Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

85. It must make sense to use the existing tribunal system, although we are concerned about lengthy delays now occurring before cases reach a tribunal hearing. We also remain unconvinced that the current system is an improvement over the previous appeal system that used lay General Commissioners to handle lower level cases with the more difficult cases reserved for legally trained Special Commissioners.

86. Consideration should be given to ensuring that tribunals are accessible to taxpayers and as far as possible proceedings are kept informal. Taxpayers should have a right to be represented by a person of their choice.

Q25 What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

87. While a pay first principle is always likely to be attractive from a revenue authority perspective, again we believe there needs to be a balance. It also needs to be remembered that taxes are levied and, unless and until the tax is due, the money should belong to the taxpayer. We accept that there may be cases where this presumption may be rebutted, for example in tax avoidance schemes or where the taxpayer pursues a case that has little technical merit, but the answer is for WRA to take a case to the tribunal quickly and potentially have costs awarded against the taxpayer if the judge held the taxpayer’s case was unreasonable.

88. In cases where there is a genuine dispute, we think it is wrong to force the taxpayer to have to pay the full amount. This could be used to apply undue pressure on the taxpayer and also provided little incentive for the revenue authority to then pursue the case through the tribunal. An alternative, more reasonable proposal might be to require a part payment to secure an appeal. The amount must not be prohibitive to the taxpayer, say a percentage of the tax with a modest upper maximum. A further refinement would be to pay the money into an escrow account.

Q26 Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

89. Not at this stage, but as noted above we would be delighted to help the Welsh Government develop its proposals. We would be happy to meet and discuss our submission and suggestions in more detail, should the Welsh Government wish to do so.

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)



cutting through complexity

The collection and management of devolved taxes in Wales

The response of KPMG LLP in Wales to the Welsh Government's consultation paper (WG22945)



Glossary

Assembly

The National Assembly for Wales

Consultation Document

The consultation document on the collection and management of devolved taxes in Wales published by the Welsh Government on 23 September 2014, available at:
<http://wales.gov.uk/docs/caecd/consultation/140923-white-paper-en-v1.pdf>

Devolved Taxes

Taxes imposed by the National Assembly for Wales pursuant to its proposed powers under the Wales Bill

EU

European Union

GAAR

General Anti-Avoidance Rule or General Anti-Abuse Rule

HMRC

HM Revenue & Customs

LfT

Landfill Tax, as imposed by the Finance Act 1996, Part III

SEPA

Scottish Environment Protection Agency

SDLT

Stamp Duty Land Tax

TTiiL

Tax on Transactions involving interests in Land

Wales Bill

The Wales HL Bill (2014-15) 46

WRA

Welsh Revenue Authority, to be known in Welsh as *Awdurdod Cyllid Cymru*

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1 Introduction

1.1 KPMG LLP in Wales

KPMG is a global network of professional firms providing audit, tax, and advisory services. We operate in 155 countries and have 155,000 professionals working in member firms around the world.

KPMG LLP, a UK limited liability partnership, operates from 22 offices across the UK with approximately 11,500 partners and staff.

Our Welsh office is located in Cardiff.

1.2 Working with the Welsh Government and the WRA

We welcome the opportunity to participate in the Welsh Government's consultation on the proposed framework for managing Devolved Taxes.

We recognise that creating a new tax system involves a huge number of considerations and that, accordingly, the scope of the Consultation Document is broad (i.e. the Consultation Document poses single questions on issues that have been the subject of separate detailed consultations at a UK level (for example in relation to a GAAR)).

In many instances our responses are of a correspondingly high level, though we have made more detailed comments where it has appeared to us appropriate to do so.

We look forward to participating in further consultations on the Welsh replacements for SDLT and LfT in due course.

In the meantime, we would be very happy to discuss the points set out in our response with you in a meeting or by 'phone if you would find this helpful.

At the risk of stating the obvious, it is in all our interests, both in Wales and in the rest of the UK, for Devolved Taxation to work and to work well.

KPMG has participated in the Scottish Government's consultations on the establishment and operation of the new devolved tax system in Scotland and we are keen to apply that experience in support of the Welsh Government and the WRA.

We recognise the responsibility of the tax profession in Wales and in the rest of the UK to contribute to the discussion on Devolved Taxes and look forward to working with you on this.

2 The WRA

2.1 Do you agree with the proposal to establish the WRA as a Non-Ministerial Department, which is accountable to the Assembly?

We have no preference for an alternative legal structure and accountability model to that proposed.

2.2 What are your views on the proposed core set of duties for the WRA?

We consider the proposed principal function of the WRA: 'ensuring that Welsh taxes are collected efficiently and effectively with receipts being paid to the Welsh Consolidated Fund to fund public services in Wales',¹ to be appropriate.

In addition to the proposed principal function, the specific duties proposed for the WRA are to:²

- collect all net tax revenue due, while exercising necessary caution in cases of exceptional hardship;
- provide information, guidance and support to assist taxpayers to be compliant;
- consult/engage widely with stakeholders in advance of proposed changes to taxes;
- seek to avoid disputes, but where they occur to resolve them quickly through consensus or other means;
- establish arrangements (including with other public bodies) to identify and report any criminal activity;
- provide information and advice to the Welsh Government and/or the Assembly on tax administration and collection matters;
- meet any relevant EU and international obligations;
- have regard to Ministerial guidance; and,
- establish and maintain high professional standards.

We consider that these duties are appropriate.

Specifically, we agree that it is appropriate for the WRA to have the power, subject to judicial review, to exercise discretion in its management of Devolved Taxes.

We suggest that, for the avoidance of doubt, the duty to exercise discretion in relation to cases of exceptional hardship be explicitly expressed to include hardship for businesses as well as individuals.

¹ Consultation Document, para 2.12

² Consultation Document, para 2.13

We envisage here cases where the collection of Devolved Taxes due could, potentially, compromise the ability of a business to continue to trade as a going concern with the associated threat to jobs.

In such circumstances, it would be preferable in appropriate cases for the WRA to have the flexibility to agree an appropriate payment schedule rather than enforce immediate collection through, say, a winding up order.

We would also suggest the inclusion of an additional duty to liaise with other tax authorities, in particular HMRC and Revenue Scotland, on behalf of the Welsh Government.

2.3 Do you have any further views regarding the proposed leadership and governance arrangements for establishing the WRA?

We have no comments on the proposed leadership and governance arrangements for establishing the WRA.

2.4 What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the WRA and taxpayers?

We understand that a 'Taxpayers' Charter' as envisaged in the Consultation Document would be a general statement of the principles under which WRA will operate and, specifically, that it would 'set out the rights and expectations of both the tax authority and the taxpayer in the payment of taxes'.³

On this basis, we would see merit in the creation of a 'Taxpayers' Charter' to provide safeguards for taxpayers in dealing with the WRA, particularly those who are not represented by professional agents or advisers.

Additionally, we consider that a 'Taxpayers' Charter' could provide guidance to an independent complaints adjudicator or panel.

However, we consider that it would be important that taxpayers were made clear as to the purpose and effect of the 'Taxpayers' Charter' in order to avoid misunderstandings as to the protections offered by it, and its interaction with taxpayers' legal obligations and responsibilities.

We recommend that any 'Taxpayers' Charter' be subject to a specific consultation.

³ Consultation Document, para 2.25.

2.5 What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why?

2.5.1 The number of organisations engaged in collecting Devolved Taxes

We are strongly supportive of the delegation, where possible, of operational tax collecting responsibilities to public bodies with which taxpayers would in any case interact in relation to the taxable event or activity.

In our view, it is important to the success of the Welsh Devolved Tax system that it avoids imposing an obligation on taxpayers to interact with a further public body when discharging their Devolved Tax responsibilities and, where possible, reduces the number of administrative interactions between taxpayers and the state.

We appreciate that this may result in the potential loss of certain economies of scale (though effective use of information technology should minimise this), but consider that any additional costs would be most appropriately borne by the state in order to avoid imposing disproportionate compliance costs on individual taxpayers and businesses.

We are therefore supportive of Revenue Scotland's 'customer centric' approach to the collection of Scottish devolved taxes and, where possible, would encourage its replication by the WRA.

We recognise, however, that the devolved tax authorities' responsibilities may increase in the future with any further devolution of powers over taxation and that this model may not necessarily accommodate all further taxes which might be devolved.

2.5.2 A consistent national approach to collection and management

On the basis that the WRA would merely delegate, rather than surrender, its tax collecting powers to other appropriate public bodies and therefore retain overall responsibility and oversight, this should ensure a consistent national approach. This does not therefore appear to be a significant risk.

2.5.3 A simple standard approach to Devolved Taxes

As different Devolved Taxes may have very different requirements in terms of their practical operation, we note that whilst a degree of consistency across Devolved Taxes is desirable, it may be necessary to adapt certain collection powers to the specific requirements of a particular Devolved Tax.

In order to avoid the structure of the WRA's tax collection powers becoming overly complex and rigid in its operation, we suggest that the framework for the design of tax collection powers be considered both in relation to the design of:

- each individual measure; and
- the system as a whole (in particular the way that particular powers or restrictions are likely to act and interact in practice).

2.5.4 Adopting the existing UK tax structure cf. developing a Welsh response

Whilst replicating aspects of the existing UK tax structure might present some immediate advantages in terms of taxpayer familiarity, we would caution against the uncritical adoption of existing UK structures.

In developing a new Devolved Tax system the Welsh Government has an opportunity to implement arrangements that meet the specific requirements of Wales, which might not necessarily be the same as those of the UK as a whole.

The UK system is generally regarded as being overly complex and any steps the Welsh Government could take to optimise the Devolved Tax system for Wales (e.g. increasing taxpayer certainty and reducing compliance costs) could potentially unlock benefits for the Welsh economy and present a source of competitive advantage for Wales in attracting inward investment.

2.5.5 Systems for tax payment and processing

We are strongly supportive of the effective use of information technology.

We envisage that for the majority of taxpayers and agents on-line payment would be the most efficient means of settling their Devolved Tax obligations (at least in relation to a Welsh Landfill tax and Welsh TTiiL).

However, we expect that a minority of taxpayers or agents might require or prefer to interact with the WRA (or another public body to which it has delegated operational responsibility for collection) using a paper and/or a cash based system.

The WRA might consider, initially at least, offering incentives to taxpayers to utilise electronic systems (e.g. extended filing deadlines) rather than paper and/or cash based systems.

2.6 In light of your response to the above question, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

2.6.1 A Welsh Landfill Tax

As Natural Resources Wales regulates disposals to landfill in Wales, it would appear possible for the WRA to delegate responsibility for the direct collection of a Welsh replacement to LfT to that body (subject, of course, to the agreement of Natural Resources Wales). This would mirror the arrangements between Revenue Scotland and SEPA in relation to Scottish Landfill Tax in being a 'customer centric' approach.

However, it might be more appropriate to exploit HMRC's existing expertise by delegating responsibility to that body, particularly if it would also be more cost effective for HMRC to manage the collection of a Welsh TTiiL on a day to day basis (see 2.6.2).

2.6.2 A Welsh tax on TTiiL

Unlike Scotland, Wales shares a single land and property registration system with England.

As there is no existing Welsh land registration body with which parties entering into a land transaction in Wales would be required to interact, it does not appear to be possible to replicate Revenue Scotland's approach to delegating responsibility for the collection of Land and Buildings Transaction Tax to Registers of Scotland (the Scottish land registry).

On the assumption that the Land Registry would not be in a position to administer the collection of a Welsh TTiiL (though we recommend that this be considered), it appears less likely to be cost effective for the WRA to develop in-house tax collection capacity, at least initially, and therefore that HMRC would be well placed to administer collection of a Welsh TTiiL on behalf of the WRA.

3 Powers and duties

3.1 **Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?**

We do not consider that any additional obligations should be imposed on taxpayers beyond those outlined in the consultation document⁴ to:

- notify the WRA (or a delegated body acting as the WRA's agent in relation to a particular Devolved Tax) if they have a liability to pay a Devolved Tax;
- self-assess their tax;
- pay the tax due within the relevant statutory time period for the particular Devolved Tax;
- have tax records that contain sufficient detail to enable an accurate tax return to be made and allow WRA to check its accuracy, where appropriate; and
- retain tax related records in an accessible form and for a specified minimum period of time.

We agree that taxpayers should pay Devolved Taxes that are due within the statutory time period.

However, an obligation to pay an amount of Devolved Tax which is the subject of a disputed assessment prior to that dispute being settled could potentially disadvantage taxpayers in cases of hardship, and lead to increased costs for the WRA enforcing the collection of Devolved Tax which is ultimately found not to be due.

We therefore recommend that a mechanism be put in place whereby a taxpayer could apply for full or partial deferral of payment until the dispute is resolved.

3.2 **Do you agree with our proposed approach to invest powers in the WRA to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?**

3.2.1 Powers to require taxpayer information and documentation

We agree that the WRA should have powers to require information and documentation from, or copies of, taxpayers' tax records.⁵

However, we do not agree that the WRA should have a general right to require information and documentation from third parties.

⁴ Consultation Document, para 3.7.

⁵ Consultation Document, para 3.8.

UK legislation limits the power of HMRC to require information from third parties who are auditors or tax advisers.⁶ This helps to ensure candour between clients and advisers and avoids imposing excessive burdens on advisers.

This is subject to certain exemptions to ensure that factual information can be obtained from tax advisers where there is no other way of obtaining that information.

We consider that it would be reasonable for the WRA's powers to obtain information to be similarly limited by statute.

Additionally, although documents containing tax advice from advisers who are not members of the legal profession are not in general legally privileged, we consider it would be inequitable that a taxpayer who had obtained assistance from a chartered accountant in relation to his position could be required to disclose information to the WRA that another taxpayer, who had obtained identical assistance from a lawyer, could not be compelled to disclose.

On this basis, consideration should be given to extending professional privilege to advice on Devolved Taxes received by taxpayers from suitably qualified advisers regulated by an appropriate professional body (such as, for example, the Chartered Institute of Taxation or the Institute of Chartered Accountants in England & Wales) who are not members of the legal profession.

This would be both for consistency and because, insofar as they set out opinions rather than facts, such documents are unlikely to be relevant in the determination of a Devolved Tax liability.

We note that whilst upholding a limited application of professional privilege in England & Wales, the majority decision in *R (on the application of Prudential plc) v Special Commissioner of Income Tax*⁷ made it clear that this was because the point was considered to be one of policy for the UK Parliament to decide upon,⁸ and that no compelling underlying logic could be discerned that justified the limitation of professional privilege to advice provided by lawyers.⁹

It was also highlighted in that decision¹⁰ that in certain areas professional privilege has been extended by statute to advice on legal matters provided by suitably qualified members of other professions (i.e. patent attorneys, trade mark agents, licensed conveyancers, and registered executory practitioners).

On this basis, an appropriate extension of professional privilege to benefit the taxpayer appears achievable as, whilst we envisage that in most

⁶ See the Finance Act 2008, Schedule 36, paragraphs 24 – 26.

⁷ [2013] UKSC 1, [2013] 2 AC 185.

⁸ [2013] UKSC 1, [2013] 2 AC 185, [52] (Lord Neuberger); [81] (Lord Hope); [92] (Lord Mance); and [113] (Lord Reed).

⁹ [2013] UKSC 1, [2013] 2 AC 185, [39] – [46] (Lord Neuberger); [78] - [79] (Lord Hope);

¹⁰ [2013] UKSC 1, [2013] 2 AC 185, [35] (Lord Neuberger); [112] (Lord Hope).

circumstances taxpayers who have obtained professional advice on Devolved Taxes in support of their position would have no particular reason to withhold that advice from the tax authorities, it remains the case that on occasion negotiations between a taxpayer and WRA may have a legitimately adversarial nature.

3.2.2 Powers to inspect

We suggest that the requirement for a power to inspect premises and take samples of goods or materials¹¹ be reconsidered. We recognise that there may be advantages to inspecting business records on-site (though we do not find the suggestion that this will be convenient to be compelling),¹² but consider that this could be achieved by agreement between the taxpayer and the WRA without imposing an obligation on taxpayers to allow the WRA access to business premises.

3.2.3 Powers to correct taxpayers' tax returns

We agree with the WRA having powers to correct taxpayers' returns which are consistent with existing powers of HMRC.

3.2.4 Powers to investigate, levy penalties, and collect debt

The proposed investigative, penalty, and debt collection powers appear to be appropriate.

3.3 **What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?**

We welcome the proposal that the WRA will utilise existing points of contact between the taxpayer and the administration (e.g. with Natural Resources Wales and HMRC) in order to avoid unnecessarily increasing the administrative burden placed on taxpayers.

We consider that direct contact between taxpayers and the WRA will still be necessary from time to time and do not think it would be appropriate for the WRA to delegate engagement with taxpayers and their agents on technical points (for example clearances) to the other public bodies which have responsibility for the collection of Devolved Taxes.

The proposal that existing bodies with appropriate powers should be able to carry out investigations on behalf of WRA¹³ appears reasonable.

However, it would be necessary to ensure that the relevant officers were properly trained and that appropriate legal safeguards were in place to ensure confidentiality of information.

¹¹ Consultation Document, para, 3.9.

¹² Consultation Document, para 3.9.

¹³ Consultation Document para 3.18.

4 Encouraging tax compliance

4.1 What are your views on other actions that the WRA should take to promote and encourage compliance?

4.1.1 WRA non-statutory business clearance service

We recommend that consideration be given to the WRA providing a facility similar to HMRC's non-statutory business clearance service in order to confirm to taxpayers the WRA's interpretation of the relevant legislation in cases of material uncertainty.

We envisage that the WRA imposing a reasonable charge for considering clearance applications in order to manage the costs borne by all taxpayers in the provision of the facility would be acceptable to users.

4.1.2 WRA guidance

We welcome the commitment to early and comprehensive consultation in connection with future policy and administrative changes to Devolved Taxes.

In particular, we consider that public consultation on the WRA's draft guidance for taxpayers should take place and we would welcome the opportunity to participate in such a consultation in due course.

In order to support the principle of certainty in Devolved Taxation we recommend that taxpayers be given a formal right to rely on WRA guidance or that the WRA be precluded from taking a position with respect to a taxpayer's specific circumstances that is contrary to its published guidance.

Also, it may be appropriate to consider financial incentives for desirable behaviours such as early filing, or filing electronically, where this reduces the WRA's administrative costs.

4.1.3 Specific issues for further Devolved Taxes

We have no additional suggestions at this stage as to how compliance could be promoted, and note that this may need to be considered further as and when additional Devolved Taxes may be introduced to take account of the nature and operation of those taxes.

4.2 Do you agree that the WRA should be provided with the powers to levy penalties and for the conditions for when and how these are used being set out in later consultation and legislation?

We agree that the WRA should be provided with powers to impose penalties and welcome the Welsh Government's proposal that the WRA will consult on the application of penalties.¹⁴

¹⁴ Consultation Document, para 4.16.

4.3 Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

The UK penalty system has, arguably, become too complex to be clearly understood by taxpayers generally.

In line with the Welsh Government's governing principles on Devolved Taxation as to simplicity, certainty for the taxpayer, and fairness;¹⁵ we would therefore encourage the Welsh Government to design a simple penalty regime, which makes clear what behaviours are likely to result in a penalty and ensures that taxpayers are made aware promptly that a penalty has or may have arisen.

We consider that the WRA should have discretion to impose penalties that are below the statutory maximum.

We recommend that factors to be considered by the WRA in the exercise of that discretion (with desirable behaviours mitigating the level of penalty imposed) include whether and to what extent:

- non-compliance was careless (we envisage that the standard of care expected would vary with the sophistication of the taxpayer with, for example, a higher standard of care expected of those who hold financial, legal, accounting, or tax qualifications);
- non-compliance was deliberate;
- the instance of non-compliance was disclosed to the WRA voluntarily (prompted or unprompted) or was concealed;
- the taxpayer cooperated fully with the WRA in attempting to rectify non-compliance;
- the instance of non-compliance is the first such instance or the taxpayer is a "serial offender"; and
- where appropriate, the taxpayer has improved tax accounting processes to minimise the risk of similar non-compliance in the future.

We also consider that, in line with reserved taxes, no penalties should be imposed where, despite non-compliance, the taxpayer took reasonable care (e.g. a reasonable view of the law was held that was contrary to the WRA's view but which was not upheld by a tribunal) or had a reasonable excuse (e.g. every effort to be compliant was made but was frustrated due to unavoidable circumstances outside the taxpayer's control).

¹⁵ Consultation Document, para 3.5.

4.4 What views do you have on the proposed approach to criminal enforcement and to public safeguards?

We agree that while there have been no criminal investigations in relation to SDLT or LfT in Wales over the past 12 months, there is a need to have in place arrangements for criminal enforcement should the need arise.

While we recognise the merits in replicating the UK system, whereby HMRC have the power to investigate specific criminal tax offences, it might be that the WRA, at least initially, would lack sufficient resources and expertise in such matters.

Consideration might therefore be given to implementing appropriate arrangements, at least in the short term, for assistance from, or delegation to, HMRC.

We agree with the proposal to implement safeguards similar to those that currently exist in relation to HMRC in England & Wales.

5 Addressing tax avoidance

5.1 Should Wales establish a specific tax disclosure regime for devolved taxes?

As a general comment, the introduction of a disclosure system may create an unnecessary distraction from the fundamental task of establishing and operating an effective Devolved Tax system, particularly as the WRA is initially expected to be responsible for only two Devolved Taxes.

We therefore recommend that consideration of a disclosure system be deferred until after the establishment of the Devolved Tax system and be subject to a separate consultation.

5.2 What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Should the Welsh Government decide to introduce a Devolved Taxes disclosure regime, in our view it should attempt to avoid the complexities of the UK system concerning what planning is disclosable, and should focus on tax avoidance arrangements that are highly abusive and artificial.

Our reasons for suggesting a focus on highly artificial tax planning are that:

- the resultant workload for the WRA must be manageable and we consider that notification of mainstream tax planning might needlessly increase the demands made on WRA resourcing such that objectionable tax planning may take longer to address or potentially be overlooked;
- we envisage implementing a disclosure arrangement should be viewed by both the taxpayer and his adviser as a serious matter - if mainstream tax planning is disclosable there is a risk that implementing disclosable planning could become routine and the deterrent effect associated with the disclosure of more objectionable tax planning could be diluted; and
- any disclosure regime should not deter investment in Wales by needlessly increasing the costs of doing business.

We also recommend that any Devolved Tax avoidance arrangement disclosure regime has less onerous time limits for disclosure than the corresponding UK arrangements in order to facilitate compliance.

We recommend that the introduction of any potential tax planning disclosure regime be the subject of specific consultation.

5.3 Are there any options, other than a tax disclosure regime, that might be considered to help to alert the WRA of possible tax avoidance schemes?

We cannot envisage any alternative arrangements that would alert the WRA to potential tax avoidance schemes.

5.4 Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

As a general comment, the introduction of a GAAR when only two Devolved Taxes are expected to be in place initially may require a disproportionate allocation of resources which would detract from the principal aim of establishing an effective Devolved Tax system.

We therefore recommend that consideration of a GAAR be deferred until after the establishment of the Devolved Tax system.

We also note that if Devolved Tax legislation is framed with sufficient accuracy and clarity, opportunities for unacceptable tax planning may be limited and a Devolved Taxes GAAR may in fact prove unnecessary.

That said, we accept in principle that a GAAR may be required to counteract abusive and highly artificial tax driven arrangements whilst not affecting the mainstream tax planning.

However, we consider that any Devolved Taxes GAAR should be consistent with the Welsh Government's governing principles on Devolved Taxation as to simplicity; certainty for the taxpayer; and fairness.¹⁶

5.5 Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

When considering the Welsh Government's approach to a GAAR, it is necessary to balance the public interest with the legitimate private interests of taxpayers.

KPMG recognises the right of taxpayers to arrange their affairs in a tax efficient manner, but accepts in principle the need for the Welsh Government to tackle abusive and artificial arrangements (our UK principles of tax advice are publically available).¹⁷

On this basis, we consider that a Devolved Taxes GAAR framed as a targeted 'General Anti-**Abuse** Rule' to counteract abusive and highly artificial tax driven arrangements whilst leaving mainstream tax planning unaffected would be preferable to a broad spectrum 'General Anti-**Avoidance** Rule'.

A broad Devolved Taxes GAAR which could affect transactions undertaken in the normal course of family or domestic relationship – such as passing wealth to the next generation – could make Wales a less attractive location for wealth creators to maintain residence. This is especially so as, as noted in the consultation document, Welsh taxpayers are already working within the framework of the UK General Anti-Abuse Rule.¹⁸

¹⁶ Consultation Document, para 3.5.

¹⁷ <http://www.kpmg.com/uk/en/services/tax/pages/uk-principles-of-tax-advice.aspx>.

¹⁸ Consultation Document, para 5.21.

We also note that, following *Joost Lobler v HMRC*,¹⁹ some commentators have suggested that a GAAR structured as an anti-abuse rule should make provision for protecting taxpayers from the effect of ‘loopholes’ in the legislation which impose taxation in circumstances that were not intended by Parliament.²⁰

We consider there to be merit in exploring this further in relation to any Devolved Taxes GAAR that the Welsh Government might wish to introduce.

Experience with the UK GAAR has illustrated the difficulties of translating this aim into legislation and we recommend that the design and operation of any Devolved Taxes GAAR be subject to a specific consultation.

5.6 How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Certainty in tax affairs is a key requirement for all taxpayers, whether businesses or private individuals.

A statutory clearance mechanism could mitigate the risk of uncertainty in the tax legislation impeding *bona fide* commercial transactions and reducing the attractiveness of Wales as a place for the creation and transmission of wealth.

In this respect, it might be of more immediate assistance than an independent panel in providing more certainty in the operation of a GAAR.

Such a clearance mechanism, while giving certainty to taxpayers, also would provide the WRA with information on transactions on a timelier basis and therefore alert the WRA earlier to transactions which they may wish to consider in further detail. It would also give the WRA an advantage in assessing at an earlier stage issues in the way legislation is drafted and offer an earlier opportunity for intervention to reduce unintended consequences arising.

That said, whilst it is difficult to comment on the potential role of expertise external to that of the WRA in determining when a Devolved Taxes GAAR might apply in practice without first understanding how it is proposed that the Devolved Taxes GAAR might operate, we could envisage a role for impartial professional or academic expertise similar to that of the UK GAAR panel.

In particular, in a Devolved Taxes GAAR that targets arrangements with ‘unusual’ features (though our recommendation would be that any Devolved Taxes GAAR targets arrangements which would demonstrably not have been entered into absent of expected tax advantages), we could envisage a role for impartial practitioners commenting on whether the steps involved in a

¹⁹ [2013] UKFTT 141 (TC), [2013] STI 1777.

²⁰ See Michael Firth, ‘Sauce for the goose’ (2013) *Taxation* 171(4396) 10; and Mike Truman, ‘Rough Joostice’ (2013) *Taxation* 171 (4397) 10.

transaction represent usual or innovative commercial practice (as opposed to artificial steps with no commercial justification).

5.7 Given its clear links to a TTiiL, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

As noted at 5.1, we recommend that the consultation on a GAAR be deferred until a later date and considered separately rather than alongside the prospective consultation on a Welsh TTiiL.

6 Resolving tax disputes

6.1 Do you agree with our approach to avoiding tax disputes and achieving early resolution?

We welcome the statement that:

‘One of our key policy objectives will be to try and avoid disputes arising in the first place. The Welsh Government will expect WRA to work on the basis of getting it right first time and fostering a culture of collaboration with taxpayers to resolve disputes where they do arise. In achieving this, WRS will need to support taxpayers by putting in place clear and accessible guidance and processes.’²¹

This should, in our view, minimise the volume of disputes.

In our experience, there is little desire on the part of taxpayers and their agents to become involved in disputes with taxation authorities and there are clear benefits in the form of reduced costs (for both the taxpayer and the taxation authorities) in resolving any disputes that do arise at the earliest possible opportunity.

We therefore welcome the proposals to avoid disputes set out in the Consultation Document and would comment that:

- while clear guidance will, for the most part, remove doubt as to the WRA’s view on the relevant legislation, it will not remove dispute entirely (as with all such guidance, it will be written from the standpoint of the taxation authority and will therefore represent only one point or view or interpretation of the legislation which might not be shared by the taxpayer; and
- when disputing the view of the taxpayer, it would in our view be preferable for the WRA to ‘lay its cards face up on the table’ at the earliest point in time in order to minimise the time and costs incurred in dealing with disputes and enquiries.

6.2 Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

We strongly welcome the commitment to alternative resolution of disputes. We believe that correctly implemented resolution mechanisms provide potential to minimise the time spent in disputes. This will lower costs for both taxpayers and the WRA by potentially reducing recourse to the tribunals and courts.

We also suggest that the WRA considers an internal review process as a matter of course before initial decisions are reached (i.e. an initial analysis of

²¹ Consultation Document, para 6.13.

a taxpayer's position reached by one WRA officer is reviewed by an appropriate colleague to test the robustness of the conclusions before the initial decision is made).

6.3 Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving tax disputes and why?

We welcome the proposal to encourage use of mediation as a lower cost initial alternative to litigation at the taxpayer's request and believe that mediation should be binding on all parties where agreement has been reached.

This is a fair, low cost and easy to implement approach to resolving disputes.

6.4 Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

We agree that given the expertise of the UK Tax Tribunal System and the likelihood that initially there will be very few (if any) litigated cases on Devolved Taxes the existing UK tax tribunal system should be used.

Given that, at present, only two Devolved Taxes are expected to be initially introduced, we suggest it be considered whether the existing UK Tax Tribunal System could deal with all Devolved Tax cases as a matter of course, rather than bringing Devolved Taxes within the scope of a Welsh Tribunal System²² which may take a considerable time to develop the requisite experience of dealing with tax matters.

6.5 What are your views on the value of adopting a "pay-first" principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

There appears to be a tension between the proposal to implement a 'pay first' principle 'including in circumstances where an appeal has been lodged and its outcome is not known' ²³ and the Welsh Governments tax principle of 'fairness' on the tax payer. We therefore recommend this proposal be reconsidered.

Whilst we believe that a 'pay first' principle would be unfair to taxpayers in the majority of cases we agree that, as noted in the consultation document,²⁴ if it is introduced there should be flexibility to set it aside in the interests of fairness, access to justice, and in cases of hardship.

²² Consultation Document, para 6.21.

²³ Consultation Document, para 6.27.

²⁴ Consultation Document, para 6.28.

7 Concluding remarks

7.1 Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

As a general point, we welcome the intention to consult on new Devolved Taxes legislation and associated WRA guidance prior to enactment of that legislation and adoption of that guidance.

We note that the specific nature of any additional Devolved Taxes which may be introduced in the future may necessitate modifications to the Devolved Tax management arrangements, and recommend that the management implications of new Devolved Taxes are actively considered as part of this process.

We also note that the introduction of further Devolved Taxes after 2018 may potentially give rise to taxation being levied on the same taxable item or event by both the WRA and HMRC (or Revenue Scotland or an overseas tax administration).

The potential implications of new Devolved Taxes for the UK's existing network of double tax treaties, and the possible necessity of intra-UK memoranda of understanding on double taxation between devolved tax administrations and HMRC, may need to be considered in due course.

We have no further remarks on the Consultation Document.

However, we would reiterate our willingness to meet representatives of the WRA or the Welsh Government in order to talk through our responses.

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Response to the Welsh Government's consultation on the collection and management of devolved taxes in Wales

Thank you for the opportunity to comment on the White Paper issued on 23 September 2014.

You will appreciate that it is important to safeguard audit independence, and consequently I am not in a position to provide responses to all the questions set out in the White Paper. I hope, however, that the following comments are helpful.

Question 1. Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Establishing the Welsh Revenue Authority (WRA), as a Non-Ministerial Department directly accountable to the National Assembly appears to me to be an appropriate arrangement, providing independence from political involvement in revenue collection.

As the White Paper notes, this proposed structure is in line with the situation in the UK, where HMRC are accountable to the UK Parliament, and also with the forthcoming arrangements in Scotland in which Revenue Scotland will be accountable to the Scottish Parliament.

Question 2. What are your views on the proposed core set of duties for the Welsh Revenue Authority?

The proposed core set of duties for the WRA seem appropriate, and I agree that consistency with current UK and proposed Scottish approaches is desirable.

Question 3. Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

With regard to the proposed accountability arrangements, I am in full agreement with the proposal that both the accounts of the WRA itself and the annual statements of taxes collected by WRA should be audited by the Auditor General.

I do, however, consider that it would be appropriate for transparency and proper tax management for there to be separate audited trust statements for each tax (I understand that this is also the approach being adopted for Revenue Scotland).

If the Auditor General is to be the statutory auditor of WRA's accounts, then this would automatically enable him to undertake value for money improvement studies by virtue of section 145A of the Government of Wales Act 1998. However, I suggest that the WRA should be added to Schedule 17 of the Government of Wales Act 1998. This would engage section 145 of that Act, so that the Auditor General may carry out retrospective examinations of the WRA; an alternative to this would be for equivalent provision to be included in the legislation establishing the WRA.

In order to tackle evasion and fraud, it may also be helpful if the WRA were to be included as a mandatory participant in data-matching exercises undertaken under Part 3A of the Public Audit (Wales) Act 2004. I note that HM Revenue and Customs currently participates in the all-UK National Fraud Initiative (NFI) data-matching exercise. Such voluntary participation has, however, taken many years to secure because of uncertainty as to whether HMRC was legally permitted to participate on a voluntary basis. Inclusion of the WRA as a mandatory participant would avoid any such delay. This could be particularly useful in the event that further taxes are devolved to Wales in future, for example if income tax were partially devolved following a referendum.

Question 5. What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why?

(Also relevant to Question 9.)

I note that the White Paper sets out that the Welsh Government is undertaking a full analysis to consider this issue, which I welcome, and I also consider that robust cost analyses should be undertaken in order to compare any proposals for the delegation of functions with that of building WRA in-house capacity. Any such cost analyses should factor in the possibility of further taxes being devolved to Wales in future, and the desirability (or not, as the case may be) of possessing in-house specialist capacity in order to best manage future demands.

As regards the possibility of the WRA delegating the function of tax collection and management, and separately delegating the function of investigating specific criminal tax offences, I consider that great care would need to be exercised if such a 'dual delegation' approach were to be adopted. The White Paper appears to recognise this, in that it sets out that the Welsh Government's proposed approach to criminal enforcement in Wales is to follow the current UK arrangements, and to confer powers on WRA to investigate specific criminal tax offences. I tend to think that is desirable, because lines of accountability, and delegation arrangements would have to be very carefully established and managed were any delegation arrangement to be set up. 'Dual delegation' would add a further layer of complexity to such delegation arrangements. Although such complexity would not be insurmountable, careful consideration would have to be given to ensure it would provide added value rather than confusing lines of accountability.

Question 7. Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

The proposed set of obligations on taxpayers appears both appropriate and conducive to the effective operation of the Welsh tax system.

Question 8. Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Overall, I consider that the powers envisaged for the WRA would be appropriate.

It appears, however, that the Welsh Government proposes to confine inspection powers to business premises. I am not certain that such a limitation on inspection powers is either consistent with those of HMRC or sufficient for effective operation of the Welsh tax system. For example, it is possible to undertake property transactions without the involvement of a solicitor or any other business, and so SDLT evasion could perhaps occur in an apparently purely domestic setting.

Question 11. Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

In order to deter evasion and encourage prompt payment, I think that it is appropriate for the WRA to be provided with powers to levy proportionate penalties. I also consider it reasonable to consult on and provide for such penalties at the same time as legislating for the specific taxes to which they relate, rather than attempting to provide a stand-alone penalty system in advance.

Question 13. What views do you have on the proposed approach to criminal enforcement and to public safeguards?

It is likely to be important to the effective operation of the enforcement regime that the WRA should possess its own powers and duties to investigate and prosecute offences. Such work lies outside the experience of the Welsh police forces and would represent a competing priority for them, to the detriment of effective enforcement.

Question 14. Should Wales establish a specific tax disclosure regime for devolved taxes?

Question 15. What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Reliance on HMRC's Disclosure of Tax Avoidance Schemes (DOTAS) regime would appear to be a sensible way of proceeding in the first instance. Establishing and maintaining a specific tax disclosure regime for devolved taxes would be likely to require significant professional input, and therefore incur significant costs. However, it may be prudent to make legislative provision for the future possibility of establishing a specific tax disclosure regime, so as to address the risk of reliance on HMRC's DOTAS regime proving either ineffective or unworkable in the Welsh context.

Question 16. Are there any options, other than a tax disclosure regime, that might be considered to help to alert the Welsh Revenue Authority of possible tax avoidance schemes?

It may be worth considering 'public interest disclosure reward' provisions for people who disclose avoidance schemes (and one-off instances of avoidance). The rewards could perhaps take the form of WRA-financed monetary awards.

Question 17. Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 20. Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Providing for a Welsh GAAR (whether on an 'abuse' or an 'avoidance' basis) appears to be a prudent means of maintaining the efficiency and effectiveness of the Welsh tax system. And given that the UK GAAR already applies to the existing SDLT, there does seem to be a clear and specific need to introduce a Welsh GAAR (even if it just reapplies the UK GAAR) to apply to any new Welsh tax on transactions involving interests in land, in order to prevent the Welsh tax system becoming a soft spot.

Question 24. Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Yes. As indicated in the White Paper, it seems unlikely that the expense of establishing a new Wales tax tribunal would represent value for money, and developing an existing tribunal that has no prior tax expertise seems unlikely to yield consistency.

If you would like any further information in respect of this response, please do let me know.



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Consultation on: Collection and management of devolved taxes in Wales

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation
(if responding on
behalf of that
organisation):

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes ☐ No ☐

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Chapter 3: Powers and duties

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes

☐

No

☐

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

Chapter 5: Addressing tax avoidance

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes

☐

No

☐

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Chapter 6: Resolving tax disputes

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Publication of responses

Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

☐

Returning this form

The closing date for replies is **15 December 2014**.

Please send this completed form to us by post to:

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or e-mail to: FinancialReformMailbox@wales.gsi.gov.uk

If you are sending your response by e-mail, please mark the subject matter:
Consultation on collection and management of devolved taxes in Wales

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Cymru (RTPI Cymru)
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Tel +44 (0)29 2047 3923
email walespolicy@rtpi.org.uk
Website: www.rtpi.org.uk/rtpi_cymru

15 December 2014

e-mail response sent to: FinancialReformMailbox@wales.gsi.gov.uk

Dear Sir/Madam,

Response to: Collection and management of devolved taxes in Wales

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 23,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

This response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

We would like to draw your attention to the Community Infrastructure Levy (CIL). The Planning Act 2008 provides that the Secretary of State for the Department for Communities and Local Government may, with the consent of Her Majesty's Treasury, make regulations providing for a CIL.

CIL is intended as a tool to be used by Local Planning Authorities (LPAs) to help deliver essential infrastructure and support the development and regeneration of areas by delivering much needed infrastructure to facilitate development. However in its current form it proves to be a difficult instrument to use in Wales given low land values and high costs for the remediation of many sites. The CIL, combined with the restrictions imposed on S106, mean that the required investment to support developments can be difficult to fund through either mechanism.

CIL is not currently a devolved matter. Regulations have therefore been made on an England and Wales basis - 'Community Infrastructure Levy Regulations 2010'. The regulations came into force on the 6th April 2010 and have since been amended by

the 'Community Infrastructure Levy (Amendment) Regulations 2011'. The Welsh Government provides separate guidance on CIL.

RTPI Cymru continues to support the principle of utilising the CIL mechanism in Wales to capture increases in land values arising from the grant of planning permission in order to secure funding for infrastructure directly and indirectly related to the development of the land.

We believe that CIL should be devolved. The planning framework surrounding the promotion and control of the development and use of land will diverge further once the Planning Wales Bill is enacted; the CIL therefore needs to be fit for purpose for the framework in Wales. By devolving responsibility for CIL to Welsh Ministers, it can be adapted and used to complement the overall planning system in Wales, as opposed to a mechanism which is principally designed to work within the English planning system. It would also be simpler for the CIL to be repealed or adapted, as it is found not fit for purpose, if this function is devolved.

RTPI Cymru would suggest that to deliver the fully devolved nature of planning and responsibility for the built environment it is essential that control over funding and delivery is devolved, giving the Welsh Ministers control over complementary mechanisms.

If you require further assistance, have any queries or require clarification of any points made, please contact RTPI Cymru on 029 2047 3923 or e-mail Roisin Willmott at walespolicy@rtpi.org.uk

Yours sincerely,



Dr Roisin Willmott MRTPI
Director
RTPI Cymru

FSB Wales

Collection and
Management of
Devolved Taxes
in Wales

15th December 2014





Collection and management of devolved taxes in Wales

FSB Wales

FSB Wales welcomes the opportunity to present its views to the Welsh Government. 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

FSB Wales warmly welcomes the Welsh Government's consultation on the collection and management of devolved taxes in Wales. FSB Wales consulted with members via two focus group events to inform our submission to part 1 of the Silk Commission. As such, FSB Wales is pleased to see the recommendations of the Commission's work become a reality via the Wales Bill, currently being discussed in the Westminster Parliament. It is now crucial that the Welsh Government creates the capacity to manage the devolved taxes in a way that encourages economic growth and rewards compliant small firms in Wales.

To inform our policy positions across the UK, FSB Wales frequently surveys members on their experiences of key issues. Our most recent survey on tax collection and management was carried out in September 2013 and highlights a number of key concerns relating to the manner in which tax is collected from SMEs, particularly by HMRC. FSB Wales believes that this evidence should inform the Welsh Government's approach to the establishment of the Welsh Revenue Authority.

Understanding SMEs and Tax Collection

Our surveys of UK businesses suggest that cash flow problems are the largest barrier to small firms paying their taxes on time. Beyond this, issues relating to communication such as difficulties understanding what is required and confusion over payment dates are most likely to cause issues for SMEs in paying their taxes on time.

What difficulties, if any, have prevented you from paying taxes on time?

Base: 2,174

Cash flow problems	30%
Difficulty understanding exactly what is required	14%
Confusion over payment dates	11%
Lack of relevant paperwork to complete the return (e.g. had to request duplicate copies of receipts, invoices, etc)	8%
Mistakes or omitted information that prevented the return being accepted on time	8%
Other	7%
No difficulties have prevented me from paying on time	53%



In terms of external support for tax calculations, most firms surveyed rely on external accountant or tax advisors to provide them the advice and support they need to calculate their taxes. This suggests that the proposed Welsh Revenue Authority should work closely with the external advice industry to ensure advice is of a high quality. Despite the reliance on external advice, a significant number of those surveyed rely on HMRC services to help calculate their tax liability.

From where have you sought external help with your tax calculations over the past two years, if at all?

Base: 2,185

External accountant/ tax advisor/ book keeper	77%
HMRC (via telephone or in person)	30%
HMRC online services	25%
Someone else	3%
No help sought	12%

In relation to the cost of administration, according to our survey results, 26 per cent of firms spend on average between 2 to 3 hours completing tax forms each month. A further 24 per cent spend between 5 and 8 hours, suggesting that tax administration is an issue for some businesses. Furthermore, firms on average spend a significant amount complying with tax obligations (excluding tax liabilities) with 32 per cent of respondents paying between £1,001 and £3,000 per year. This includes professional fees, software costs as well as staff and owner's time.

On average, how much time does your business spend each month understanding, calculating and completing tax forms?

Base: 2,183

No time at all	12%
Around 1 hour each month	18%
2 to 3 hours	26%
4 to 5 hours	13%
6 to 8 hours	11%
2 days	6%
3 to 5 days	3%
6 days or more	2%
Unsure	9%



How much do you estimate your business spends complying with its tax obligations each year (please include professional fees, software costs, staff and owner's time but exclude the actual tax that your business pays)?

Base: 2,190

£0 (Nothing)	2%
£1 to £250	5%
£251 to £500	8%
£501 to £1,000	16%
£1,001 to £3,000	32%
£3,001 to £5,000	16%
£5,001 to £10,000	11%
£10,001 to £25,000	4%
More than £25,000	1%
Unsure	4%

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

FSB Wales welcomes the proposal for a Welsh Revenue Authority (WRA) as a Non-Ministerial Department, which closely mirrors the decision of the Scottish Government to set up Revenue Scotland in response to tax devolution. That said, FSB Wales believes before a decision is made to set up the WRA a more detailed analysis of the costs and benefits of such an approach need to be taken. This is acknowledged on page 12 of the consultation document, but should be a key element of the discussion informing the Welsh Government's approach to tax administration. There is a risk that following such a model would be premature without meaningful consideration of the alternatives.

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority? :

FSB Wales largely agrees with the core set of duties proposed for the WRA. Of particular importance in relation to SMEs is the provision of information, guidance and support to assist taxpayers to be compliant. Furthermore, FSB Wales believes that an additional competency of the WRA should be to provide Tax Impact Assessments on any tax proposals, to inform the debate around tax decisions taken by Welsh Government. In particular, a Tax Impact Assessment would focus on the impact on Wales' SMEs.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Accountability directly to the National Assembly for Wales is crucial for any government body to be properly scrutinised. FSB Wales therefore welcomes the inclusion of this link and suggests the



Finance Committee would be the appropriate Committee to scrutinise the WRA. In terms of the board of the WRA, FSB Wales believes it is important to have a diverse membership. It is likely that a large number of SMEs will come into contact with the body and this should be reflected at a senior level in terms of governance arrangements. In this respect, membership of the board should include someone with an SME perspective.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

The tax payers' charter could help to set out clearly the expectations of taxpayers in terms of the new body. FSB Wales believes that the charter should seek to differentiate business by size, recognising that the expectations in terms of support and guidance for SMEs will be significantly different to those of larger companies.

Question 5: What are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering consider the factors shown in paragraph 2.37, and refer to functions not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

FSB Wales feels that the approach taken by the Scottish Government as set out in 2.30 merits further consideration. Organising the activity of the WRA around customers could prove attractive if it reduces the number of agencies that a customer has to deal with. For example, businesses submitting Landfill Tax returns will likely be dealing with Natural Resources Wales in a regulatory context.

In relation to section 2.37, our survey suggests that improving the quality and speed of telephone advice was a key concern in relation to HMRC. Furthermore, allowing queries to be asked and resolved via email and improving website navigation are all important to those surveyed and should be considered in detail in the establishment of the Welsh Revenue Authority. This suggests that a key concern should be introducing forms of payment and processing, such as on-line payment, to improve the quality of service.



Considering the current tax system, which of the following potential new services and improvements should have priority in their development and offer to businesses?

Base: 2,164

Reduce the amount of time it takes to contact an HMRC advisor on the telephone	37%
Allow queries to be asked and resolved via email	33%
Provide one tax reference number for all of a business's taxes	22%
Improve the appearance and ease of navigation of the HMRC website	21%
Improve the clarity of information available on the HMRC website	19%
Allow ALL forms to be completed and submitted online	17%
Allow queries to be asked and resolved via online chat	16%
Provide a dedicated HMRC business phone line to assist in tax calculations	13%
Provide an HMRC operated payroll bureau service for small businesses	13%
Provide an online tool that allows tax liability to be calculated under different scenarios	12%
Increase awareness of the provision to pay taxes by monthly standing order	12%
Provide real time notification when payment is received by HMRC	10%
Provide a standard payment date for all annual taxes	9%
Other	7%
Unsure	12%

Finally, FSB Wales does not agree with statement 2.37iv that suggests the UK tax structure should be preserved rather than responding to Welsh priorities. One of the key motivations for the devolution of taxes, such as SDLT, was to respond to devolved policy areas. FSB Wales believes that the Welsh Government, while aiming to reduce administrative burdens, should respond to the concerns of Welsh firms when designing tax policy.

Chapter 3: Powers and duties

FSB Wales agrees with the proposed obligations as set out in the consultation document. In particular the need to operate in a simple and stable way is important for many SMEs as customers of the proposed WRA. Where there are obligations on the tax payer to provide information and keep records, efforts should be made to ensure officers of the WRA (or the relevant delegated tax collecting agency) fully understand the sometimes difficult operating environment of Wales' SMEs. Our research on regulatory issues has highlighted consistence in approach from regulatory agencies as a key factor that impacts on the day to day operation of small firms¹. This can equally be applied to the roles and responsibilities of the proposed WRA.

¹ FSB Wales. 2014. *Better Regulation for Wales* [Online]. Available at: <http://www.fsb.org.uk/policy/rpu/wales/images/better%20regulation%20wales.pdf> (accessed 5th December 2014).



Where delegation does take place, the WRA must be assured that delegation to an alternative body does not pose a risk to the efficacy of tax collection and does not add complexity to the tax collecting process. As a starting point, the WRA should strive to be less complex and impose lower administrative burden than HMRC in carrying out its function in a Wales.

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance? :

As stated previously, good regulatory enforcement rests on taking an approach to regulation that prioritises education as the first response to non-compliance. This is also true for tax compliance. The WRA should prioritise assisting SMEs to comply with tax regulations before moving on to enforcement action. This necessitates strong guidance from the WRA as well as officers that are able to support SMEs where complications arise.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation? :

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform our approach to Welsh taxes?:

FSB Wales believes that the penalty system in place should be no more onerous than those currently used by HMRC in collecting the devolved taxes. Our evidence suggests that often an impact of poor advice and guidance is penalty charges for late submission and late payment for 30% and 27% of those surveyed respectively. This is potentially avoidable if effort is placed on educating firms and supporting them to comply.

What has been the business impact of the poor standard of help received from HMRC?

Base: 424 (Members identifying poor HMRC service)

Incurring professional fees (e.g. accountant, tax advisor)	53%
Lengthening of the tax calculation process	40%
Penalty charges for <u>late submission</u> of returns	30%
Penalty charges or surcharges for <u>late payment tax due</u>	27%
Other	23%
No specific business impact	12%

Chapter 5: Addressing tax avoidance

It is our contention that the vast majority of small firms are tax compliant and would not seek to avoid tax. Tax avoidance allows firms to illegally gain a competitive advantage. We believe the Welsh Government should seek to ensure all firms are operating on a level playing field. FSB Wales is therefore supportive of a General Anti-Avoidance Rule as set out in Scotland.



Conclusion

FSB Wales welcomes the consultation on the collection and management of taxes in Wales. For the first time, the Welsh Government will have control of taxation which provides an opportunity for improving Wales' economic wellbeing. FSB Wales believes in legislating for the management of taxes in Wales, the Welsh Government should learn from best practice across the UK. In this respect, FSB Wales welcomes the opportunity to provide an insight into our members' experiences of the current tax collection regime.



Federation of Small Businesses Wales

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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.

Associate Companies

We have three active subsidiary companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601), FSB Publications Limited (company number 01222258 and Data Protection Act registration number Z7315310) and FSB Recruitment Limited. (company number 07836252 and Data Protection Act registration number Z3131666).



Private and Confidential

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

15 December 2014

Dear Sir or Madam

'Collection and management of devolved taxes in Wales' – White paper published on 23 September 2014

PwC welcomes the opportunity to respond to the Welsh Government's proposals for the collection and management of newly devolved taxes to replace Stamp Duty Land Tax (SDLT) and Landfill Tax (LfT). An in-depth response to the specific questions posed within the consultation paper follows below.

The main issues that we have identified relate to the question of the Welsh Revenue Authority's (WRA's) mission, and the organisational structure most suited to satisfying the Welsh Government's objectives. The WRA, as currently envisaged, has a very limited remit: taken in isolation, the two taxes for which it will be responsible initially constitute a relatively small percentage of overall government revenues, but setting up and operating an independent revenue authority will involve significant costs, and require considerable expertise. The White Paper's focus on creating a "lean body", with considerable potential for delegation and outsourcing to other public bodies (such as local authorities or HMRC), is an attempt to respond to this dilemma.

We welcome the Welsh Government's recognition of the challenge inherent in this situation. The White Paper's discussion of HMRC's possible ongoing role in collecting and managing the devolved taxes is, in our view, an appropriate response to the need for institutional expertise and economies of scale, that have been identified. However, at this stage we are not certain whether the model of a WRA with the majority of functions outsourced to other agencies and with limited capacity for action on its own account will be capable of providing the necessary management and oversight of those functions or achieve the desired level of accountability in a cost-effective manner, relative to persisting with the status quo. How this will be resolved in the longer term will depend on decisions to be taken in the future about the extent to which taxation powers will be devolved to the Welsh government.

If you have any questions or would like to discuss any of the points raised in this letter in more detail, please do not hesitate to contact me (0292 080 2242) or my colleagues, Tracey Bentham (0117 928 1194) or Chris Williams (0292 080 2115).

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Matthew Hammond'.

Matthew Hammond
PricewaterhouseCoopers LLP

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**Welsh Government
Consultation on: Collection and management of devolved taxes in
Wales (Number: WG22945)**

Consultation Response Form

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Town:	Cardiff
Postcode:	CF10 3PW
Organisation (if responding on behalf of that organisation):	PricewaterhouseCoopers LLP

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority

Question 1. Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes

X

No

It is unclear to us whether the establishment of a WRA is a necessary step for, or cost-efficient means of, administering the devolved taxes in question. If management and collection are to be outsourced, then a WRA that is able to provide effective oversight of these third parties and accountability to the Assembly will require a substantial level of resources. This may not be cost-effective relative to the revenues generated by the two taxes in question.

However, assuming the establishment of the WRA is the most effective way in which to serve the Welsh Government's overarching objectives, we agree with the proposal to establish the WRA as a Non-Ministerial department, accountable to the Welsh Assembly, similar to HMRC. This would ensure that the operational independence of the WRA is maintained, with robust lines of accountability. Separation is a very important principle.

In our view, it is important not to underestimate the number of full time, dedicated expert staff that will be required by the WRA to enable it to operate effectively and efficiently. The references to a lean body and enabling secondment of staff between the WRA and the core Welsh Government suggest a lack of continuity of trained expert resource from the outset. The importance of training and developing personnel cannot be underestimated. The appropriate administration of tax legislation requires a considerable degree of technical expertise, as well as a high degree of professionalism and a full understanding of the WRA's responsibilities and powers. We would expect staff administering the devolved taxes to receive extensive training before being responsible for decision-making in relation to complex areas of law involving very large sums of money.

We would welcome more detail on this issue. It would assist if a proposed organisational structure could be provided, along with details of specialist roles. For example, how many staff is it anticipated will be needed to audit or investigate returns, and on what basis has this been estimated?

If tax collection is to be delegated to another organisation, consideration should be given to measures needed to ensure that there is consistency of application and approach to tax collection, and also the need for training of all staff involved. Having the collection and assessment functions performed by different Welsh Government departments therefore needs specific careful consideration.

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

In our view, the broad duties and functions of the WRA as set out in the discussion paper are in line with best practice for tax authorities in other tax regimes; and they complement the existing functions and duties of HMRC. This will make any transition from HMRC easier and will provide certainty and convenience for the taxpayer and agents on the eventual transfer of powers. Having said that, we believe that it is key that the WRA does not underestimate the need to interact closely and exchange information with HMRC, both throughout any transition process and beyond to ensure a smooth transfer. Moreover, we reiterate our concerns as to whether a new institution is the most cost-effective means of providing this functionality, given the relative scale of the devolved taxes in question.

We understand that a high level summary of the functions and duties of the WRA is realistic at this stage of the consultation process. However, we feel that more detail will clearly be required in due course.

One of the duties of the WRA is to provide advice on the administration and collection of tax. It may be appropriate for the WRA to have a broader role in advising the Welsh Government on issues over and above the administration and collection of tax, for example including the efficacy of tax policies and impact on different taxpayers, and the design and coherence of the tax system as a whole. We believe that the WRA could also play a part in identifying and monitoring strengths and vulnerabilities in the Welsh tax regime.

In addition to assisting with understanding the impact of tax policies, the WRA may also be well-placed to assist in ensuring that, as far as possible, legislation is written clearly and simply and makes Parliamentary intention as clear as possible. This will assist with compliance and efficiency of collection and should also help to prevent abuse of the tax system.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

We would welcome more detail on how the Board Members and Chief Executive Officer would interact and details of individuals' responsibilities and accountability. In general terms, we would be in favour of a Board with a non-executive Chair, comprising both non-executive and executive members. The White Paper refers to the accountability envisaged by Scotland. If the same system is likely to be replicated in Wales as exists in Scotland, we have reservations about having a Board which is entirely made up of non-executive members to whom the Chief Executive would report. This would give a very unbalanced position where the Chief Executive in particular would be isolated from the Board. A non-executive Chair, together with a Board that is comprised of both non-executive and executive members, would appear to us to give a good level of accountability, whilst making the Chief Executive's position tenable. Challenge would be robust but more representative of both executive and non-executive positions and responsibility, and the Board and the Chief Executive would be collectively accountable for the performance of the WRA.

The general principles for selecting members of the Board are appropriate i.e. public appointments made in accordance with the Nolan principles on Standards in Public Life, and consistent with Welsh practice. It is important that the process is transparent and arrived at through fair and open competition. Presumably, like all senior posts, appointments to the Board will be based on the recommendations of leading civil servants. We recommend that the selection and appointment process is under the control of the Head of the Welsh Civil Service. We note, however, that no mention has been made to having an employee representative on the Board. This Board requirement exists for a number of similar Welsh organisations and in our opinion should be taken into consideration.

In our view there is nothing outside the normal process of senior external appointments that would be required, except the need for additional tax expertise in assessing appointments.

Regarding governance arrangements, there is a long-standing convention in the United Kingdom over confidentiality in respect of the taxpayer, which is an important part of taxpayer trust in both the system and the tax authority. We recognise that the appropriate level of confidentiality and transparency to be applied is a matter of legitimate public debate, and believe that the WRA should consider these issues by reference to the outcome of such a debate. That said we would support a statutory prohibition on the unauthorised disclosure of taxpayer information, which should include appropriate sanctions.

The complaints handling procedures as presently outlined emphasise alignment with existing arrangements for public bodies in Wales, with the Public Service Ombudsman Wales playing a pivotal role. While we welcome the opportunity to refer complaints to an Ombudsman, we emphasise the need for an adequate complaints handling procedure within the WRA itself, so that, in the majority of cases, referrals will not be necessary. Complaints handling may be resource-intensive, particularly if there is a transitional period during which tax policy and administration are reorganised.

While we concur that the establishment and running costs of the WRA will be determined by the final arrangements selected for tax collection and management, we reiterate that the 'lean' administrative body envisaged must have adequate staffing levels and expertise at its disposal from the outset.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

While we support the intention, we are unable to comment on the merits of a "Taxpayers Charter" on the basis that there is no detail contained within the consultation document on the content of the charter and the legal standing which the charter would have. Is it intended that the charter would be legally enforceable?

We note that HMRC have moved away from a taxpayers' charter to a broader service commitment. This may be a more appropriate model for the WRA, as it provides taxpayers with an understanding of the service they can expect, without setting expectations about the potential for legal redress. If responsibility for tax collection were to be passed to another organisation, this service commitment would need to cover all the relevant organisations, and clarify which bodies are to be responsible for which services.

Whether a charter or a broader service commitment is adopted, it is important that it establishes clear expectations around both WRA service provision and taxpayer conduct, so that behaviours that breach stipulated standards can be recognised and dealt with appropriately by both parties. Regular and impartial appraisal of WRA compliance with its obligations under the charter/service commitment may help to ensure it remains relevant, and has a positive impact on the relationship between WRA and taxpayer. It also needs to be sufficiently flexible to accommodate both individual and business taxpayers, particularly if the devolution of Welsh taxation progresses beyond the two taxes currently in prospect.

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

We consider that a streamlined and simplified approach to the collection and management of devolved Welsh taxes is an important factor, which will help to promote cost efficiency and deliver value for money to the taxpayer.

Continuity is critical for both taxpayers and tax authorities. From a taxpayer perspective, any change in the authority with whom they interact when paying taxes, or in the various ways in which they interact with that authority (e.g. through websites, call centres, advisers, bank transfers, and taxpayer reference numbers) has the potential to cause confusion, and increase the likelihood of errors and disputes. Any such changes would need to be clearly communicated, and taxpayers would need access to personnel familiar with the potential issues to support them through the transition.

From the perspective of the tax authority, it is vital that an appropriate number of suitably skilled staff are on hand to provide the necessary continuity. We would recommend caution in respect of any cost-saving innovation that may compromise this. Economies of scale and access to institutional knowledge suggest using administrative capacity that is already in existence, rather than attempting to recreate this from scratch. Institutional knowledge is likely to be passed on more easily if personnel tasked with collecting and managing Welsh devolved taxes have ready access to groups possessing that wider and deeper expertise, rather than attempting to obtain it via

service agreements, secondments, and subcontracting. To complement this, individuals with previous experience, relevant skills and expertise should be recruited where possible.

Insofar as the choice between adopting the UK tax structure and developing a system tailored to Welsh priorities is concerned, a balance needs to be struck between administrative convenience and the pursuit of particular policy aims. Devolution presents an opportunity to adapt the two taxes in question to reflect Welsh contextual factors and Welsh policy objectives, but doing so will increase the administrative burdens on both taxpayers and the Welsh Government. Whatever initial decisions are taken, it is vital that the new system be supported by personnel experienced in the management of an evolving tax regime.

Finally, the overarching principles that should be considered when looking at the approach to collecting and managing Welsh taxes should be in line with other commitments being made by the Welsh Government. For instance, a WRA should look to incorporate the 'Well-Being of Future Generations (Wales) Bill' and 'Digital Wales' in order to ensure that it meets wider commitments to both sustainability and the digital future of Wales.

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

There are a number of different organisations which could manage devolved Welsh taxes, but we believe that it is important to consider the most cost efficient arrangement, especially given the limited income generated from the two taxes being devolved in the first instance.

If tax collection is to be delegated to another organisation, consideration should be given to the measures needed to ensure that there is consistency of approach to tax collection, as well as to the need for training of all staff involved. Therefore, we would suggest that having the collection and assessment functions performed by different Welsh Government departments needs specific careful consideration.

The possibility of HMRC playing an ongoing role in the collection and management of devolved taxes would address many of our concerns about adequate expertise, economies of scale and administrative continuity. However, for HMRC's involvement to be satisfactory, it would need to be accountable to the Welsh Assembly in respect of devolved taxes in much the same way that it is currently accountable to Parliament. It is unclear whether the insertion of an additional layer of governance, in the form of the WRA, would enhance accountability in a cost-effective manner.

Consideration should also be given to the longer term expectations of the Welsh tax regime, such that any solutions adopted now can be scaled to, or revised in light of, subsequent changes in the scope of devolved taxation. An independently-resourced WRA may be more suitable where substantial devolution of powers is envisaged in the future. However, even then it may be more effective for this entity to be founded as a subdivision within HMRC, rather than as an independent and potentially isolated organisation competing for the same pool of expertise.

We do not think that in general terms it is beneficial to have different procedures from HMRC, unless there is a compelling reason for doing so. Any differences may add to uncertainty and cause problems for business operating across the UK as a whole, with employees based in different regions.

As an overarching point, we would advise that the formulation of tax policy and the organisational arrangements required to collect taxes are intertwined, rather than discrete issues to be dealt with individually. The experience in Scotland of using Registers of Scotland and the Scottish Environment Protection Agency for the collection of devolved SDLT and LfT should be monitored before any decision is made as to which organisation(s) should collect and manage devolved Welsh taxes.

Chapter 3: Powers and duties

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes

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No

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Should a WRA be deemed appropriate, we would expect its powers to be broadly in line with those which are available to HMRC. Any mismatch is likely to result in real administrative difficulty for clients with operations extending across the UK. We would not expect that any significant divergence from HMRC's powers and procedures is necessary, unless required by the nature of specific devolved taxes, or if there was some other strong policy justification.

Given that there is a reasonable expectation that the powers and procedures which will be put in place for the newly devolved taxes will also be a template for any further taxes which are subsequently devolved, we have a number of more specific observations as follows.

- We would expect there to be an obligation on taxpayers to notify the WRA if they became aware that a return was incorrect. The consultation document is silent on this point at present, and it is not reflected in the list of circumstances under which returns might be amended.
- We would expect the periods for which records should be retained for devolved and non-devolved taxes to be consistent.
- At present, for non-devolved taxes, there is an unjustifiable difference between payment and repayment interest rates. We would hope that the WRA would agree to apply the same rates to both payment and repayment interest.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

There are a number of safeguards in the HMRC powers regime laid out in Finance Act 2008, which are not mentioned in this document and which need to be made explicit, particularly the prohibitions on third party notices on tax advisers, and prohibitions on information relating to pending appeals. The powers which are contained in Finance Act 2008 (on which the proposals under consideration appear to be broadly modelled) are extensive and in our opinion appropriate safeguards will be required for WRA.

The delegation of powers is important in this context. We would be concerned if these significantly intrusive powers were to be exercised by inappropriately trained or under-skilled staff, or if there was to be any lack of clarity around accountability of those applying the powers. It will be necessary to ensure that the information powers are:

- only exercised by appropriately qualified staff;
- subject to the same level of legal safeguards as HMRC's powers under Finance Act 2008;
- subject to appropriate levels of authorisation (for example by specific senior officers); and
- subject to appropriate complaint procedures.

Additional detail regarding the precise nature of investigatory powers will, in our opinion, be needed. Specification of notice periods for inspection of premises, for example, will be necessary to ensure equitable and proportionate treatment of taxpayers.

The consultation document does not deal with returns which have been filed incorrectly as a result of carelessness or negligence. In our experience the majority of errors are as a result of innocent error, oversight or carelessness, rather than a result of fraud. One of the policy drivers behind the review of HMRC powers was to distinguish more clearly between deliberate/careless errors and innocent errors.

The consultation document does not mention the time limits for amendments to tax returns, so we therefore assume that these will remain the same as for HMRC.

We believe that the WRA needs to give further consideration to whether a greater degree of taxpayer certainty could be achieved. This could be done in a number of ways, but we would suggest that specific consideration should be given to whether:

- clearances could be offered if all relevant information is made available;
- an 'evidence of fact' rule could be applied in the same way as for VAT purposes; and
- a specific enquiry period needs to be introduced.

Finally, although we agree with the principle of adopting similar powers to those currently in place for HMRC, those powers (exercised by HMRC or the WRA) may not always be appropriate. The current approach to legal professional privilege by HMRC is a concern from the perspective of taxpayers having a level playing field as to their rights and, although the consultation document does not specifically mention legal professional privilege, the consultation document proposes following HMRC's approach.

The Supreme Court in *Prudential PLC and Prudential (Gibraltar) Ltd v Special Commissioner of Income Tax and Philip Pandolfo (HM Inspector of Taxes)* [2013] UKSC1 indicated that the state of the law at present is unsatisfactory and suggested that the position might be revisited by Parliament. Although we believe that there is merit in adopting the same system for devolved and non-devolved taxes, we do not think that the UK law as it currently stands is an appropriate model as it puts the taxpayer in a different position depending simply upon whether the professional adviser he uses is or isn't a lawyer.

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

The policy framework as set out in this consultation document is ambitious, and we question whether it can be delivered effectively using wide-scale delegation.

As noted above, any delegation of powers may create potential problems in ensuring consistency of delivery, application of rules and guidance, as well as training of staff and accountability. Any delegation would need to be subject to clear agreements between parties to ensure operational efficiency and, even more importantly, effective accountability. In framing such agreements, a thorough assessment of the resources required to effectively deliver any delegated functions will also be required.

When considering any delegation of powers, an important issue that will need to be addressed is how to ensure that such delegation does not undermine the accountability of the WRA to the Welsh Assembly. For example, any bodies to which powers are delegated should be subject to the same restrictions and safeguards as the WRA itself.

We also consider that information sharing is an important issue. There will need to be an agreement regarding historic information held by HMRC. As the tax system is increasingly automated with tax returns being submitted using iXBRL, information technology could be a significant problem if systems are used that are incompatible with those of HMRC, or HMRC do not maintain systems that the WRA rely on to get access to historic information. There is a need for a 'memorandum of understanding' between HMRC and the WRA to govern information sharing. Transactions may involve, for example, land in both Wales and England and would require co-ordination between the two bodies in terms of both information and powers.

We suggest that a clear set of guiding principles be established now, during the early stages of devolution, to ensure clarity and consistency as the devolution of Welsh taxes develops.

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

We believe that tax systems should be designed in such a way as to make it as easy as possible for taxpayers to comply. As a result we agree with the aim of the WRA to establish a regime that supports taxpayers to be compliant through the provision of guidance and prompts, and by offering systems that are easy to use. However, we are concerned about whether these aims can be delivered by the number and nature of staff which the WRA will be able to call on and whether the WRA will be able to achieve the stated intention of supporting taxpayers to be compliant. We cannot emphasise strongly enough that the devolved tax regime must be underpinned by effective mechanisms to support taxpayer compliance. Such mechanisms must be appropriately staffed if they are to be effective. We would welcome further detail around the proposed shape, size and location of the organisation and how it will support both the Welsh economy and deliver value for money, particularly given the limited revenue that will be generated by the two taxes to be devolved initially.

We note that there are no specific proposals to encourage taxpayers to put their affairs in order in the event that they have made errors in reporting their liability to devolved taxes. We would encourage the WRA to consider whether specific incentives, perhaps through the proposed penalty regimes, could be offered.

We would encourage the WRA to adopt a system similar to the HMRC online portal. This would enable agents acting on behalf of taxpayers to have real time access to client accounts and would ensure that what is put in place will be familiar to tax agents and taxpayers. In our view, this is the best way to ensure continuity, certainty and provide convenience for the taxpayer and their agents, and would also help to encourage compliance.

We would also encourage the WRA to consider the appropriateness of a collaborative model to work with larger taxpayers or for larger transactions. In our opinion, the approach adopted by HMRC, where a Customer Relationship Manager is appointed in such cases, has proved very successful.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

The vast majority of tax payers are compliant however, as indicated above; we would encourage the WRA to give careful consideration to promoting voluntary compliance by providing incentives for taxpayers to make voluntary disclosures.

Above all, we believe that it is important that taxpayers are clear as to what actions (or inactions) will trigger a penalty, as well as what the level of penalty will be. We welcome the proposed consultation on both the level and use of penalties.

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

We believe that the WRA should have discretion to determine the level of sanctions. As indicated above, we would be in favour of an approach that would involve flexing the level of sanctions on the basis of whether there has been prompted or unprompted disclosure by the taxpayer. We would welcome an approach based on the Schedule 24 Finance Act 2007 regime, which is now well understood by taxpayers and their advisers.

It is worth revisiting whether the scale of fixed penalties is appropriate, subject to appeal rights and reasonable excuse exclusions. In other tax regimes, the penalties for non-compliance vary according to the size or nature of the taxpayer. Sanctions could also take into account the scale of the transaction and the taxpayer's previous conduct in such matters.

However, the WRA should consider the implications of having different penalties from those charged by HMRC, as this may lead to increased costs for cross-border businesses.

As noted above, we consider that interest rates on underpaid and overpaid tax should be equalised.

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

We support an approach to criminal enforcement and public safeguards that is consistent with the approach taken elsewhere in the UK. The transfer of investigatory powers, such as the power to search premises or detain individuals, to a new organisation such as WRA should be undertaken with caution, as any error in application of these powers may undermine the authority and legitimacy of the body. It may be appropriate for criminal activity to be investigated by the police (as is the case in Scotland), or by HMRC (in the event that HMRC continues to provide operational support).

Chapter 5: Addressing tax avoidance

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes

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No

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As the disclosure of tax avoidance schemes (DOTAS) regime will continue to apply in Wales to the non-devolved taxes, we would question whether introducing a separate notification scheme for two taxes is a proportionate measure.

In the short term a notification scheme should not be necessary for a Welsh Tax on Transactions involving interests in Land if, following consultation on its design, the legislation addresses some of the shortcomings of SDLT in the UK.

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Whilst we question whether introducing a separate notification scheme in the short term is a proportionate measure, we support the Welsh Government's aims of tackling artificial and abusive tax schemes, and protecting the interests of compliant taxpayers.

In evaluating measures to tackle such abuse, a balance needs to be struck between preventing abusive tax planning and ensuring that Wales remains an attractive place to do business. Any measures introduced must therefore be proportionate, provide taxpayer certainty and not interfere with legitimate, established and commercial arrangements.

One key element that we consider essential for any disclosure regime is clarity over what would constitute a tax avoidance scheme requiring notification.

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Our view is that well-designed taxes and tax systems should provide extremely limited opportunities for avoidance or abuse. In the case of the two taxes being initially devolved, the potential for abusive arrangements would appear to be sufficiently low as to obviate the need for a separate disclosure regime. As noted in paragraph 6.4 of the White Paper, the number of appeals relating to SDLT and LfT in Wales is low, and no examples have been identified where the appeals have been referred to the tribunal system. This indicates that the devolved equivalents of these two taxes should be relatively straightforward and uncontentious to administer, assuming there are no substantive differences between the non-devolved and devolved taxes.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

The Welsh Government should look to draw on the experience of the UK general anti abuse rule, which will apply in Wales to all applicable taxes that are not devolved.

At this stage we would recommend that the Welsh Government should withhold its position on a GAAR until such time as the impact and effectiveness of the UK general anti abuse rule can be assessed.

Question 18: Would you see a Welsh GAAR being a wider, ‘avoidance’ provision, or a narrower, ‘abuse’ provision?

Wales will be competing globally, and we believe that the introduction of a GAAR targeted at highly artificial and abusive transactions would be more effective than a more widely drawn rule for the following reasons:

- a more widely drawn provision would introduce uncertainty and in turn make Wales a less attractive location for business and inward investment;
- it is necessary to balance the twin objectives of protecting the tax base from egregious schemes, whilst limiting the uncertainty associated with a rule of this type and a targeted rule should meet these objectives;
- a rule targeted at highly abusive transactions should not interfere with established, legitimate, commercial arrangements;
- a targeted rule should ensure greater taxpayer certainty as to which arrangements will fall within the scope of the GAAR; and
- a GAAR that is consistent with the rule that will apply to taxes that are not devolved will be easier for taxpayers to apply.

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

We believe that there is a role for independent expertise in assessing whether the GAAR will apply to tax arrangements. An independent review of any tax arrangements that may be within the scope of the GAAR would be an important safeguard for taxpayers before the WRA can apply the GAAR, similar to the Advisory Panel for the UK general anti abuse rule. Independent experts should be advisers and those in business with an understanding of the technical, commercial and economic aspects of arrangements under consideration.

The precise role of independent experts will, of course, depend on the eventual design of a Welsh GAAR. Whether independent experts will form a view as to whether the GAAR applies to specific arrangements, or, as for the UK general anti abuse rule, entering into arrangements is ‘a reasonable course of action’ will be something that can be considered in due course.

While we recognise that an independent panel would increase the complexity of the system by allowing for an additional layer of scrutiny, the additional comfort it could provide to business compliant taxpayers, and thus the additional gains in investor confidence and wider economic growth should not be underestimated.

However, at the early stages of devolution, with only SDLT and LfT devolved, we question if an independent panel, and its associated costs, is necessary or whether a set of guiding principles should be established in anticipation of further devolved taxes.

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

We are in favour of a prior clearance system which would serve to reduce taxpayer uncertainty, in particular for transactions that may be subject to a TAAR or the GAAR. The introduction of a prior clearance system in Wales would not only give taxpayers' increased certainty, but would also give Wales a competitive advantage in attracting business investment.

A clearance rule will require resourcing by the WRA, which will need sufficient appropriately experienced staff to provide clearances with an assured speed of response to meet the commercial and other requirements of taxpayers.

Publishing clearances, either general clearances or actual anonymised clearances, would help to reduce administrative costs in the longer term, whilst providing taxpayer certainty.

It is best practice to consider issues of implementation and enforcement at the tax policy design stage. However, we would reiterate that it may be preferable for the Welsh Government to withhold its position on a GAAR until such time as the impact and effectiveness of the UK general anti abuse rule can be assessed.

Chapter 6: Resolving tax disputes

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

We note that avoidance of disputes could be facilitated by simple, clear rules and advance judgements that allow both WRA and the taxpayer to “get it right first time”. We would very much welcome clear guidance which is also well referenced. This should enable issues to be identified early in the process (perhaps even before transactions are entered into).

Similarly, in our experience it can save a great deal of time and cost if both the taxpayer and the revenue authority are clear at an early stage as to the position that they take and the reason for this. Consultation in advance of changes in legislation and other aspects of tax policy will also help to prevent disputes arising.

The cost-sharing approach to Alternative Dispute Resolution may be appropriate in some cases. However, there is a risk that certain taxpayers may view cost-sharing as unacceptable (particularly when under financial strain), and thus this may actually disincentivise early resolution.

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

In general, our view is that it is appropriate and beneficial to encourage the voluntary use of Alternative Dispute Resolution. Our experience is that businesses find Alternative Dispute Resolution offers an efficient and fair mechanism for the resolution of tax disputes. However, we also recognise that disputes need to be resolved in accordance with the law, and there will be many cases where Alternative Dispute Resolution will not be appropriate and which will need to be resolved through litigation.

A clarification of the policy approach in this context would be useful. Most parties agree that Alternative Dispute Resolution is a good idea if the intention is to resolve disputes, but there are clearly circumstances where revenue authorities might take the view that they have reached the correct conclusion in a dispute and they do not wish to enter into an Alternative Dispute Resolution process (for example where they think there is a particular policy line that they need to hold). With that in mind, the WRA will need to be clear on what the principles underlying Alternative Dispute Resolution will be; a statement along the lines of HMRC's guidance on resolving tax disputes published in 2012 would be helpful.

The attractiveness and credibility of an Alternative Dispute Resolution system would need to be ensured by providing both confidentiality and suitable third party expertise. The publication of relative costs would be useful to taxpayers considering how to approach a dispute.

In order to evaluate this option fully and also to make sure that the system works as well as possible, we would welcome the opportunity to consider more detailed proposals when they become available.

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

This will be highly dependent on the individual circumstances of the taxpayer and the nature of the dispute. Early neutral evaluation may be particularly helpful where there are significant information asymmetries between the taxpayer and the WRA, providing impartial indications of how the facts of the actual case will be viewed. Mediation can assist in cases where compromises are possible, and is preferable to ongoing uncertainty to both parties. However, where this is not the case (e.g. because WRA believes it needs to maintain a particular policy-line or principle for reasons of the wider integrity of the tax system), arbitration will be more effective. Nevertheless, we note that binding legal judgement is desirable in some instances for both WRA and taxpayers (e.g. where formal precedent is required), and thus litigation will continue to be a preferred option in many instances.

We do, however, suggest that a prior clearance system should help reduce the number of cases that end up in dispute.

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Confidence in the appeals process is of great importance to the success of the new system. We therefore favour a transitional plan that will ensure that experience that has been accumulated over many years is passed on to the Welsh Tribunal System. Persisting with the existing Ministry of Justice administered two-tier tax tribunal system would achieve continuity and consistency. This option seems to minimise the risks of uncertainty which may have a detrimental effect on businesses operating in both England and Wales, while also allaying concerns over a new authority that may lack the experience and expertise that the Ministry of Justice-run system has already accumulated. Furthermore, this system is already integrated into the English and Welsh judicial system.

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Caution should be exercised if introducing a “pay-first” principle from the inception of the WRA. Until both taxpayers and the WRA have experience of how the newly devolved taxes work in practice, there is likely to be a higher volume of disputes. Furthermore, until the WRA and its appeal processes are well-established, there will be uncertainty as to how long the resolution process will take, and thus how costly a “pay-first” principle would be to the taxpayer. Consequently, while we acknowledge that the WRA will be concerned that some taxpayers may use a cost-free disputes process to delay payment, it may nevertheless be appropriate to delay the introduction of a “pay-first” principle.

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

As we have indicated at various points in this submission, continuity, simplicity, adequacy of resources, access to expertise, clear accountability, economies of scale and cost-effectiveness are all important criteria for assessing various options for the collection and management of devolved taxation. Ongoing involvement of HMRC appears to deliver many of these advantages, particularly where the limited scope of tax devolution means that limited income will be generated. Under these circumstances, it is not altogether clear what additional benefits are to be gained from an institutionally distinct WRA. It would be useful to have some understanding of the status and scope of the Welsh Government's discussions with HMRC, in order to assess fully the options available.

Establishing a clear and simple set of guiding principles now will provide a solid base for the further devolution of Welsh taxes. If devolution progresses, processes can be revisited with the guiding principles in mind. In addition, monitoring the progress of the Scottish devolution should help to identify areas which are working well as well as those of concern.

In any event, ongoing engagement with professional bodies and firms will be vital in ensuring that the WRA is structured so as to minimise unintentional costs to the taxpayer.

Publication of responses

Responses to consultations may be made public - on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

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If you are sending your response by e-mail, please mark the subject matter:
Consultation on collection and management of devolved taxes in Wales



Cymdeithas y Cyfreithwyr
The Law Society

Collection and management of devolved taxes in Wales

December 2014



Introduction

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 Tax Law Committee is a specialist committee of the Law Society comprising 15 expert tax practitioners.
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.

Overview

4. The Society welcomes this opportunity to respond to the White Paper. We see this as an important opportunity for the Welsh Government to take account of developments, positive and negative, in the UK tax system over the last few years.
5. 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.
6. There will be some taxpayers who do not agree with the judgement of a Welsh Revenue Authority ("the Authority") as to whether tax is due or the extent of their liability and it is important that they have an opportunity to test whether a liability exists and the amount of any liability before Tribunals or the Courts, as appropriate.
7. Further, it needs to be recognised that when there is a dispute, then until the final Tribunal or Court decision has occurred, or the parties have agreed on a settlement, it is not clear that the liability *is* owed to the Authority. Accordingly if it is thought appropriate that in these circumstances tax is collected before a matter in dispute is heard by the Tribunal or Court, the Authority needs to be adequately staffed and funded so that disputes can rapidly reach the Tribunals or Courts in order to establish whether, and if so how much, liability to tax actually exists. This is a particularly unfortunate aspect of the current taxation system in the UK that inadequate numbers of well-trained staff are available to process disputes efficiently.

Response to Questions

8. Our comments below follow the questions posed in the consultation. The question number appears following the comment. Where there is no settled opinion the question has been omitted and no response is recorded.
9. While there have been some concerns whether as a Non-ministerial Department, HM Revenue & Customs ("HMRC") is adequately accountable to Parliament whilst maintaining taxpayer confidentiality, we suspect that there would have been more difficulties faced by HMRC had it been a Ministerial Department with a Minister responsible for it and answerable before Parliament. (Question 1)

10. If fully delivered the core set of duties for the Authority would be a good starting point then, after a period of operation by the Authority, say five years, a review of the duties could be carried out. (Question 2)
11. 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. It would certainly be helpful if non-compliance with the Charter had an adverse impact on continued employment by the Authority rather than just being seen to be aspirational.
12. We think it is very important that consultation occurs between groups representing both assisted and unassisted taxpayers (e.g. the Low Income Tax group in the UK as well as appropriate representative bodies) to consider whether the Charter's principles are being followed. (Question 4)
13. From the perspective of taxpayers, the most important factor is balancing efficiencies of the low cost of collection, without having low levels of performance (e.g. insufficient staff to respond to telephone enquiries promptly) and the perception of the Authority being distant, remote or unthinkingly "heavy-handed". We suspect that the net cost of collection will be increased if there is a variable local approach rather than a single body for Wales. (Question 5)
14. We would only add that to accompany powers and duties of the type that could be expected, in order to enable taxpayers to self-assess tax, they need to have access to an adequately staffed Authority enabling them to resolve areas of uncertainty promptly where published (presumably online) guidance does not adequately deal with these questions. (Question 8)
15. One feature that the Authority could test would be whether a *ruling system*, with an appropriate cost being born by business taxpayers seeking rulings (in appropriate circumstances), should be instituted. This would enable the taxpayer who wishes to obtain certainty by reference to a particular set of facts to provide relevant material to the Authority and obtain a ruling which would be binding on the Authority unless there is a development in law (whether in Wales or in the EU) which would render the ruling inconsistent with the law as it has been determined. In appropriate circumstances it would be necessary to provide for an adequate transitional period in which the ruling remains valid whilst the taxpayer reorganises their affairs. One of the perceptions that is widely held in relation to HMRC is that the enquiry service is inadequately staffed and funded and that HMRC seeks to "trip up" taxpayers by levying penalties where as a result of not being able to obtain binding rulings (and not being able to resolve the questions out of its own resources or with professional advisors) HMRC take a different view than that taken by the taxpayer required to pay the penalties. (Question 10)
16. Provided that there is adequate time for consultation a power to levy penalties should be provided. However, 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. (Question 11)

17. It needs to be recognised that there is currently a consultation underway about extending the data regime in the UK in a manner which is thought by some bodies to be inappropriate. Therefore if there is modelling of the data for Wales on the regime currently operating in the rest of the UK, this should start from the current scheme. (Question 12)
18. One of the reasons it is perceived that there is a significant level of avoidance is the complexity and amount of reliefs in the UK tax regime. Specific reliefs targeted at particular sectors have in practice led to significant levels of litigation (e.g. reliefs targeted on films and other forms of incentive encouraged by ministers of the day.) A further cause of avoidance is rather rushed and prescriptive legislation in response to a particular problem, opening up another opportunity to mitigate tax, arising from a particularly prescriptive form of legislation adopted by Parliamentary Draftsmen. The Authority should have the opportunity to consider the fundamentals of the taxes for which it has authority and by revisiting principles underlying them, may reduce the scope of avoidance.
19. The consultation document recognises that it is important to provide certainty to business and other taxpayers and it seems unlikely that a General Anti-Avoidance Rule, unless accompanied by an adequately funded clearance / ruling process, would provide certainty. The whole reason that the UK General Anti-Abuse Rule has adopted the “double reasonableness” test is to provide as much certainty as can be provided to taxpayers, together with guidance from the Advisory Panel with a particular status, to minimise the uncertainty of taxpayers where there is no binding clearance service. (Question 17)
20. On that basis, if there was going to be a need for a restriction, we strongly recommend it should be a narrower “Abuse” provision. (Question 18)
21. In our view the assistance of an independent panel is particularly important and without the guidance produced by, and intended publication of decisions once they have been before, the Advisory Panel there would be an unacceptable level of uncertainty. The disadvantages of an independent panel will include the possibility that panel members may find themselves facing a conflict of interest or possibly, as a result, drawn from a relatively narrow sector of the population. (Question 19)
22. Given that a significant proportion of avoidance (as it is perceived by HMRC) has taken place in relation to stamp duty land tax, rather reflecting the shortcomings in UK legislation highlighted above, then, depending on the design of a Welsh land taxation regime, there will be less need for a GAAR affecting that particular tax. (Question 20)
23. 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. There are concerns regarding the accommodation of Welsh law within the current courts and tribunals service including the training of judges which must be addressed. (Question 24)
24. Where the Authority has not set out an adequate reason as to why the liability, in its view has arisen and/or its quantum, then accommodation of incidences of hardship or making time to pay arrangements are relevant. (Question 25)
25. We should be pleased to provide further comments and expand on our replies if this would assist the consideration of our submission.

Please refer any questions regarding this response to:

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Policy Adviser / Ymgynghorydd Polisi

The Law Society / Cymdeithas y Cyfreithwyr

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Cathays Park
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CF10 3NQ

Ein cyf / Our ref:
Eich cyf / Your ref:

Dyddiad/Date: 15th December 2014

Response to consultation on collection and management of tax white paper

Natural Resources Wales's purpose is to ensure that the natural resources of Wales are sustainably maintained, used and enhanced, now and in the future. We are responsible for regulating the waste industry and principal adviser to Welsh Government, adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources.

We recognise that the transfer of tax-raising powers to Welsh Government represents a significant step in devolution in Wales. We are particularly keen to continue to work with Welsh Government to ensure that the design and implementation of Welsh Landfill Tax is effective and best-suited to Welsh needs.

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 set out in the Landfill Directive for the landfilling of biodegradable waste.

Landfill Tax is a tax on the disposal of waste. It aims to encourage 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 behavioural tax 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 2.2 million tonnes in 2012.

We are represented on your Wales Landfill Tax Project Board, and Landfill Tax Technical Experts Group. Through these groups we have been working with you

www.cyfoethnaturiolcymru.gov.uk

www.naturalresourceswales.gov.uk

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg
Correspondence welcomed in Welsh and English

to look at the potential role and opportunities for Natural Resource Wales in relation to Welsh Landfill Tax and how best to realise them.

We have considered the following four elements in relation to our role and the future collection and management of landfill tax in Wales:

1. info sharing opportunities,
2. policy opportunities,
3. compliance and enforcement,
4. tax collection.

The principles and process around tax collection and management is highly technical. We are in period of organisational transformation and we consider that we do not have the expertise or capacity to deliver this activity at this time. In addition, we have some concerns that undertaking this role could take us away from our core purpose and feel that there are alternative options better placed to deliver this activity.

We do however recognise that there are opportunities and synergies in delivery for shared outcomes, for example, to improve information flow and coordination, to realise possible reduced administrative burdens on businesses, regulation and enforcement.

We also wish to remain engaged in considerations around the scope of compliance and enforcement delivery to understand whether there are any synergies or potential conflicts of interest in relation to an expanded role for us in this area. If we did have an additional compliance and/ or enforcement role we would expect it to be fully funded.

We will continue to engage in the policy development to ensure that options for Wales landfill tax delivers benefits in Wales. If you have any queries please contact Isobel Moore, Head of Business, Regulation and Economics.

Yn gywir / Yours faithfully

Emyr Roberts
Chief Executive

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Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Consultation on: Collection and management of devolved taxes in Wales

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation
(if responding on
behalf of that
organisation):

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes ☐ No ☐

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Chapter 3: Powers and duties

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes

☐

No

☐

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

Chapter 5: Addressing tax avoidance

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes

☐

No

☐

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Chapter 6: Resolving tax disputes

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Publication of responses

Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

☐

Returning this form

The closing date for replies is **15 December 2014**.

Please send this completed form to us by post to:

Financial Reform Division
2nd Floor East
Welsh Government
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Cardiff
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If you are sending your response by e-mail, please mark the subject matter:
Consultation on collection and management of devolved taxes in Wales

Collection and management of devolved taxes in Wales

Date: 15th December 2014

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. The CLA welcomes this opportunity to respond to the White Paper 'Collection and management of devolved taxes in Wales' published on 23 September 2014.

General Comments

3. Whilst the regime proposed for the collection and management of tax will initially only apply to the replacement taxes for landfill tax and stamp duty land tax (SDLT), it is important to ensure that the right framework is in place should the Welsh Assembly introduce a Welsh income tax or any other tax that is devolved to it at a later date.
4. In our view the White paper seems to take a sensible approach to the collection and management of taxes in Wales but it should be recognised that there are likely to be more cross border issues between Wales and England than between Wales and Scotland. We are concerned that the introduction of a system in Wales for the collection and management of taxes in Wales that is very different to the existing regime for the UK will add to the complexity faced by both advisers and taxpayers.
5. Having two systems of taxation is going to add a whole new layer of unnecessary complication and costs particularly for businesses operating in both Wales and in England or for professional advisers with clients in both jurisdictions. For example, there has been a great deal of confusion concerning the application of the Single Payment System and forthcoming Basic Payment System as a result of different systems operating in Wales and in England.
6. Any variation in the taxation system between England and Wales has the potential to cause substantial distortions in how businesses operate. A good example of this is the government incentives for renewable energy.
7. Tax avoidance can be hard to define but is generally accepted as being the means by which a taxpayer legitimately structures their affairs to minimise the amount of tax payable. This is legal unlike evasion which is not. The boundaries between avoidance and evasion can be blurred particularly whether a transaction or series of transactions involves an element of artificiality that has no commercial basis. It would be helpful for

the Welsh Government to focus on compliance and design a tax regime that enables and encourages compliance.

Specific Comments

8. We have the following additional comments in relation to the consultation questions, some of which have been answered together.

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

9. We agree that a Welsh Revenue Authority (WRA) should be established to operate as an independent body, free from direct ministerial control as a non-ministerial department. There needs to be an appropriate means, set out in legislation, by which the WRA accounts to the Assembly for its actions.
10. 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. We note that it is proposed that the WRA will be a smaller body and whilst we are concerned that the establishment of the WRA would just spread the limited pool of people, expertise and funding even further, sharing expertise as proposed would be beneficial.

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

11. We agree that the WRA should adhere to high standards of propriety, integrity and transparency as this will ensure taxpayer confidence and trust. As a smaller body than HMRC consideration should be given to ways in which there is greater scope for building relationships with Welsh taxpayers and their advisers as this is more likely to lead to good compliance.
12. We recommend that the duties are kept under review.

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

13. We agree that the Board members of the WRA should be appointed according to the Nolan principles. We would recommend that the Board includes both executive and non-executive directors as is the case with other existing bodies such as HMRC and the Competition and Markets Authority so that the board of the WRA can benefit from a wide range of knowledge and experience. In particular, the appointment of non-executive directors with experience of tax law and/or tax administration (such as professionally qualified lawyers, accountants or chartered tax advisers with experience of advising taxpayers) will provide valuable insights to the WRA. Such non-executive directors should be appointed through open competition for their experience, ability and diversity of skills.

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

14. We support the proposal to establish a Taxpayers Charter. The Charter legal status should be set out clearly in legislation. The consequences for non-compliance by taxpayers with their obligations under the tax regime by way of penalties, for example, are normally clearly stated in legislation. Yet the consequences of non-compliance by a revenue authority are generally less well understood by taxpayers so these should also be clearly laid out. A taxpayer should have the ability to make a complaint about a failure of the WRA or any delegated authority acting on behalf of the WRA. A procedure for referring complaints to the existing Adjudicator's Office will also need to be established.
15. It is important that there is a full consultation on the terms of any charter and that this is regularly reviewed to ensure that it remains fit for purpose. The WRA should include in its reports to the Assembly how it has complied with its obligations under the charter and what action it proposes to take where there have been complaints that have been upheld by the adjudicator or if its actions have been criticised in a tribunal.

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

16. Creating a system that is easy for taxpayers to understand and use will be an essential element of any approach to the collection and managing devolved taxes. A system that is difficult or burdensome for the taxpayer to use may hinder compliance or increase taxpayer costs because they need to appoint advisers to assist them. Whilst online services can be beneficial in aiding taxpayers and their advisers, this should not be the sole option as many of our members in rural areas do not have access to broadband.
17. Although HMRC has a large operation, the reduction in staffing levels as a result of the UK Government's cost cutting policy - necessitated by the UK's economic position - has had a detrimental effect on the levels of service experienced by taxpayers. This includes the time taken to answer calls to a helpline or the turnaround time in dealing with correspondence. Whilst the Welsh Government has proposed keeping costs low this should not be at the expense of performance levels.
18. A single national approach to the collection of taxes may be the best way to achieve efficiencies and we would support the delegation of collection to HMRC, particularly as taxpayers will be used to dealing with HMRC. We are concerned about the implications delegation to any other body may have on taxpayer confidentiality. HMRC officials are bound by strict confidentiality rules with breaches of confidentiality subject to criminal sanctions. Other bodies, such as National Resources Wales or local authorities, are not bound by such a strict code.

19. In addition, we doubt that National Resources Wales has the capacity to undertake any tasks involved in collection of taxes. There is also considerable uncertainty as to how many local authorities there will be in Wales. Although there are currently 22 Local Authority areas in Wales we are aware that the Williams Commission report published 31 Jan recommended that this number be reduced to between 10–12. With ongoing consultation as to local authority reorganisation due to take place by 2017 and the radical suggestion by Minister Leighton Andrews that the number of local authorities could be reduced to possibly 6, we would not recommend that any delegation is made to local authorities.

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

20. We consider the proposed obligations to be appropriate, although it should be made clear that a taxpayer can fulfil their obligations through an appointed agent if they so wish.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

21. The WRA will need to have powers to undertake its legal duty to collect and manage the devolved taxes. However it is essential any legislation to invest the WRA with such powers also contains the appropriate safeguards for the taxpayer. In particular, steps should be taken to ensure that the powers invested in the WRA are proportionate to the tasks it undertakes, namely the collection and management of direct taxes. HMRC now have more extensive powers than those that were available to the Inland Revenue, as a result of levelling up of the powers to those that had been enjoyed by HM Customs and Excise, who historically had more extensive powers to enable them to deal issues such as smuggling to avoid excise duties. Accordingly, the powers of the WRA should not exceed those reasonably needed to undertake its obligations. We recommend that there is a separate and detailed consultation on the issue of powers and safeguards.

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

22. See our response to questions 5 and 6 above.

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

23. The vast majority of taxpayers seek to be compliant and the default approach of the WRA should to assume that a taxpayer is trying to comply with the tax regime unless proved otherwise. This will aid ongoing relationships between the WRA and taxpayers.

24. Most taxpayers are happy to pay a level of taxation that they perceive to be fair. It is when they consider that there is a lack of fairness in the tax system, whether that is as to the rate of tax charged or the way in which tax is charged that abusive avoidance, or even evasion which is unlawful, may be contemplated.
25. Certainty as to how tax legislation applies to a particular taxpayer and their particular circumstances also aids compliance. Tax legislation can be complex and when it is there is a need for clear guidance to be available to enable taxpayers to understand their obligations. A taxpayer or their adviser should be able to access effective telephone helplines manned by properly trained staff where comprehensive advice is given. If necessary a taxpayer or their adviser should be able to obtain a written ruling that can be relied upon and will be binding on the WRA.

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

26. We agree that the WRA should have the power to levy penalties provided that the penalty regime is set out in primary legislation. To safeguard taxpayers who have made a genuine mistake or are affected by exceptional circumstances, such as flooding, which impacts on their ability to deal with their tax affairs in a timely way there should be provision that penalties are not applied in these circumstances. The level of penalties to be applied should not be set at such a level that this discourages taxpayers from engaging with the WRA to regularise outstanding tax issues or deters from challenging the WRA as to the application of the law to their circumstances or appealing a ruling.
27. Taxpayers will need to familiarise themselves with the new tax regime and administrative system when the devolved taxes take effect. As such it would be appropriate for there to be a period during which penalties are not levied to allow taxpayers to adjust to the new regime.

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

28. We agree that the Welsh Government should establish arrangements for criminal enforcement that are consistent with existing UK arrangements, subject to the same safeguards under the PACE¹ Codes of Practice.

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

¹ Police and Criminal Evidence Act 1984

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

29. The existing UK disclosure of tax avoidance schemes rules (DOTAS) are understood by professional advisers and there is little benefit in having a separate system for Wales, particularly as the taxes it would cover are less likely to be the subject of marketed avoidance schemes. This is evidenced by the fact that the number of SDLT schemes disclosed to HMRC in 2014 were fewer than 5, a substantial decrease in the number of schemes from the high of 485 schemes in 2005-06². This is no doubt influenced in part by the publication of a warning notice by Solicitors Regulation Authority in 2012 following concern about the promotion or facilitation of SDLT schemes³.
30. The Welsh Government has the opportunity to ensure that the taxes it develops are based on firm principles, are fair and certain and clearly set out in legislation so that there is less scope for the type of schemes marketed schemes that are the subject of the DOTAS regime.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

31. The Welsh Government should exercise caution if it were to create its own general anti-avoidance rule (GAAR) rather than mirror the existing UK wide general anti-abuse rule, given the lack of understanding of the term avoidance and the uncertainty for taxpayers and advisers currently being experienced in Scotland where the Scottish Government have adopted a rule that appears to be wider in scope than the current UK general anti-abuse rule.
32. In the current financial climate with Governments needing to recover as much tax as possible, the focus nationally and internationally (such as at OECD level) is very much on tackling avoidance. It should be remembered that avoidance (unlike evasion) is perfectly legal and is usually taken to mean the structuring of one's affairs in a way that minimises the tax payable. However the language used by politicians in the UK and elsewhere (such as in the OECD) in the ongoing debate on these issues seems to be

² [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379821/HMRC - Tax avoidance disclosure statistics 1 Aug 2004 to 30 Sept 2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379821/HMRC_-_Tax_avoidance_disclosure_statistics_1_Aug_2004_to_30_Sept_2014.pdf)

³ <http://www.sra.org.uk/solicitors/code-of-conduct/guidance/warning-notices/Stamp-duty-land-tax-schemes--Warning-notice.page>

confusing avoidance with evasion. There is an argument that the boundaries between very aggressive avoidance and evasion are sometimes blurred.

33. It should be remembered that tax planning concerned with the reduction of taxes to the legal minimum (or the maximization of post-tax income and capital to the legal maximum) has always been regarded as a well-established valid and proper activity.
34. The majority of CLA members own and farm their own land, but a significant number let land to tenant farmers and run wider, diversified rural estate businesses. CLA members on the whole hold land for generations. It is commonplace for our members to enter into arrangements, which owe more to concerns about succession planning than to tax planning and as such we would not wish to see a rule put in place that will hinder such succession planning.
35. We are pleased to see that the consultation document recognises that it is important to provide certainty to business and other taxpayers. If it is determined that the Welsh Government wishes to adopt its own rules to counter aggressive tax avoidance we would encourage it to follow the example of the current UK general anti-abuse rule rather than the adoption of a general anti-avoidance rule as has been the case in Scotland. This will reflect the recommendation to Member States of the European Commission⁴ for the adoption of a general anti-abuse rule to target artificial arrangement(s) which has been put into place for the essential purpose of avoiding taxation and which have lacks commercial substance. Further guidance is given as to what is regarded as artificial⁵. For example:
- the legal characterisation of the individual steps which an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole
 - arrangements is carried out in a manner which would not ordinarily be employed in what is expected to be a reasonable business conduct:
 - arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows
36. Any such rule should only apply to tax avoidance schemes which are artificial and contrived. A narrow anti-abuse rule that draws the line between non-abusive tax mitigation/planning and abusive tax avoidance should comprise objective and principled factors such as those outlined above and be accompanied by clear guidance. This will create less uncertainty, particularly for taxpayers operating both in Wales and England.
37. We believe that in operating any general anti-abuse rule the onus should be on the WRA to show that any particular arrangement is abusive, in that the intended tax effect of the relevant transaction was not in accordance with the purpose of the legislation. Effective working of any such rules will depend on the ability of the taxpayer and their advisers to be able to easily identify what the purpose of the legislation. One of the difficulties with existing tax legislation and the application of the current UK GAAR is that it can be a challenge to determine with any certainty what the purpose of the legislation is.

⁴ See European Commission Recommendation of 6 December 2012 on aggressive tax planning C(2012) 8806 final, paragraph 4.

⁵ Para 4.4 of the recommendation.

38. We consider that the Welsh Government should establish its own independent advisory panel to advise as to whether a transaction(s) fall foul of the Welsh GAAR. We also believe that a Welsh GAAR should state expressly that a court of tribunal must take account of any published guidance and of any opinion of the advisory panel.

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

39. We agree with suggested approach. We consider that an important element of the relationship between the WRA and taxpayers and their advisers is the ability for them to have informal discussions to resolve any areas of dispute. If this does lead to a resolution there should remain the ability to appeal to the tribunals, albeit with a reference to Alternative Dispute Resolution (ADR) if appropriate in a particular case. The method of ADR will be determined by the facts of a particular case, but there should be no limitation of the methods of ADR available.

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

40. We agree that the existing tribunal system should be used. It would be very costly to create and administer a new system.

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

41. The current operation of the UK SDLT requires payment of tax due with 30 days of the effective date of completion. For the majority of transactions, particularly those that are residential this is actual completion. A similar rule would be appropriate for the new Welsh tax on land transactions. In reality most pay the tax due promptly since they need the receipt of the confirmation of payment to be able to register the transfer of ownership with HM Land Registry. As such a pay now rule would not be appropriate for these transactions.
42. We have no views as to whether a pay now rule is appropriate for any other devolved taxes. However, if there is such a rule, provision needs to be made to provide safeguards where taxpayers may suffer hardship in complying such a rule. Also, in the interests of access to justice, the creation of a pay first rule should not be used to prevent a taxpayer from appealing any decision of the WRA.



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Ref/Cyf 34:

WLGA

White Paper: Collection and Management of devolved taxes in Wales

Introduction

The WLGA welcomes the opportunity to comment proposed White Paper. We will respond to the detailed questions below but it is important that we set out our general position in respect to the new tax environment, and the importance of controlling resources close to communities, where this is best to do so. Much of our response to the detailed questions below highlights the expertise which Local Government brings as a local tax administrator. This expertise, alongside the statutorily underpinned central-local partnership, should define local government's relationship with the new Welsh Revenue Authority (WRA).

WLGA's general position in the new tax environment

An essential part of our vision is that local government should have maximum freedom and flexibility to control the resources needed to deliver services locally to communities. The tax raising powers which local government already possesses are a key feature of the resource landscape at the local level and are a key element in our vision for greater local control of resources.

The WLGA would argue that in the new tax management environment, local democratic responsibility for taxation remains a key feature. Just as there is recognition in the consultation proposals that the new devolved taxes should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation. Gerry Holtham's recent paper to the Institute of Welsh Affairs¹ recognised the strategic links between locally collected property taxes, newly devolved taxes and taxes that have the potential to be devolved.

The WLGA has welcomed invitations already made to participate in the Tax Advisory Group and our officers are contributing constructively in other fora. We believe that there is a need for Local Government to have a close relationship with the WRA and a means for high level and meaningful interaction with the new body.

¹ IWA Senedd Paper 2: Taxation in Wales, Spring 2014 (<http://www.iwa.org.uk/en/publications/view/233>)

Q1: Do you agree with the proposal to establish the Welsh Revenue Authority as a non-Ministerial Department, which is accountable to the Assembly?

Yes

Q2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

The proposed core set of duties are reasonable and relatively comprehensive. There is no mention though of proposals in relation to how the taxes due are to be established nor what the reporting and accountability arrangements are to be. There also needs to be some discussion in relation to tax avoidance and evasion more widely rather than limiting this to criminal activity.

Q3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Our view is that the WRA will become a key player in the 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. However a decision to go with the preferred approach should be fully tested against the benefit of alternative models. We note, for example, that in some responses to a similar consultation by the Scottish Government that a Revenues Commissioner was proposed by some.

The devolution of these taxes does provide an opportunity for a more coherent approach to all taxation in Wales, as put forward by Gerry Holtham's paper cited above. There may be a role for the WRA, perhaps advisory in nature, to keep overview of all property taxes in Wales and in examining and developing different approaches to National Non-Domestic Rates (NNDR) and Council Tax, while recognising and retaining the local decision-making in terms of Council Tax rates is the cornerstone of local democratic accountability.

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.

**Q4: What are your views on proposals to establish a Taxpayers' Charter?
What action is essential in keeping a charter relevant and effective in
supporting a constructive relationship between the Welsh Revenue Authority
and taxpayers?**

We strongly support the establishment of a Taxpayers' Charter. It is important that there is clarity regarding roles, rights and expectations of the WRA and individual taxpayers.

The Charter needs to be responsive to change but regular stakeholder engagement will help ensure that it remains relevant.

**Q5: What in your view are the most important considerations in determining
the approach to collecting and managing devolved Welsh taxes and why?**

In our experience, the core principles of any tax system are:

- Minimise leakage and avoidance
- Maximise collection
- Minimise burdens on businesses / taxpayers
- Minimise complexity
- Minimise administration costs

One of the main features of a new system for these taxes is that the administrative costs should be kept as low as possible so that as much of the tax receipts as possible are used to fund services. This is also linked to an ability to keep collection rates high (and improving) over time. A track record in both these areas should be a precondition of any organisation that takes up this role in the future. Processes should be automated wherever possible and there should be a single registration process for taxpayers or their agents.

From the taxpayer perspective the system should be simple as possible in terms of registration, calculation and payment of tax. All taxpayers should have a consistent, high quality experience that is transparent and predictable.

In the initial years there should be no significant differences in cost to taxpayer between England and Wales given the porous nature of a relatively long border (this is particularly relevant to Landfill Tax). There should be minimal change from existing practice from taxpayers' experience (except where improvements can be made) to ensure smooth transition.

Q6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Local authorities in Wales are best placed to collect and manage devolved taxes. They already have systems in place to undertake the management and collection of taxes and/or sundry debtor accounts. Local authorities have experienced staff with relevant qualifications from the Institute of Revenues Rating and Valuation (IRRV) who have practical experience in all aspects of collection, minimisation of tax avoidance, revenue leakage and managing outstanding debt. Experienced staff would ensure a smooth transition and utilising existing systems would keep costs to a minimum.

There is no up-to-date contemporaneous cost benchmarking data. However the last time that an exercise was carried out by CIPFA in 2011, the costs of collecting CT and NNDR were significantly lower in Wales than England.

The track record of local authorities in Wales in collecting taxes and income due is good. Collection rates for council tax are at historic highs. Compared to unitary authorities in England and Scotland collection rates here are higher. Outstanding debt is falling and revenues practitioners are constantly striving to improve their service.

There is inevitably a degree of variation across the 22 authorities, it may shape the type of model that is adopted, for example given the low level of transactions it could be done by one authority nationally, or by one authority in each region. What is clear is that one or more local authorities could play a significant role in the management and collection of newly devolved taxes given that they already collect £1,300m in Council Tax, £895m in NNDR and similar levels in sundry debtors.

Further work would be required with local authorities to discuss the details of how this might work.

Q7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes, in that they are based on the taxpayer obligations that exist in the current system for the taxes that are to be devolved, these are appropriate obligations.

Q8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

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. Early planning may be required in terms of developing the appropriate investigative powers, particularly where there may be issues around legislative competency.

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.

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.

It would be remiss of the WLGA to miss this opportunity to highlight that local authority revenues officers are highly experienced in all these aspects and have an excellent track record.

Q9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

We are strongly of the view that additional costs should be kept to a minimum and as such would much rather see delegation to a body(ies) that have existing systems in place over building capacity in-house within the WRA. There is significant potential for symbiosis / overlap with delegates' existing role(s) for example, speedier processing of change of property owner details and the use of local knowledge in dealing with tax compliance / avoidance issues.

Functions should be delegated to where they best fit and make most sense. Delegation is not necessarily an all or nothing approach as different functions or parts of the process can be approached in different ways. There is a need to be wary of over-complicating the system.

The terms and conditions of the arrangement should also set out examples of potential triggers for the revocation of the delegation of powers as it is important that all parties are fully aware of these before entering an agreement.

The control of personal and confidential data transfer between the WRA and the delegatee while ensuring that sufficient data is shared to allow efficient operation of the

system needs to be carefully managed. Continuity and ease of transition from the taxpayers' viewpoint are also key considerations.

The delegatee should have a good track record of collecting and managing personal information while managing and collecting taxes / payments due, along with high collection rates and experience of managing compliance / non-payment appropriately and robustly yet sensitively where this is required.

Q10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

The WRA should ensure that the tax system is well publicised and well understood and that access to guidance and further information is simple and speedy. Being pro-active will minimise non-compliance and will also clearly set out the message that there is a clear and consistent approach to non-compliance in Wales. The development of specific approaches to this should utilise evidence from existing non-compliance issues as base for developing a response to non-compliance.

The taxpayer also needs clarity, transparency, accuracy and timeliness in the calculation of the tax due and to be able to make the payment of the tax due a routine part of the wider transaction.

It is important that those collecting the tax are accessible at times of query or dispute in order to ensure that these are resolved quickly.

Q11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.4) and for the conditions for when and how these are used being set out in later consultation and legislation?

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.

It is important that any penalty regime is consulted upon widely prior to its introduction.

Q12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

Benefits of the current system include that it is clear, accessible and geared to be proportionate with the amount of tax due.

Q13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

We agree that Welsh Government needs to establish powers to deal with criminal offences in relation to tax, even if these are extremely rare. This is a complex area in terms of legislative competency and early work is required to ensure a smooth transition.

We also agree that powers to investigate should be conferred on the WRA and that the WRA should then be able to delegate that function to another body where an existing experienced resource could be utilised.

It should be noted that in response to the changes being introduced due to Welfare Reform, many local authorities are establishing fraud investigation units on a commercial basis so that they can retain access to officers that are experienced in investigation, including giving cautions.

Again, public safeguards also need to be established to mirror existing safeguards to ensure that the system is fair, just and unbiased

Q14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes - it appears that there are benefits to establishing a disclosure scheme for tax avoidance but also that this needs to remain the same, or very similar to, the existing regulations to avoid any additional administration for taxpayers as a result of the introduction of a new system

Q15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Where possible, established processes that work should be replicated within Wales to avoid having to start from scratch. There is potential to learn from existing practices across the UK and beyond and to work collaboratively.

Another important aspect is the need to enable sufficient data sharing across the UK but is particularly relevant for authorities on the Wales / England border.

Q16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Given the widespread understanding of the current regime, a possible area to explore would be relying on the existing UK DOTAS rules if this were possible.

Q17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Yes

While relatively rare, there are those who would take full advantage of any legal loophole that provides scope for tax to be avoided even where this was not the intention of the legislation. While the taxes that are currently being devolved are relatively small, the Welsh Government should introduce a similar General Anti-Abuse Rule (GAAR) in Wales in preparation for the further devolution of taxes.

In order to be fair to those taxpayers who do pay their taxes in full on time there needs to be a clear stance against artificial tax avoidance schemes that are considered to be an abuse of tax legislation. Welsh taxpayers are already working within a GAAR which sets out the principles of the stance against tax avoidance/abuse in particular that gaining a tax advantage under a certain set of circumstances will be considered outwith the legislation.

This GAAR would effectively ensure that tax avoidance schemes are discontinued as soon as there is an awareness of their existence rather than have to undertake a long, drawn out legislative process to close them down using specific tax legislation.

Q18: Would you see a Welsh GAAR being a wider “avoidance” provision or a narrower “abuse” provision?

Our view is that the narrower “abuse” provision would provide greater clarity and certainty for taxpayers that it is the artificial avoidance arrangements that are being targeted specifically. It is important that it is clear to all that this rule does not apply to regular tax planning and management activities

Q19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

An independent panel drawn from across the full range of stakeholders would provide reassurance to businesses and other taxpayers that the GAAR was targeting artificial tax avoidance schemes that abuse the spirit of tax legislation rather than simply ensuring maximum revenues for the government and would inspire greater confidence in the system. The focus would tend to be on greater fairness for all taxpayers as well as the Government.

A potential disadvantage might be difficulty in reaching consensus on schemes that are on the borderline.

Q20: Given its clear links to a Tax on Transactions involving interest in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Continuity and maintenance of collection rates are crucial as this taxes is devolved to Wales. Not introducing a GAAR at the same time as the tax is devolved could provide signals that the rules in Wales are being relaxed in comparison with England and would work against Welsh Government and Local Government's standpoint that all taxpayers should pay the tax they are due to pay. It would be more difficult to tighten this back up following a perceived relaxation of rules than to maintain the current system.

Q21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Clearly avoiding a dispute in the first instance should be the priority of any tax system. To this end accuracy and timeliness of the calculation of the tax due is paramount, but equally important is that the potential taxpayers have a good understanding of the tax due and how it is calculated.

Where a query or a dispute does arise, early, informal discussion can often lead to resolution of the matter without the need for any further, more costly intervention.

Where this arises in relation to the payment of council tax or NNDR, many disputes / non-payment issues are resolved through informal discussion with the taxpayer, sometimes with alternative payment schedules being agreed in cases of hardship.

Q22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Yes, alternative dispute resolution mechanisms have been shown to result in more timely conclusions to disputes and therefore are more cost effective methods of resolving disputes than the more adversarial tribunal route.

Q23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving tax disputes and why?

Early Neutral Evaluation would be useful for both parties in ascertaining whether there is a clear position in the potential outcome of a dispute from an appropriately qualified neutral and independent person, helping to ensure that only genuine disputes progress to further stages of resolution.

Arbitration would provide the opportunity for both parties to set out their positions to an appropriately qualified neutral arbitrator who would then make a decision on the solution to which both parties are bound.

As mentioned above early, informal discussion can be very successful and could perhaps be coupled with the option to involve a neutral mediator may also help where the dispute can be resolved through discussion / negotiation. This may not be the best course for disputes that involve complex legal or accounting arguments that may set precedents for future tax transactions.

Q24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Yes, as this offers the best solution in terms of both cost effectiveness and in continuity for taxpayers. The system is already established and is well understood and can also operate at a scale that may not be possible for a Wales-only system given the low levels of appeals arising from the taxes that are currently being devolved.

If there is further devolution or if new taxes are introduced, this may need to be reconsidered as it may become more difficult to manage an England and Wales tribunal system alongside diverging tax legislation.

Q25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

In relation to specific taxes where the requirement to pay a tax is well understood and well publicised before any transactions are entered into, then a “pay first” principle may be appropriate.

If a “pay-first” principle is to be adopted then it is imperative that the systems in place to calculate the tax liability are accurate. Opportunities for early informal discussions in relation to accuracy also need to be available, well understood and widely publicised.

It is important that any postponement or appeals processes do not allow scope for widespread abuse / tax avoidance purposes.

There need to be clear and accessible safeguard systems and processes in place in order to discuss issues in relation to genuine hardship

Q26: Do you have any related issues which we have not specifically address or other comments that you would like to make?

It is imperative that the transition to devolving these taxes should be trouble free. Decisions in relation to how the taxes are managed and collected should not result in a greater burden on Welsh taxpayers nor a reduction in revenues to the Welsh public sector.

Author: Mari Thomas (02920 468632)

Email: mari.thomas@wlga.gov.uk

Cleared by: Councillor Aaron Shotton, Spokesperson for Finance & Resources
(PENDING)



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Consultation on: Collection and management of devolved taxes in Wales

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation
(if responding on
behalf of that
organisation):

Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

Yes ☐ No ☐

Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?

Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?

Question 4: What are your views on proposals to establish a Taxpayers' Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Question 6: In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

Chapter 3: Powers and duties

Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

Yes

☐

No

☐

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?

Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and in the selection of a delegatee?

Chapter 4: Encouraging tax compliance

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?

Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?

Chapter 5: Addressing tax avoidance

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

Yes

☐

No

☐

Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?

Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

Question 18: Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?

Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?

Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

Chapter 6: Resolving tax disputes

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?

Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?

Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Publication of responses

Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

☐

Returning this form

The closing date for replies is **15 December 2014**.

Please send this completed form to us by post to:

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or e-mail to: FinancialReformMailbox@wales.gsi.gov.uk

If you are sending your response by e-mail, please mark the subject matter:
Consultation on collection and management of devolved taxes in Wales

<p>Response of the Public Services Ombudsman for Wales to the Welsh Government's consultation on the White Paper: 'Collection and management of devolved taxes in Wales'</p>

1. As Public Services Ombudsman for Wales I investigate complaints made by members of the public that they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. As such, I have a unique perspective on the provision of public services in Wales, driven from the views of members of the public who have been dissatisfied with the service they have received. Where cases have wider lessons, it is important that these are communicated so that they can improve service delivery and reduce dissatisfaction in the future.
2. Whilst I welcome the opportunity to respond to the consultation on the proposed arrangements for the collection and management of devolved taxes in Wales, in my role as Ombudsman it would not be appropriate for me to comment upon the vast majority of the content of this consultation. However, there are two specific areas where it is appropriate for me to offer my view, which are as follows:

- **Page 12 – Maintaining Standards:**

- (a) I concur that the handling of complaints concerning the WRA should be aligned to the established arrangements for public bodies in Wales. It is my view that taxpayers in Wales should have the same recourse to the Ombudsman should they be dissatisfied with any aspects of the tax collection and management service for which the WRA will be responsible as they do for the other devolved services which come within the jurisdiction of the Public Services Ombudsman for Wales.
- (b) I accept that there may be some elements of the WRA's activities which may more properly be a matter for the Independent Police Complaints Commission (IPCC) to consider. There are of course mechanisms which could be put in place to deal with such situations, for example the establishment of a Memorandum of Understanding between the PSOW and the Commission.

- **Page 35 - Avoiding disputes and seeking early resolution:** Paragraph 6.15 refers to establishing an early stage process of appeals similar to that currently used by HM Revenue & Customs. The proposal states that alternative dispute resolution (ADR) costs would be shared between the taxpayer and the WRA. I would suggest that in view of the fee chargeable this should be optional and that provision should be made to enable the taxpayer to take the matter direct to a tribunal if they do not agree to ADR and the costs involved.

3. Finally, should the Welsh Government find it helpful, I would be happy to meet with officials to discuss the above in greater detail.

Public Services Ombudsman for Wales
December 2014

Tax Policy & Legislation Division
Treasury
Finance & Corporate Services
Welsh Government
By email: [Financial Response Mailbox]

Date: 15 December 2014

Subject: [REDACTED] response to 'Welsh Government Consultation on
Collection & Management of Devolved Taxes in Wales'

Our reference: n/a

Your reference: n/a

We offer this response with the understanding that our identity and feedback will not to be made publicly available

Dear Sir / Madam

Summary

1. A stable and internationally competitive tax framework is vital for business and for the successful development of the Welsh economy.
2. The complexity and administrative structures around a tax framework should be proportionately lean, transparent and practical. This is particularly important in an economy of Wales' current size.
3. Devolution of some tax powers offers the opportunity to consider the appropriateness of some less competitive aspects of the UK framework (both policy and practice) to the Welsh economic landscape. Examples include Business Rates, R&D tax credits, Enhanced Capital Allowances, taxes which affect essential costs such as energy, and the timeliness and responsiveness of some processes.
4. The creation and promotion of a positive culture of payment and compliance is to be welcomed and fully in line with [REDACTED] corporate values. A key element of that would be a fair, transparent and responsive enforcement of enforcement.
5. While a devolved fiscal framework may create a positive business environment in Wales, it will always be important to address the vital issue of how such a framework aligns and agrees with UK and European counterparts.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED] would welcome the opportunity to share its experience of operating in multiple tax regimes as part of the Welsh Government's further considerations of this important policy area.

1. Introduction & General Principles

a) [REDACTED] and Wales

[REDACTED]
[REDACTED]. As an international company with a vision which reflects our global network of suppliers, partners and customers, tax – at any level - fits into the range of factors which influences our business decisions.

[REDACTED]
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[REDACTED]
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[REDACTED]
[REDACTED]

Our corporate experience in devolved Wales has been broadly positive. [REDACTED]
[REDACTED] Working together with the Welsh Government we have been able to improve our Welsh operations' competitiveness, train highly skilled people, and we have protected jobs when this has been an imperative. We support the Welsh Government's positive approach to growth, investment and skills development and the government's practical and realistic focus on sustainability.

b) The importance of an appropriate tax framework to promote economic growth

The locally prevailing fiscal regime is a key component in maintaining and improving the national economic environment. A competitive and sustainable tax regime in Wales should be an important signal to business to grow and sustain the operations here. This in turn incentivises investment leading to a range of secondary effects, many of which have clear 'public goods', e.g. innovation, skills and sustainability. Clearly where companies can contribute to societal objectives – such as the current "Green Growth" strategy, this may be reflected in the fiscal process.

Devolved tax powers should not be seen as an end in themselves. Decisions on how and where to pursue such devolution should be grounded in a clear 'business-case' alongside the social and political drivers. The recent announcement of the devolution of Business Rates to Wales provides a present example of where competitive distortions

(e.g. costs five times higher than elsewhere in Europe) and brakes on growth (e.g. the current regime effectively penalises investment) in the UK framework can be considered in a way that is directly relevant to the economic needs and priorities of Wales. For example, reflecting the considerably higher proportion of manufacturing activity as a share of GDP than in the UK as a whole.

Done right, tax devolution should be a powerful driver of economic growth with its associated social benefits. Done wrong, and the reverse is risked.

c) Creating a *better* tax system

Evaluating the practical challenges of managing tax and identifying areas of improvement are important steps in devolution for Wales. We believe some important considerations, recognizing some of the particular characteristics of the Welsh context, are:

- The economy in Wales is currently relatively small which means that to be viable, the structures and processes for managing tax must be proportionately lean, transparent and practical.
- It will be essential for Wales to undertake this journey with a keen eye on the partner and competitor nations and their fiscal regimes – the UK, the European Union or elsewhere such as key nation states. The importance of benchmarking any Welsh framework against other nations is clear. More technically, preserving what is good and important in current arrangements is also important (e.g. tax-neutral transactions between UK entities, group relief, transfer of assets at tax written down values etc.).
- [REDACTED] general experience of working with the Welsh Government suggests that the responsive approach of the Welsh Government already pays dividends: information and decisions are shared quickly and efficiently. In tax terms this may be applied to offer a local, dynamic, predictable and collaborative service. A practical example of an area for potential for improvement would be the lengthening periods, in practice, of HMRC VAT recycling. This can bring cash flow and uncertainty issues. More generally, greater tax powers give further opportunities for specialists within Welsh Government to craft tailored approaches that will bring investment to Wales.
- A local tax regime may carry further benefits of clearer interpretation of tax policy. Facilities such as the Research and Development Tax Credit (“RDEC”) were designed with a primary focus on pharmaceutical industry but have proved to be useful in driving innovation and local supply chain sourcing for manufacturers like [REDACTED]. However, changes announced in the 2014 Autumn Statement which seek to deny the RDEC relief for raw materials used in production put some of these benefits at risk.
- The Enhanced Capital Allowance scheme has the admirable goal of incentivizing energy and resource efficiency, vital for achieving the Welsh Government’s sustainability goals. However, the current largely list based approach is less environmentally and economically useful in some disproportionately important opportunities for Wales where, in our experience,

large bespoke investment is outside the rules due to peculiarities of interpretation of the legislation.

The end result should be a framework that is coherent, transparent, responsible, responsive and sensitive to the imperative that the economy must be sustained for the benefit of the whole community.

has experience of working under different tax systems in many fiscal regimes in the international arena. We should be able to contribute knowledge towards our shared goals which will enable us to work together for mutual benefit.

2. Creating a Lean & Efficient Structure

a) The Welsh Revenue Authority (“WRA”)

White Paper Questions 1-3.

An appropriate definition of “separateness” for a WRA is important with respect to political intervention, tax policy and its interpretation and in ensuring the authority is solely accountable for its responsibilities as a tax management and collection body.

It is important that clear accountability exists for managing the tax process and a centre of expertise is created, perhaps following the principles which have seen the creation of an integrated, competent authority in Natural Resources Wales. Some clarification may need to be provided with respect to the relationship between the WRA and the National Assembly (to whom it is “accountable”), and also the Welsh Government, (from whom it should “have regard to Ministerial guidance”).

Concerns will be expressed about the cost of forming a new public body – which will require staff, operating assets – including sites and databases – and resource for its communication. It may be possible, and certainly helpful for the wider audience to know, how much of this “set-up and ongoing cost” may be satisfied from existing Welsh Government or HMRC assets.

The WRA will need a Board and Senior Management Team. The structure and approach to its formation will be critical to the definition of the body’s “brand,” values and approach. We suggest that a representative range of expertise and experience be brought to the Board, including utilizing expertise in the business community. As one of Wales’ leading manufacturing companies – with a high and broad tax liability and in-house tax expertise we believe that we could offer a strategic contribution to this process and would be happy to do so.

b) Defining a Positive Culture

White Paper Question 4.

The principles and values of any Wales tax framework should build on an approach that is of course robust but, to the extent reasonable and practicable, also collaborative. We would suggest that the values themselves should include ideas of

partnership, sustaining the community and our environment, openness, fairness and practicality. A fundamental principle of the proposals should be that (like government in general) the devolved *tax regime should serve the community – the community does not serve the tax regime*. This expression must have a clear function. The word “Charter” is, alone, ambiguous, lacking focus and accountability. It may be hard to measure performance against charter commitments objectively. The role of a “Charter” in creating “a positive culture of payment” is a laudable aim but we believe that more prosaic levers such as the culture and values of individual companies [REDACTED] [REDACTED] the transparency and responsiveness of the tax framework and the trust formed over time in the relationships between the tax authority and the underlying tax base.

The White Paper’s listed obligations of the WRA and tax-payers are uncontroversial, but opportunities exist here to predict a culture of self-assessment, cooperation and partnership and a commitment to minimise “red-tape.” Useful guidance for payers is provided in Statement of Practice (SP) this or equivalent advice/ interpretation notes should be continued in the Welsh regime.

We are invited to suggest ways in which compliance can be promoted and encouraged and a predictable range of tools is offered. While overt hypothecation generates difficulties a commitment to link specific fiscal revenue with related programmes or initiatives which are supported by the community will contribute to a positive culture. We would highlight the recycling of funds associated with landfill activities as an example in this regard, assisting community engagement, promoting good practice and creating a positive culture of linking tax with community benefit.

c) Tax Collection and Management Bodies

White Paper Questions 5 & 6.

Wales has a relatively small population and, currently, economy. A lean structure will be needed to manage a limited fiscal process. In the same way that the Welsh Government has been able to harness the opportunity of a relatively small economy to create a highly focused economic development strategy, a local, practical and efficient collection process should be created. A multiple agency approach to collection can only be applied if it is better and more economical than a lean single body. It is difficult to understand how a variable local strategy can be fair or serve a global business [REDACTED] [REDACTED]

Clearly in a process of transition to a devolved regime, consistency with the UK tax structure will be helpful. The attitude of the Welsh electorate (and inward investors) to the real life impact of devolution may be at stake.

In theory at least, the White Paper does not rule out options to invite other organisations to manage and collect taxes. Candidates could be existing competent authorities if they could demonstrate that their regulatory responsibilities could not be compromised by a new fiscal role. Appropriate obligations and safeguards would need to be put in place.

Self-sufficiency in compiling tax-returns is well-established in personal and corporate tax. It could be further developed given an appropriate culture, online, or other automatic facility, and timely, reliable advice. “File-and-pay” is well established as a “DIY” tax solution for low-risk tax payers. We support continuity of this principle where it works and reduces bureaucracy.


d) Safeguards, Penalties & Enforcement

White Paper Questions 7-25

Taxes must be enforced fairly to be effective and grow any “positive culture of payment”. We believe some important considerations in this regard are:

- The separation of the tax authority’s powers from that of government itself is important to reduce political risk and the perception of such risk.
 - In order to manage an easy transition, preventing confusion, it is important that consistency is maintained in criteria and levels of penalty. We support the White Paper’s concern to minimise the risk of cheating, concealment, fraud, etc. in the transitory period via maintaining a consistent approach with UK where practicable.
 - Appropriate, non sensational and proportional profile around both good and bad practice could be used again to promote the “positive culture of payment”. Recent well publicised corporate situations have highlighted the risk to ‘brand value’ which is an increasingly powerful lever on organizations in all fields.
 - Alternative Dispute Resolutions (ADR) mechanisms should be a tool of last resort. Lessons must be learned when cases reach this point, since it does suggest a failure of the process.
 - The White Paper states that several formal bodies are able to take formal action against HMRC. This induces the logical question that an independent Welsh Tax scrutiny / ombudsman organisation might be created. Its presence may contribute towards the positive culture of payment which the Welsh Government seeks to create.
-

3. Wales must be “*Business-Country*”

 Working with government here, we are able to sustain a highly-skilled workforce, develop a strong energy and transport infrastructure, and a sound regulatory structure. Above all, a supportive fiscal environment can work together with a pro-growth economic development policy to make Wales the country of choice for future investment in our business.

Tax devolution does present some potential risks to manage. We understand the appetite amongst some in the community for self-determinism at a Welsh level. New approaches to government, new ways to manage communities, new philosophies and new technology can all make this happen. But simultaneously we are an international business with global interests and partners. While we focus positively on important matters at a local level these must be consistent with the much broader global view to continue to drive economic benefit. To be effective for us, the instruments of Welsh devolution, be they policy, lawmaking or tax, must work in this context.

Some important questions must be answered to inform our proposals with respect to a devolved tax regime in Wales. The future of the Barnett Formula (or whatever its successor may be), and the future of distribution of resources from the EU with both effect Wales' fiscal balance and efficacy. These may command detailed study, consultation and debate in their own right.

A perceived major risk today lies in the complexity and cost of introducing a regional tax system – and the possibility that a high-tax regime could be a medium/long term result, additional bureaucracy could cause delays and uncertainty and inconsistencies with UK neighbours and other EU states causing major frustration to business.

Equally, we are currently unclear about how borrowing powers may be managed – and with what impact on the Welsh tax regime. If the Welsh Government proceeds it must be with diligence and caution and with a clear business vision of viability.

We wish the Welsh Government success in this consultation process on a subject which is clearly a political Rubicon – carrying opportunity and risk. We are optimistic that much will be learned from organisations and experts who offer their observations with good will and support for the wide ambitions of the Welsh Government.

[REDACTED] welcomes the opportunity to contribute its views and look forward to making further contributions where appropriate.

Yours faithfully,

[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

Ref/Cyf 38:

The Lord Chief Justice makes the following observations on the Paper:

Investigatory powers (para. 4.23)

Very careful attention ought to be given to enter and search warrants. The law in this area is extremely technical and needs to be administered by those with the requisite knowledge, skills and experience.

Prosecution (para. 4.28)

Very careful attention will need to be given to the body prosecuting given the complexity of the law and the need for real expertise.

Tribunals (chapter 6)

It is obviously sensible to use the existing First-tier Tribunal and Upper Tribunal system to handle appeals relating to tax. However, as the Minister for Finance and Government Business comments, there will be specific Welsh taxes to replace Stamp Duty Land Tax and Landfill Tax next spring. Accordingly, the Tribunals will need to ensure that they have expertise in the understanding of Welsh legislation and the way that this operated in Wales. This will require extra resources and/or training.

Do we need to send a formal response to the correspondence details provided in the Paper, or does this email suffice?

Kind regards

Lucy

Lucy Boyle | Legal Adviser to the Lord Chief Justice | Judicial Office | Room C111 | Royal Courts of Justice | Strand | London WC2A 2LL | 020 7947 7971 | www.judiciary.gov.uk

Collection and management of devolved taxes in Wales

Consultation response

Introduction

1. CBI Wales welcomes this opportunity to respond to the Welsh Government's White Paper – Collection and Management of devolved taxes in Wales. The CBI is the UK's leading business organisation, representing some 190,000 businesses that together employ about a third of the private sector workforce. In Wales we represent the country's biggest employers, including 75% of anchor companies and a range of growth SMEs. The CBI is the main business organisation working with the Welsh Government to deliver a more competitive business environment.
2. British business taxation plays a substantial role in the funding of public services. Tax contribution to the UK government in 2013/14 amounted to £172bn of a total tax take of £574bn. As well as corporation tax payments, businesses contribute to the Exchequer in the form of employer NICs, business rates, fuel duty, stamp duty, customs duties and a variety of environmental taxes. Businesses also collect a large amount of tax on behalf of the government, such as personal income tax through PAYE and indirect taxes such as VAT. Virtually all taxes, including personal income tax, employees' NICs and VAT depend on the successful operation of business.
3. While the Welsh Government has yet to set out its operational priorities and processes of a tax collection and management regime, the CBI welcome this early opportunity to give initial views on the limited information currently available. The CBI look forward to responding in more detail once the Assembly Bill on tax collection and management is introduced in the months ahead.
4. The CBI reports *Tax and British business: making the case* and *Tax in a global economy: the way forward* provide more detail on the CBI's work on tax administration and reform.

Economic growth must underpin the Welsh Government's approach to tax administration

5. Only the private sector can deliver the growth and jobs the Welsh economy needs. A more supportive business environment will help business growth and deliver a stronger and more prosperous Wales. For the Welsh economy to prosper there has to be a stronger focus on increasing the competitiveness of the Welsh business environment- a commitment to deliver a devolution dividend not a devolution risk premium.
6. Business in Wales needs to have confidence in the Welsh Government's ability to successfully use its existing powers to support economic growth. The Welsh Government's current administrative and legislative powers are not insignificant, with limited but important law making powers in key business areas since 1999- including economic development, planning, business rates, infrastructure and innovation. While the Welsh Government has already taken steps to improve the economy, Wales continues to have poor productivity levels and high levels of economic inactivity, as a result it remains vital that every lever of power available to the Welsh Government must be leveraged to support growth.

The Welsh Government must avoid unnecessary duplication and costs for businesses

7. Chapter two of the White Paper outlines two options for tax collection and administration in Wales, both of which enable operational matters to be separate from Welsh ministers. The first option, vesting tax powers in HMRC Commissioners, the second option being a legally-constituted specialist tax authority similar to Revenue Scotland.
8. CBI members are of the view that either maintaining the existing scope of HMRC's powers or maintaining close links between HMRC and the Welsh Revenue Authority is the best way forward. CBI research has found that tax administration is already a significant burden for a range of firms – particularly the UK's mid-sized businesses – and this should not be compounded by the duplication of activities and functions which are already effectively delivered by HMRC.
9. In general, CBI members will want to see a full cost/benefit analysis on what the existence of a Welsh Revenue Authority will mean to businesses, relative to outsourcing these functions to HMRC. The Welsh Government needs to provide more information on the two options to properly demonstrate the best way forward.

Tax policy making process consistent with UK existing law to avoid complexity

10. This consultation process will inform the first Welsh tax legislation in over 700 years. The decisions and choices made will have significant ramifications to perceptions of Wales as a place to do business. This process is a major opportunity for Wales to establish a strong reputation as a pro-growth nation with a modern and efficient tax system whilst avoiding unnecessary duplication or confusion with existing HMRC processes and procedures.
11. More tax authorities across the globe are considering the cooperative compliance framework with businesses. The model is an appropriate one for the Welsh Government to consider. The aim of the approach is to reduce uncertainty and make the process more efficient and effective. If handled correctly, the approach is better for both the tax authority and business.
12. Chapter three of the consultation outlines plans by the Welsh Government to legislate for a penalty regime for devolved taxes. An important part of any modern tax system is a simple, consistent and fair penalties regime. Any regime the Welsh Government introduces should seek to help those that are compliant as well as address those who are not. Furthermore, there needs to be a consistent approach to DOTAS (Disclosure of Tax Avoidance Schemes) and GAAR (General Anti Abuse Rule).

Good principles of tax policy making and administration

13. The CBI welcome the Welsh Government setting out its tax principles, below, in advance of the publication of the White Paper.
 - Fairness to businesses and individuals who pay them
 - Be simple
 - Clear rules seek to minimise compliance and administration costs
 - Support growth and jobs that in turn will help tackle poverty
 - Provide stability and certainty for tax payers
14. The White Paper's pledge to 'introduce legislation that reflects these principles and provides a clear and strong tax governance framework' is a strong position from which to begin engagement and the success of the legislation will be seen by the Welsh Government's ability to deliver this vision.
15. It is important that the Welsh Government's focus is on tax changes that remove existing distortions in the tax system and not a patchwork of new measures

16. Earlier in 2013 the CBI published *Tax in a global economy: the way forward* it set out the principles and processes we recommend when developing tax policy. When applied to a devolved context, they are as follows:

Principles

- Common, coordinated and consistently applied tax rules
- Maintain and improve the UK tax competitiveness should be a core objective
- Any changes to long established principles must bring real benefits and not just increase administrative burdens
- Policies must be forward looking and able to anticipate changes in business practices

Process

- Any major changes in devolved tax rules by must be based on UK coordination
- Allow sufficient time for meaning consultation with relevant stakeholders
- Ensure sufficient recruitment of relevant tax specialists
- Achieve UK-wide agreement on a few key components of any devolved tax administration and collection reforms
- Dispute resolution should be coordinated across the UK

Certainty

17. When developing a tax collection and administrative regime for Wales, the most important factor is giving businesses clarity and certainty in advance to allow firms to plan and operate effectively. With the Welsh Government gaining tax and borrowing powers from April 2018, it is important that a fully-functioning, efficient and effective regime for collecting and managing Stamp Duty Land Tax and Landfill Tax is in place well in advance of the commencement date.

Simplicity

18. The UK government has committed to creating the most competitive tax system in the G20. As well as competitive rates of tax, this means creating a system which is simple to navigate and cost-effective to manage. Decisions about devolution of tax powers should consider the full impact of any changes on the complexity of the overall system, both for UK firms aiming to manage their tax affairs and for international investors assessing the attractiveness of the UK tax system.
19. The White Paper clearly mentioned 'opportunities for further devolution' and the need to ensure the regime 'put in place now can cater for future possibilities.' The issue of complexity is especially important here. If corporation tax were to be devolved, the ability to shift profits and losses - not jobs - to Wales from the rest of the UK, or the other way round in future, could lead to an overall reduction in the tax yield in the UK (although the direct costs and tax foregone would be borne primarily by Wales through application of the ECJ Azores ruling) assuming ongoing block grant adjustments would fully reflect any increase in the level of profit shifting. The consequences for Wales' devolved public finances could be considerable without delivering any tangible economic or employment benefits for Wales.

Avoid unnecessary changes

20. A stable tax system is vital to business. The Welsh Government should avoid unnecessary changes to tax legislation. In bringing forward reform, the government should work with business to ensure that any changes improve the sustainability and long-term stability of the corporate tax system.
21. When assessing the competitiveness of a country's tax system important factors include the effective tax rate, stability and advance warning of major changes.
22. Businesses making location decisions need stability, as long term investments need a predictable tax system. Unheralded shocks can have a destabilising effect that spreads beyond their intended remit, such as the windfall tax on the North Sea profits in 2011, the bank levy, U-turns on VAT and, more recently, the first draft of the public procurement rules.

Cost

23. Where tax revenues are small or volatile, the administrative cost of devolving tax powers may offset to a large degree the benefits identified. For example, Scottish Ministers had the ability to vary the Scottish rate of income tax by 3p in the pound. However, the power has never been used and the Scottish Government has allowed the ability to use the power to lapse by deciding not to pay HMRC £3.5m to work on the PAYE system that would allow the tax to be collected. In the event of a separate Welsh Revenue Authority, it must be suitably resourced with sufficient expertise to ensure a smooth transition to the administration of devolved taxes.

Effective interaction between policy makers

24. The Welsh Government should learn lessons from the UK tax system and ensure more effective interactions take place between devolved tax policy makers both in Wales and at Westminster. Without this dialogue there may be problems in moving from a policy conception to well-drafted legislation during the drafting stage. This happened with the new CFC regime where the proposed new rules resulted in extremely complex draft legislation despite an effective and productive consultation. It is also a recurring annual problem with the time-restricted Finance Bill process. The quality of legislative drafting needs to be improved to ensure that onerous legislation does not undermine policy development.

Strengthen the independent review of tax law

25. It is important to have an independent process for reviewing the effectiveness of tax laws. The formation of the Office for Tax Simplification (OTS) has been a welcome step at a UK level. However, more needs to be done. If the OTS is to be effective it needs to be properly funded. Furthermore, the OTS should be given the power to comment on whether proposed legislation meets its policy objectives. The CBI recommend the Welsh Government ensure the OTS is able to conduct effective independent reviews of devolved taxation where appropriate.

Improve the economic analysis capacity and capability

26. At a UK level, more needs to be done to strengthen HM Treasury and HMRC's tax economics expertise and increase the use of dynamic effects of tax rates on tax revenues. Similar improvements to data collection and analysis are also important for the effective implementation and administration of devolved Welsh taxes.
27. Full dynamic tax analysis – which forecasts the effects of businesses' reactions to incentives created by policy – strengthens the evidence base in supporting a move towards a more economically efficient tax system. When comprehensive dynamic analysis has taken place, for example with HMRC's 2012 analysis of the top rate of personal income tax, the analysis highlighted the mistaken assumption that higher tax rates automatically raise significantly more revenue. Full dynamic analysis needs to be introduced for all major taxes to make an accurate trade-off between the need to raise tax revenue and the potential cost in economic activity foregone as a result of higher tax rates.

Conclusion

28. It is vital that there is an intelligent and inclusive discussion about the nature of the Welsh tax administration and collection and the choices facing the Welsh Government in the months ahead. The Welsh Government needs to provide more information on the two options to properly demonstrate the best way forward and prove that the necessary cost benefit analysis has been conducted to demonstrate the real value in establishing a Welsh Revenue Authority.
29. Businesses play a key role both in collecting taxes paid by other taxpayers and also in delivering the economic growth and wealth that indirectly leads to higher tax revenues from consumers and larger incomes for pensioners. The CBI is keen to play its part in helping the Welsh Government make the right choices.

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

Dear Sir,

Collection and management of devolved taxes in Wales

Thank you for the opportunity to respond to the consultation

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

In response to the Consultation we would like to make the following replies:

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

RICS feels it might be easier to keep the current system at least for an interim period after the devolution of new powers in the next few years. As is said

“HMRC’s processes and procedures are commonly understood by taxpayers and their agents and Welsh taxpayers will continue to pay tax to HMRC for non-devolved taxes.”

Local authorities could continue to collect NNDR. For the replacement taxes (TTiL and WLfT), there could be a specialist unit (or one each) to assess and administer TTiL and WLfT, then HMRC could be asked to act as collection agent for the small sums assessed to be paid.

Question 2. What are your views on the proposed core set of duties for the Welsh Revenue Authority?

We would only say that high standards must be maintained

Question 4: What are your views on proposals to establish a Taxpayers' Charter?

The introduction of an alternative charter may be a benefit/disadvantage to some tax payer's potentially leading to moving tax base locations in order to take advantage of alternative charters. We recommend a Task and Finish group be established to look at this issue directly.

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Firstly simplicity and retaining well established services that are already understood
If implemented, clearly one of the main considerations will be the effective and economic management and collection of taxes. Initially at least we feel continuity in the agency of tax collector will be important.

Question 6. In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

We would suggest that a steering group be employed to look at the benefits of negotiating alternative revenues and levels of taxation collected in Wales by HRMC and the means of redistribution of this tax revenue directly back to the Welsh Government.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information

Only so far as it is necessary to the assessment and proper administration of TTiL and WLfT. Simplicity and fairness are essential.

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Compliance with the Welsh Language commission guidelines

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties

Yes provided they are proportionate and allow flexibility for individual circumstances

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

We feel this to be unnecessary at this point although it should be kept under review.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

No. The UK GAAR can already cover SDLT when devolved so, if it needs widening the UK Government could be asked to make any necessary amendments avoiding potential delays.

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

This looks appropriate, but periodic reviews to determine if this is still the case in response to any changing conditions is something we would recommend.

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Just to comment that we hope the principle of the removal of the SLAB element to SDLT will be maintained when the tax is devolved to Wales.

If you have any queries in respect of this response please do not hesitate to contact me.

Yours sincerely,

David Morgan
Policy Manager

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