



ICAEW REPRESENTATION 03/17

TAX REPRESENTATION

LANDFILL DISPOSALS TAX (WALES) BILL

ICAEW welcomes the opportunity to comment on the [Landfill Disposals Tax \(Wales\) Bill](#). The Bill was published by the Welsh Government on 28 November 2016 and these comments are in response to an [enquiry by the Finance Committee](#) for the National Assembly into the general principles of The Bill.

This response of 6 January 2017 has been prepared on behalf of ICAEW by the Tax Faculty in partnership with the ICAEW's Regional Director for Wales. Internationally recognised as a source of expertise, the faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world.

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LANDFILL DISPOSALS TAX (WALES) BILL

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the [Landfill Disposals Tax \(Wales\) Bill](#) (The Bill) published on 28 November 2016. These comments are in response to an [enquiry by the Finance Committee](#) for the National Assembly into the general principles of The Bill.

MAJOR POINTS

2. We support the approach the Welsh Government has adopted to the proposed introduction of Landfill Disposals Tax (LDT) for Wales. Like the approach that the Welsh Government has adopted for Land Transaction Tax, we believe that the consultation process has been well designed, transparent and has encouraged participation.
3. Generally we support the approach of modelling the tax on the existing UK Landfill Tax but where necessary ensuring that the existing rules are clarified and improved. We believe that the Bill is well set out and drafted within the constraints of the need to mirror the existing Landfill Tax provisions.
4. We also support the publication of the Explanatory Memorandum that accompanies the Bill and in particular the inclusion of a schedule setting out the various powers that have been delegated under the Bill.
5. To help taxpayers and provide certainty, the WRA should publish a statement that reconciles these Bill provisions to those of the Landfill Tax provisions (as set out in the Finance Act 1996 as amended). It should identify the material differences between the two taxes, in particular the new provisions found in Part 4 on taxable disposals at unauthorised landfill sites. Some of this information is already included in the Explanatory Memorandum but it would be helpful to have a full summary available on the public record.
6. The statement should also highlight provisions that have not been carried forward from the Landfill Tax provisions. For example, para 25 of Sch 5 to the Finance Act 1996 provides powers for what is now HMRC and on appeal a Tribunal to mitigate penalties, including down to nil, as they think proper. This power does not appear to have been carried forward into the Bill provisions, although we note there is a general power in clause 72 to make regulations in respect of penalties. We believe that the Landfill Tax provision provides an important protection for taxpayers and we would have expected to see it included within the Bill itself.
7. We note that the actual rates of tax will be set out later this year by way of statutory instrument. Again, we think this is a sensible approach given that LDT will not come into force until 2018. More generally, we understand that the rates of LDT will follow the existing UK rates of Landfill Tax. The setting of rates is clearly a policy question for the Welsh Government to decide and is not one for us to comment on in detail. However, while we understand the reasons for adopting this approach, namely to ensure that existing revenues are not reduced and to discourage 'waste tourism', we question whether adopting the same rates as those for Landfill Tax will actually work best for Wales.
8. We understand that in addition to replicating the existing two rates of Landfill Tax, there will be a further rate under LDT that will apply to disposals at unauthorised waste disposal sites (as set out in Part 4). The leaflet that has been published to accompany the publication of the Bill states that in order to encourage waste disposal in authorised sites this rate will be set at a higher rate than the standard rate. In order to provide certainty it would be helpful for the Welsh Government to set out its proposals in respect of this new higher rate as soon as practicable.

RESPONSES TO SPECIFIC QUESTIONS

9. Responses to the specific questions posed in the Terms of Reference are set out below.

The general principles of the Bill and the need for legislation

10. The general principles appear to be clear and well set out given the need for consistency with the existing landfill tax regime.

Any potential barriers to the implementation of these provisions and whether the Bill takes account of them

11. We are not aware of any.

Whether there are any unintended consequences arising from the Bill

12. We have some concerns about the new provisions in Part 4 of the Bill relating to taxable disposals at unauthorised sites – in short illegal landfill and fly tipping. It is possible that, under clause 46(2), a person could become a taxable person if they operated the lorry from which the waste was tipped or if they are the person who owns the land on which the waste was tipped. In order not to become subject to LDT, the person concerned would have to prove that they did not knowingly cause or permit the waste to be tipped.

13. While it is easy to understand the policy concern with unauthorised tipping sites, it would appear that prima facie someone who owned land upon which fly tipping took place will face a tax charge unless they can prove they didn't know about it. It is always difficult to prove a negative.

14. We are concerned that the wide ranging nature of this provision could result in innocent parties being held liable for tipping over which they had no control. While para 46(3) gives powers for the WRA to make regulations about the circumstances when this might apply and what should be taken into account, greater clarity is needed about what these regulations will include so as to address these concerns. There needs to be an overriding test of reasonableness.

The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum)

15. We have no comments.

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

16. In principle we believe that all substantive tax provisions should be set out in primary legislation rather than by way of regulations. However, this is not the case with LDT. We welcome the clear statement in the Explanatory Memorandum that summarises the various powers granted in the Bill to make regulations, but it does highlight just how many of the provisions in the Bill provide for further regulations to be made.

17. We appreciate that this approach largely mirrors that used in Landfill Tax, but do think an opportunity has been missed to put the vast majority of the LDT provisions into primary legislation. It is therefore all the more important to enable proper scrutiny of the Bill that, when the Bill is to be debated, the main regulations to be introduced are made available in draft at that time. This will allow for proper consideration of the Bill provisions in the light of the proposed regulations.

Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed:

- *Be fair to businesses and individuals who pay them;*
- *Be simple, with clear rules which seek to minimise compliance and administration costs;*
- *Support growth and jobs that in turn help tackle poverty; and*
- *Provide stability and certainty for taxpayers.*

18. We support these principles and the draft legislation appears to have been framed in accordance with them. The principles established by the Welsh Government mirror our own ten principles of good tax policy formulation. These were first formulated in 1999 in relation to UK tax policy and, although they predate the devolution of taxes, we believe that they are equally relevant in the devolved tax context. They are attached as an Appendix.

The definition of a 'taxable disposal' and 'qualifying materials'

19. The definitions appears reasonable.

The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content;

20. In para 21 4(a), we think the word 'or' should be added at the end of the words in (i) and (ii).

The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level

21. See our comments in para 5 above. The ability to amend the rates by way of regulation should provide sufficient flexibility.

The proposed exemptions

22. No comment.

The proposed reliefs

23. The proposed reliefs in LDT appear reasonable and largely mirror landfill tax although we note in the latter tax dredging, mining and quarrying activities are given by way of exemption rather than a relief. This difference in treatment will increase the admin burdens as compared to Landfill Tax although we can understand the policy rationale for this decision.

The inclusion of unauthorised disposals of waste at places other than authorised landfill sites;

24. See our comments above.

The inspection of premises for the purposes of ascertaining a person's liability to Land Disposals Tax and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities;

25. The proposed extension of the existing powers in s 103 of the Tax Collection and Management (Wales) Act 2016 appear to be reasonable.

The duties on taxpayers to make payments and pay penalties and interest in certain circumstances

26. See our comments above in respect of the potential application of penalties in certain circumstances.

How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance

27. The proposed approach appears reasonable.

Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill.

28. We can understand why this decision was taken and it should help to simplify the operation of the tax. It would be helpful to clarify exactly why it is considered that this approach will 'maximise the amount of funding reaching projects (per para 3.45 of the Explanatory Memorandum) as we would have thought it might lead to a reduction in expenditure on local community projects.

ICAEW TAX FACULTY'S TEN PRINCIPLES FOR GOOD TAX POLICY FORMULATION

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.