

Y Pwyllgor Cyllid / Finance Committee

Casglu Trethi Datganoledig / Collection of Devolved Taxes

CMDT 05 – Cymdeithas y Cyfreithwyr / The Law Society



Cymdeithas y Cyfreithwyr  
The Law Society

## **Collection and management of devolved taxes in Wales**

December 2014



## **Introduction**

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 Tax Law Committee is a specialist committee of the Law Society comprising 15 expert tax practitioners.
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.

## **Overview**

4. The Society welcomes this opportunity to respond to the White Paper. We see this as an important opportunity for the Welsh Government to take account of developments, positive and negative, in the UK tax system over the last few years.
5. 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.
6. There will be some taxpayers who do not agree with the judgement of a Welsh Revenue Authority ("the Authority") as to whether tax is due or the extent of their liability and it is important that they have an opportunity to test whether a liability exists and the amount of any liability before Tribunals or the Courts, as appropriate.
7. Further, it needs to be recognised that when there is a dispute, then until the final Tribunal or Court decision has occurred, or the parties have agreed on a settlement, it is not clear that the liability *is* owed to the Authority. Accordingly if it is thought appropriate that in these circumstances tax is collected before a matter in dispute is heard by the Tribunal or Court, the Authority needs to be adequately staffed and funded so that disputes can rapidly reach the Tribunals or Courts in order to establish whether, and if so how much, liability to tax actually exists. This is a particularly unfortunate aspect of the current taxation system in the UK that inadequate numbers of well-trained staff are available to process disputes efficiently.

## **Response to Questions**

8. Our comments below follow the questions posed in the consultation. The question number appears following the comment. Where there is no settled opinion the question has been omitted and no response is recorded.
9. While there have been some concerns whether as a Non-ministerial Department, HM Revenue & Customs ("HMRC") is adequately accountable to Parliament whilst maintaining taxpayer confidentiality, we suspect that there would have been more difficulties faced by HMRC had it been a Ministerial Department with a Minister responsible for it and answerable before Parliament. (Question 1)

10. If fully delivered the core set of duties for the Authority would be a good starting point then, after a period of operation by the Authority, say five years, a review of the duties could be carried out. (Question 2)
11. 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. It would certainly be helpful if non-compliance with the Charter had an adverse impact on continued employment by the Authority rather than just being seen to be aspirational.
12. We think it is very important that consultation occurs between groups representing both assisted and unassisted taxpayers (e.g. the Low Income Tax group in the UK as well as appropriate representative bodies) to consider whether the Charter's principles are being followed. (Question 4)
13. From the perspective of taxpayers, the most important factor is balancing efficiencies of the low cost of collection, without having low levels of performance (e.g. insufficient staff to respond to telephone enquiries promptly) and the perception of the Authority being distant, remote or unthinkingly "heavy-handed". We suspect that the net cost of collection will be increased if there is a variable local approach rather than a single body for Wales. (Question 5)
14. We would only add that to accompany powers and duties of the type that could be expected, in order to enable taxpayers to self-assess tax, they need to have access to an adequately staffed Authority enabling them to resolve areas of uncertainty promptly where published (presumably online) guidance does not adequately deal with these questions. (Question 8)
15. One feature that the Authority could test would be whether a *ruling system*, with an appropriate cost being born by business taxpayers seeking rulings (in appropriate circumstances), should be instituted. This would enable the taxpayer who wishes to obtain certainty by reference to a particular set of facts to provide relevant material to the Authority and obtain a ruling which would be binding on the Authority unless there is a development in law (whether in Wales or in the EU) which would render the ruling inconsistent with the law as it has been determined. In appropriate circumstances it would be necessary to provide for an adequate transitional period in which the ruling remains valid whilst the taxpayer reorganises their affairs. One of the perceptions that is widely held in relation to HMRC is that the enquiry service is inadequately staffed and funded and that HMRC seeks to "trip up" taxpayers by levying penalties where as a result of not being able to obtain binding rulings (and not being able to resolve the questions out of its own resources or with professional advisors) HMRC take a different view than that taken by the taxpayer required to pay the penalties. (Question 10)
16. Provided that there is adequate time for consultation a power to levy penalties should be provided. However, 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. (Question 11)

17. It needs to be recognised that there is currently a consultation underway about extending the data regime in the UK in a manner which is thought by some bodies to be inappropriate. Therefore if there is modelling of the data for Wales on the regime currently operating in the rest of the UK, this should start from the current scheme. (Question 12)
18. One of the reasons it is perceived that there is a significant level of avoidance is the complexity and amount of reliefs in the UK tax regime. Specific reliefs targeted at particular sectors have in practice led to significant levels of litigation (e.g. reliefs targeted on films and other forms of incentive encouraged by ministers of the day.) A further cause of avoidance is rather rushed and prescriptive legislation in response to a particular problem, opening up another opportunity to mitigate tax, arising from a particularly prescriptive form of legislation adopted by Parliamentary Draftsmen. The Authority should have the opportunity to consider the fundamentals of the taxes for which it has authority and by revisiting principles underlying them, may reduce the scope of avoidance.
19. The consultation document recognises that it is important to provide certainty to business and other taxpayers and it seems unlikely that a General Anti-Avoidance Rule, unless accompanied by an adequately funded clearance / ruling process, would provide certainty. The whole reason that the UK General Anti-Abuse Rule has adopted the “double reasonableness” test is to provide as much certainty as can be provided to taxpayers, together with guidance from the Advisory Panel with a particular status, to minimise the uncertainty of taxpayers where there is no binding clearance service. (Question 17)
20. On that basis, if there was going to be a need for a restriction, we strongly recommend it should be a narrower “Abuse” provision. (Question 18)
21. In our view the assistance of an independent panel is particularly important and without the guidance produced by, and intended publication of decisions once they have been before, the Advisory Panel there would be an unacceptable level of uncertainty. The disadvantages of an independent panel will include the possibility that panel members may find themselves facing a conflict of interest or possibly, as a result, drawn from a relatively narrow sector of the population. (Question 19)
22. Given that a significant proportion of avoidance (as it is perceived by HMRC) has taken place in relation to stamp duty land tax, rather reflecting the shortcomings in UK legislation highlighted above, then, depending on the design of a Welsh land taxation regime, there will be less need for a GAAR affecting that particular tax. (Question 20)
23. 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. There are concerns regarding the accommodation of Welsh law within the current courts and tribunals service including the training of judges which must be addressed. (Question 24)
24. Where the Authority has not set out an adequate reason as to why the liability, in its view has arisen and/or its quantum, then accommodation of incidences of hardship or making time to pay arrangements are relevant. (Question 25)
25. We should be pleased to provide further comments and expand on our replies if this would assist the consideration of our submission.

Please refer any questions regarding this response to:

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