



Llywodraeth Cymru  
Welsh Government

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## **STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE:** The Welsh Tax Acts etc. (Power to Modify) Act 2022

**DATE:** 24 October 2022

**BY:** Rebecca Evans MS, Minister for Finance and Local Government

The Welsh Tax Acts etc. (Power to Modify) Bill was passed by the Senedd on 12 July 2022 and received Royal Assent on 8 September.

Tax devolution is important. It provides a significant lever through which we are better able to deliver strategic priorities for Welsh citizens and businesses.

The last four years' experience of tax devolution has enabled the Welsh Government to develop considerable tax capability. We have established a distinct Welsh approach to shaping tax policy, and to the delivery of that policy by the Welsh Revenue Authority. Our approach keeps the needs of Welsh citizens, communities, and businesses at the forefront.

### **Purpose**

This Act will provide an additional fiscal lever by permitting the Welsh Ministers to make amendments in response to changes made by the UK government to predecessor UK taxes - that is, to stamp duty land tax and landfill tax - which will affect the Welsh block grant adjustment, and therefore the revenues available for essential public services.

Amendments to the Welsh Tax Acts will also be permitted in order to respond to other external circumstances, such as to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations.

It will also enable the Welsh Ministers to make legislative changes to protect against avoidance activity, which can then be stopped with immediate effect. This includes situations where increased clarity in the legislation will put beyond doubt the intended application of the legislative provisions, and potentially benefit taxpayers by stopping the promotion of avoidance opportunities that do not actually exist. Such action has been taken by the UK government to protect tax regimes and taxpayers in the past and the Welsh Ministers will now be able to take similar action.

Lastly, this Act will allow the Welsh Ministers to make changes where a court or tribunal decision identifies an issue that the Welsh Ministers consider could benefit from legislative change, or greater clarification of the law. This includes decisions relating to the Welsh Tax Acts, UK predecessor taxes, other taxes, or other laws that may affect the devolved taxes.

### **Retrospective effect**

This Act allows the Welsh Ministers to make regulations which may have retrospective effect. The use of the power retrospectively will be considered on a case-by-case basis as justification for each use may differ, depending upon the purpose.

This will include situations where the impact of the regulations is to confer a benefit to Welsh taxpayers. For example, the Welsh Government may want Welsh taxpayers to benefit from a reduction in their tax liability from the same date that a change was introduced in England. The Welsh Ministers may choose to achieve that by adopting, or adapting, the same or a different policy.

### **Statement of policy on retrospective legislation**

The Welsh Ministers have a statutory obligation to publish a statement on their policy with respect to the exercise of the power to make regulations with retrospective effect. That statement is annexed to this Written Statement. The Welsh Ministers are required to publish the statement of policy within 3 months of the Act receiving Royal Assent. This Written Statement meets both those statutory obligations.

### **Review, alternative mechanisms and cessation of the power**

The Welsh Ministers must review the operation of the Act and publish their conclusions within four years of the Act coming into force. That review will 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. My officials will start exploring alternative mechanisms in the near future. That work will include engagement with tax and legal experts and I hope that they will again be willing to give their time generously in helping to develop the Welsh devolved tax framework.

The Welsh Ministers ability to make regulations using the power in this Act is limited to five years from the day the Act comes into force. That period can be extended to no later than 30 April 2031 subject to Senedd approval.

Annex

## **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 2022**

### **1. Background**

#### ***General***

1.1 The Welsh Tax Acts etc. (Power to Modify) Act 2022 (“the Act”) operates to enable changes to be made to the Welsh Tax Acts<sup>1</sup>, 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’<sup>2</sup> UK taxes (that is, one where we have an equivalent devolved tax) which affect, or may affect the amount paid into the Welsh Consolidated Fund<sup>3</sup>, 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.

### **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

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<sup>1</sup> “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”).

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

<sup>3</sup> Under section 118(1) Government of Wales Act 2006.

making will also be possible for regulations made using the power provided by the Act<sup>4</sup>, 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 procedure<sup>5</sup>.

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 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.

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<sup>4</sup> see section 2 of the Act

<sup>5</sup> 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 60<sup>th</sup> 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.

2.4 The Welsh Ministers will ensure that the regulations made will be proportionate and compatible with the European Convention on Human Rights<sup>6</sup>.

### **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.

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

