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Welsh Tax Acts etc. (Power to Modify) Bill

[AS AMENDED AT STAGE 3]

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Welsh Tax Acts etc. (Power to Modify) Bill

[AS AMENDED AT STAGE 3]

An Act of Senedd Cymru to confer on the Welsh Ministers a power to modify the Welsh Tax Acts and regulations made under those Acts for specified purposes; and to make provision for connected purposes.

Having been passed by Senedd Cymru and having received the assent of Her Majesty, it is enacted as follows:

1 Power to modify the Welsh Tax Acts etc.

(1) The Welsh Ministers may, by regulations, modify any of the Welsh Tax Acts and regulations made under any of those Acts if they consider that the modifications are necessary or appropriate for or in connection with any of the following purposes—

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

(2) But see section 2(4), (5) and (6) (restrictions on the power).

(3) In this Act, “Welsh Tax Acts” means—

- (a) the Tax Collection and Management (Wales) Act 2016 (anaw 6);
- (b) the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1);
- (c) the Landfill Disposals Tax (Wales) Act 2017 (anaw 3).

(4) In this section—

“international obligations” (*“rhwymedigaethau rhyngwladol”*) means any international obligations of the United Kingdom other than obligations to observe and implement the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42));

“predecessor tax” (*“treth ragflaenol”*) means—

- (a) stamp duty land tax;
- (b) landfill tax.

2 Regulations under section 1: supplementary

(1) Regulations under section 1 may (among other things) –

- (a) impose landfill disposals tax or land transaction tax;
- (b) impose or extend a liability to a penalty.

(2) Regulations under section 1 may also (among other things) make provision that has retrospective effect, as long as –

- (a) the provision does not retrospectively impose or extend a liability to a penalty;
- (b) where the provision retrospectively creates any liability to land transaction tax or landfill disposals tax, or to an increased amount of either of those taxes –

(i) the Welsh Ministers have made an oral statement to Senedd Cymru, or have laid a written statement before it, indicating their intention to make such provision, and

(ii) the provision does not have effect in relation to any period before the statement was made or laid;

(c) where the provision retrospectively withdraws an entitlement to a tax credit (within the meaning of section 96 of the Landfill Disposals Tax (Wales) Act 2017 (anaw 3)), or reduces such an entitlement –

(i) the Welsh Ministers have made an oral statement to Senedd Cymru, or have laid a written statement before it, indicating their intention to make such provision, and

(ii) the provision does not have effect in relation to any period before the statement was made or laid.

(3) Regulations under section 1 may also (among other things) –

- (a) make different provision for different purposes;
- (b) make incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) Regulations under section 1 may not modify –

(a) Part 2 of the Tax Collection and Management (Wales) Act 2016 (anaw 6) or regulations made under that Part (provisions about the Welsh Revenue Authority);

(b) regulations made under any of the following provisions of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1) (regulations specifying tax bands and tax rates for land transaction tax) –

(i) section 24(1);

(ii) paragraph 27(4) of Schedule 6;

(iii) paragraph 28(1) of that Schedule;

(c) regulations made under any of the following provisions of the Landfill Disposals Tax (Wales) Act 2017 (anaw 3) (regulations specifying tax rates for landfill disposals tax) –

(i) section 14(3);

(ii) section 14(6);

(iii) section 46(4).

(5) Regulations under section 1 may not make any provision relating to the investigation of criminal offences.

(6) Regulations under section 1 may not alter any procedure of Senedd Cymru relating to the making of a statutory instrument under any provision of those Acts.

(7) The power conferred by section 1 does not affect, and is not affected by, any other power of the Welsh Ministers under the Welsh Tax Acts.

3 Policy statement: regulations under section 1 that have retrospective effect

(1) The Welsh Ministers must publish a statement of their policy with respect to the exercise of the power under section 1 to make regulations that have retrospective effect.

(2) The Welsh Ministers must publish the statement before the end of the period of three months beginning with the date on which this Act receives Royal Assent.

(3) The Welsh Ministers may revise the statement, and if they do so, they must publish the revised statement.

4 Procedure for regulations under section 1

(1) The power to make regulations under section 1 is exercisable by statutory instrument.

(2) A statutory instrument containing regulations under section 1 may not be made unless –

(a) a draft of the instrument has been laid before, and approved by a resolution of Senedd Cymru, or

(b) the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft of the instrument being so laid and approved.

(3) Subsections (4) to (8) apply to an instrument that is made without a draft of the instrument being laid before, and approved by a resolution of, Senedd Cymru.

(4) The instrument must be laid before Senedd Cymru.

(5) If the instrument is not approved by resolution of Senedd Cymru during the period of 60 days beginning with the day on which the instrument is made, the regulations contained in the instrument cease to have effect at the end of that period.

(6) But if –

(a) Senedd Cymru votes on a motion for a resolution to approve the instrument before the last day of that period, and

(b) the motion is not passed,

the regulations contained in the instrument cease to have effect at the end of the day on which the vote takes place.

- 5 (7) No motion may be moved in Senedd Cymru for a resolution to approve the instrument during the period of 28 days beginning with the day on which the instrument is made.
- (8) In calculating the periods mentioned in subsections (5), (6) and (7), no account is to be taken of any time during which Senedd Cymru is –
- (a) dissolved, or
 - (b) in recess for more than 4 days.

10 **5 Regulations ceasing to have effect: supplementary**

- (1) This section applies where regulations cease to have effect as a result of section 4(5) or (6).
- (2) Any liability to land transaction tax or landfill disposals tax, or to an increased amount of either of those taxes, that would not have arisen but for the regulations is to be treated as never having arisen.
- 15 (3) Any withdrawal of an entitlement to a tax credit (within the meaning of section 96 of the Landfill Disposals Tax (Wales) Act 2017 (anaw 3)), or reduction in such an entitlement, that would not have occurred but for the regulations is to be treated as never having occurred.
- (4) Any liability to a penalty under any of the Welsh Tax Acts or regulations made under any of those Acts, or to an increased amount of such a penalty –
- 20 (a) that arose before the regulations ceased to have effect, but
- (b) that would not have arisen but for the regulations,
- is to be treated as never having arisen.
- (5) The validity of anything previously done under or in reliance on the regulations is not affected by the fact that the regulations have ceased to have effect.

25 **6 Review of operation and effect of this Act**

- (1) The Welsh Ministers must –
- (a) review the operation and effect of this Act, and
 - (b) publish the conclusions of the review before the end of the period of 4 years beginning with the day on which this Act comes into force.
- 30 (2) A review under this section must include an assessment by the Welsh Ministers of alternative legislative mechanisms for making changes to the Welsh Tax Acts and regulations made under any of those Acts.
- (3) In undertaking a review under this section, the Welsh Ministers must consult Senedd Cymru and such other persons as they consider appropriate.

7 Expiry of the power under section 1

- (1) The power under section 1 expires at the end of the period of 5 years beginning with the day on which this Act comes into force, except so far as provided otherwise under this section.
- (2) The Welsh Ministers may, by regulations, provide that the power under section 1 –
- (a) is not to expire at the end of the period mentioned in subsection (1), but
 - (b) is to continue in force for a further period, ending no later than 30 April 2031, specified in the regulations.
- (3) The power to make regulations under subsection (2) –
- (a) is exercisable once only, and
 - (b) is exercisable by statutory instrument.
- (4) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (5) A draft of the instrument –
- (a) may not be laid before Senedd Cymru before the conclusions of the review under section 6 have been published, and
 - (b) may not be approved by a resolution of Senedd Cymru after the end of the period mentioned in subsection (1).
- (6) The expiry of the power under section 1 does not affect the continuation in force of any regulations made under that power before its expiry.

8 Interpretation

In this Act –

- “modify” (“*addasu*”) includes amend, repeal and revoke; and the reference to “modifications” is to be interpreted accordingly;
- “Welsh Tax Acts” (“*Deddfau Trethi Cymru*”) has the meaning given by section 1(3).

9 Coming into force

This Act comes into force on the day after the day on which it receives Royal Assent.

10 Short title

The short title of this Act is the Welsh Tax Acts etc. (Power to Modify) Act 2022.