



Finance Committee of the National Assembly of Wales – call for evidence on the Tax Collection and Management (Wales) Bill

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) is pleased to comment on the Tax Collection and Management (Wales) Bill (the Bill) in response to the Finance Committee's Call for Evidence. We have endeavoured to keep our submission short, in line with the Committee's requirements; we would be pleased to amplify our points orally or in writing.
- 1.2 We consider that the Bill has been developed with open and effective consultation. We commend the wide-ranging consultation including the consultative forums and for allowing a proper timescale for responses to be developed.

2 Avoidance and evasion

- 2.1 We note that Welsh Ministers have confirmed that they wish to see more evidence of the scale, scope and nature of tax avoidance in relation to SDLT and LFT within Wales, to ensure that legislative and operational approaches to tackling tax avoidance are clear, robust, and proportionate. These issues are therefore under consideration in the context of consultations on LTT and LFT. We support this approach with some caveats; it would be disappointing if this approach led to the inclusion in LTT of an equivalent to Finance Act 2003 sections 75A-C, legislation that has been found to be flawed and unworkable both in practice and in the tribunals¹.

¹ See *Project Blue Limited and the Commissioners for Her Majesty's Revenue and*

2.2 We consider that there is merit in trying principles-based drafting where necessary combined with specific targeted anti-avoidance rules. Traditionally UK tax law, particularly in an 'avoidance' context, has been written in great detail, leading to complexity and often to loopholes that then require further legislation.

3 The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

3.1 This is a key area of concern. In our view secondary legislation should be used only for procedural and administrative matters. There are four areas where a regulatory power is prescribed in the Bill that extends beyond the scope of procedure or administration (albeit with the affirmative procedure because of its potential significant effect). These four areas are:

- Power to amend the conditions under which protected taxpayer information is disclosed (clause 17(2))
- Power to amend the amount and assessment of penalties charged to taxpayers (clause 154)
- Power to amend provisions relating to what are to be classed as appealable decisions (clause 170(7)) and
- Power to confer further investigative, detention and seizure powers (clause 183(1) (2)).

3.2 It is our view that such powers belong properly in primary legislation. Although a limited power to make inflationary adjustments to penalties, for example, would be appropriate in secondary legislation it is important to ensure that matters such as substantive changes to penalties are seen as fairly imposed and properly legitimised by the Assembly, rather than simply by administrative decision.

4 Use of terminology in the Bill common to UK tax legislation

4.1 As set out in the policy background of the Explanatory Memorandum, Welsh Ministers have agreed that where there is no good policy reason to diverge from UK tax administration, current operational processes and arrangements will be adopted in the Welsh context. Therefore, in the interests of certainty, where terms used in Bill are the same as those used in equivalent UK legislation (for example 'reasonable' in the sense of 'reasonable excuse' 'reasonable grounds' or 'reasonable care' etc), it would be helpful - unless it is stated elsewhere- to acknowledge in the Bill itself that UK jurisprudence should be regarded as binding precedent, unless the Assembly indicates

otherwise in the legislation.

5 Part 2: The Welsh Revenue Authority (WRA)

- 5.1 We are pleased to note that the WRA has the freedom to establish non-voting committees in order to fulfil its functions. The involvement of committee members with particular tax expertise and experience in business and practice will build confidence in the Authority. Such committees provide also the opportunity for exercising valuable oversight of fundamental aspects of the management of devolved taxes such as evaluating proposed changes and monitoring WRA adherence to the Charter of standards and values.
- 5.2 The main functions of the WRA (clause 11) are reasonable as far as they go although we consider that the duty to provide information and assistance relating to devolved taxes to devolved taxpayers, their agents and other persons might emphasise more robustly the need for good communication with taxpayers. As we noted in our consultation response, frequent and clear communication is important, ideally with a good mix of communication methods, in order to reach all taxpayers. A compliance culture depends upon good communication.
- 5.3 We note that clause 15 provides for the use of information by WRA and persons to whom the WRA has delegated any of its functions. This power is subject to any international obligation of the United Kingdom which restricts or prohibits the use of information. We note that a similar provision in the Revenue Scotland and Tax Powers Act 2014 is subject in addition to 'any other enactment' (section 17(b)). Is the apparent omission of that specific qualification intentional?
- 5.4 Clause 23 provides that the WRA may pay a reward to a person in return for a service which relates to any of its functions. This seems a very wide scope and we think it should be restricted to matters such as rewarding informers, if that is the intention.'
- 5.5 We are pleased that the Charter of standards of values has been given statutory force and that there is parity of obligations between the WRA and the taxpayer. We are concerned though that the standard is aspirational in terms of the behaviours and values contemplated; we think it would be better framed in terms of the 'behaviour and values expected of the Welsh Revenue Authority'. It would be appropriate to frame the expectations of taxpayers similarly.
- 5.6 The WRA must review the Charter 'from time to time'. Although we recognise the value of flexibility (and the need to balance limited resources) we would prefer a more defined process and timeline or trigger for review. Failure to do so runs the risk of undermining the status of the Charter. Again a standing committee could offer the mechanism for a governance/ compliance function in relation to the Charter and a defined review process with a reporting timeline.

- 5.7 As an important safeguard the Charter should apply to any person to whom the WRA has delegated any of its functions explicitly, even if this is implicit.
- 5.8 We endorse the response of the Low Incomes Tax Reform Group particularly in relation to producing and publishing a Charter in readiness for 1 April 2018.
- 5.9 The timings for producing the Corporate Plan (clause 26) and Annual Report (clause 27) are a little vague. Timely production needs to be tied into the political timetable to ensure that these documents perform an effective function.

6 Part 3: Tax returns, enquires and assessments

- 6.1 We note that the record keeping obligation in clause 36 appears to diverge from the UK provisions in section 12B of the Taxes Management Act 1970 in that clause 36(3) refers to the sixth anniversary of the day on which the tax return is made (rather than the fifth). If so, it is unclear why this should be so given the intention to maintain consistency?

7 Part 4: Investigatory Powers of WRA

- 7.1 In relation to information notices we welcome the protection for 'journalistic information' (clause 96) although we note that this term could be usefully defined. Similarly the protection for personal records (clause 97), privileged communications between legal advisers and clients (clause 99) and for the extension of protection to communications between a tax adviser and client. The latter protection is provided under clause 100 (2) to a '*tax adviser*' (*'cynghorwr treth'*) [that] means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person). There may be some ambiguity around the meaning of 'appointed' (by way of example 'appointed' might mean the existence of an engagement letter between client and adviser, or perhaps that notification has been made to the Authority that the adviser is acting as agent). Therefore some clarificatory guidance on what is meant by 'appointed' would be helpful.

8 Part 5: Penalties

- 8.1 We are concerned that provision is made in the Bill for a regulatory power to change penalty provisions. As noted above, although the secondary legislation will be subject to the affirmative procedure, changes to the penalty regime should be in primary legislation.

- 8.2 We note that HMRC issued a discussion document earlier this year² on a potential fundamental change of approach to the imposition of penalties. The CIOT's response is at <http://tinyurl.com/nvzw9xw>.

9 Part 8 : Reviews and Appeals

- 9.1 We are disappointed that there is no provision giving the WRA power to postpone the collection of tax when an appeal is made even in the case of (objectively tested) hardship. Whatever is promised by way of interest if the taxpayer wins, it will not provide full recompense unless the rate is set above the current commercial savings rate.
- 9.2 From a wider perspective (not limited to appeals to the tribunal), we consider that consideration should be given to adopting Time To Pay (TTP) arrangements similar to those used by HMRC.
- 9.3 In common with legislation in the rest of the UK, the Bill provides for circumstances in which reference to the tribunal is made by either the taxpayer or the WRA (or jointly) as part of the operation of the management of devolved taxes. These include not only appeals against assessments but also a limited number of applications that are made to the tribunal on other matters for example third party notices (clause 85), inspection of business premises (clauses 101, 104 and 106) and an application to impose a penalty for failure to comply with information notice (clause 149). In this context we note the current Ministry of Justice consultation *Court and Tribunal Fees - Consultation* that includes fee proposals relating to the First-tier Tribunal (Tax Chamber) and Upper Tribunal (Tax and Chancery).
- 9.4 Any imposition of fees on an application to the tribunal will need to be considered from the perspective of the management of Welsh devolved taxes if referrals are likely to be significant.

² <https://www.gov.uk/government/consultations/hmrc-penalties-a-discussion-document>

10 The Chartered Institute of Taxation

10.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
8 September 2015