

Agenda – Finance Committee

Meeting Venue:	For further information contact:
Hybrid – Committee room 4 Ty Hywel and video conference via Zoom	Owain Roberts Committee Clerk
Meeting date: 2 February 2022	0300 200 6388
Meeting time: 09.30	SeneddFinance@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Private pre-meeting – Informal (09.15–09.30)

- 1 Introductions, apologies, substitutions and declarations of interest
(09.30)
- 2 Paper(s) to note
(09.30) (Pages 1 – 6)
 - Minutes of the meeting held on 19 Jan
 - Minutes of the meeting held on 21 Jan
- 2.1 PTN 1 – Letter from the Minister for Finance and Local Government: Finance Ministers' Quadrilateral meeting – 21 January 2022
(Pages 7 – 8)
- 2.2 PTN 2 – Letter from the Minister for Finance and Local Government on the Tax Bill: Welsh Tax Acts etc. (Power to Modify) Bill – 24 January 2022
(Pages 9 – 10)
- 2.3 PTN 3 – Letter from the Minister for Finance and Local Government: financial transactions capital – 26 January 2022
(Pages 11 – 14)



2.4 PTN 4 – National Audit Office report: Administration of Welsh rates of income tax 2020–21 – January 2022

(Pages 15 – 16)

3 Welsh Tax Acts etc. (Power to Modify) Bill: Evidence session 2

(09.30–10.20)

(Pages 17 – 36)

John Cullinane, Director of Public Policy, Chartered Institute of Taxation

Lakshmi Narain, Chair of the Chartered Institute of Taxation's Welsh

Technical Committee

Supporting documents:

FIN(6)–05–22 P1 Chartered Institute of Taxation and Low Income Tax

Reforms Group

Research Service Brief

BREAK (10.20–10.30)

4 Welsh Tax Acts etc. (Power to Modify) Bill: Evidence session 3

(10.30–11.30)

(Pages 37 – 66)

Frank Haskew, Head of Tax, Institute of Chartered Accountants in England and Wales

Richard Lloyd–Bithell, Senior Policy and Technical Manager, Chartered Institute of Public Finance and Accountancy

Glenn Collins, Head of Policy, Technical and Strategic Engagement, Association of Chartered Certified Accountants UK

Supporting documents:

FIN(6)–05–22 P2 – Institute of Chartered Accountants in England and Wales

FIN(6)–05–22 P3 – Chartered Institute of Public Finance and Accountancy

FIN(6)–05–22 P4 – Association of Chartered Certified Accountants UK

Research Service Brief

BREAK (11.30–11.40)

5 Welsh Tax Acts etc. (Power to Modify) Bill: Evidence session 4

(11.40–12.10)

(Pages 67 – 72)

Dyfed Alsop, Chief Executive, Welsh Revenue Authority

Sam Cairns, Chief Operating Officer, Welsh Revenue Authority

Dave Matthews, Head of Policy, Welsh Revenue Authority

Supporting documents:

Research Service Brief

6 Motion under Standing Order 17.42 (ix) to resolve to exclude the public from the remainder of this meeting.

(12.10)

7 Welsh Tax Acts etc. (Power to Modify) Bill: Consideration of evidence

(12.10–12.20)

8 Tertiary Education and Research (Wales) Bill: Consideration of draft report

(12.20–12.30)

(Pages 73 – 103)

Supporting documents:

FIN(6)–05–22 P5 – Draft report

Concise Minutes – Finance Committee

Meeting Venue:

This meeting can be viewed

Video Conference via Zoom

on [Senedd TV](#) at:

Meeting date: Wednesday, 19 January
2022

<http://senedd.tv/en/12578>

Meeting time: 09.30 – 12.31

Remote

Attendance

Category	Names
Members of the Senedd:	Peredur Owen Griffiths MS (Chair) Mike Hedges MS Sam Rowlands MS (In place of Peter Fox MS) Rhianon Passmore MS
Witnesses:	Sophie Howe, Future Generations Commissioner for Wales Alex Chapman, New Economics Foundation Victoria Winckler, Bevan Foundation Sara Jones, Wales Retail Consortium Suzy Davies, Wales Tourism Alliance Ben Cottam, Federation of Small Business Leighton Jenkins, CBI Cymru
Committee Staff:	Owain Roberts (Clerk) Leanne Hatcher (Second Clerk) Georgina Owen (Second Clerk) Mike Lewis (Deputy Clerk)



	Owen Holzinger (Researcher) Christian Tipples (Researcher) Owain Davies (Researcher)
--	--

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Private pre-meeting – Informal (09.15–09.30)

1 Introductions, apologies, substitutions and declarations of interest

1.1 The Chair welcomed Members to the virtual meeting of the Finance Committee.

1.2 Apologies were received from Peter Fox MS. Sam Rowlands MS attended as a substitute.

2 Paper(s) to note

2.1 The papers were noted.

2.1 **PTN 1 – Letter from the Business Committee to Committee Chairs – Review of the committee timetable and committee remits – 7 January 2022**

2.2 **PTN 2 – Scrutiny of the Welsh Government Draft Budget 2022–23: Written evidence from Ramblers Cymru – January 2022**

3 Scrutiny of the Welsh Government Draft Budget 2022–23: Evidence session 5

3.1 The Committee took evidence from Sophie Howe, Future Generations Commissioner for Wales; and Alex Chapman, Senior Researcher, New Economics Foundation on the Welsh Government's Draft Budget 2022–23.

Break (10.15–10.25)

4 Scrutiny of the Welsh Government Draft Budget 2022–23: Evidence session 6

4.1 The Committee took evidence from Victoria Winckler, Director, Bevan Foundation on the Welsh Government’s Draft Budget 2022–23.

Break (11.10–11.20)

5 Scrutiny of the Welsh Government Draft Budget 2022–23: Evidence session 7

5.1 The Committee took evidence from Sara Jones, Head of Welsh Retail Consortium; Suzy Davies, Chair, Wales Tourism Alliance; Ben Cottam, Head of Wales, Federation of Small Businesses (FSB Wales); and Leighton Jenkins, Head of Policy – Wales, CBI Wales on the Welsh Government’s Draft Budget 2022–23.

6 Motion under Standing Order 17.42 (ix) to resolve to exclude the public from the remainder of this meeting.

6.1 The motion was agreed.

7 Scrutiny of the Welsh Government Draft Budget 2022–23: Consideration of evidence

7.1 The Committee considered the evidence.

Concise Minutes – Finance Committee

Meeting Venue:

This meeting can be viewed

Video Conference via Zoom

on [Senedd TV](#) at:

Meeting date: Friday, 21 January 2022

<http://senedd.tv/en/12720>

Meeting time: 09.30 – 12.50

Remote

Attendance

Category	Names
Members of the Senedd:	Peredur Owen Griffiths MS (Chair) Mike Hedges MS Rhianon Passmore MS Gareth Davies MS (In place of Peter Fox MS)
Witnesses:	Rebecca Evans MS, Minister for Finance and Local Government Andrew Jeffreys, Welsh Government
Committee Staff:	Owain Roberts (Clerk) Leanne Hatcher (Second Clerk) Georgina Owen (Second Clerk) Mike Lewis (Deputy Clerk) Martin Jennings (Researcher)



In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv

Private pre-meeting – Informal (09.15–09.30)

1 Introductions, apologies, substitutions and declarations of interest

1.1 The Chair welcomed Members to the virtual meeting of the Finance Committee.

1.2 Apologies were received from Peter Fox MS. Gareth Davies MS attended as a substitute.

2 Paper(s) to note

2.1. The papers were noted.

2.1 PTN 1 – Scrutiny of the Welsh Government Draft Budget 2022–23: Written evidence from Wales Environment Link – January 2022

2.2 PTN 2 – Letter from the Minister for Finance and Local Government to the Llywydd: The Non–Domestic Rating (Multiplier) (Wales) Regulations 2022 – 18 January 2022

2.3 PTN 3 – Scrutiny of the Welsh Government Draft Budget 2022–23: Additional information – Wales Tourism Alliance – January 2022

3 Scrutiny of the Welsh Government Draft Budget 2022–23: Evidence session 8

3.1 The Committee took evidence from Rebecca Evans MS, Minister for Finance and Local Government; and Andrew Jeffreys, Director, Treasury on the Scrutiny of the Welsh Government Draft Budget 2022–23.

3.2 The Minister agreed to provide the Committee with the following information:

- a note on the successor group due to replace the budget advisory group on equalities (BAGE);
- a note on financial transactions capital; and
- a note on business support in relation to digital infrastructure and developing digital skills, particularly for small businesses.

4 Scrutiny of The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2021

4.1 The Committee took evidence from Rebecca Evans MS, Minister for Finance and Local Government; and Andrew Jeffreys, Director, Treasury on the Scrutiny of The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2021.

5 Motion under Standing Order 17.42 (ix) to resolve to exclude the public from the remainder of this meeting and the meeting on 28 January 2022.

5.1 The motion was agreed.

6 Scrutiny of the Welsh Government Draft Budget 2022–23: Consideration of evidence / Key issues

6.1 The Committee considered the evidence.

7 Supplementary Budget 2021–22 requests from Directly Funded Bodies

7.1 The Committee considered the supplementary budget requests from the Directly Funded Bodies.

8 Consideration of Forward Work Programme

8.1 The Committee considered the Forward Work Programme.

9 Business Committee review of committee timetable and remits

9.1 The Committee considered the Business Committee review of committee timetable and remits.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Agenda Item 2.1



Ein cyf/Our ref: RE-652-22

Llywodraeth Cymru
Welsh Government

Peredur Owen Griffiths MS
Chair, Finance Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

21 January 2022

Dear Peredur,

I am writing to inform you of an urgent Finance Ministers' Quadrilateral meeting that took place on the 12 January to discuss the cost-of-living crisis and Covid funding requirements in response to the Omicron variant.

In attendance were myself, Chief Secretary to the Treasury - Simon Clarke MP, Minister for Finance Northern Ireland - Conor Murphy MLA, and Cabinet Secretary for Finance and the Economy Scottish Government - Kate Forbes MSP.

During the meeting I highlighted some of the support measures the Welsh Government has put in place to address the cost of living crisis, but outlined that most of the powers and fiscal resources were in the UK Government's hands. I pressed that the UK Government needed to go further in providing immediate support to people with rising bills and living costs, and shared ideas to tackle fuel poverty.

In relation to the item on Covid funding, we discussed the importance of certainty to support effective planning. I requested the CST guarantee that money allocated to support the Covid response would be provided in full and sought assurance that the usual practice would be maintained, whereby late allocations of funding could be carried forward. I also raised the need for the use of the Coronavirus Job Retention Scheme and the Self Employment Income Support Scheme to be kept under consideration should circumstances in any of the four nations require it.

The updates from the Devolved Governments on our respective 2022-23 budget rounds was an opportunity to share priorities for the coming year, and I particularly outlined our plans to tackle the climate and nature emergencies. I highlighted the challenges the UK Spending Review settlement had on our ability to invest in infrastructure to drive towards net zero, noting that the Welsh Government capital budget would be 11% lower in 2023-24 than this year.

I also took the opportunity to secure Ministerial agreement for officials to work together to establish effective arrangements for the new Finance Inter Ministerial Standing Committee

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

(FISC) so that this could be agreed ahead of our next meeting which will be the first meeting of the FISC under the newly published Intergovernmental Relations Review.

Finally, the CST confirmed that the Chancellor would present his Spring Statement on 23 March alongside the latest Office for Budget Responsibility economic and fiscal forecast.

Following the meeting a joint Press Notice was issued by Devolved Finance Ministers.
[Finance ministers call for Covid funding flexibility | GOV.WALES](#)

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Ein cyf/Our ref: MA/RE/0094/22

Peredur Owen Griffiths, MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

24 January 2022

WELSH TAX ACTS etc. (POWER TO MODIFY) BILL

Dear Peredur,

Thank you for your recent letter following the Finance Committee's evidence session on 22 December 2021 in relation to the Welsh Tax Acts etc. (Power to Modify) Bill ("the Bill") in which you request information:

- To understand the potential costs involved in implementing any subordinate legislation arising from the Bill, such as updating systems, forms, guidance and communicating any changes; and
- The actual costs associated with implementing the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020.

As you are aware, this legislation aims to provide a mechanism to enable Welsh Ministers to respond to external events including those that impact on the Welsh budget – circumstances which are beyond our control. Without this legislation, we would still need to find a way to respond. In most scenarios, this would likely mean responding using emergency legislation or, where possible, our existing regulation making powers. The costs of implementation would be the same regardless of the legislative mechanism used to effect that change. The alternate would be to live with the impact of the external event, including potential reductions in Welsh budgets. The primary aim of this legislation is to protect Welsh revenues.

Without this Bill, we risk future financial costs if, for example, a new charge is introduced for stamp duty land tax and we are unable to respond quickly. Although this may not happen in the immediate future, it is certainly possible in the next few years as land transaction taxes are continuing to be lively.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Welsh Treasury officials, together with officials from the Welsh Revenue Authority (WRA), have considered the potential administrative costs of any future changes – which includes, for example, updating guidance and forms, testing or additional communications requirements. For most changes it is reasonable to assume that the costs will be met within existing budgets. However, the costs to the WRA will very much depend on the precise nature of the change that today cannot be predicted with any certainty and will need to be considered on a case-by-case basis.

In relation to the implementation of the Land Transaction Tax (Temporary Variation of Rates and Bands for Residential Property Transactions) (Wales) Regulations 2020, the WRA incurred costs of around £1,200 to implement the temporary rate changes to land transaction tax from 27 July 2020. This included a small fee paid to their IT supplier, however, the majority of the technical changes, including testing, was undertaken internally. This cost does not include a minimal cost to revert to the original LTT rates (effected on 1 July 2021) nor the cost of staff time used on the WRA communications and guidance updates as this was absorbed into business as usual activity. The changes were widely anticipated following my announcement on 14 July 2020 and therefore the requirements and costs of raising awareness were minimal.

The requirement to make changes to tax rates was anticipated in the design of the WRA tax management system, and systems built with the functionality that makes such changes relatively straightforward. This helped keep the costs low for the July 2020 changes.

I hope that this information helps the Finance Committee in their scrutiny of the Bill, but if there is any other information you require before my appearance before you again please do write to me.

Yours sincerely,



Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

CC: Chair of the Legislation, Justice and Constitution Committee

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mike Hedges AM, Swansea East,
Welsh Parliament,
Cardiff Bay,
Cardiff.
CF99 1SN

26 January 2022

Dear Mike,

At Business Committee on Tuesday 18 January and during Finance Committee on 21 January it was agreed that I provide a written update on the use of financial transactions capital (FT) to align with the Final Budget and which includes an update on the current decisions on the use of FT.

The constraints on how ring-fenced FT budgets can be used, alongside limited flexibilities to re-profile or carry over budgets continues to present various challenges when managing FT schemes, particularly identifying suitable schemes which fit the profile of the budget available. Despite this, we continue to use FT capital in the best way possible and currently have invested over £1.7bn in a large variety of projects supporting our business and housing sector, benefiting many parts of our society and economy. A summary breakdown of those investments is provided in the Annex to this letter.

As previously indicated, I plan to make further FT allocations in the Final Budget 2022-23. The allocations will make the most beneficial use of the total £451m consequentials we have received from the UKG covering the three financial years 2022-23, 2023-24 and 2024-25. However, like our revenue budget we have received a front loaded profile, which given the additional complexities in allocating FT does not reflect the realities in how we need to allocate and manage this type of funding. We will also seek to maximise the use of repayments to Welsh Government that can be reinvested before repayment is due to the UKG. The identification of these additional allocations is in progress and the outcome will be set out in the Final Budget.

The repayment of FT scheme investments to Welsh Government reserves currently totals £79m and includes £60m early repayments from the H2B scheme that has been reinvested. The in-year position is subject to being updated in the second supplementary budget.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Repayments due to the Welsh Government in the next three financial years will be included in the Final Budget 2022-23.

In respect of the eligibility of co-operatives to access FT, I can advise that they are eligible as entities outside the central and local government budget boundaries.

I am copying this letter to the Chair of the Finance Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca". The script is cursive and fluid.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Allocation of Financial Transactions Capital from 2013-14 to 2021-22¹

	£m
Help to Buy Cymru – To help qualifying home buyers purchase a new build home with a low loan-to-value mortgage and provide a boost to the construction industry.	673
Development Bank for Wales – Investment funds to provide access to finance for SMEs, support business growth, boost exports and create/safeguard jobs. Includes funds for tourism, rescue and restructure, micro businesses, angel co-investment, commercial property, flexible investment, life sciences etc.	635
Land for Housing scheme – Providing loans to Registered Social Landlords to acquire sites in order to accelerate the development of affordable housing schemes.	82
Economic Development Initiatives – Funding that supports economic growth in Wales	62
Property Development Funds and Property sector - Helps build new homes, commercial and industrial space.	9
Cardiff airport and Aviation – To increase commercial potential of aviation industry in Wales and enhance route development.	59
Housing and RSL loans – To support delivery of 20,000 homes commitment and housing provision including new innovative developments	97
Green Growth Wales and Green Infrastructure – To support Wales' renewable energy sector and to increase and accelerate projects to deliver green investment in Wales.	17
Town Centre Loans and Regeneration Funds – To assist in providing a sustainable future for vacant and under-utilised sites and properties and in doing so supporting vibrant and viable town centres.	47
Education - To support the development of new FE campus in Aberdare and Bridgend STEAM Academy	15

¹ Figures are rounded to the nearest million, as per latest monitoring information from departments and do not include repayments due back to central reserve. 2021-22 figures included are subject to adjustment in the 2nd Supplementary budget and audit of the final out-turn position. Includes early repayment of £60m being recycled.

Barry Island Strategic Regeneration Area - link road. To accelerate delivery of a key transport route as part of our regeneration programme.	2
Capital Loan Scheme for Sport and Leisure Facilities – To improve facilities through and invest-to-save approach, increase participation in sport and physical activity and contribute to better health outcomes.	2
Community Asset Loan Fund - loans to voluntary sector organisations seeking to take on community assets.	3
Electric Vehicle Transformation - To support the purchase of low emission vehicles	12
Credit Unions subordinate loans to support compliance with mandatory capital to asset ratios	3
Building safety loans to help maintain and improve the quality of housing stock in Wales and allow residents, leaseholders and tenants to feel safer in their homes.	12
Mutual Investment Model - supporting investment in education and transport infrastructure	12
Total	1,742



National Audit Office

Comptroller and Auditor General
Gareth Davies

Peredur Owen Griffiths MS
Chair, Finance Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

Email: SeneddFinance@senedd.wales

Agenda Item 2.4

The UK's independent public spending
watchdog

Switchboard +44 (0)20 7798 7777
Email Gareth.Davies@nao.org.uk

Date 21 January 2022

Dear Peredur,

ADMINISTRATION OF WELSH INCOME TAX 2020-21

I am pleased to be able to share with you a copy of my report on the administration of Welsh income tax for 2020-21, which has been published today.

I would be very happy to discuss the findings of my report with you and other members of the Committee, should you find this useful.

Yours sincerely,

GARETH DAVIES



[Adroddiad y Swyddfa Archwilio Genedlaethol: Gweinyddu cyfraddau treth incwm Cymru 2020-21 – Ionawr 2022](#) (PDF, 461KB)

[National Audit Office report: Administration of Welsh rates of income tax 2020-21 – January 2022](#) (PDF, 348KB)

Welsh Tax Acts etc. (Power to Modify) Bill

Finance Committee of the Senedd Cymru (Welsh Parliament) inquiry

Response by the Chartered Institute of Taxation and our Low Incomes Tax Reform Group

1 Introduction

1.1 The Chartered Institute of Taxation (CIOT) and its Low Incomes Tax Reform Group (LITRG) respond jointly to the Finance Committee's inquiry into the general principles of the Welsh Tax Acts etc (Power to Modify) Bill.

1.2 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

1.3 We have considered the following in our response:

- The general principles of the Bill and the need for legislation;
- The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation as set out in Chapter 5 of Part 1 of the Explanatory Memorandum
- Any potential barriers to the implementation of these provisions and whether the Bill takes account of them
- Whether there are any unintended consequences arising from the Bill

- the appropriateness of section 3 (Policy statement: regulations under section 1 that have retrospective effect) and the [draft policy statement](#) (PDF, 329KB) published alongside the Bill.

2 The general principles of the Bill and the need for legislation

- 2.1 As we said in our response to the Welsh government's consultation: Tax Devolution in Wales – Enabling changes to the Welsh Tax Acts¹, our starting point is that tax law should be set out in primary legislation particularly in so far as it relates to the exercise of tax powers setting out what is subject to tax and imposing burdens on taxpayers. Secondary legislation should ideally be used only for administrative matters. This is to ensure proper scrutiny of legislation that results in the imposition of some kind of burden (compliance or financial) on taxpayers.
- 2.2 However, we recognise the challenges in introducing primary legislation to implement tax changes via an annual Welsh finance bill as currently the volume of legislative change required is probably insufficient to justify an annual finance bill process in Wales. There are however good reasons to keep this option under review. The legislative process should reflect the significance of the devolved tax system in raising revenue in Wales. The case for an annual Welsh finance bill will strengthen if devolved taxes provide an increased share of revenues to fund wider policy areas dealt with by the Welsh Parliament.
- 2.3 We consider there is currently a good case for a mechanism to enable amendments to be made in the manner set out in the Bill on the basis the powers provide a reasonable balance between the competing needs of speed, scrutiny and responsiveness at this point in the development of Welsh devolved taxes. We suggest consideration is given to a legislative sunset clause or mandatory re-authorisation to ensure they remain appropriate.
- 2.4 We note the reference in the [Explanatory Memorandum](#) at paragraph 11 (*In addition, review of this legislation, and the regulations made using it, will be undertaken as part of ongoing consideration of the feasibility and appropriateness of a future annual Welsh Finance Bill procedure.*). We welcome that commitment. Extensive use of the regulatory powers to amend the Welsh devolved taxes is likely to be a strong indicator of the need to re-consider whether the regulatory powers remain appropriate.
- 2.5 Where regulations made under the powers in the Bill make complex amendments we think, it should be the norm to publish (ideally simultaneously) a consolidated version of the law as amended. This would greatly aid transparency and comprehensibility of the law, particularly where the amendments made are very complex, or are due to come into force at short notice. We understand that the Welsh Tax Acts published on the legislation.gov.uk website (and possibly Law Wales in the future) will be updated to reflect the current legislation in force following approval of a regulation by the Senedd.

¹ <https://www.tax.org.uk/ref694>

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

3.1 The Bill provides Welsh Ministers with a power to make changes, by means of regulations, to the Welsh Tax Acts and regulations made under those Acts, if the Welsh Ministers consider that it is necessary or appropriate to make those changes for any of the four purposes specified in the Bill. The regulations can be made either under the draft affirmative procedure (the regulations can only come into effect once the Senedd has approved the making of them), or where the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary, under the made affirmative procedure (the regulations come into force as soon as the regulations are made, whilst awaiting Senedd approval).

The four purposes are:

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

3.2 We consider the use of the powers in the circumstances described seem reasonable, with the caveat that there is quite a wide discretion particularly in relation to the undefined term 'tax avoidance'. We note the Minister's comments in the [evidence session before the Finance Committee](#) at paragraph 210-211 of the transcript² and the interaction with the existing power to

²

Para 210 : (Carolyn Thomas MS) Thank you. Just a final question from me regarding the 'to protect against tax avoidance' in relation to devolved Welsh taxes—so, why the Bill confers powers on Welsh Ministers to protect against tax avoidance when there is already the general anti-avoidance rule enacted in legislation. So, if that legislation already exists, why would this Bill confer powers on Welsh Government to protect against tax avoidance?

Para 211: (Rebecca Evans, Minister for Finance and Local Government.) So, for both devolved taxes, there is always the risk that there will be individual or mass-marketed avoidance activity that Welsh Government and the Welsh Revenue Authority might want to stop with immediate effect. That could be because there is a lacuna or gap in the legislation that facilitates the avoidance activity or, based on UK experience, a need for clarity to the legislation to make it clear that the law operates in a manner that doesn't permit the avoidance activity. So, the general anti-avoidance rule is an important anti-avoidance tool available to the WRA to counteract instances of tax avoidance. However, it can only be used after the fact, where a specific avoidance scheme has been used to gain a tax advantage, so it doesn't prevent future taxpayers from exploiting the same avoidance opportunity in the future, whether intentionally or not. So, the new power would enable Welsh Ministers to change the law and close down any perceived opportunities for avoidance before they could become widely exploited.

Para 212: In many cases, it's desirable to make the change to the legislation to provide greater clarity to stop the marketing of avoidance schemes that ultimately the courts find didn't work as the promoters contended. And that sort of change actually protects taxpayers from taking part in avoidance schemes that can result in them paying the tax owed and also the fees for the advice and services as well, so it would seek to protect Welsh taxpayers as well.

counteract artificial tax avoidance arrangements under the General Anti-Avoidance Rule³. The intention is that the power may be used to close down any perceived opportunities for avoidance before they become widely exploited. We recognise the value of acting swiftly to close down artificial tax avoidance arrangements thereby helping to protect taxpayers who may otherwise participate in avoidance schemes without the full facts and knowledge of the law. We note also the SDLT experience where there has been a history of mass marketed avoidance schemes subsequently addressed through primary legislation although this has taken time. As with all four purposes it will be essential that the case for using the power in these circumstances is robust, based on evidence and subject to scrutiny.

- 3.3 There is a tension between introducing a tax change quickly and ensuring the legislation has adequate scrutiny such that it is effective. The more complicated the change, the greater the need for consultation. In evaluating the tensions between scrutiny and speed, one of these needs may outweigh the other depending on the type of legislative change under consideration and, in particular, the motivation for that change.
- 3.4 We have considered whether there might be a case for extending the purpose in (d) to include a change in interpretation by HMRC in relation to a predecessor tax that leads to a need to clarify the interpretation of a provision in the devolved taxes. However, on balance such changes are more appropriately addressed through existing powers or where necessary through primary legislation.
- 3.5 We also considered whether there might be advantages in a specific commitment to raising the intended use of the powers at the Minister's Tax Engagement Group or through a dedicated stakeholder forum before proceeding to the formal stages and, where it is not possible to do so (for example, due to forestalling or sensitivities), the restraints on so doing should be noted explicitly in the Explanatory Memorandum when introducing the proposed change to the Senedd. However, we are comforted by the comments at paragraph 4.15 of the Explanatory Memorandum in relation to consultation on new measures.

In many cases the Welsh Ministers will not invite comment on the intention to legislate using the powers provided by the Bill, the nature of the change or on its timing prior to making regulations. However, subject to the risk of forestalling, consideration will be given on a case by case basis to engaging informally, and in confidence, with key stakeholders, before and during the drafting of regulations to establish whether the legislation will achieve its objective. In particular, where the regulations are to respond to changes made by the UK government to a predecessor tax, or the coming force date does not need to be immediate, there may be opportunities for engagement.

Consideration might be given to publishing the nature of any informal consultation after the regulations come into force in the interests of transparency.

- 3.6 The Bill provides that ministers determine whether 'urgency' requires the made affirmative procedure. Paragraph 3.28 of the Explanatory Memorandum states:

³ Tax Collection and Management (Wales) Act 2016 section 81A et seq.

However, the Welsh Ministers may use the made affirmative procedure where they consider it necessary by reason of urgency (for example where the regulations will need to have effect immediately or shortly thereafter, and so before a draft affirmative set of regulations could be approved by the Senedd). This will ensure that changes may, where appropriate, come into force as soon as the regulations are made, whilst awaiting Senedd approval. The rules in relation to the making and approval of made affirmative 11 regulations are set out in subsections 4(3) to (7). Made affirmative regulations must receive approval within a maximum period of 60 Senedd days to enable those regulations to remain in effect. The rationale to introduce a change through new made affirmative regulations will be set out in the Explanatory Memorandum to those regulations.

The use of the made affirmative procedure may limit scrutiny and therefore the opportunity to identify unintended consequences of the measure. It would be helpful to explore in what circumstances ministers envisage they may consider invoking this procedure.

- 3.7 A lack of scrutiny places more weight on the importance of effective and routine post-legislative review of whether substantive measures are achieving their objectives at an acceptable cost, and the Senedd should hold the Welsh government to account accordingly.

4 Any potential barriers to the implementation of these provisions and whether the Bill takes account of them

- 4.1 In terms of procedure, we note that secondary legislation once laid, cannot generally be amended. Thus, if the draft that is laid is defective, even in a minor way, it cannot be altered to ensure that it is correct – secondary legislation can generally only stand or fall as drafted. This is probably not a major barrier as the consequence of any defect would be a short delay while a new instrument is laid.

5 The appropriateness of section 3 (Policy statement: regulations under section 1 that have retrospective effect) and the [draft policy statement](#) (PDF, 329KB) published alongside the Bill

- 5.1 There is clearly a case for retrospection to correct an obvious anomaly that is harming taxpayers or to correct deficiencies that emerge. For example in Scotland amendments were made to LBTT, initially through secondary legislation prospectively and subsequently with retrospective effect through primary legislation, to correct the ADS position for couples where the title to the former main residence is in the sole name of one of the couple and the couple then jointly buy a new main residence prior to selling their current main residence. There was some inevitable delay before Scottish parliamentary time could be found to pass primary legislation. The ability to correct anomalies retrospectively through the Bill's powers will ensure inequities for the taxpayer's are alleviated more quickly.
- 5.2 In addition to retrospective changes that benefit the taxpayer, the Explanatory Memorandum and the draft policy statement clearly envisage circumstances where regulations *increase* a taxpayer's

liability (subject to compatibility with the European Convention on Human Rights) including where avoidance needs to be 'halted' or where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted.

We observe that retrospection has also been used at Westminster to reconfirm previously established interpretations of the law that were shared across a whole marketplace or section of the population, but which the courts had unexpectedly found to be erroneous.

Similarly the Westminster government has used retrospection to combat organised tax avoidance, the least controversial circumstances have been when an announcement is made that legislation would be amended in the next Finance Bill backdated to the date of announcement: the announcement serves to avoid taxpayers developing expectations of the more favourable tax treatment sought by the avoidance scheme.

We note the regulatory power in paragraph 3(1)(c) of the Bill to make a provision that has retrospective effect is not limited in its effect to the date of a prior announcement.

- 5.3 The draft policy statement states that a change taking effect from a date earlier than the date of making is intended to be used in exceptional circumstances only. We agree that retrospective legislation that imposes or increases a tax charge on income earned, gains realised or transactions concluded at a time before the legislation was announced should be used with extreme care and justified in detail.
- 5.4 The draft policy statement refers to 'retrospection'. There are broadly two ways in which tax legislation can act on past events, often referred to as 'retrospective' and 'retroactive' although the meaning ascribed to these terms is not consistent. Tax practitioners, at least in the UK would usually understand retrospective legislation to mean legislation imposes (or reduces) a tax charge on income earned, gains realised or transactions concluded at a time before the legislation was announced. Retroactive legislation is usually taken to mean legislation that imposes a tax charge on income arising or a gain realised after the date when the legislation enters into force (perhaps a deemed gain), but that income or gain arises from transactions entered into (or at least commenced) before the legislation. The powers under the Bill could be used to effect changes in either sense irrespective of the terminology used. A key point from our perspective is that the Welsh government recognises and gives due weight to taxpayers' legitimate expectations in this context.
- 5.5 The 'Spotlight' system⁴ is often used by HMRC to identify avoidance schemes that are contrary to the policy intent. We suggest that where the WRA identifies artificial avoidance activity, a similar approach should be considered to give early warning to taxpayers that such schemes are not effective or where the WRA becomes aware that a particular approach is being marketed to taxpayers that does not reflect the WRA's interpretation of legislation and case law. The aim would be to protect taxpayers from developing expectations of the more favourable tax treatment. A good example of 'pointers' that might be helpful to taxpayers is the article published on the CIOT

⁴ <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight-number-20-onwards>

blog at <https://www.tax.org.uk/explaining-subsidary-dwellings-guidance-for-welsh-properties> and (for SDLT) <https://www.tax.org.uk/stamp-duty-refunds-too-good-to-be-true>.

6 Acknowledgement of submission

6.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

7 About us

7.1 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. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

7.2 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.

7.3 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.

7.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

7.5 The Low Incomes Tax Reform Group is an initiative of the Chartered Institute of Taxation 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.

7.6 LITRG works extensively with HM Revenue and Customs and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and 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.

The Chartered Institute of Taxation

21 January 2022

Document is Restricted



WELSH TAX ACTS ETC. (POWER TO MODIFY) BILL 2022

Issued 26 January 2022

Set out in the attached representation are comments made by ICAEW on the Welsh Tax Acts Etc. (Power to Modify) Bill 2022 (the Bill). These comments include:

- comments by ICAEW on specific questions raised by the secretariat of the Welsh Government's Finance Committee in advance of an oral evidence session on 2 February 2022; and
- specific comments on the draft Bill.

This response of 26 January 2022 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 157,800 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2022

All rights reserved.

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

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

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

For more information, please contact: representations@icaew.com

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (No. 246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

INTRODUCTION

1. Set out below are comments made by ICAEW in relation to the Welsh Tax Acts Etc. (Power to Modify) Bill 2022 (the Bill). The Bill, and accompanying papers and statements, can be found [here](#). Our comments consist of two sections, as follows.
 - Comments on specific questions raised by the Committee secretariat in advance of on oral evidence session on 2 February 2022.
 - Specific comments on the draft Bill.

COMMENTS ON SPECIFIC QUESTIONS RAISED BY THE COMMITTEE SECRETARIAT IN ADVANCE OF ON ORAL EVIDENCE SESSION ON 2 FEBRUARY 2022

Whether you agree with the purpose of the Bill

2. We support the policy purpose behind the Bill. Given that the UK Government continues to make changes to the Stamp Duty Land Tax (SDLT) regime, it is clearly important that the Welsh Government has the tools needed to be able to react to such changes if they are likely to have a significant impact on Land Transaction Tax (LTT).

Strengths and weaknesses of the Bill

3. The strength of the Bill is it should allow changes to be made quickly to the devolved taxes in react to changing external circumstances.
4. The weaknesses of the Bill are that changes will not be made through primary legislation and there is a danger of a lack of proper scrutiny of any regulations which will be made under this Bill.
5. One of our principles of good tax policy is that tax legislation should be enacted in primary legislation rather than secondary legislation. These proposals allow for changes to be made by way of secondary legislation, i.e. regulations, which is contrary to our principles. That said, we understand the specific difficulties faced by the Welsh Government responding to changes made by the UK Government in relation to, for example, SDLT.
6. As we understand it, one of the reasons for this approach is that Wales does not have an equivalent Finance Bill procedure for making annual changes to the Welsh Tax Acts. While we appreciate that at present such a procedure may not be considered to be necessary because annual changes are likely to be few in number, nevertheless we think that consideration should be given to having the capability to adopt an annual Finance Bill procedure. This would ensure that any changes could be enacted by way of primary legislation. It would also ensure that a procedure is in place so that, if and when further tax raising powers are devolved to the Welsh Government, it has the necessary mechanism to make changes quickly. We understand that similar problems are faced in in relation to amending the devolved Scottish Taxes and similar calls have been made for a legislative process to allow for such changes to be made.
7. It is important to ensure that all measures are subject to proper and effective scrutiny. A weakness of the Bill is the extensive powers given to make changes by way of secondary legislation. There is always a danger with a regulation making powers that there is insufficient scrutiny of them as compared to that given to primary legislation. This is particularly important given that any regulations could contain retrospective powers, although

we recognise that the the accompanying procedures should help to ensure that such powers are exercised only in clearly defined circumstances.

Whether the level of delegated powers is appropriate

8. The level of delegated powers must be proportionate to the problem they seek to solve. We appreciate that the Welsh Government needs the ability to respond to changes made to SDLT by the UK Government. Further, the ability to react to quickly to identified tax avoidance schemes etc and/or unexpected court rulings is understandable.
9. We support reasonable and proportionate measures to address tax avoidance, and recognise that LTT, like SDLT, poses particular risks in relation to tax avoidance. Particular issues are that LTT is self-assessed and managed on the basis of process now, check later. Agents, usually conveyancers/solicitors, will not necessarily be engaged on an on-going basis; rather they will be engaged to complete and file the return only.
10. LTT poses a slightly different risk profile as compared to SDLT. On the one hand, the impact of LTT tax avoidance is potentially greater than for SDLT given its smaller tax base: on the other hand, LTT is far more likely to be charged at lower rates than for SDLT due to lower property values, thereby reducing the potential motivation to engage in tax avoidance. In practice, however, there is probably not much difference in the risk profile.
11. Nevertheless, we remain concerned about the wide power under these provisions to make retrospective changes to the tax rules. Another key principle of a good taxation system is the need for certainty. In principle, we believe that the approach adopted to countering tax avoidance should be similar to that which is encapsulated in the so-called 'Rees Rules' which were subject to extensive debate in the UK Parliament in 1978 and which were set out at that time as follows:

First, the warning must be precise in form. A mere suggestion that there are vague schemes of tax avoidance that must be counted should not suffice.

Secondly, the problem at which the warning has been directed should immediately be referred to a committee which I understand exists ... composed of members of the Inland Revenue and of the accountancy and legal professions ... [the committee] should to left ... to devise the precise legislative measures which should then be introduced.

Thirdly, if the committee can hit on appropriate legislative provision, the draft clause ... should immediately be published in advance of the Finance Bill so that those who are likely to be in the field of fire will have a second clear intimation of what to expect.

Fourthly, such a clause must, without fail, be introduced in the following Finance Bill ...

12. This doctrine was formulated nearly 44 years ago and we are not sure whether the second of the above rules was ever adopted or not but, if it was, it has not operated for many years. However, we believe that the fundamental principles behind the Rules remain good, namely that any tax changes made should only apply from the date of the announcement, must be announced in clear form, must be published in draft and enacted in the next Finance Bill.
13. The approach adopted by the Welsh Government is, in effect, a modified version of the Rees rule in that regulations could be announced which would make immediate changes to the

primary legislation, thereby by-passing the need to go through a formal Finance Bill process. We can see that this approach might give a higher degree of certainty, provided the regulations are approved under the appropriate ratification process.

14. Our main concern is with retrospection and the **draft statement** on retrospection which is included in the bundle of supporting material for the Bill. This procedure should not be used to introduce a tax change from a date prior to the date on which it was announced and we believe that the draft statement should be clarified to confirm that this is not the intention. If it is so intended, there should be a formal confirmation that such an approach would be wholly exceptional and that it would be accompanied by a detailed and compelling justification for such a procedure.

Whether a similar legislative process has been implemented elsewhere

15. It would be helpful to compare and contrast the proposed Welsh Government approach to that which has been adopted by the Scottish Government to deal with similar circumstances.
16. We have discussed this with colleagues in relation to the devolved taxes in Scotland. We understand that Scotland has similar issues to those in Wales – namely there is no obvious process to change the devolved taxes. We understand that the problem may be more acute in Scotland than in Wales because the Scottish equivalent of SDLT (namely Land and Buildings Transaction tax) was changed more extensively when rewritten from SDLT – partly due to the need to align it with Scottish land law etc. We also understand that there have been a number of Scottish tax Tribunal cases on the two devolved Scottish taxes and that some of the questions that have been decided are quite fundamental to the operation of the taxes – see the fourth trigger condition in this Bill (namely para 1(1)(d)).
17. We understand that in Scotland there has been a working group that was looking at this and which produced an interim report a couple of years ago but not subsequently and there are calls to reconvene it.
18. We are not aware of any other similar legislative processes.

Whether the Welsh Government needs additional powers considering the existing powers it has to make changes to tax legislation and does it replicate existing powers

19. The Welsh Government already has the power to change the rates and bands etc by way of regulation so there is already a precedent adopted for such an approach. The powers subject to this consultation exclude the ability to change rates and bands (see clause 2(3) of the Bill). We understand that this approach was adopted because the Welsh Government already has a pre-existing power to change these. However, this exclusion serves to complicate these provisions and consideration should be given to deleting it.
20. We do not think any further powers should be needed.

Whether the Bill is the right approach to make changes to tax legislation

21. In broad terms, the measures will allow primary legislation to be overridden by secondary legislation in four defined circumstances. Although adopting this approach is not one we would advocate under our principles, we appreciate that the Welsh Government does need the ability to react quickly in the circumstances outlined.

Whether there are possible scenarios where the proposed approach would not work

22. We cannot think of any. However, we would also note that many promoters of tax avoidance avoidance schemes appear to operate outside of any oversight (whether by a professional body or otherwise) and appear impervious to changes designed to stop their activities. In relation to tax avoidance, these particular changes would impact upon the taxpayer who entered into a scheme rather than those behind such schemes and who may continue to abuse the system. While it is right that measures should be aimed at the taxpayer, the Welsh Government should consider whether it has the necessary powers to tackle the promoters of egregious tax avoidance schemes.

Whether there are any external events not covered by the four purpose tests

23. We cannot think of any external events at the current time which would not be covered by the four purpose tests. As a general principle, and given our comments above, these powers should be used sparingly and only in defined circumstances, so we think that the four tests are enough for the time being. We suggest the position is kept under review and, if further events are identified, then these could be considered at that stage. We would repeat our request that the Welsh Government should consider adopting a Finance Bill type process which would allow for necessary tax changes to be made every year.

Whether the approach would enable appropriate scrutiny

24. The approach adopted should normally allow for appropriate scrutiny although in one of the circumstances (namely that in the circumstances set out in para 4(2)(b) the regulations can be made without a draft being laid and approved by the Senedd), it will be effectively after the event. We would expect that the power in para 4(2)(b) is only exercised in extremis and that, if it is used, a clear and compelling justification is made for it.

Whether the Senedd should have a legislative budget process to enable tax changes to be made through primary legislation

25. See our comments made above. We think that the Senedd should have a legislative budget process and that tax changes should ideally be made by way of primary legislation.

How the Bill could impact on Welsh taxpayers and stakeholders

26. The purpose of the measures is to allow the Welsh Government to make changes at short notice if one of four conditions is satisfied. In terms of the four conditions, one of them, namely compliance with international obligations, is likely to be a rare occurrence and the impact on Welsh taxpayers is likely to be very limited. The other three conditions are much more likely to occur and therefore the impact on Welsh taxpayers is likely to be much higher.

SPECIFIC COMMENTS ON THE DRAFT BILL

Clause 2(1)(b)

27. In principle we do not think that a power to make or extend a penalty should be available by way of amending existing primary legislation – such a power should only be made by way of primary legislation through a Finance Bill type process. Accordingly, we would welcome clarification of the circumstances when this provision might apply and what safeguards will be in place to protect taxpayers.

Clause 2(1)(c)

28. See comments made above about retrospection and that it should not apply to a period before any announcement.

Clause 2(1)(3)

29. As noted above, we understand that this is included because the Welsh Government already has the power to do this. However, as one would expect to see a specific power to change rates and bands included in this provision, including an exclusion in these rules serves merely to confuse, especially as there is no cross reference to the existing power. We would delete it or put in a specific cross reference so that the reason for this is clear.



Finance Committee - Welsh Tax Acts (Power to Modify) Bill

A Submission by:
The Chartered Institute of Public Finance and Accountancy

January 2022

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. CIPFA shows the way in public finance globally, standing up for sound public financial management and good governance around the world as the leading commentator on managing and accounting for public money.

Further information about CIPFA can be obtained at www.cipfa.org

Any questions arising from this submission should be directed to:

Richard Lloyd-Bithell
Senior Policy and Technical Manager
CIPFA

Tel: +44 (0)131 221 8653

Email: Richard.Lloyd-Bithell@cipfa.org

1. Executive summary

CIPFA is pleased for the opportunity to provide evidence to the committee. As a professional body for public finance, we take a special interest in the good public financial management, administration, and the devolution of powers.

Set out below are comments made by CIPFA in relation to the Welsh Tax Acts (Power to modify) Bill.

The bill is anticipated to be used in response to external changes not to be used to instigate tax policy changes. The act is significant in its powers, including its remit of making retrospective changes. Wales constitutional arrangements sets out as clear lines by providing that it was illegal for the government to raise taxes except to the extent that Parliament had granted it the power to do so. Under the Government of Wales Act, Senedd Cymru (Welsh Parliament), has the power to decide whether and to what extent people should be subject to devolved taxes.

The Bill clearly outlines amendments to three Acts of Senedd Cymru, together referred to as the Welsh Tax Acts. Which will establish a framework for the collection and administration of devolved taxes – to be administered by the Welsh Revenue Authority, with particular focus on Land Transaction Tax (LTT) and Landfill Disposal Tax (LDT).

This bill would delegate to the Welsh Government (the executive) from the Senedd (the legislature) power to change tax legislation made by the Senedd. This is a common delegation of power we have seen utilised by Welsh Government using powers granted to them by UK Acts of Parliament (enabling Acts) to react with urgent need to take action to protect the public in response to Covid-19 Pandemic, as an example of an external factor requiring use of these powers by the executive. In principle the balance of power between the executive and the legislature must be closely considered in these matters. The Chartered Institute of Taxation and the Institute of Chartered Accountants in England and Wales stated that their default position is that tax legislation should be in primary legislation, and particularly in the case where legislation relates to the exercise of tax powers, except in very exceptional circumstances – which CIPFA would agree with this principle. CIPFA recognises that in response to these concerns the scope of the bill has been restricted the power to exercise the act by the executive has been restricted to the four sets of circumstances outlined in the draft bill.

Under the Bill as introduced, the Welsh Ministers would have the power under section 1 to amend the Welsh Tax Acts (and any regulations made under them) if they considered that the modifications were necessary or appropriate for or in connection with:

- ensuring that LTT or LDT is not imposed where to do so would be incompatible with any international obligations;
- protecting against tax avoidance in relation to LTT or LDT;
- responding to a change to a predecessor tax that affects, or may affect, the amounts paid into the Welsh Consolidated Fund under section 118(1) of the Government of Wales Act 2006;
- responding to a decision of a court or tribunal that affects, or may affect, the operation of any of the Welsh Tax Acts or regulations made under any of those Acts.

Clause 2(1)(c) enables the Welsh Ministers to make Regulations which have retrospective effect. CIPFA has a concern in regard to retrospection and the draft statement on retrospection. This procedure should not be used to introduce a tax change from a date prior to the date on which it was announced, and we believe that the draft statement should be clarified to confirm that this is not the intention. If it is so intended, there should be a formal confirmation that such an approach would be in very exemption circumstances and that it would be supplemented by a detailed and compelling reasoning for such a procedure.

In regard to Clause 2(1)(B) – CIPFA, in principle, is concerned by the power to make or extend a penalty without amendment to existing primary legislation. Such power should be made through primary legislation.

In summary CIPFA, supports the policy purpose behind the Bill in principle. Given that the UK Government continues to make changes to the Stamp Duty Land Tax (SDLT) regime, it is important that the Welsh Government has the mechanism needed to be able to react to such changes if they are likely to have a significant impact on Land Transaction Tax (LTT).

2. Welsh Tax Acts (Power to Modify) Bill Comments

Under section 2, we have made commentary against each question, in order, raised in the Committees call for evidence from expert witnesses, also considering the adoption of modifying tax legislation and it's effectiveness and potential alternative approaches.

2.1 *Considerations of the general principles of the Bill and the need for legislation?*

2.1.1 There is significance of the bill regarding its potential impact on public administration and risk to Welsh Government in it's ability to raise and collect taxes within the parameters of the specific taxes outlined in the bill. The level of delegated powers should be proportionate to the problem they aim to resolve. CIPFA understands that the Welsh Government needs the ability to respond to changes made to SDLT by the UK Government and the mechanism to react to swiftly to identified tax avoidance schemes and unexpected court rulings.

Considering the four purposes of the bill and it's intended use, CIPFA has the following observations;

2.1.2 ***“Ensuring that LTT or LDT is not imposed where to do so would be incompatible with any international obligations”*** - section 116A(3) of the Government of Wales Act 2006 states ‘A devolved tax may not be imposed where to do so would be incompatible with any international obligations.’

To enable the Welsh Tax Acts to be amended swiftly if the reason for the incompatibility with international obligations lies in those Acts. It also stands to reason, the power should be capable of being exercised retrospectively.

2.2.2 ***“protecting against tax avoidance in relation to LTT or LDT”*** – CIPFA supports mitigating the risks of tax avoidance. However, Part 3A of the Tax Collection and Management (Wales) Act 2016 (a Wales Tax Act) already contains a broad general anti-avoidance rule. This applies where a person or entity enters an arrangement for the main or sole purpose of obtaining a tax advantage, and that arrangement is an artificial one when measured by reference to certain statutory criteria. Should these cases arise, the Welsh Revenue Authority (WRA) can start a process which can lead to tax adjustments against the taxpayer. If the matter comes to be determined before a court or tribunal, it is for the WRA to prove both that there is an artificial tax avoidance arrangement, and that the adjustments are reasonable (Section 81H). In summary – CIPFA does not have any substantive comment on the new bill, as the power to

2.2.3 ***“responding to a change to a predecessor tax that affects, or may affect, the amounts paid into the Welsh Consolidated Fund under section 118(1) of the Government of 15 Wales Act 2006”*** – As the committee will be aware The Welsh Consolidated Fund is the money that pays for the devolved governance of Wales. Its main component is the annual block grant received from the UK Government. Under the arrangements agreed between the UK and Welsh Governments, the block grant is adjusted if the UK Government changes an UK government tax which is the equivalent of a

devolved tax. So if the UK Government increases the rate of SDLT (the equivalent to LTT), the block grant is reduced, and vice versa. In CIPFA's view The policy need for a mechanism that enables swift action in these sorts of circumstances is clear.

2.2.4 **“responding to a decision of a court or tribunal that affects, or may affect, the operation of any of the Welsh Tax Acts or regulations made under any of those Acts”** - In board terms, the measures will allow primary legislation to be overridden by secondary legislation in four defined circumstances. Although adopting this approach is not one we would advocate under our principles. In the case of the anti-avoidance purpose, it allows the Welsh Ministers to change the Welsh Tax Acts in response to an external challenge to the way in which they operate. The difference in this case, however, is that the amendment will not be made to avert the use of a loophole, but rather to respond to a decision of a court of law. It is not uncommon for the law to be changed in response to a decision of a court. Where the law in question is primary legislation, that would normally be done by further primary legislation, unless the power to do so is given to the executive. The challenge is that, as in the case of the anti-avoidance provision, the drafting of the Bill does not reflect this approach. Rather it gives the Welsh Ministers the power, should they choose to do so, to achieve routine policy changes, significant or otherwise, and to overturn decisions made in a court of law. The principle of this should be considered in order to ‘future proof’ the bill.

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

2.2.1 This bill would delegate to the Welsh Government (the executive) from the Senedd (the legislature) power to change tax legislation made by the Senedd. This is a common delegation of power we have seen utilised by Welsh Government using powers granted to them by UK Acts of Parliament (enabling Acts) to react with urgent need to take action to protect the public in response to Covid-19 Pandemic, as an example of an external factor requiring use of these powers by the executive.

2.2.2 In principle the balance of power between the executive and the legislature must be closely considered in these matters. The Chartered Institute of Taxation and the Institute of Chartered Accountants in England and Wales stated that their default position is that tax legislation should be in primary legislation, and particularly in the case where legislation relates to the exercise of tax powers, except in very exceptional circumstances – which CIPFA would agree with in Principle.

2.2.3 CIPFA recognises that in response to these concerns the scope of the bill has been restricted the power to exercise the act by the executive has been restricted to the four sets of circumstances outlined in the draft bill.

2.3 *Any potential barriers to the implementation of these provisions and whether the Bill takes account of them?*

- 2.3.1 CIPFA would note that tax avoidance schemes operate outside of any oversight and appear resistant to changes designed to stop their activities. In relation to tax avoidance, these changes would impact upon the taxpayer who entered into a scheme rather than who continue to abuse the system. While it is right that measures should be aimed at the taxpayer, the Welsh Government should consider whether it has the necessary powers to tackle the promoters of egregious tax avoidance schemes. Otherwise CIPFA has no other substantive comment.
- 2.4 *Whether there are any unintended consequences arising from the Bill?*
- 2.4.1 We cannot think of any external events at the current time which would not be covered by the four purpose tests. As a general principle, and given our comments above, these powers should be used cautiously and only in defined circumstances, so we think that the four tests are sufficient for the current environment. We suggest the position is kept under review and, if further events are identified, then these could be considered at that stage
- 2.5 *The appropriateness of section 3 (Policy statement: regulations under section 1 that have retrospective effect) and the draft policy statement published alongside the Bill?*
- 2.5.1 CIPFA has a concern in regard to retrospection and the draft statement on retrospection This procedure should not be used to introduce a tax change from a date prior to the date on which it was announced, and we believe that the draft statement should be clarified to confirm that this is not the intention.
- If it is so intended, there should be a formal confirmation that such an approach would be in very exemption circumstances and that it would be supplemented by a detailed and compelling justification for such a procedure.
- 2.6 *The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)?*
- 2.6.1 Based on the financial impact assessments CIPFA has no material concern from the outcome of these assessments. However CIPFA wish to highlight the potential costs from adapting systems, building capacity and data, should a retrospective liability calculation be needed.

Think Ahead

ACCA

ACCA response to the Senedd Finance Committee Consultation on the Welsh Tax Acts etc. (Power to Modify) Bill – January 2022

About ACCA

ACCA (the Association of Chartered Certified Accountants) is the global professional body for professional accountants.

We're a thriving global community of 233,000 members and 536,000 future members based in 178 countries and regions, who work across a wide range of sectors and industries. In Wales, we have over 6,000 members and students working across a range of sectors including in practice, in the public sector, financial services, manufacturing and leisure and hospitality. We uphold the highest professional and ethical values.

We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business and digital expertise essential for the creation of sustainable organisations and flourishing societies.

Since 1904, being a force for public good has been embedded in our purpose. We believe that accountancy is a cornerstone profession of society and is vital helping economies, organisations and individuals to grow and prosper. We do this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities. Through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at accaglobal.com

General Comments

ACCA's 2020 report Foundations for a Sound Tax System: Simplicity, Certainty, Stability | ACCA Global identified three essential principles which a tax framework should strive to balance: simplicity, certainty and stability. These should also act as the benchmarks by which policymakers and public can measure the maintenance and improvement of a tax system.

For businesses and for the wider economy, the issue of stability is most urgent, particularly for businesses facing restricted cashflows in the aftermath of the pandemic. Businesses planning any kind of long-term investment will be less likely to commit to a particular course of action if the financial outcome is uncertain. This particularly important in the current context where the Welsh Government is pursuing strategic objectives to deliver a sustainable and inclusive recovery that will require some level of business investment.

ACCA believes that a greater commitment to simplicity and genuine structural improvements to the tax system to improve taxpayer understanding of the tax framework, can in turn, produce greater transparency and accountability.

Specific Comments

We believe that the retrospective legislative approach is the solution of last resort and should be considered when all other options have been exhausted.

In the report mentioned above we stated that: "The scope for abuse of uncertainty and the impact of anti-avoidance rules is discussed, along with the mechanisms by which tax administrations can ensure that compliant business is not disadvantaged as a consequence of others' exploitation of uncertainty.

The tension between simplicity and certainty is exacerbated by the differing needs and priorities of different classes of taxpayer, and increases the importance of considered policymaking by system designers. A tailored and pragmatic compromise may be unavoidable, but that does not excuse legislators from their underlying obligation to design taxes carefully and thoughtfully."

You will note that we prefer stronger anti-avoidance measures, however, where no practical alternative is available and we recognise that the Welsh Government may wish to accelerate a change to the law in exceptional circumstances.

These should be matched by appropriate safeguards which may include a process with the measure only applying from the date the process is completed. For example, the measure not applying until an announcement of a change made to Senedd, publicity of the change is undertaken and clarity on when the bill will be presented is made.

For more information please contact/Am fwy o wybodaeth, cysylltwch a:
Lloyd Powell, ACCA Cymru/Wales
Lloyd.powell@accaglobal.com

Document is Restricted

Document is Restricted

Document is Restricted