

Agenda – Finance Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 7 October 2015

Meeting time: 08.45

For further information contact:

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Committee Clerk

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At its meeting of 1 October 2015, in accordance with Standing Order 17.42, the Committee resolved to meet in private for item 1

1 Assembly Commission draft budget 2016–17: Consideration of draft report

(08.45 – 09.00)

Paper 1 – Draft report

Public

2 Introductions, apologies and substitutions

(09.00)

3 Papers to note

(09.00)

Letter to Chair of Finance Committee from Minister for Finance and Government

Business

(Pages 1 – 4)

Note from Tax Collection and Management (Wales) Bill Stakeholder event 23

September 2015

(Pages 5 – 7)



4 Public Services Ombudsman for Wales: Estimate of income and expenses 2016–17: Evidence session 1

(09.00 – 10.00)

(Pages 8 – 30)

Nick Bennett, Public Services Ombudsman for Wales

Susan Hudson, Policy & Communications Manager

David Meaden, Financial Accountant

Paper 2 – Public Services Ombudsman for Wales Estimate for the Financial Year 2016–17

Research briefing

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(10.00)

Item 6

6 Public Services Ombudsman for Wales: Estimate of income and expenses 2016–17: Consideration of evidence

(10.00 – 10.15)

Break

(10.15 – 10.30)

Public

7 Tax Collection and Management (Wales) Bill: Evidence session 6

(10.30 – 11.15)

(Pages 31 – 61)

Martin Warren, Director for Wales, Institute of Chartered Accountants in England and Wales

Jason Piper, Senior Manager – Tax and Business Law, The Association of Chartered Certified Accountants (ACCA)

Paper 3 – Institute of Chartered Accountants in England and Wales consultation response

Paper 4 – The Association of Chartered Certified Accountants (ACCA) consultation response

Research briefing

8 Tax Collection and Management (Wales) Bill: Evidence session 7

(11.15 – 12.15)

(Pages 62 – 71)

Kay Powell, Policy Adviser, The Law Society

Richard Beech, Partner, Glamorgan Law LLP

Paper 5 – The Law Society consultation response

Research briefing

9 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(12.15)

Item 10

10 Tax Collection and Management (Wales) Bill: Consideration of evidence

(12.15 – 12.30)

Jocelyn Davies AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

1 October 2015

Dear Jocelyn,

At the Finance Committee's Stage 1 scrutiny of the Tax Collection and Management (Wales) Bill, I committed to provide further information in relation to:

- 1) the circumstances where the section 14 direction-making power might be used, (including the rationale for providing that the power could not be exercised in relation to section 28 [accounts] and section 29 [tax statement], whilst there is no such restriction in relation to section 32 [accounting officer arrangements]); and,
- 2) the current arrangements provided for in the Bill for appointing members of the Welsh Revenue Authority.

Section 14: General directions

Tax collection is a function of government: the revenues collected will go into the Welsh Consolidated Fund to support public services in Wales. Welsh Ministers should rightly give strategic direction to the WRA on operational policy priorities (for example, the emphasis that the WRA should place on compliance and anti-avoidance).

The Assembly and Welsh public will, quite rightly, expect Welsh Ministers to be accountable for the strategic direction of the WRA. They should and will expect the WRA to be accountable for the efficient and effective collection of devolved taxes within the strategic framework set by Welsh Ministers. The Bill fully protects the confidentiality of taxpayer information and specific taxpayer situations from any involvement from Welsh Ministers, and ensures the operational independence of the WRA. However, tax revenue is a fundamentally important element of the Welsh Government budget, and Welsh Ministers should have the ability, if absolutely required, to ensure that the WRA is indeed collecting devolved taxes efficiently and effectively.

For that reason, the Bill provides for a direction-making power. I would envisage a direction being given only rarely and in unusual circumstances. This could be, for example, where there is a critical risk to the effective collection of Welsh tax receipts. It is difficult to provide a specific example, because the precise circumstances of tax collection difficulties in the future cannot be known.

In considering our approach and this provision we have looked carefully at the arrangements elsewhere between Ministers and HMRC and Revenue Scotland. Different approaches have been adopted:

- On the one hand, section 11 of the Commissioners for Revenue and Customs Act 2005 provides that in the exercise of their functions the Commissioners shall comply with any directions of a general nature given to them by the Treasury;
- On the other hand, however, the Revenue Scotland and Tax Powers Act 2014 provides that the Scottish Ministers must not give directions relating to, or otherwise seek to control, the exercise by Revenue Scotland of its functions (section 7). The Scottish Ministers may, however, give guidance to Revenue Scotland, to which Revenue Scotland must have regard (section 8).

Having considered both arrangements, my preference is to remain consistent with the current Treasury/HMRC model, although with the introduction of a greater degree of transparency (because Welsh Ministers will be under a duty to publish directions unless they consider that this would prejudice the effective exercise of WRA's functions). Whilst WRA should be operationally independent from Welsh Ministers in terms of how it deals with individual taxpayers, that has to be balanced against a need to ensure that the delivery of devolved tax operational policy is being carried out effectively. Section 14 allows this balance to be struck in a similar way to section 11 of the Commissioners for Revenue and Customs Act 2005.

What safeguards are in place?

The Bill throughout provides extensive safeguards for taxpayers to ensure that they are treated fairly, impartially and in accordance with the law. There are two main points to recognise:

Firstly, the power itself is limited to issuing directions of a general nature. Welsh Ministers will simply not be able to interfere in individual taxpayers' affairs. This is distinct from other bodies, for example Natural Resources Wales, where Ministers are able to issue directions of a specific nature.

Secondly, Welsh Ministers must publish any directions given unless they consider that publication would prejudice the effective exercise of WRA's functions. This goes further than the equivalent provision for HMRC, which does not require publication at all. This openness and possibility for public scrutiny will further ensure that the powers will not be inappropriately used. Such directions, issued publicly, would be subject to scrutiny by the Assembly. They would be subject to normal public law principles and could, potentially, be challenged in the courts.

It is also important to note that the rest of the Bill also contains significant and comprehensive safeguards for taxpayers. Any decisions by WRA will need to be reasonable and taken in accordance with the law. WRA's decisions will be subject to extensive judicial scrutiny. For example:

- Part 4, provides that when WRA uses its powers to require the public to provide information, or to access premises, it can only do so with the approval of the Tribunal. That is a very important safeguard which, in some respects, provides greater security for the public than is the case in Scotland and the UK;
- Part 8 of the bill confers extensive rights on the public to review or appeal against a wide range of WRA decisions, including those that determine tax liability or liability to penalties.

The Bill provides for comprehensive judicial oversight of WRA's functions which will guard against inappropriate Ministerial interference in individual taxpayers' affairs.

I would also refer to sections 16 and 19 of the Bill which make it a criminal offence for anybody working in WRA (or organisations acting under delegation) to disclose protected taxpayers' information, other than in tightly defined circumstances. Again, this is a significant safeguard against inappropriate interference in taxpayers' affairs.

The rationale for providing that directions cannot not be exercised in relation to sections 28 (accounts) and 29 (tax statement), but not 32 (accounting officer arrangements)

Sections 28 and 29 already provide for specific directions in a particular context. Therefore Section 14, for clarity, stipulates that the general direction-making power cannot *also* apply.

It was questioned whether section 32 should be outside the scope of the general direction making powers in section 14. Section 32 empowers Welsh Ministers to specify the responsibilities of WRA's accounting officer (who will be the Chief Executive), and such responsibilities may include the signing of the WRA's accounts, ensuring the propriety and regularity of the WRA's finances, and the economy, efficiency and effectiveness with which WRA resources are used. As this provision relates to the personal responsibilities of the Chief Executive, as accounting officer, rather than the functions of the WRA, the direction making-power cannot be applied: that is, it is already outside the scope of the general direction-making powers in section 14. As such, an exemption like that provided for sections 28 and 29 is not necessary.

Section 3: Membership arrangements for the Welsh Revenue Authority

The Bill provides that the Chair and other non-executive members of the WRA Board will be appointed by Welsh Ministers and that Welsh Ministers will appoint a Deputy Chair from among the non-executive members.

Welsh Ministers will also appoint the first Chief Executive but subsequent chief executives will be appointed by WRA, although Welsh Ministers will have a role in approving the terms of appointment. WRA are responsible for the appointment of its staff (who will be civil servants), although again Welsh Ministers have an approval role in relation to the terms and conditions of those appointments. WRA will nominate the executive members of the WRA Board.

The non-executive members will be public appointments made in accordance with the Code of Practice for Ministerial Appointments to Public Bodies (the Nolan principles). Amongst other things, the Nolan principles state that no reappointment or extension is made without a satisfactory performance appraisal, evidence of which must be made available to the Commissioner for Public Appointments on request; and no individual will serve in any one post for more than ten years.

The terms and conditions of non-executive members will be set by Welsh Ministers. Such appointments will be for the next Welsh Government to make, but I would not anticipate that the terms and conditions of appointments would depart significantly from the existing terms and conditions model used for non-executive appointments to the Welsh Government Board. These are generally for a fixed period of two years with the possibility of extension. The Seven Principles of Public Life would apply.

A handwritten signature in cursive script that reads "Jane".

Jane Hutt AC / AM

Y Gweinidog Cyllid a Busnes y Llywodraeth
Minister for Finance and Government Business

Finance Committee

Stakeholder Event 23 September 2015: Tax Collection and Management (Wales) Bill

These notes represent the feedback from attendees at the Stakeholder event but are not intended to be a comprehensive view of those who attended.

Culture and role of the Welsh Revenue Authority (WRA)

- WRA needs to enshrine consistent treatment to all business in Wales;
- HMRC is inconsistent in terms of its treatment of various size business (often being more robust with smaller business) and its inability to pursue multi-national business;
- Small businesses' service and experience of HMRC is dependant entirely on the case officer assigned to them;
- Businesses may prefer to deal with one body for all taxation including business rates. Should this be WRA?
- The Taxpayers' Charter should be transparent and accountable, there should be a desire to communicate with taxpayers (which is less apparent with HMRC). WRA should work with business to resolve problems where possible;
- WRA should have a section/department offering advice which is accessible to taxpayers;
- Customer engagement needs to be agreed within the contract with HMRC (if the WRA's functions are delegated) or there is a risk of inheriting existing customer service issues;
- HMRC appears too close to HM Treasury and there should be a clear separation between tax policy development at Welsh Government and application of that policy by WRA. Chief Executive of WRA will need to show strong leadership to ensure HMRC's Wales section (if functions are delegated to them) adopts a different culture in collection of tax;
- Concern that HMRC will dictate collection processes with little or no knowledge of Wales – clear direction required by the WRA on how things should be run or perhaps there is a need for an office in Wales?
- There should be a place on the WRA Board or a committee/sub-committee representing small businesses;
- The attendance of WRA members should be considered during appointment and publicised in the accounts;

- Simplicity is key. To minimise cross border issues the WRA cannot operate too differently from the current HMRC arrangements or this will cause confusion/difficulties to the tax payer and any agent acting on their behalf;
- Needs to work for Wales. Important opportunity to build from scratch and get things right first time – learn lessons from HMRC;
- The level of confidentiality required is currently beyond most local authorities, however, HMRC is used to working at this level.

A Welsh tax system

- Need more engaging tax policies in Wales;
- Advantages in trying to simplify rules in Wales;
- Welsh tax system should mirror the system in England to avoid confusion unless there are clear benefits to doing otherwise.
- There should be a tax impact assessment undertaken on any potential taxes to be created;

Oversight/Scrutiny of the WRA

- Does the WRA come under the Public Services Ombudsman for Wales or the Parliamentary Ombudsman?
- The Taxpayers' Charter provides a measure to mark against but a clear avenue of scrutiny of the WRA also needs to be established. What mechanisms are in place for constituents to make a complaint to their Assembly Member? How do AMs intervene if there is a major issue? Could the Public Accounts Committee be responsible for the scrutiny of the WRA as it is an at arm's length body of the Welsh Government? How have Scotland managed this?
- An Assembly Committee should have strategic oversight of WRA (Similar to the Finance Committee's responsibilities over the Wales Audit Office);

WRA powers over enforcement and penalties

- Need a strong enforcement team from the outset (so it is set up to deal with future devolved taxes);
- Need local officers to ensure taxpayers have access to a member of WRA staff that can help;
- Independent, third party mediators/facilitators to offer Alternative Dispute Resolution (ADR) as an additional tier before tribunal (Should there be a Welsh tribunal system?);
- Simplify forms and make them accessible;



- Should consider a graduated scale of penalties related to business turnover (in the Bill it is graduated for some but not all penalties – should be consistent?);
- Need to legislate for evasion and anti-abuse not necessarily avoidance (as Scotland has);
- Need to see evidence of what an effective level of penalty is to encourage anti-abuse before setting these levels.
- HMRC should be required to forward data and information about any evasion from other taxes which may have an effect on Welsh devolved taxes.

Public awareness of changes to the Welsh tax system

- There should be general awareness campaign of WRA and its functions and a targeted campaign for the small taxes;
- There is a lack of public awareness around the proposed introduction of devolved taxes but in practice do the public need to know about the WRA if HMRC is used as the collection agent as in reality not much will change for the taxpayer?
- The changes require a smooth transition;
- Professional bodies are the best way to communicate changes to practitioners;
- Transparency. The taxpayer has a right to know who is collecting their money and what it is being spent on – could this be advertised within the Charter?
- Welsh Government should approach with caution in the early stages and park any new ideas or innovation to make sure they get it right as the public needs confidence in the system;
- Commendation around introducing framework legislation first.

Online tax filing and access to advice

- Online filing should be an option, with support available;
- Digital default is now widely accepted on the condition there is a non-penalised alternative;
- Access to broadband in Wales is a massive issue;
- Avoid off-shore advice and ensure that if the cloud is used for online systems, the cloud stays in the right jurisdiction;
- Direct access to HMRC staff who are carrying out collection;
- Customer engagement should be included in any service agreement or Memorandum of Understanding with the collection agent.





**Public Services Ombudsman for Wales
Estimate for the Financial Year 2016/17**

**Submission to the Finance Committee meeting
of the National Assembly for Wales
7 October 2015**

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1. Introduction to this Estimates Submission

- 1.1 I submit this budget estimate as required by paragraph 15 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2005, as amended by the Government of Wales Act 2006. It sets out the resources required from the Welsh Consolidated Fund to carry out my statutory functions apart from my salary, National Insurance and pension costs, which are a separate direct charge on the Welsh Consolidated Fund and do not, therefore, form part of this estimate. However, they are reported in my Annual Accounts in order to ensure that they reflect the total running costs of the office.
- 1.2 This is the fifth submission of the Public Services Ombudsman for Wales's (PSOW) estimates to the Fourth Assembly. The Finance Committee is responsible for considering this estimates submission. The Communities, Equality and Local Government Committee is responsible for considering the work of the office. The PSOW also appears before the Public Accounts Committee to discuss the Annual Accounts as and when required by that Committee. The information provided in this paper relates particularly to those matters within the remit of the Finance Committee.
- 1.3 The Public Services Ombudsman (Wales) Act 2005 establishes the office of the Ombudsman as a 'corporation sole'. The Ombudsman is accountable to the National Assembly for Wales, both through the mechanism of the Annual Report, and as Accounting Officer for the public funds with which the National Assembly entrusts the Ombudsman to undertake their functions.
- 1.4 The net resource expenditure sought for 2016/17 is £4,090k, with a net cash requirement of £4,279k. This represents a flat settlement and maintains my budget at no more than 0.03% of the Welsh Block. It accommodates both staff pay awards and other inflationary pressures other than the annual pension deficit payment increase and a £12k increase in capital to invest in new technologies to increase efficiencies. The detail in this paper supports this estimate submission.

2. The Role of the Public Services Ombudsman for Wales

2.1 As Ombudsman, I have two specific roles. The first is to consider complaints about public service providers in Wales; the second role is to consider complaints that members of local authorities have broken the Code of Conduct. I am independent of all government bodies and the service that I provide is free of charge.

2.2 Complaints about public service providers

2.2.1 Under the PSOW Act 2005, I consider complaints about bodies which, generally, are those that provide public services where responsibility for their provision has been devolved to Wales. The types of bodies I can look into include:

- local government (both county and community councils);
- the National Health Service (including GPs and dentists);
- registered social landlords (housing associations);
- and the Welsh Government, together with its sponsored bodies.

Since 1 November 2014, I am also able to consider complaints about privately arranged or funded social care and palliative care services.

2.2.2 When considering complaints, I look to see whether people have been treated unfairly or inconsiderately, or have received a bad service through some fault on the part of the service provider. Attention will also be given to whether the service provider has acted in accordance with the law and its own policies. If a complaint is upheld I will recommend appropriate redress. The main approach taken when recommending redress is, where possible, to put the complainant (or the person who has suffered the injustice) back to the position they would have been in if the problem had not occurred. Furthermore, if from the investigation I see evidence of a systemic weakness, then recommendations will be made with the aim of reducing the likelihood of others being similarly affected in future.

2.2.3 My Complaints Advice Team also provides the Complaints Wales signposting service, which is an independent and impartial telephone and web based service. It offers advice to members of the public on how to complain about a public service and signposts their complaint to the organisation that provides the service that they wish to complain about, or to the appropriate independent complaint handler or ombudsman

2.3 Code of Conduct complaints

2.3.1 Under the provisions of Part III of the Local Government Act 2000 and also relevant Orders made by the National Assembly for Wales under that Act, I consider complaints that members of local authorities have breached their authority's Code of Conduct. I can consider complaints about the behaviour of members of:

- county and county borough councils
- community councils
- fire authorities
- national park authorities and
- police and crime panels.

All these authorities have a Code of Conduct which sets out in detail how members must follow recognised principles of behaviour in public life.

3. Corporate Governance

3.1 The constitutional position of a corporation sole means that responsibility and accountability for the activities carried out by my office must remain with me, as Ombudsman.

3.2 Whilst bearing in mind the constitutional position of a corporation sole, I have established an Advisory Panel which provides both challenge and support to me as Ombudsman. There is also an Audit & Risk Assurance Committee, a sub-committee of the Panel, which provides particular support to me in relation to my responsibilities

as Accounting Officer. The work of both these for over the past year has been addressed in greater detail as part of the Governance Statement within my Annual Accounts for 2014/15, which was published in August 2015. However, I take the opportunity here to state that, following an open recruitment exercise, I was delighted that Mrs Sharon Warnes, previously Assistant Director/Senior Policy & Performance Manager at Gwynedd Council, was appointed to the Advisory Panel (following Mr Ceri Stradling's resignation at the end of 2013/14). Mrs Warnes also sits on the Audit & Risk Assurance Committee.

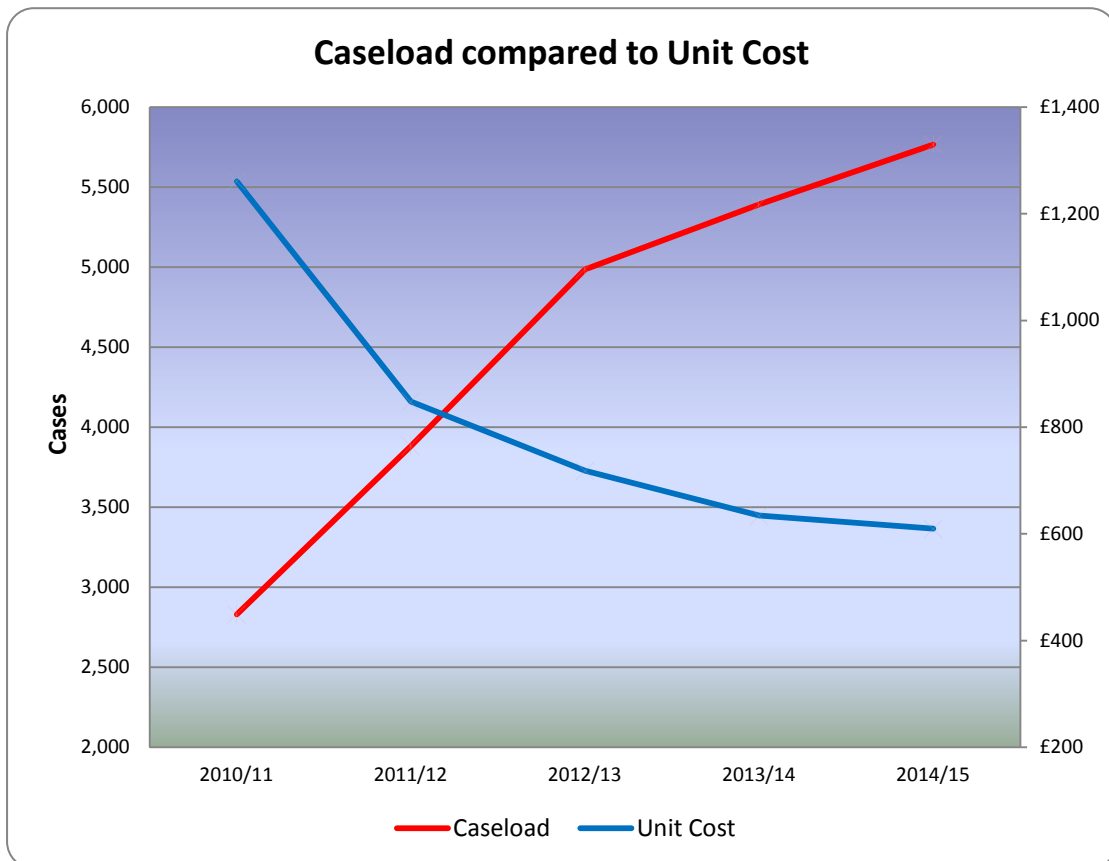
4. Financial Performance

- 4.1 The arrangements for financial management and internal control have been independently reviewed by Deloitte as the PSOW's internal auditors. Deloitte were appointed with effect from 1 April 2011. The work of Deloitte was planned on the basis of their overall needs assessment. Their reports have highlighted the satisfactory internal control framework within the organisation and made recommendations for improvement where necessary.
- 4.2 The Deloitte Internal Audit Annual Report in respect of the year 2014/15 stated: "Based on the work we have undertaken during the year we are able to conclude that the Public Services Ombudsman for Wales (PSOW) has a basically sound system of internal control, which should provide **substantial assurance** regarding the achievement of PSOW's objectives." There were six new recommendations (two medium and four low priority).
- 4.3 The Auditor General gave the annual accounts for the year 2014/15 an unqualified audit opinion in keeping with all previous years.
- 4.4 The PSOW has worked on the principle that the overheads of the office should be less than 5% of the total expenditure. This has always been achieved since the office was established under the Public Services Ombudsman (Wales) Act 2005 and is a principle that was derived from good practice within the public sector. This is evidenced in the analysis of expenditure on the aims and objectives of my Strategic Plan as set out in the Annual Accounts where overheads are identified as 4.5% of total costs.

5. Efficiency and Effectiveness

5.1 The PSOW has previously reported to the Finance Committee on the concerted effort made to provide a more efficient and effective service at the early stages of the complaints handling process, together with streamlining the investigation stage. These arrangements have continued to be crucial in the context of dealing with the ever increasing number of enquiries and complaints received by my office.

5.2 That upward trend continues, as illustrated below:



5.3 It is particularly noteworthy that over the five year period 2010/11 to 2014/15 the number of enquiries and complaints received more than doubled whilst expenditure adjusted for inflation fell by 2%, as detailed in the table below.

	2010-11	2011-12	2012-13	2013-14	2014-15	% change
Enquiries	1,127	1,866	2,906	3,234	3,470	+208
Public Body Complaints	1,425	1,605	1,790	1,932	2,065	+45
Code of Conduct Complaints	277	412	291	226	231	-17
Expenditure, adjusted for inflation	£3,566k	£3,292k	£3,581k	£3,419k	£3,515k	-2

5.4 Innovation

5.4.1 Whilst recognising the admirable work undertaken in previous years to streamline the office's complaints handling processes, I was nevertheless acutely aware of the continuing upward trends. It was notable that July 2014 saw the highest number of enquiries and highest number of complaints received in the office since it came into existence in April 2006. I therefore instigated an innovation project, engaging all staff, with a view to identify areas for further efficiency gains. That work resulted in over 30 agreed action points. The majority of these involved internal changes, with a key focus being on reinforcing and gathering greater momentum in relation to becoming a 'paperless office'. We have taken the view that this approach will enable us to gain further efficiencies in relation to the practicalities of dealing with casework documents. However, there have been implications for bodies within my jurisdiction too, whereby I now request records in electronic format only (and associated with that, I have reduced the timescales allowed for bodies in jurisdiction to provide me with the records requested).

5.5 Turning the Curve

5.5.1 Associated with my concern about the continued increase in complaints, I have considered what we could do to promote improvements in complaint handling in bodies within jurisdiction, together with how we may have greater impact on contributing to improved public service delivery. As a result, I introduced new and changed job roles during June 2015. In particular, a number of existing posts were revised, whereby I introduced the positions of Assistant Investigation Managers (AIMs) and Investigation and Improvement Officers (IIOs). Whilst they will continue

to play an important investigatory role in the future, the improvement duties within both these roles will include stakeholder engagement with certain bodies in jurisdiction as well as thematic leads for areas which continue to affect quality public services.

5.6 Professional advisers

5.6.1 I use clinical advisers with expertise in various areas of the health professions to assist me with the consideration of health cases. Previously, the office relied solely on advisers engaged through an arrangement with the Office of the Parliamentary and Health Service Ombudsman (OPHSO), which is subject to a recharge to my office. The Committee has been previously advised of the PSOW's decision to directly engage a number of clinical advisers who come in to the office as required. We continue to be very pleased with the positive impact on the PSOW's service as a result. This has enabled a more prompt review of cases at the early stages of the consideration of a complaint, and more focussed and effective interaction with other specialist advisers at OPHSO during investigations. This has reduced costs for my office due to fewer case files needing to be sent to OPHSO in Manchester or London. However, whilst seeking to minimise the call on the arrangement with OPHSO as far as possible, we still have a significant reliance on this service. Further, in view of the continued increase in health complaints to my office, it is likely that I will need to also increase the number of requests for advice, meaning an even greater cost to my office.

5.6.2 I also engage directly a number of other professional advisers in the fields of social care and planning. These also prove their worth by, in particular, enabling early decisions to be made at pre-investigation stage of the complaints process. I am conscious that it is highly likely that I will need to increase the use of the advisers providing me with professional advice on social care matters in view of the additional complaints of this type that will need to be considered by my office as a result of the revised statutory social care complaints procedure and extension of my jurisdiction in this area.

6. Strategic Planning

6.1 The key strategic aims for the office to 2015/16 have been the following:

1. To offer a service where excellent customer care is at the forefront of all we do, where we work to raise awareness of our service and do our best to make it accessible to all and easy to use.
2. To deliver a high quality complaints handling service, which considers and determines complaints thoroughly but proportionately, and conveys decisions clearly.
3. To use the knowledge gained from our investigations to contribute to improved public service delivery and to inform public policy.
4. To continue to analyse and improve the efficiency and effectiveness of our governance, business processes and support functions, to further demonstrate transparency and ensure the best use of the public money entrusted to us.

6.2 I am currently in the process of reviewing these aims with my staff and other stakeholders, with a view to developing a new strategic plan to take us forward to 2018/19.

6.3 Key amongst our considerations will be the potential emergence of a new Public Services Ombudsman (Wales) Act during 2016, following the Assembly Finance Committee's inquiry into the powers of the Ombudsman during 2015. The Finance Committee will of course be highly aware that first amongst its recommendations from its inquiry was the following:

“The Committee is persuaded by the evidence that there should be a revision to the powers of the Ombudsman. The Committee recommends that a bill is introduced into the Assembly to extend the role of the Ombudsman.”

6.4 The Finance Committee's attention is drawn to the fact that should a new Act be introduced during the financial year 2016/17, it is my intention to manage the transitional phase for that year within the net cash requirement of £4,279k.

7. Local Government Pensions

- 7.1 Under the Public Services Ombudsman (Wales) Act 2005, most of my staff are members of the Principal Civil Service Pension Scheme (PCSPS). In previous submissions I have reported that when the office of the Public Services Ombudsman for Wales was established in 2006, a number of members of staff formerly employed by the Commission for Local Administration in Wales were entitled to remain in the Local Government Pension Scheme. Since then, the scheme, which is administered by Cardiff County Council, continues to remain in deficit. This has arisen because of the increases in life expectancy that affect the liabilities of the pension scheme while its assets have been reduced by decreases in the value of its investments and by lower rates of return.
- 7.2 The liability for the deficit was identified following a three year actuarial review and was included within the second supplementary estimate for 2011/12 as Annually Managed Expenditure (AME), however; the annual payments are treated as Departmental Expenditure Limit (DEL). These payments are increased by £13k each year and will continue to be made until 2017/18.
- 7.3 The Scheme funding position had deteriorated since 31 March 2010 primarily due to fluctuations in financial conditions (which has affected actual investment returns since 31 March 2010 as well as expected returns in the future). This has been partially offset by pay increases being lower than expected and shortfall contributions paid since 31 March 2010. The latest actuarial valuation as at 31 March 2015 recognises a reduction of £230k in the deficit from £720k at 31 March 2014 to £490k. It is anticipated that the deficit should be eliminated over the next 3 financial years by the additional payments made to the Scheme in 7.2 above.

8. Pay awards

- 8.1 Office salaries are based on England and Wales Local Government pay scales with uplifts applied depending on settlements agreed at the National Joint Council for Local Government Services. A 2% uplift to pay was agreed in 2014/15 covering the two years from April 2014 to March 2016.

9. Cost Pressures

- 9.1 Despite the cost and other pressures on my service, for this budget estimate submission for 2016/17, I propose a flat settlement and to remain at less than 0.03% of the anticipated Welsh block. The only additional cash sought is the £13k agreed annual increase in pension deficit payments and a small increase in capital of £12k.
- 9.2 The office continues to absorb cost increases. HM Treasury is stating that the GDP Deflators, as the measure of inflation for the forthcoming years, are estimated currently to be 1.0% for 2015/16 and 1.7% for 2016/17.
- 9.3 The office has absorbed higher costs relating to the pension increases for the former Ombudsmen whose pensions are met from within my budget allocation. In line with the Pensions Increase Order for 2015 these pension payments have increased by 1.2% and added £2k to the costs of running this office. It is likely that the pension increase will be about 2% in 2016/17 resulting in a further increase in costs of £3k.
- 9.4 The office continues to meet increases in service charges, rates and utilities at the premises in Pencoed. There is, however, a requirement for additional archive space, which has arisen due to the increase in case files which need to be retained. In addition, this will enable us to realise our innovation actions as regards the use of technology for matters such as video-conferencing, Skype and document scanning. In addition, it future-proofs the office for the next ten years, including the potential for additional staff should the Ombudsman be given additional powers in any new Act. Therefore, as part of the 10 year lease renewal negotiations with our existing landlord, we acquired additional office space within the same building at nil additional rental cost although there will be an increase in service charges and other premises related costs. This has reduced the rental cost per square foot from £13 to £9, resulting in significant value for money for office space.
- 9.5 Despite the cost of printing, postage and carriage continuing to rise we intend to absorb these costs by implementing various efficiency and cost reduction schemes such as – encouraging the use of double sided printing, more use of second class mail and constant evaluation of courier costs.

- 9.6 We continue to embrace technological advances to improve efficiency and take the office towards becoming a paperless office. We need to increase our capital budget from £13k to £25k to enable us to continue to invest in these technologies.

- 9.7 In relation to procurement, when new contracts are negotiated and exiting contracts reviewed the aim is to secure cost reductions and/or enhancements in the method of working. Examples include a new integrated mobile phone and tablet solution, replacement of low specification PCs for front line staff, increased internet bandwidth at no extra cost and improved management performance measuring tools via new telephone software. We continue to enhance our complaints handling system to improve usability, reflect developments in our internal processes and keep up with legislation.

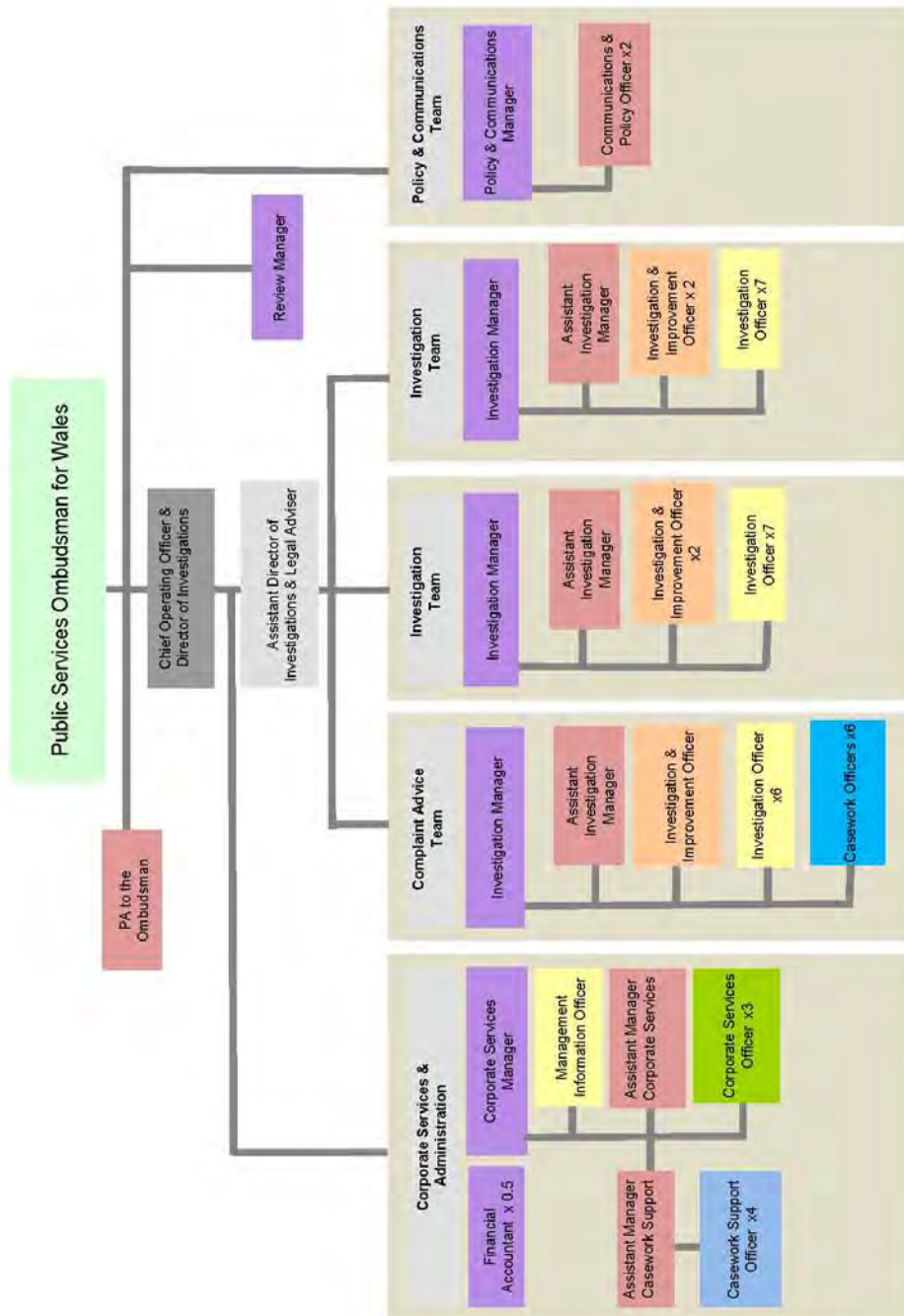
- 9.8 Finally, I would draw the Committee’s attention to the fact that my budget estimate does not include any contingency provision for meeting unexpected items of expenditure, such as legal challenges to my casework decisions.


Public Services Ombudsman for Wales
September 2015

Appendix 1 Estimates 2016/17

	Actual 2014/15	Budget 2015/16	Estimate 2016/17
	£'000	£'000	£'000
Capital DEL	17	13	25
Fiscal Revenue DEL			
Salaries and related costs	2,530	2,788	2,788
LGPS related costs	254	266	279
	2,784	3,054	3,067
Premises	353	399	407
Computer systems and support	141	149	149
Office costs	142	127	130
Advisory and legal fees	527	310	310
Communications	103	82	82
Training and recruitment	46	44	40
Travel and subsistence	27	36	29
Audit fee	20	20	20
Sub total	4,143	4,221	4,234
Income	0	0	0
Total Fiscal Revenue DEL	4,143	4,221	4,234
Non cash DEL			
Depreciation	86	75	80
	4,229	4,296	4,314
Revenue DEL (B+C)	4,229	4,296	4,314
Total DEL (A+B+C)	4,246	4,309	4,339
Annually Managed Expenditure (AME)			
Movement on LGPS	-254	-266	-279
Provisions movement	94	20	30
Total AME	-160	-246	-249
Total Managed Expenditure			
A+B+C+D	4,086	4,063	4,090
Resources Required	4,086	4,063	4,090
Depreciation	-86	-75	-80
Change in Provisions	-94	-20	-30
Utilisation of Provisions	254	266	279
Other movements in Working Capital	-1	20	20
Net Cash Requirement	4,159	4,254	4,279

Appendix 2 Organisational Structure since June 2015





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TAXREP 41/15 (ICAEW REPRESENTATION 115/15)

Tax Collection and Management (Wales) Bill 2015

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

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

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

Contents

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

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

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

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For more information, please contact ICAEW Tax Faculty: [REDACTED]

icaew.com

Introduction

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

Specific comments on the Bill

Part 2, Welsh Revenue Authority (WRA)

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

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

Clause 16 et seq, Confidentiality of Taxpayer's Information

10. This topic is comprehensively covered but the issue of consent in clause 17 1(a) does need to be tightened up to define exactly what constitutes consent. If this is not done then disputes may arise regarding the evidence or otherwise that consent has been given.
11. Where disclosure is made without consent under the other listed permitted situations, we believe that there should there be a duty to advise the taxpayer of this action and the reasons why.
12. Similarly, we believe it should it be a requirement that the duty of confidentiality is passed onto and accepted by the receiving organisation or individual where appropriate.

Clause 22, Funding

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

Clause 23, Rewards

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

Clause 25, Taxpayers' charter

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

Part 8, Reviews & Appeals

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

Other comments

Service standards

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

APPENDIX 1

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

The tax system should be:

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

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



Written Evidence from ACCA on the Tax Collection and Management (Wales) Bill

About ACCA

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 178,000 members and 455,000 students in 181 countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 92 offices and centres and more than 7,110 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

Comments on the Tax Collection and Management (Wales) Bill

1. The Assembly has an enviable opportunity to design a tax administration from scratch, offering the opportunity to learn from the successes and mistakes of existing administrations not just in the UK but elsewhere. That said, the new administration will initially replace only a small aspect of the overall tax collection regime in Wales, and the existing authorities and administration will remain in place for the remaining taxes.
2. It is likely that many of the taxpayers initially affected will continue to remain exposed to comparable taxes in England, and so there is much to commend the approach of following closely the existing HMRC model and processes. Stability is a key feature of a good tax system, and change should be carefully managed and imposed only where a clear benefit will accrue.
3. One feature of the legislation which should permeate the whole of the WRA's activities is the code of values embodied in the Charter. The discussion of the Charter and its content and publication in the Explanatory Memorandum is encouraging both in tone and content as to the Assembly's goals.
4. In order to have the maximum impact it will be important that the Charter is freely available and well publicised for all those who may come into contact with the WRA or its delegated agents in the exercise of its functions (as to which, see below under "Digital by Default").
5. It is not currently explicit in the Bill that the Charter will be binding on delegated agents. It should be, and this should be made clear.
6. More fundamentally, the legislation is silent on whether there is any oversight of the content of or compliance with the Charter. At the very least, the obligation to lay the Charter before the Assembly should include some scope for the Assembly to indicate its approval, or otherwise, of the Charter.
7. Guidance, and legislation, should be designed with unrepresented taxpayers in mind. While exceptionally a tax levied only on businesses with significant levels of turnover or employees might be reasonably expected to impact only a relatively sophisticated taxpayer base, all other powers, and in particular penalty and investigation

policies, will be relevant to any possible taxpayer, and must accordingly be drafted with the unrepresented and unsophisticated taxpayer in mind.

8. If for some reason the underlying legislation cannot be drafted in clear, simple language then the WRA must undertake to provide complete, clear and unambiguous guidance which will make the content accessible to an unrepresented taxpayer.
9. Brevity is not the same thing as simplicity. Leaving things out to keep the message simple will be counterproductive in the long run.
10. Detail relating to exceptions may well be better positioned in supplementary pages, but its existence, and importance, must be clearly signposted for those to whom it is relevant
11. One important aspect of the administration of taxes is the cost of collection. Whether delegated or otherwise, it is generally the case that a tax should raise more than the costs of its administration. It is not clear from the Bill whether a measure which cost more to administer than it raised would necessarily be within the lawful powers of the WRA.
12. The difficulties would be compounded where administration of the tax had been delegated. Could the WRA lawfully delegate a tax which it knew would cost more to administer than it would raise? And what would be the consequences and responsibilities if it became apparent after the event that the costs of the delegated agent exceeded the revenue collected?
13. It should be noted in this context that the delegated agents' remuneration should not be based on the actual collections made. We would welcome explicit confirmation of this in the primary legislation.
14. Effective and constructive engagement with all affected parties in the creation of the tax system will be crucial to taxpayer confidence and engagement. ACCA would welcome the exploration by the WRA of alternative methodologies for more fully exploring the impact of new taxes on all those affected, both directly and indirectly. The TIIN model may serve as a useful basis for such an exercise, although reservations have been noted about its implementation in some instances, so the opportunity should be taken to try to improve execution.

15. Again however, this is an exercise which cannot be undertaken cheaply, and a fully integrated consultation and impact assessment process is likely to impose an initial cost in the development of new taxes and administrative processes. With full and effective monitoring of the costs of a tax throughout its life, the benefits of such a model would hopefully be demonstrated to a level such that the process be adopted in turn by the other UK tax administrations.

Board Structure and staffing

16. One departure from the HMRC model is in the appointment of a Board rather than use of the Commissioners model. Accountability, along with transparency, is a principle to which all good tax systems should aspire. The Bill furthers that aim by adopting a model which will be comparatively familiar to anyone with a background in corporate affairs.
17. ACCA welcomes the inclusion of significant non-executive membership of the Board, and would further welcome minimum experience requirements in respect of the makeup of the non-executive membership.
18. The creation of non-voting subcommittees with scope to investigate and receive evidence from experts in particular fields, as well as other stakeholders, will enable the WRA to make informed decisions about the future shape and direction of the Welsh tax system.
19. Access to subject specific expertise through subcommittees will be invaluable even to general tax experts, but it will be important to ensure that those voting on the future shape of the administration of taxes in Wales have a suitably rounded and well informed view of the issues facing both taxpayers and the authority in dealing with tax issues. The Board will be supervising a practical day to day administrative authority, and will need the practical knowledge of how such systems do or don't work in practice if it is to do the best job for Wales.
20. The wider staffing of the WRA will be fundamental to its long term success. A well trained and effective staff can operate to overcome many of the difficulties which might arise as a consequence of incompletely developed legislation or unexpected consequences. By contrast, no matter how buoyant the economy, a demotivated,

undertrained or insufficiently experienced administration can derail the most carefully structured of tax systems.

Delegation of Powers

21. The confirmation in s13 that WRA will retain responsibility for all delegated operations is welcome. Likewise, the obligation on the WRA to publish details of the delegated operations will be an important element in supporting public confidence. The level of detail to be published will be subject to separate regulation, but one aspect which should be explicit is that the collection and enforcement of taxes should not be remunerated on a “by results” basis. Setting the prices for such delegation will undoubtedly be challenging, but public confidence in the system will be increased with transparency and accountability.
22. The likelihood that delegated taxes will be operated by HMRC staff who are familiar with HMRC processes should be borne in mind when designing such powers and processes.
23. The delegation of powers could extend to activities such as debt collection, and should of course be restricted to competent authorities and actors. However, no such condition is explicit in the Bill. Imposing such a condition and requiring the WRA to confirm satisfaction before appointment of delegates would firstly reduce the likelihood of any inappropriate appointment being made, and secondly clarify the process and responsibilities after the event should such an appointment be made.

Report and Accounts

24. The timescale for preparation of the Annual Report, Annual Accounts and Tax Statement should be aligned, given the interdependence of the three documents. While “as soon as reasonably practicable” is a good target, this should even so be subject to a back stop deadline correspondent to the Tax Statement and Accounts.
25. Responding to changes in the external environment and managing the change that enforces is a key element in maintaining a good tax system, and budgets timetables and staffing must be set with that in mind. Cotemporaneous publication of the Annual Report, Annual Accounts and Annual Tax Statement would give a clear focus for both the WRA and its stakeholders on how to plan actions.

Powers – penalties and investigations

26. Secondary/primary legislation: The use of secondary legislation offers many benefits to the legislature, but must be subject to certain limits. In particular, certain aspects of tax legislation should be retained in primary legislation only, to ensure the proper transparency and scrutiny.
27. In particular, the power of the state to investigate taxpayers and impose penalties on them on behalf of society must be subject to a proportionate degree of scrutiny. Such activities disrupt the normal balance between the rights of the individual and wider society, and should be subject to corresponding checks and balances.
28. ACCA shares the concerns voiced by other respondents that the powers in draft clauses 17 (2), 154, 170 (7) and 183 (1)(2) would properly belong in primary, not secondary legislation.

Digital Agenda

29. The aspiration to “digital by default” has merits as a long term aim, but should not be imposed as a short term burden on taxpayers who are unable to reasonably comply. HMRC themselves may be best placed to advise another tax authority on how to manage its implementation, but it is important to note that the policy has suffered a number of challenges and defeats on points of principle and legal administration.
30. A revenue authority does not have the luxury afforded to business of targeting only the most profitable customers and declining to serve those on the margins of economic effectiveness. Neither is it reasonable for the authority to externalise the costs of collection, and impose a double burden on those least able to bear it. The burden of a tax should be limited to the financial expense of paying it. Where the law imposes a charge then the authority must provide a reasonable and effective means to comply with that obligation at a proportionate cost.
31. The digital by default agenda impacts upon tax administration in all three aspects of the delivery of tax policy – the dissemination of legislation and guidance; the process of calculation and return completion, and finally the payment or collection mechanisms for each tax.
32. Access to legislation and guidance: On the one hand, digital delivery should allow for seamless presentation of both the underlying legislation and the user friendly guidance (or perhaps, for self-

assessed taxes, in the opposite order). On the other hand, it must be remembered that not every taxpayer will have ready access to online sources of guidance or legislation, or feel comfortable using them. Guidance is there for the benefit of the taxpayer; it should be provided in the form in which the taxpayer will most easily be able to make use of it.

33. Calculation and return submission: The advantages of electronic completion of returns and online submission can be significant, and as a matter of best practice should be embraced. However, the convenience of the administrative authority should not outweigh its responsibility to provide for the convenience of the tax payer. Controversial though some of Adam Smith's other ideas may be, there can be little argument that careless use of the power to tax in a manner which fails to take account of the prevailing environment and consequently imposes unwarranted burdens on the very society which tax seeks to support is a failure to properly exercise that power.
34. Payment: While offering the promise of speed and efficiency, online payment systems bring with them also security risks, in addition to the burden which compliance with such a regime can impose if the portals and protocols imposed by the authority are not suitable for the taxpaying public. Security is a further significant consideration. The authority should bear in mind the need to educate taxpayers if new processes are introduced with which they may not be familiar.

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Think Ahead

ACCA

Foundations for a sound
tax system: simplicity,
certainty and stability



About ACCA

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Simplicity, certainty and stability: in ACCA's view these are the three cornerstones of a good tax system.

Policy makers should consider them any time they plan to change the tax system. They are also the benchmarks by which taxpayers can assess the effectiveness of government in maintaining and improving tax systems.

This paper references three earlier ACCA papers.

■ **Stability in Tax**

<http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2015/may/stability-in-tax.html>

■ **Certainty in Tax**

<http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2014/november/certainty-in-tax.html>

■ **Simplicity in Tax**

<http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2013/november/simplicity-in-the-tax-system.html>

Tax should exist to create benefits for society, not be a burden upon it.

Tax systems are fundamental to society. They are the conduit through which the state gathers the resources it needs to support public spending, and are often the direct mechanism of implementing policy. Every citizen is affected by the operation of tax systems, and the efficiency and effectiveness of the system and its administration will have effects far beyond the direct impact of tax collection.

Tax systems have grown ever more complex, reflecting the societies and economies in which they operate. As the world changes around them, tax systems must change to keep up. The arrival of the container, the executive jet and the internet have changed the face of world trade and domestic economies beyond all recognition. The enhanced mobility of goods, people and capital has transformed societies but the importance of tax in maintaining those societies is undiminished.

The three functions of a tax system (revenue raising, redistribution and regulation of economic behaviour) will be achieved in different ways at different times. As policy makers react to change, and seek to influence it themselves, they will be faced with choices over what to tax, and how to do so.

ACCA has identified three fundamental considerations which every system should strive for, and by which citizens can measure the success of governments and tax administrations in developing laws and processes, and the resources to administer them, for the greatest benefit of society. Regardless of the policies adopted by government, the role of the tax system in funding or implementing them should be designed to best reflect the optimal balance between simplicity, certainty and stability.

Complexity costs: it distorts behaviour and wastes resources.

Understanding and complying with tax legislation should be as simple and straightforward as possible.¹ If taxpayers and their advisers face too complex a tax system and are unclear what is expected of them, this creates the potential for mistakes and deliberate rule-breaking. Complexity in the tax system distorts the economy, diverting productive energies into non-productive administration.

WHY IS TAX SO COMPLICATED?

Tax systems can perform multiple roles: raising revenue, redistributing wealth and regulating behaviour (eg through excise duty on alcohol or 'green taxes'). These roles may be achieved in several ways: by taxing spending (eg through value added tax (VAT) or goods and services tax (GST)), receipts (personal or corporate income) or capital. Single taxes may be intended to support more than one aim.

Implementing tax also has complexity: even when based on legislation, supplementary guidance or case law may be required. Tax authorities, taxpayers and advisers will interpret the rules – not necessarily in the same ways.

In practice, much of the complexity experienced by taxpayers and advisers stems from policy implementation: confusing paperwork, ambiguous or inconsistent legislation and dysfunctional bureaucratic processes. Additional complexities are created when governments are tempted to grant exemptions for certain taxpayers or draft anti-avoidance legislation.²

Anti-avoidance legislation requires taxpayers to keep up-to-date with targeted rules, or to 'second guess' the intentions of the legislature when trying to understand the tax impact of transactions.

Taxes must also be calculated and assessed, which can happen in a variety of ways (eg by paper forms or online) and at different periods (eg annually, quarterly or on an ad-hoc basis). Collection methods also differ. For example, with transactional taxes, it often isn't the taxpayer who remits the tax to the authorities (as with VAT and income tax on employment earnings).

Economic growth appears to be more strongly linked with reducing the administrative burden on business than with cutting tax rates.

Taxpayers face even more complexity when operating across multiple jurisdictions, which may apply rules in different ways and have different tax rates.

WHAT ARE THE ADVANTAGES OF SIMPLIFICATION?

ACCA believes that a commitment to achieving simplicity in the tax system will produce the following benefits:

- reduced cost of administration;
- greater accountability through clarity and transparency; and
- improved stability, because the potential for unintended consequences and need for counteracting measures are reduced.

It's also notable that reducing the administrative burden on business appears to be more strongly linked with economic growth than cutting tax rates.

¹ See *Simplicity in Tax* (ACCA 2013).

² See *Global policies on Taxation of Companies: Principles and Practices* (ACCA 2013) for further discussion of the complexity of tax avoidance.

HOW CAN GREATER SIMPLICITY BE ACHIEVED?

Technology can play a part in reducing the administrative burden on business, by enabling online filing, reducing the need for repeated taxpayer input, and even removing the human element from data input altogether. Many jurisdictions now base filings on accounts prepared in XBRL (Extensible Business Reporting Language) which is easily readable by other software.

Simplicity can be encouraged by restricting adjustments to standards-compliant accounting when preparing tax computations. Where adjustments are necessary, these should be specified as clearly as possible.

Drafting simpler tax legislation doesn't necessarily mean shorter legislation. It also needs to be usable and understandable. This is particularly important in countries where taxpayers self-assess their liability and will be the primary users of the legislation.

The most fundamental driver of simplicity (or complexity) in a tax system is the intended function of tax. A system designed purely to raise revenue is more likely to be simple, as the only design constraints are neutrality and efficiency. Mechanisms that introduce choices for taxpayers, and taxes designed to influence behaviour, are more likely to increase complexity.

Policy makers should try not to make any one tax do too many things, and should not use too many different taxes to try to achieve the same aim – for example,

corporate income taxes get used to raise revenue, to redistribute corporate profits from the wealthy (the business owners who would otherwise ultimately benefit from the surplus), and to regulate business activity, through eg enhanced deductions for installing 'environmentally friendly' plant and machinery. Introducing the various targeted aims inevitably results in complication. And then there is the overlap; direct levies on carbon use or energy consumption have similar aims to the 'green' elements of corporation tax. Operating two systems with the same aim needs to be carefully considered if governments are to avoid waste and complexity in their tax collection regimes.

The number of tax rules, and their ability to interact (or even conflict) with each other, should be kept to a minimum.

Note that the concept of fairness doesn't necessarily align with simplicity. The simpler and less granular a tax system, the less finely it will be able to differentiate between the circumstances of different taxpayers. A flat tax is theoretically the ultimate in simplicity, but has no 'progressive' element.

In general, to encourage simplicity, the number of tax rules, and their ability to interact (or conflict) with each other, should be kept to a minimum.

Tax law and tax administration should be simple. Society as a whole pays the price for complexity.

Certainty in a tax system is important. Without it neither governments nor taxpayers can effectively budget or plan for their future actions.

Certainty in a tax system is important because without it neither governments nor taxpayers can effectively budget or plan for their future actions. Yet every system incorporates uncertainty to some degree, and it may even be encouraged.

BENEFITS OF CERTAINTY

Policy makers need to be able to base future spending plans on a realistic assessment of expected income. Certainty also benefits taxpayers. It helps them choose between alternative transactions, and to decide whether to proceed with an individual transaction.

Where there is uncertainty over the tax position of a transaction, prudent taxpayers may reserve funds against the potential liability, restricting additional investment and so creating an opportunity cost. Where uncertainty leads to disputes between taxpayer and tax authority, the direct and indirect costs can be considerable.

HOW UNCERTAINTY CAN ARISE

Uncertainty can develop at any stage of the tax-assessment cycle – when identifying tax transactions, valuing them and applying tax law to them. The threat of retrospective legislation is particularly devastating, generally reserved by governments to counter clear abuse.

Corporation taxes are typically based on an adjusted value of published accounting profit, but that may rely on subjective valuations. In addition, the same concept – such as depreciation (gradual writing down of the cost of an asset to reflect its use) – may be applied differently under accounting and tax rules. The same transaction may also have a different tax treatment depending on who makes it.

A purposive interpretation of legislation – where tax law is to be applied in line with its intended purpose – creates uncertainty. This is particularly

demonstrated by the general anti-avoidance, or anti-abuse, rule – a principles-based approach designed to protect society from unacceptable tax avoidance, but an inevitable cause of uncertainty.

The involvement of the judiciary in interpreting tax law also has an impact. Judicial precedent can change overnight, while the appeals system and potential for multiple opinions can cause additional uncertainty for taxpayers.

The treaty-based system of international tax (which follows legal form to allocate tax characteristics) has created some uncertainty for international businesses, which some managers or owners have exploited. However, the alternative (a unitary tax model) would introduce different uncertainties. Instead of taxing each company's locally accounted profits, the system would tax a proportion of the whole (global) profits of the business on the basis of the proportion of its sales, assets and labour recorded in the jurisdiction.³

Resolving uncertainty is a poor second best to avoiding it in the first place

ABUSE OF UNCERTAINTY

Abuse of uncertainty poses risks to the exchequer. Taxpayers may seek to use it to their advantage when interpreting tax law, while tax officials may also seek an undue advantage, for themselves or the state. Corrupt tax officials could, for example, attempt to impose excessive tax demands in the hope of receiving a bribe.

Extending discretion to tax authorities to 'do a deal' poses a further risk to the tax system in the form of undisclosed state aid. Such deals will typically be limited to the largest multinationals or wealthiest individuals, and could give them significant advantages through lower effective tax rates.

³ See *Certainty in Tax* (ACCA 2014) for more explanation of the issues.

DELIBERATE UNCERTAINTY

In some cases taxpayers seek to introduce uncertainty deliberately, eg through an artificial avoidance scheme based on a tenuous interpretation of the law or facts. In practice, uncertainty usually results from the tax and accounting system failing to capture the reality of a transaction clearly.

Taxpayers cannot be expected to avoid all such areas of uncertainty. Managers of a business have duties to protect the interests of the owners and other direct stakeholders in the business, which may exceed their legal duties to wider society.

Any objectively certain tax regime would have to consider every possible transaction and interaction, making it far too complex. Once governments accept some circumstance-based uncertainty is unavoidable, they may be tempted to extend the boundaries of uncertainty deliberately. They may expect prudent taxpayers to wish to minimise tax risk and so pay more tax in order to be sure of escaping challenge. Such actions by government are just as open to criticism as actions of taxpayers seeking to exploit uncertainty through aggressive avoidance schemes.

WHAT CAN POLICY MAKERS DO?

Policy makers need to understand the tension that exists between simplicity and certainty. The interests of larger businesses are better served by certainty, while individual taxpayers will require simplicity. The relative importance of simplicity and certainty to smaller businesses will depend on their aims, activities and resources. Designers of tax systems need to reach a compromise between conflicting needs.

Limiting the damage done by uncertainty should be a primary objective of tax system designers

Where governments use administrative or judicial discretion in the tax system, clear guidance will be needed. For large businesses, transparent clearance mechanisms allowing taxpayers to discuss proposed transactions in advance could help to address any uncertainties arising when interpreting legislation.

Agreeing consistent treatments for cross-border transactions is key to confident international trade

If uncertainty about tax is going to stand in the way of projects that would otherwise benefit society then it has failed in its objective.

Stability is closely related to certainty. 'Certainty' is about knowing what the answer to a given question ought to be; stability is about whether the current answer will still be correct in one, two or ten years' time. Stability extends to the rates at which calculated values are taxed and the administrative practices surrounding that process in a way that certainty does not.

WHY STABILITY MATTERS

For taxpayers, stability is essential for effective planning and efficient ongoing compliance. Individuals can budget household income more accurately, while businesses are encouraged to make investment decisions. Businesses would typically prefer to operate in a slightly more imperfect system than in one where incremental improvements are made every year.

If uncertainty about tax is going to stand in the way of projects that would otherwise benefit society then it has failed in its objective.

Stability is particularly important for enabling investment in large infrastructure and development projects, as businesses need reassurance that the tax rules won't change part way through. Concerns about the stability of a tax system will be reflected in the overall risk weighting given to new investments.

TAX RATE STABILITY

Across most OECD nations, general consumption taxes (eg VAT) and personal income taxes generate most revenue, followed by corporate income taxes. The rates of such taxes need to be moved only minimally to generate a significant revenue impact. The number of changes can be kept to a minimum, and the burden spread across a comparatively wide base. Targeting a smaller population is likely to be more disruptive and divisive.

Stability is fundamental to effective planning and efficient compliance.

At a macro level, sudden shifts in tax rates can be bad for business and consumer confidence. When step changes are prompted by major events (eg war), the tax burden rarely falls back to its original level. Governments generally find new ways to spend the money.

TAX BASE STABILITY

Changing tax rules that affect the tax base has an economic and compliance cost. The more regular the change, the greater the cost. For smaller businesses in particular, large infrequent changes are generally preferable to successive small ones.

The need for any change should always be considered carefully, as should the mechanics of implementing the change and its interaction with the rest of the tax system. Impact assessments are useful tools for legislators to model the outcomes of changes, but Policy makers must take account of real world conditions. The UK system of tax credits, for example, has merit as a model, but operational weaknesses.⁴

TAX ADMINISTRATION STABILITY

The administration of tax systems changes as technologies change, bringing scope for greater efficiency and effectiveness. Nevertheless, system changes must always be made with care, particularly in relation to withholding mechanisms for employment taxes or consumption tax returns and processes. Successful change requires clear communication from the authorities and adequate time (for systems development and educating taxpayers).

Investment in the training and retention of staff at every level should be a priority.

Efforts should also be made to ensure that tax authorities are staffed with well trained, motivated individuals. This encourages higher quality tax administration, not least through the maintenance of institutional memory which can reduce the likelihood of repeated mistakes.

THE WAY FORWARD

Change for the sake of it would be a bad thing in a tax system. Politicians and tax Policy makers should always think carefully about whether the tax system is the best way to achieve a desired change in society.

Some political systems support a consensus model of decision making, which can enable a more stable and predictable tax system. Though politicians may lose some of their discretion to shape tax policy, society may benefit. A measured and well signposted programme of predictable change represents the optimal, pragmatic compromise.

Tax systems could benefit from some kind of independent oversight of tax policy and the effectiveness and efficiency of the system. This would reassure taxpayers and investors that non-partisan aspects of the tax system are not being compromised for short-term political ends.

Mechanisms for change are an essential feature of any healthy system.

Greater consistency in cross border and internationally applicable taxes would also benefit taxpayers and authorities, reducing scope for disputes and arbitrage. Greater stability should be achieved as domestic authorities converge on common models.

Tax should exist to create benefits for society, not be a burden upon it.

Today's world changes faster than most legislatures can update their tax law. Policy makers may need to accept short-term imperfections, while taking a measured approach to implementing genuine structural improvements which meet the principles of simplicity and certainty in a transparent and accountable way.

A good tax system, like a simple stool, depends on three things for its strength and solidity. Simplicity, Certainty and Stability. And like a tripod, if any one of the legs is deficient, the whole thing is likely to fall over. The principles to some extent overlap and are interdependent. If the system is not simple, its impact is less likely to be certain. Breaking down the analysis of the system methodically is far more likely to create a consistent and coherent outcome that goes at least some way towards achieving the desired aims without any undesirable side-effects.

The balance of the factors will be different in different cases, but perhaps the key is simplicity; once that is in place, certainty and stability will flow as a natural consequence. Policy makers should try not to make any one tax do too many things, and should not use too many different taxes to try to achieve the same aim. Operating two systems with the same aim needs to be carefully considered if governments are to avoid waste and complexity in their tax collection regimes.

The importance of the tax system to individuals and society is so great that it should not be treated as a short-term political football, but seen instead as the bedrock of constitutional funding, and recognised as an integral and pervasive element of every business and individual's environment. A good tax system will benefit both a government and its populace; a poor one will discomfit individuals and discourage business, with impacts far beyond the tax system itself.

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The Law Society of England and Wales

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

Background

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

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

Overview of the Bill

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

Welsh Revenue Authority

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

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

³ [Record of Proceedings 29 April 2015](#) at para 97

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

Information

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

Penalties

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

⁴ [Finance Committee Report May 2015](#)

⁵ [Record of Proceedings 29 April 2015](#)

Tax Tribunal

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

Secondary Legislation

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

Further Comments

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

Please refer any questions regarding this response to:

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