

Statement of policy with respect to the exercise of the power to make retrospective legislation within the Welsh Tax Acts etc. (Power to Modify) Act 20XX

1. Background

General

1.1 The Welsh Tax Acts etc. (Power to Modify) Act 20XX (“the Act”) operates to enable changes to be made to the Welsh Tax Acts¹, by regulations where the Welsh Ministers consider that such changes are necessary or appropriate and where they are required to have effect immediately or shortly thereafter. Those changes will be permitted in order to respond to a number of external circumstances. In summary:

- i. to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations;
- ii. to protect against tax avoidance in relation to devolved Welsh taxes;
- iii. to respond to changes made by the UK government to ‘predecessor’² UK taxes (that is, one where we have an equivalent devolved tax) which affect, or may affect the amount paid into the Welsh Consolidated Fund³, and
- iv. to respond to decisions of the courts/tribunals which affect or may affect the operation of the Welsh Tax Acts, or any regulations made under them.

1.2 The primary intended effect of the Act is to provide Welsh Ministers with a proportionate mechanism to protect Welsh tax revenues raised through devolved taxes, and to avoid adverse implications for businesses, the property market, and the environment.

1.3 The regulation making powers will not be used to achieve routine policy changes to the devolved taxes. For such changes the Welsh Government will use powers that already exist in the Welsh Tax Acts or, where necessary, primary legislation.

¹ “The Welsh Tax Acts” are defined as The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (‘the LTTA’), the Landfill Disposals Tax (Wales) Act 2017 (‘the LDT’) and the Tax Collection and Management (Wales) Act 2016 (the “TCMA”).

² ‘Predecessor taxes’ currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.

³ Under section 118(1) Government of Wales Act 2006.

³ see section 2(1)(c) of the Act

2. The Statement - Retrospective Legislation

2.1 Changes to tax legislation will normally take effect no earlier than the date the regulations are made. However, a change which takes effect from a date earlier than the date of making will also be possible for regulations made using the Act⁴, although this is intended to be used in exceptional circumstances only. Consideration as to whether to make regulations which give retrospective effect will be decided on a case by case basis, depending upon the particular circumstances. In all such circumstances, however, the regulations will be subject to Senedd approval, be they subject to the draft or made affirmative procedure⁵.

2.2 Examples of situations where the Welsh Ministers may consider making regulations with retrospective effect include:

- where a change is made by the UK government that has immediate effect and provides a tax, and therefore commercial, advantage to entities liable to the predecessor tax,
- where a change is made by the UK government that has immediate effect and raises significant amounts of tax by a predecessor tax which will have a material effect on the block grant adjustment,
- where avoidance needs to be halted,
- where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted, and
- where regulations have been made using powers in the Act (either by draft or made affirmative procedure) and the Welsh Ministers wish to amend the effect of the regulations, so that the changes have effect from the same date that the original regulations had effect.

2.3 The Welsh Ministers will ensure that the regulations made will be proportionate and compatible with the European Convention on Human Rights⁶.

⁴ see section 2(1)(c) of the Act

⁵ Draft affirmative regulations must be laid in draft for at least 20 days before a Senedd vote can be held to approve them. Made affirmative regulations can come into force with immediate effect once made by the Welsh Ministers, approval by Senedd vote must be given within a maximum period of 60 days for those regulations to remain in effect.

⁶ "The Convention Rights" which have been incorporated into UK law via the Human Rights Act 1998.

3. Timing and Communication of Changes

3.1 Whilst the Welsh Ministers will usually seek to make tax announcements as part of the Draft Budget Statement where possible, it is necessary to recognise that the intended use of the power provided by the Act is to respond to external events. As a result, it is likely that the use of this power will fall outside the time period that would permit an announcement to be made as part of the Welsh Government's Draft Budget. Changes are therefore most likely to occur outside the first Draft Budget Statement. Where possible, the Welsh Government and the Welsh Revenue Authority will use their communication channels and known stakeholders to raise awareness of the changes in advance (in particular the Written Statement and the details or annexes contained therein).

4. Procedure

4.1 When bringing forward retrospective legislation it is the Welsh Ministers' intention to abide by the following procedure:

- the outline of the proposed changes will be precise and provided by means of the Written Statement,
- the Written Statement will state the procedure that will be used and that the regulations will be made as soon as possible in line with relevant procedure and Welsh Government policies,
- the Welsh Ministers will write to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee outlining the proposed changes and inviting the Committees to consider the purpose and effect of the retrospective legislation. Copies of the letters will be sent to the Llywydd, and
- The regulations will be published (and where appropriate made) as soon as possible.

4.2 Where it is possible to do so in the time allowed by individual circumstances, the Welsh Government will seek views on the effect of the regulations, either through a formal consultation where possible, or informally with trusted external interested parties. However, given the nature of the regulations, particularly in cases where amendments are required urgently it may not always be possible, for example where the risk of forestalling arises.