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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/2143/22

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

28 June 2022

WELSH TAX ACTS etc. (POWER TO MODIFY) BILL

Dear Peredur,

Please see the attached draft of the statement of policy with respect to the exercise of the power to make retrospective legislation within the Welsh Tax Acts etc. (Power to Modify) Bill. As required by section 3(2) of the Bill, the statement must be published before the end of the period of three months beginning with the date of Royal Assent.

The revised draft addresses comments raised during the Stage 1 scrutiny process and takes account of the amendments agreed at Stage 2. The Chartered Institute of Taxation (CIOT) and the Institute for Accountancy in England and Wales (ICAEW) were consulted on the revisions to this draft statement, and I am grateful for their continued engagement and support in the development of this Bill.

I trust this update on progress is helpful in advance of Stage 3 proceedings.

Yours sincerely,

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

CC: Chair of the Legislation, Justice and Constitution Committee

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

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

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.

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 power provided by 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 increases 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 the power 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. This will only be possible, however, where the changes do not increase or create a liability to tax or reduce an entitlement to LDT tax credit.

2.3 Regulations cannot make any changes retrospectively where it would impose a new or extend an existing penalty. Furthermore, where the regulations create or increase a liability to a devolved tax, they may only be made with retrospective

⁴ see section 2 of the Act

⁵ Draft affirmative regulations cannot be considered and voted upon by the Senedd until either the committee responsible for the functions (where relevant) and any other committee which has given notice, has reported on the draft instrument, or until 20 days has elapsed since the draft instrument was laid before the Senedd. Made affirmative regulations can come into force with immediate effect once made by the Welsh Ministers, however the motion to approve such regulations must be considered and agreed by the Senedd within a maximum period of 60 days in order for those regulations to remain in effect. If there is no vote within this timeframe, or the regulations are not approved by the Senedd, the instrument will cease to have effect from the day following the 60th day or at the end of the day on which the vote takes place. A minimum period of 28 days must also elapse, from the point of making, before the Senedd can consider and vote on the motion to approve such regulations. In calculating these periods no account is taken of any time during which the Senedd is dissolved or in recess for 4 or more days.

effect from the date the Welsh Ministers have made an oral or Written Statement to the Senedd. The same restrictions also apply where the regulations reduce or withdraw an entitlement to a tax credit for LDT purposes. These restrictions do not apply where the effect of the regulations is to remove or reduce a liability to a devolved tax, or to increase or introduce a new, tax credit into the LDT regime.

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

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 immediately following any oral or Written Statement (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 an oral or Written Statement,
- the oral or 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 also be sent to the Llywydd, and
- The regulations will be laid before the Senedd (and where appropriate) made as soon as possible.

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

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 time permits, or informally with trusted external interested parties. However, given the nature of the regulations, particularly in cases where amendments are required urgently this may not always be possible, for example where the risk of forestalling arises.

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