

The Law Society of England and Wales

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 Law Society has specialist law committees including the tax law committee comprising 15 expert tax practitioners and the conveyancing and land law committee.
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. There is a dedicated Wales committee which includes academics and lay members as well as practitioners.

Background

4. The Welsh Government has engaged closely with experts and industry on the new tax regime for Wales, this has provided for issues to be raised and considered at an early stage. The open approach has allowed for consideration of legislation beyond the confines of a formal consultation procedure and civil servants are learning and developing. This close working will bear fruit when the individual taxes come to be enacted.
5. The Welsh Government's intention has been to encourage business and has been open in its discourse on new Welsh taxes. In launching the Tax Collection and Management (Wales) Bill ("the Bill") the Minister for Finance and Government Business said "our tax arrangements for Wales are based on four clear principles – fairness; simplicity; supporting jobs and growth; and stability and certainty".¹
6. The Finance Committee's own pre-legislative inquiry has informed the process with regard to the foundations for Welsh taxes.
7. As a representative body we have been closely involved with the groundwork for this new revenue function in Wales. We sit on the Finance Minister's Tax Advisory Group, have members on the Welsh Government's tax forums as well as on their specialist advisory groups. In terms of our discourse with members, we have engaged individually, in groups and through seminars. We use our own lines of communication to the profession through targeted mailings, weekly Professional Update reports and the Law Society's Gazette and are delivering this message to members across the jurisdiction in both Wales and England.
8. The solicitors profession is adaptable, however, it is important in terms of our ability to ensure that members across both England and Wales are aware of the extent of devolution and also the impact of devolution, that we have clear messages coming from the Welsh Government, from the National Assembly for Wales and more broadly the media.

¹ [Minister for Finance and Government Business Monday 13 July 2015](#)

Overview of the Bill

10. The Welsh Government is in a position where Scotland 'went first' so that the legislation to accommodate new devolved taxes has been drawn up within the UK very recently and as the Land and Buildings Transaction and Scottish Landfill taxes have already come into effect there is practical as well as legislative experience from which to learn.
11. As the Bill draws on current UK legislation as well as Scottish provisions on the fundamental requirements for a Welsh tax regime the extent of 'novel' drafting is narrow. Our responses to Welsh Government consultations and evidence to the Finance Committee's own pre-legislative scrutiny set out our views on many of the provisions in the Bill and so are not repeated here.²
12. This response does not focus on all the individual parts of the Bill as the provisions have been developed over time and many operate to replicate existing law. Below are observations on particular provisions and wider comments for the Finance Committee to consider.

Welsh Revenue Authority

13. The status and provisions of the Welsh revenue authority ("WRA") are welcomed. The main concerns relate to communication and scrutiny.
14. The WRA's role and functions must be clear and clearly communicated. The WRA's identity and the brand for Welsh taxes must be made known to the public. This is important if an agent is appointed which is provided for in the Bill and is a particular issue if HM Revenue and Customs ("HMRC") acts as agent for WRA. HMRC could be dealing with the same tax payer but the relationship will be regulated by different provisions and charters.
15. Looking at the scrutiny of WRA by the National Assembly for Wales ("NAW"), we would propose a formal process is put in place to ensure that that WRA is truly answerable. This could be accommodated through Standing Orders of the National Assembly or possibly better delivered through the inclusion of a set procedure in the Bill to ensure a robust and accessible process exists.
16. Such a procedure could require direct accountability through a named NAW committee "where this new body would be expected to account for the way that it's operated in a more transparent way" [para 97] as was discussed during our evidence session with the Finance Committee and this would be welcomed.³
17. 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. In addition it would be helpful if non-compliance with the Charter had an adverse impact on in relation to the operation of the WRA rather than just being seen to be aspirational.

² [Response to White Paper pub. Feb 2015](#) and [Record of Proceedings 29 April 2015](#).

³ [Record of Proceedings 29 April 2015](#) at para 97

19. In its report the Finance Committee recommended that "stakeholders are represented on the board of the [WRA]" but there is no provision for this in the Bill.⁴
20. In taking evidence on its inquiry the Finance Committee heard from the chief executive of Revenue Scotland that there is a "devolved tax collaborative" in Scotland and it may be appropriate to include statutory provision for a similar body in Wales.⁵ A tax professionals forum could be developed to scrutinise tax policy-making in Wales.

Information

21. Effective information governance will be of paramount importance not only for efficient administration but also to protect the confidentiality of sensitive data. As the Poynter Review of information security at HMRC and the Cabinet Office Data Handling Procedure in Government Final Report both made clear in the wake of the HMRC data breach in 2007 when two discs containing personal details of all UK families claiming child benefit went missing, information governance has in the past been relatively neglected. The establishment of the WRA is an opportunity to apply best practice from the outset.

Penalties

22. 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.
23. The major areas of concern with the current UK penalty regime are:-
- penalties arising for taxpayers when they could not have known they were in default;
 - time based or other penalties which have the effect of deterring rather than encouraging compliance; and
 - a system with very little flexibility which is not tailored to a taxpayer's needs and so which does not promote compliance.
24. 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. The level of penalties are noted.
25. In addition, HMRC has recently issued a discussion document on penalties. HMRC are placing their review of the penalty regime firmly in the context of their digital plans, which it is said will make it easier for taxpayers to comply with their tax obligations and allow the use of more accurate data across all taxes and this is informing their policy moving forward. See further below regarding keeping pace with UK legislation.

⁴ [Finance Committee Report May 2015](#)

⁵ [Record of Proceedings 29 April 2015](#)

Tax Tribunal

27. 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 and the tribunals will continue to be relevant for other taxes applicable in Wales.

Secondary Legislation

28. The powers for the Welsh Government to make regulations under both the affirmative and negative procedures in this Bill are extensive. Although NAW has looked to appoint a specialist adviser it may be more appropriate to establish a committee of experts. The level of input required to advise on the Bills to accommodate the two proposed taxes added to the operational regulations and the Charter in due course is likely to be beyond that of an individual.

Further Comments

29. The Bill does not set out any general provisions for tax avoidance and therefore we assume provisions, if any, will be included in the legislation for individual taxes.
30. Stamp duty land tax only came into effect in 2003. Since this time there has been some bedding in and in order to ensure that the right people were engaged with that process the stamp duty land tax working together stakeholder group was established. The group includes professional bodies, tax law specialists and advisers, as well as internal agencies, HMRC and Government representatives. This group doesn't deal with individual issues or cases, but, is concerned with the operation of the tax which has been useful for all those working within what was for everyone a new regime and in terms of online activity was developing at the same time.
31. Finally, regarding consistency of approach there is a balance to be struck. Looking at the Bill the provisions are clearly drawn from both existing UK tax law and from the Revenue Scotland and Tax Powers Act 2014. There is merit in establishing an approach which is consistent with the rest of the UK however Wales has no control over changes by other legislators and governments. The annual finance bills introduced to the UK Parliament provide a vehicle, and an opportunity, for the UK government to make changes. As new law is made for other parts of the UK then the pursuit of consistency will be challenging. Fundamental changes will require a new Bill in Wales. The choice between consistency and innovation is finely balanced and a matter for future governments.

Please refer any questions regarding this response to:

Kay Powell LLM Solicitor / Cyfreithiwr

Policy Adviser / Ymgynghorydd Polisi

The Law Society / Cymdeithas y Cyfreithwyr

Capital Tower / Twr y Brifddinas

Greyfriars Road / Heol Y Brodyr Llwydion

Cardiff / Caerdydd

CF10 3 AG

T 029 2064 5254 **F** 029 2022 5944

email: kay.powell@lawsociety.org.uk