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Llywodraeth Cymru
Welsh Government

Jocelyn Davies AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
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Dear Jocelyn

Thank you once again for your consideration of the Tax Collection and Management (Wales) Bill during Stage 1. I am pleased that the general principles of the Bill have been agreed, and I thank your Committee for their recommendation in this regard.

During the General Principles debate on the Bill on 8 December, I confirmed that I would provide a detailed response to your Committee's Stage 1 report and its 29 recommendations. I have set out below my response to the recommendations; this includes details of where I agree there is need to put forward amendments to the Bill. I have already tabled 20 Government amendments and will table further amendments in a second tranche next month.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Best wishes,
Jane

Jane Hutt AC / AM
Y Gweinidog Cyllid a Busnes y Llywodraeth
Minister for Finance and Government Business

Tax Collection and Management (Wales) Bill Stage 1

Committee Report recommendations and Welsh Government response

Recommendation 2

The Committee recommends that the Welsh Government commit to undertaking an enhanced awareness raising campaign to encourage widespread public awareness of the Welsh Revenue Authority and devolved taxes prior to 2018.

Accept: I am committed to continued engagement. As announced previously, I will publish a Treasury Paper on Welsh taxes early in the New Year. This will help us to further engage on tax devolution, including informing people of progress to date and what is anticipated in the future, and beginning to develop the key elements of a constructive relationship between the new WRA and devolved taxpayers. This will be formalised in the Charter of standards and values. I would expect the WRA to start consultation on a Charter soon after its formation so that the document is in place when tax collection gets underway. I would certainly encourage the WRA to consider including a commitment in its Charter to engage with its stakeholders in a positive and constructive way on all matters, including the development of its devolved tax procedures, where appropriate.

I also aim to initiate a survey of the current level of public awareness of the developing proposals around devolved tax and to revisit this over time.

Work on raising awareness of the new devolved taxes and the changes to collection and management will need to start well in advance of April 2018. I am committed to ensuring that those who will be paying Welsh devolved taxes are fully aware of what they need to do from 1 April 2018.

Recommendation 3

The Committee recommends that the Bill be strengthened to ensure the independence of the Welsh Revenue Authority from the Welsh Government and this should be expressly provided for on the face of the Bill.

I am wholly supportive of the WRA being operationally independent, with Ministers having no role in individual taxpayer's affairs. However, for the reasons set out below, I believe that the Bill provides for this operational independence. I am, of course, open to further discussion on this point and, in that context, am mindful of section 7 of the Revenue Scotland and Tax Powers Act 2015 (with which you are familiar from our scrutiny sessions).

Our approach and proposals for the WRA are consistent with HMRC and Revenue Scotland in a number of key areas:

- all have clear operational independence in order to ensure that Ministers are not implicated in the day-to-day management of taxpayers' affairs;
- all are non-Ministerial departments and are staffed by civil servants;
- all have extensive powers legal powers and responsibilities vested in them (in Commissioners in the case of HMRC) and are responsible for exercising those powers in accordance with the law;
- all deliver tax policy set by Ministers;

- Ministers appoint non-executive Board members (HMRC commissioners are by letters patent, but they may resign by notice in writing to the Treasury); and,
- all are answerable to Tribunals and Courts for how they exercise their powers.

Tax collection is a function of government as tax receipts fund public services. The WRA, in common with HMRC and Revenue Scotland, will need to collect taxes within the tax policies and the priorities set by Ministers. The Welsh Ministers need to be able to give strategic direction to the WRA on devolved tax policy priorities: for example, on the emphasis they should place on tax compliance and avoidance work. To this end, section 14 of the Bill allows the Welsh Ministers to give general directions (in the same way that the Treasury can give general directions to HMRC). However, importantly, this power does not allow the Welsh Ministers to provide any specific direction to WRA on how it should make decisions in individual taxpayers' cases. Should the Welsh Ministers attempt to issue such directions, that would clearly be unlawful.

Part 8 of the Bill confers comprehensive review and appeal rights on taxpayers, enabling them to hold WRA to account for its decisions. Any suggestion by a taxpayer that WRA had been unduly influenced by the Welsh Ministers can therefore be subject to robust judicial scrutiny. Part 8 of the Bill confers wide powers on the tribunals to affirm, vary or cancel WRA decisions.

Furthermore, section 19 of the Bill creates a criminal offence in relation to the wrongful disclosure of protected taxpayer information. This is a further crucial safeguard for taxpayers, preventing WRA officials sharing confidential, individual taxpayer information with Ministers and others.

As announced previously, I have reflected on the Committee's comments concerning any general Ministerial directions that might be given under section 14. Currently, section 14 of the Bill requires the Welsh Ministers to publish any directions given to WRA unless they consider that publication would prejudice the effective exercise of WRA's functions. The Committee previously raised concerns about the caveat regarding non publication and therefore I tabled amendment 2 on 9 December to delete it. If agreed, the Bill will require that all directions given by the Welsh Ministers must be published. This will provide complete transparency and will enable others to scrutinise any directions and the reasons why they are being given.

This is clearly a very important point for all of us and it is crucial that we get it right. I would be happy to discuss it with the Committee further.

Recommendation 4

The Committee recommends that section 3(1)(d) of the Bill should be amended to ensure the members of staff appointed to the board are done so by a process of Chief Executive nomination in the first instance and then by a staff ballot process when future vacancies arise.

Accept: I am happy to consider introducing amendments that would provide for an additional executive member of the WRA to represent staff and for such an appointment to be made by a staff ballot.

The amendments will also alter the process by which the other executive members of WRA become members of the Board, so that instead of this being the result of a WRA nomination, it is the result of a recommendation by the Chief Executive, which the non-

executive members of WRA then appoint in accordance with (or require an alternative recommendation).

Recommendation 5

The Committee recommends that the Bill should include more detail on the appointment period for non-executive members and would recommend the model specified in the Public Audit (Wales) Act 2013 as a good example, whereby non-executive appointments should be for a period of no more than four years and a person may not be appointed more than twice.

Accept in part: I am committed to openness and transparency in the appointment process and have said previously that the Nolan principles will apply to all non-executive member appointments. Furthermore the terms and conditions of these roles will be advertised publically. I accept the Committee's recommendation in part and will look to bring forward an amendment that defines the appointment period and the maximum time that can be served.

Recommendation 6

The Committee recommends that provisions in Part 2 in relation to the chairperson and the deputy chairperson are consistent unless there is a valid reason for differing provisions.

There are necessary differences in the provisions relating to the Deputy Chairperson and Chairperson. Provisions for a Deputy Chairperson reflect the fact that such an appointment is additional to the non-executive member appointment. Unlike the Chairperson, the Deputy Chairperson could continue in the role of a non-executive member despite no longer serving as a Deputy Chairperson.

This means that provisions have been made in relation to a Deputy Chairperson that are not needed for the Chairperson (i.e. to the effect that a person can resign as a non-executive member *or* as a Deputy Chairperson (s. 5(3)) and that a person will no longer be the Deputy Chairperson when he/she ceases to be a non-executive member (s. 6(2)) because the Chairperson is a non-executive member *only* whereas the Deputy Chairperson is a non-executive member *and* a Deputy Chairperson.

In the circumstances, the provisions as drafted do not require any amendment.

Recommendation 7

The Committee recommends that section 8(4) which provides for Chief Executives "to be appointed by WRA" (subsequent to the first appointment by the Welsh Ministers) should be amended to ensure that the non-executive members make the final appointment decision (rather than the employee members of the Board).

Accept: I will bring forward an amendment to section 8(4) at Stage 2, so that Chief Executive appointments (subsequent to the first appointment by the Welsh Ministers) will be made by the non-executive members of the WRA Board rather than the whole of the WRA Board.

Recommendation 8

The Committee recommend the Bill is amended to ensure the Board's quorum prescribes a majority of non-executive members.

Accept: I want the WRA Board to always have a majority of non-executive members. I will bring forward an amendment at Stage 2 to include provisions that require WRA to make rules about quorum and to require those rules to specify that there needs to be a majority of non-executive members present at a WRA Board meeting in order for it to be quorate.

Amendment 1, tabled on 9 December, ensures that, in the event that Welsh Ministers use their regulation making power to amend the number of members on the WRA Board, they could only do so in a way that maintains a non-executive majority.

Recommendation 9

The Committee recommend that at least one non-executive member should be a member of each committee/sub-committee, unless it is a non-decision making committee/sub-committee.

Accept: the role of non-executives members in the work of the WRA is essential and I appreciate the point being made by this recommendation.

I intend to bring forward amendments to the effect that where WRA authorises a committee of WRA or a sub-committee of such a committee to carry out any of its functions under section 12(b) TCM Bill, the committee or sub-committee that it authorises for that purpose must include at least one non-executive member amongst its membership.

Recommendation 10

The Committee recommends that the Welsh Revenue Authority produces a publication scheme and that all decisions taken by committees/sub-committees of the Welsh Revenue Authority should be made publicly available. If there is a valid reason not to publish a decision, the reasons for this should be made publicly available in accordance with the publication scheme.

Accept: I agree that this is good practice. As a public authority, WRA will need to comply with relevant obligations under the Freedom of Information Act. As such, I would expect the WRA to:

- publish the classes of information that it will make available; and,
- tell people how they can access such information.

In formulating the arrangement for such a scheme the WRA will need to consider how it will safeguard individual taxpayers' information.

Recommendation 11

The Committee recommends that Tax Impact and Information Notes (or equivalent documents) should be introduced for all significant variations in the devolved taxes. Where appropriate the Welsh Government should ensure that these notes are produced alongside their budget announcements. These notes should be reviewed by the Welsh Revenue Authority at least every three years and be subject to scrutiny by an Assembly Committee before the Welsh Revenue Authority's budget is agreed.

Accept in principle: where new tax legislation is proposed, specific impact assessments will be undertaken, for example in relation to equality and protected groups and the rights of the child. This will be case for the proposed Land Transaction and Landfill Disposal taxes and any other taxes that might be devolved to Wales in the future. An RIA for each bill will include a timetable for a future review.

I consider that it would be good practice in the future to also consider publishing information about any significant variations to the devolved taxes, especially where changes are being made alongside wider budget considerations.

Clearly there is no immediate role for the WRA here, but when it is established and if and when there are significant changes to tax policy then I would expect the WRA to play an important role in contributing to tax policy considerations, including on practical implementation issues. Indeed, one of the WRA's functions as a result of this Bill will be to provide information, assistance and advice to Welsh Ministers, (section 11 (2) (b).

The relationship between the Welsh Government and the WRA will be set out in a memorandum of understanding and this will clarify respective roles in relation to future tax policy considerations including assessments.

Budget discussions will be between the Welsh Government and WRA and these will take account of both performance and Ministerial tax policy priorities.

Recommendation 12

The Committee recommends that section 12 should be amended to clarify that certain important functions (such as approval of the Corporate Plan, the Annual Report, the annual Accounts and the annual Tax Statement) are reserved as the responsibility of the Welsh Revenue Authority and should not be delegated to staff.

Accept: I intend to table an amendment that adopts the Committee's recommendation, so as to ensure that it is the WRA Board retains responsibility for the preparation of the corporate plan, the annual report, the annual accounts and the tax statement.

Recommendation 13

The Committee recommends that clear lines of accountability are provided, through a publicly available memorandum of understanding or service level agreement, between the Welsh Revenue Authority and the delegated bodies with responsibility for tax collection and management. The memorandum of understanding or service level agreement should set out clear standards for dealing with taxpayers.

Accept: I agree that it will be important to have publically available information about any delegation arrangements and the Bill already provides for this. Section 13 of the Bill provides for the delegation of WRA's functions and section 13 (4) requires the WRA to publish information about delegations or any directions made under that section.

It's also worth pointing out that the WRA's Charter will need to include standards of behaviour and values and that the Charter will apply equally to the WRA and any other body delivering functions on its behalf.

Recommendation 14

The Committee recommends that where the Welsh Revenue Authority delegates any of its functions to an organisation/s, consideration should be given to ensuring the organisation/s provides a high level of expertise to Welsh taxpayers, including taking Welsh Language provisions into account and setting out provision for Welsh speakers in a Statement of Service Standards.

Accept: Service standards and access to both tax expertise and Welsh language provision are important considerations in the on-going discussions we are holding with HMRC and NRW.

The Welsh Language (Wales) Measure 2011 will automatically apply to the WRA. The WRA will need to have its own Welsh language standards, which it will need to agree with the Welsh Language Commissioner. Such standards will apply equally to WRA and anyone undertaking delegated functions on its behalf. The WRA may delegate its functions, but it will still retain responsibility for the effective and efficient execution of its functions and duties.

Recommendation 15

The Committee recommends that the Bill is amended to prevent the Welsh Government intervening in the exercise of the Welsh Revenue Authority's operational functions.

For the reasons given above, in my response to recommendation 3, I consider that the Bill already guarantees the operational independence of the WRA and provides extensive protection to individual taxpayers against the intervention of the Welsh Ministers.

Recommendation 16

The Committee recommends that the Charter must specifically refer:

- to a quality service for the taxpayer;*
- to its application to delegated bodies with responsibility for collection and management of taxes.*

Accept: as mentioned under recommendation 2 previously, I intend undertaking engagement on this in the New Year. This will include consideration of how a Charter should refer to providing a quality service.

The WRA may delegate its functions, but it will still retain responsibility for the effective and efficient execution of its functions. As such, service standards will apply equally to WRA and anyone undertaking delegated functions on its behalf.

Recommendation 17

The Committee recommends that the first Charter should be published prior to the relevant taxes being formally devolved to Wales in April 2018.

Accept: it will be essential to have the Charter in place by the time that tax collection gets underway. The Charter will be the responsibility of the WRA, but I would nevertheless expect the WRA to consult on their proposed document in the run up to 2018 and to finalise and publish it so that it is in place by the time that devolved tax collection gets underway.

Recommendation 18

The Committee recommends that the Bill is amended so that:

- section 25(2)(a) replaces the word “aspire” with “adhere to”;*
- the requirement to review the Charter “from time to time” under section 25(3)(b) should include the provision for a review at least every five years.*

Accept: amendments 3, 4, 5, 8 and 9 tabled on 9 December change the wording of the provision for a Charter so that the WRA will be expected to adhere to standards of behaviour and values when dealing with taxpayers and their agents.

Amendments 6 and 7 require the WRA to review the Charter at least once in the period of 5 years beginning with the day on which the Charter is published, and at least once in the period of 5 years following a review after that.

Recommendation 19

The Committee recommends that section 26(2) is amended to ensure the Corporate Plan includes key performance measures.

I agree that performance measurement is essential and how this is to be done should be in the public domain. Section 26(2)(b) of the Bill requires the WRA to produce a corporate plan and this must set out the outcomes by reference to which the achievement of the main objectives may be measured. I will not be proposing an amendment because measures of performance are already required to be in the corporate plan.

Recommendation 20

The Committee recommends section 27 of the Bill should specify that the Annual Report should be published no later than 31 August to ensure the Annual Report and Accounts are available within a set time period to ensure accountability, transparency and effective scrutiny of the operations of the Welsh Revenue Authority.

Accept in principle: I am happy to look again at the timing of the preparation, reporting and publication of the Annual Report. In doing this I will consider how the timing of the publication of the Annual Report links to the timing of the final publication of the WRA's annual accounts and Tax Statement.

Recommendation 21

The Committee recommends that the Bill includes provision which enables the National Assembly to authorise a Committee to scrutinise the Welsh Revenue Authority.

In my letter to the Committee of 4 November I referred to section 37 of the Government of Wales Act 2006. I drew attention to this because the section confers broad powers on the Assembly to require a person to attend to give evidence or produce documents. The powers can be exercised by the Audit Committee or such other committee as the Assembly expressly authorise. Standing Orders require that every area of the Government and associated public bodies must be subject to committee scrutiny. The devolved taxes will be the responsibility of Government and the Welsh revenue authority, so the Business Committee must ensure that this area is subject to the scrutiny of a committee.

I also mentioned that the Bill includes several measures that require the Assembly to be provided with information to assist it to scrutinise the WRA. Taken together these provisions enable the Assembly to undertake scrutiny of the WRA, separate from the Welsh Ministers, however the Bill does not specify how the Assembly should scrutinise the WRA. Arrangements such as which Committee should undertake scrutiny are for the Assembly to decide, not for the Welsh Government to prescribe in legislation. This is in line with other Assembly Acts, such as the Public Audit (Wales) Act 2013. Whilst this latter Act sets out certain functions for the Assembly, such as appointing non-executive members to the Wales Audit Office, and makes provision for the Assembly to delegate these functions to a Committee of its choosing, amongst others, it contains no provisions relating to the general scrutiny of the Wales Audit Office by the Assembly beyond requiring the laying of certain documents before it.

Recommendation 22

The Committee recommends section 30(3)(a) is amended to ensure the wording of the audit provision in the Bill is consistent with that of the audit provision for the Welsh Ministers' accounts as set out in section 131 of the Government of Wales Act 2006.

Accept: I note the difference between the GOWA wording and the Bill wording and I will consider tabling an amendment at Stage 2, as recommended.

Recommendation 23

The Committee recommends section 32(3)(a) regarding the responsibilities of the Accounting Officer in relation to the signing of the accounts should expressly refer to the annual accounts and the annual Tax Statement.

Accept: I have tabled amendment 11 that amends section 32(3)(a) to include responsibilities in relation to both the signing of the WRA accounts and Tax Statement.

Recommendation 24

The Committee recommends that the Welsh Revenue Authority issues a Statement of Practice on a tax by tax basis to provide flexibility in the case of individual taxes whilst providing certainty over timescales for service users.

Accept: this will be a matter for the WRA. However, I agree that a Statement of Practice on a tax-by-tax basis is good practice that the WRA should seek to follow.

Recommendation 25

The Committee recommends the Minister reviews the position in relation to the Public Services Ombudsman for Wales' role in dealing with complaints against the Welsh Revenue Authority and in relation to tribunal arrangements for devolved tax collection and management and brings forward amendments if appropriate.

Accept: I note the views of the Committee on this matter and am happy to review the issue that has been raised.

Recommendation 26

The Committee recommends that the definition of rewards should be clarified on the face of the Bill.

The provision at section 23 is consistent with that found in both UK and Scottish legislation. In order to clarify this provision further, I will provide further details in the explanatory note relating to the provision. This will clarify that the provision provides for WRA to pay a reward to a person for a service relating to any of its functions, for example for information which leads to the collection of undeclared tax; and, that I would expect that any arrangements put in place by WRA would:

- be discretionary;
- would be payable only as a consequence of what is achieved as a direct result of information provided; and,
- be determined by taking account of such factors as: tax recovered; loss of revenue prevented; other measurable benefits, such as reduction in time/costs associated with compliance.

Recommendation 27

The Committee recommends the Bill is amended to ensure the Welsh Revenue Authority are not permitted to treat rewards as a deduction from the amounts paid into the Welsh Consolidation Fund.

I can reassure the Committee that the provision at section 24 does not include 'rewards' and therefore does not provide for any such expenditure to be deducted from the amounts that are to be paid into the Welsh Consolidated Fund.

Recommendation 28 & Recommendation 29

The Committee recommends that section 22 of the Bill should be replaced with a provision that would treat the Welsh Revenue Authority as an additional “relevant person” in section 124 of the Government of Wales Act 2006. The Committee urges the Welsh Government to obtain the Secretary of State’s consent to ensure that should an amendment to amend section 124 of the Government of Wales Act 2006 be agreed by the National Assembly, the Bill would be able to be passed at Stage 4.

If it is not possible to obtain the Secretary of State’s consent to amend section 124 of the Government of Wales Act 2006, the Committee recommends that the Welsh Revenue Authority’s budget is identified separately and hypothecated in the Welsh Government’s annual budget motion.

The WRA will undertake a function of Government and it is therefore appropriate for it to receive its funding through the Welsh Government’s budget process. Welsh Ministers will have responsibility for the WRA’s budget in a similar way to that of HM Treasury and HMRC’s budget and the Scottish Government and Revenue Scotland’s budget.

I acknowledge however that it is essential that there is transparency around the WRA’s budget. I consider that such transparency can be achieved by including sufficient detail within an existing Welsh Government MEG – possibly that relating to Central Services. The Assembly has full oversight of the budget process and can vote on it.

I have also made provision for the WRA to be transparent in the use of its budget. Section 28 requires the WRA to prepare accounts which will be reported on by the AGW before being laid before the Assembly. Section 29 requires the WRA to prepare a Tax Statement of the amount of money collected by it during a financial year and this will also be laid before the Assembly.

Constitutional and Legislative Affairs Committee (CLAC)

Recommendations

CLAC recommend that the Minister should table an amendment to sections 3, 4, 26 and 186 of the Bill

Currently these powers are subject to the negative procedure, but CLAC recommend that it is made subject to the affirmative procedure, because primary legislation is being amended.

I have noted the view of the Committee on the broader issue relating to the negative or affirmative procedure. I note also that the First Minister has written to the Committee on this issue. In that letter he explains that the choice between the negative and affirmative procedure is considered on the merits of each case, and ultimately informed by a variety of factors, including the nature of the power, its likely scope, and the circumstances in which the power is to be used.

Given the scope and circumstances in which the powers in sections 3, 4, 26 and 186 might be used, I remain of the view that the negative procedure is appropriate.