

## Agenda – Finance Committee

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Meeting Venue:	For further information contact:
<b>Committee Room 3 – Senedd</b>	<b>Bethan Davies</b>
Meeting date: Wednesday, 21	Committee Clerk
September 2016	0300 200 6372
Meeting time: 09.00	<a href="mailto:SeneddFinance@assembly.wales">SeneddFinance@assembly.wales</a>

### **1 09.00 – 09.15 – Informal pre-meeting**

### **2 Introductions, apologies, substitutions and declarations of interest**

(09.15)

### **3 Papers to note**

(09.15)

(Pages 1 – 5)

**Letter from the Cabinet Secretary for Finance and Local Government to the Chair – 18 August 2016 – Written Response to the Report of the Finance Committee: Scrutiny of the Welsh Government First Supplementary Budget 2016–17**

(Pages 6 – 12)

**Letter from the Presiding Officer to the Chair – 16 September 2016 – Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill**

(Pages 13 – 16)

### **4 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Evidence session 1**

(9.15–11.00)

(Pages 17 – 38)

Mark Drakeford AM, Cabinet Secretary for Finance and Local Government  
Andrew Hewitt, Policy Manager, Welsh Government  
Gareth McMahon, Government Lawyer, Welsh Government

[Land Transaction Tax and Anti-avoidance of Devolved Taxes \(Wales\) Bill, as introduced](#) (PDF, 831KB)



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

- 5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**  
(11.00)
- 6 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Consideration of evidence**  
(11.00–11.10)
- 7 Update on budget procedures in light of devolved taxes**  
(11.10–11.25) (Pages 39 – 45)

Paper 1 – Update on budget procedures in light of devolved taxes

- 8 Letter from the Business Committee on the Landfill Disposal Tax Bill**  
(11.25–11.30) (Pages 46 – 47)

Paper 2 – Letter from the Business Committee on the Landfill Disposal Tax Bill – 14 September 2016

- 9 Introduction to the Public Audit (Wales) Act 2013**  
(11.30–12.30)

Steve O'Donoghue, Director of Finance and Human Resources, Wales Audit Office  
Kevin Thomas, Director of Corporate Services, Wales Audit Office

## Concise Minutes – Finance Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: Thursday, 14 July 2016

Meeting time: 09.32 – 12.02

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/3679>

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### Attendance

Category	Names
Assembly Members:	Simon Thomas AM (Chair) Nick Ramsay AM Steffan Lewis AM Mark Reckless AM Eluned Morgan AM Mike Hedges AM
Witnesses:	Claire Clancy, Chief Executive & Clerk of the Assembly Matthew Richards, National Assembly for Wales Georgina Haarhoff, Welsh Government Repa Antonio, Welsh Government Andrew Hewitt, Welsh Government Sean Bradley, Welsh Government
Committee Staff:	Bethan Davies (Clerk) Gerallt Roberts (Deputy Clerk) Martin Jennings (Researcher)



	Christian Tipples (Researcher)
	Joanest Varney-Jackson (Legal Adviser)

## **1 Consideration of legal advice in relation to Section 7, Public Audit (Wales) Act 2013**

1.1 The Committee received legal advice from Commission staff in relation to Section 7 of the Public Audit (Wales) Act 2013.

## **2 Introductions, apologies, substitutions and declarations of interest**

2.1 The Chair welcomed Members to the meeting.

2.2 Apologies were received from David Rees AM.

## **3 Papers to note**

3.1 The papers were noted.

## **4 Consideration of Section 7, Public Audit (Wales) Act 2013**

4.1 The Committee considered the position with the regard to remuneration of the Auditor General for Wales and noted the Chief Executive and Clerk had consulted with the First Minister. The Committee resolved that remuneration arrangements for the Auditor General for Wales should remain as specified in his current terms and conditions.

## **5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

5.1 The motion was agreed.

## **6 Briefing on the Land Transaction Tax Bill**

6.1 The Committee received a briefing from: Georgina Haarhoff – Head of Tax Policy and Legislation, Welsh Government; Repa Antonio – Land Transaction Tax Project Manager, Welsh Government; Andrew Hewitt – Land Transaction Tax Policy Manager, Welsh Government; and Sean Bradley – Senior Lawyer, Welsh Government; on the Land Transaction Tax Bill.

## **7 Consideration of the approach to scrutiny of the draft budget**

7.1 The Committee agreed its approach to scrutiny of the Welsh Government Draft Budget for 2017–18.

7.2 The Committee agreed to hold a public consultation on proposals for the draft budget to steer the Committee's scrutiny, to be held over the Summer Recess.

## **8 Consideration of provisional Autumn Term work programme**

8.1 The Committee agreed its work programme for the Autumn Term.

8.2 The Committee agreed to publish its work programme on its webpages.

## **9 Consideration of draft letter to the Constitutional and Legislative Affairs Committee in relation to the Wales Bill**

9.1 The Committee agreed the letter to the Chair of the Constitutional and Legislative Affairs Committee.

# Concise Minutes – Finance Committee

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Meeting Venue:

**Pierhead Building, Pierhead Street, CF99**

**1NA**

Meeting date: Thursday, 15 September

2016

Meeting time: 08.35 – 15.50

## Informal Meeting

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### Attendance

Category	Names
Assembly Members:	Simon Thomas AM (Chair) Mike Hedges AM Eluned Morgan AM David Rees AM Steffan Lewis AM Nick Ramsay AM Mark Reckless AM
Committee Staff:	Bethan Davies (Clerk) Catherine Hunt (Second Clerk) Georgina Owen (Deputy Clerk) Joanest Varney-Jackson (Legal Adviser)



# **1 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)**

## **Bill: Approach to scrutiny**

1.1 The Committee agreed its approach to Stage 1 scrutiny of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill.

# Agenda Item 3.1

FIN(5)-05-16 PTN1  
Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref: MA-P/MD/6191/16

Simon Thomas AM,  
Chair Finance Committee,  
The National Assembly for Wales,  
Cardiff Bay,  
Cardiff  
CF99 1NA

18 August 2016

Dear Simon,

Thank you for your Committee's scrutiny of the First Supplementary Budget 2016-17 and the report that followed.

I attach a written response to the recommendations made.

I hope you find this useful and look forward to working with you in future.

**Mark Drakeford AM/AC**

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



## **Written Response to the Report of the Finance Committee: Scrutiny of the Welsh Government First Supplementary Budget 2016-17**

**10 August 2016**

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This Supplementary Budget was the first opportunity to amend budgetary plans for the current financial year which were published and approved by the previous Assembly in March.

The main purpose of this budget was to realign those plans into the portfolios of the new government. This is essential for future accountability of the Cabinet and effective management of the Welsh Block. The net effect on the overall budget of these changes was zero.

The budget also allowed us to reflect a small number of adjustments which arose from decisions made in the previous administration.

It was also the first budget of the new government to be scrutinised by this Committee. For this I would like to thank the Finance Committee for the work undertaken and I look forward to working in partnership with the members in future.

**Detailed Responses to the report's recommendations are set out below:**

### **Recommendation 1**

The Committee recommends the Welsh Government continue to take up opportunities to minimise costs of elections to the taxpayer.

**Response:** Accept

We are always looking to minimise costs and our guidance to Returning Officers encourages this.

Returning Officers act in an independent capacity when conducting elections. The Guidance which accompanies the National Assembly for Wales

(Returning Officers fees and Charges) Order 2016, stressed all expenditure must be for the efficient and effective conduct of the election. Returning Officers are encouraged to seek value for money and cost savings when procuring electoral goods and services. Local authority contracts and frameworks may be used to provide electoral services provided they are value for money.

Returning Officers are required to submit their accounts within six months of the date of the election. Unlike the UK Government who audit a proportion of Returning Officer accounts, all the accounts submitted to the Welsh Government will be audited. Historical election account data will be used to build a picture of spending and used to monitor variations.

The draft Wales Bill proposes to devolve powers over certain electoral functions to the Welsh Government. I am hosting a workshop in the autumn to look at how these powers might be used to modernise the electoral system and if there are opportunities to reduce costs in the longer term.

**Financial Implications:** None.

## **Recommendation 2**

The Committee recommends that in future the Welsh Government publishes greater evidence setting out the rationale behind budget allocations such as the business rate relief scheme, including details of the anticipated economic impact. This will assist Assembly Members and the people of Wales to scrutinise programmes in terms of their success and the value for money they offer.

**Response:** Accept

We take account of a range of evidence to inform the decisions we take about allocating our budgets. It is vital that we are clear about what the Welsh Government is proposing to do, and why, and that people can access the

information which has been considered. This is why we publish the statistics, research, evaluation and other evidence which has been material to our decisions.

In 2011-12, Wales was the first UK Administration to publish an impact assessment of spending plans. Since then, we have continually looked for opportunities to improve our approach and have taken steps in subsequent budgets to increase the scope of issues included and supporting analysis. The improvements we have made reflect the recommendations of both the Finance Committee's Inquiry into Best Practice Budget Procedures and the Budget Advisory Group for Equality (BAGE).

At Draft Budget stage, we publish a narrative which includes an assessment of the best available evidence which has informed our spending plans at the strategic level. Within the narrative, we draw on and integrate evidence provided in the Strategic Integrated Impact Assessment with data on future trends and relevant evaluations. The full Strategic Integrated Impact Assessment is also published alongside the Draft Budget narrative. The evidence which informs detailed spending plans within portfolios is published in the evidence papers which Cabinet Secretaries send to the Finance Committee to support informed scrutiny of plans.

We are guided by a set of high level principles to drive research and evaluation, including the assessment of value for money. In line with our principles, we are always looking for ways to improve the way we evaluate our policies and programmes so that we can draw on the best evidence available to inform our budget decisions.

**Financial Implications:** None.

### **Recommendation 3**

The Committee recommends that the Cabinet Secretary presents information to ensure that it is possible to track allocations to departments and major projects over the course of this Assembly term. This should include enabling comparisons to be made when the portfolios of Cabinet Secretaries change.

**Response:** Accept

This government is committed to openness and transparency. Our approach to this budget was to limit the number of changes. We wanted to show clearly how the new portfolio budgets were formed out of the previous plans and I think we achieved that.

Within the published documentation we included tables which showed the movement of funding from the previous plans to the new portfolios.

We will continue to present budget documentation in a simple format that facilitates an easy understanding of the numbers. We will also continue to provide a narrative description of the key changes to figures including any significant allocations from reserves.

When there is a change in portfolios we will ensure that there is a reconciliation between the old and the new.

**Financial Implications:** None.

### **Recommendation 4**

The Committee recommends that the Cabinet Secretary keeps the Committee informed of discussions with the UK Treasury on any decisions that may result in changes to the Welsh Government's budget in the coming months.

**Response:** Accept

**Response:** Accept

Since I gave evidence to the Committee on the First Supplementary Budget 2016-17, I have discussed my concerns about the implications of the EU referendum vote on public finances and the Welsh budget with both the Chancellor to the Exchequer and the Chief Secretary to the Treasury. In his response to the Monetary Policy Commission's recent Inflation Report, the Chancellor confirmed that he is prepared to take any necessary steps to support the economy and promote confidence. He went on to confirm that the UK Government will set out its fiscal plans at Autumn Statement, once the Office for Budget Responsibility has produced a new forecast.

I expect to meet the Chief Secretary again early in the new session and I will be pressing for early engagement and clarity ahead of the Autumn Statement. I will keep the Committee informed of any resulting changes to the Welsh settlement.

**Financial Implications:** None.

**Mark Drakeford AM**

**Cabinet Secretary for Finance and Local Government**

Simon Thomas AM  
Chair  
Finance Committee  
National Assembly for Wales

16 September 2016

Dear Simon

## Land Transaction Tax and Anti-Avoidance (Wales) Bill

Further to my statement on the legislative competence in respect of the Land Transaction Tax and Anti-Avoidance (Wales) Bill, published on 12 September, I am writing to draw your attention to the human rights and consent issues I took into account in reaching my view.

In accordance with section 110(3) of the Government of Wales Act 2006 (GoWA) and Standing Orders 26.4, I have stated my view that the Land Transaction Tax and Anti-Avoidance (Wales) Bill is within the legislative competence of the Assembly.

However, the Bill raises an issue relevant to competence which I consider it appropriate to bring to the attention of your Committee, so that its members can decide whether or not to probe this issue further as part of the scrutiny process.

### Human Rights

In order to be within the Assembly's legislative competence, each provision of a Bill must satisfy the criteria set out in section 108 of the Government of Wales Act 2006 (GoWA). One of the criteria set out in section 108 is that the provisions of a Bill must be compliant with rights set out in the Human Rights Act 1998 and taken from the European Convention on Human Rights ("the ECHR/the Convention"). Article 1 of Protocol 1 to the Convention is one such right. In my view, the general anti-avoidance provisions (GAAR) of the Bill (set out in section 65) merit in-depth scrutiny in the light of the requirements of Article 1 of Protocol 1.

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



### Article 1 of Protocol 1

Article 1 of Protocol 1 (A1P1) to the Convention protects the enjoyment of possessions. Taxation deprives a person of a possession: the amount of money due by way of tax. However, A1P1 expressly provides that it does not -

*“in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.*

The tax must be lawful for the exception to apply. The fact that the tax is provided for in legislation – such as the Bill - will not be enough. To be lawful, in Convention terms, the legislation must be drafted with sufficient precision to allow the citizen to assess, with reasonable certainty (taking advice if necessary), what s/he has to do to comply with it; what the consequences of non-compliance will be; and whether his or her rights have been breached. The Supreme Court has recently ruled that certain provisions of an Act of the Scottish Parliament were outside the legislative competence of that Parliament on the basis that they were not drafted with this requisite precision (*The Christian Institute and others v The Lord Advocate (Scotland)*, Trinity Term [2016] UKSC 51).

### The General Anti-Abuse Rule (GAAR)

The GAAR contained in section 65 of the Bill seeks to address tax avoidance in devolved taxes.

The GAAR will apply to artificial tax avoidance arrangements. These are arrangements where:

- the main purpose (or one of the main purposes) is to obtain a tax advantage, and
- entering into or carrying out the arrangement was not “a reasonable course of action”, having regard to the relevant tax legislation.

The Bill lays down the following guidelines for assessing whether a course of action was “reasonable”, and therefore whether a tax arrangement was “artificial”. They are:

- whether there is a genuine economic or commercial substance to the arrangement, and
- whether it is reasonable to assume that the arrangement results in an amount of tax chargeable that was less than would have been anticipated by the relevant legislation.

These guidelines provide some clarity to taxpayers as to how the GAAR will be applied. They are not, however, mandatory or exhaustive.

The Bill also provides that an arrangement will not count as artificial if it is in accordance with ‘generally prevailing practice’ accepted by the Welsh Revenue Authority (WRA). This, clearly, seeks to be fair to taxpayers.



In any proceedings relating to the GAAR, the onus of proving that an arrangement is artificial will lie on the WRA.

The Finance Act 2003 currently provides for a General Anti-Abuse Rule (the UK GAAR), which became law in 2013. It covers, among other taxes, Stamp Duty Land Tax, which Land Transaction Tax (LTT) will replace in Wales. The UK GAAR applies to tax arrangements which are considered to be 'abusive'. It does not apply to transactions involving UK Landfill Tax.

The Revenue Scotland and Tax Powers Act 2014 makes provision for a Scottish GAAR (which became law in 2015). It applies to transactions involving land and buildings in Scotland, and to transactions involving Scottish Landfill Tax. The Scottish GAAR applies to tax arrangements which are considered to be 'artificial'.

Both the UK GAAR and the Scottish GAAR are intended to provide tax authorities with the means to challenge taxpayers' attempts to arrange their affairs so as to pay less tax than the relevant legislation intended. They seek to provide a level of protection for State finances across the taxes to which the relevant GAAR applies.

The GAAR introduced by the Bill is similar to the Scottish GAAR, in that both apply to arrangements which lead to a tax advantage which is considered to be 'artificial'. In contrast, the UK GAAR uses the concept of 'abusive' arrangements.

Neither the UK GAAR nor the Scottish GAAR has been challenged in the courts.

#### A1P1 and the GAAR

The Committee may wish to probe whether the concept of a 'reasonable' course of action is sufficiently precise for a taxpayer to regulate his or her conduct. The Committee may wish to explore how easy it will be to assess what is 'genuine', and what it is 'reasonable to assume' about the level of tax anticipated to be paid.

The Convention requirement for clarity of legal drafting is also relevant to new sections 81E-81H, which the Bill inserts into the Tax Collection and Management (Wales) Act 2016, and which relate to what the WRA may do in taking counteraction against artificial tax avoidance. The WRA's power to make 'such adjustments as it considers just and reasonable to counteract a tax advantage' appears to allow the WRA considerable discretion and to lack precision. Although complete precision would, in practice, be difficult to achieve in this context.

A strong argument in favour of the GAAR's compatibility with the Convention is that the taxpayer can challenge, in an independent and impartial tribunal, any WRA ruling of artificiality, and the validity of any counteraction taken. It is also extremely important in Human Rights terms, and positive, that the burden of proof of artificiality will lie on the WRA in such proceedings.





## Queen's/Duke of Cornwall's Consent

Section 104 of GoWA provides that no Bill may be passed without the consent of Her Majesty or the Duke of Cornwall where that consent is required by virtue of Standing Order 26.67.

Consent is required where a Bill affects prerogative, private or hereditary revenue of the Queen or the Duke of Cornwall. (This is a separate matter from the question of whether a Bill affects the Crown as an institution). The need for consent from Her Majesty or the Duke of Cornwall is not a matter of legislative competence, and so a Bill could not be referred to the Supreme Court for lack of that consent; however, the Bill cannot be passed until any required consent has been signified.

Whether consent is needed for this Bill depends on whether Her Majesty's or the Duke of Cornwall's private, prerogative or hereditary revenue could be affected by a land transaction as defined in the Bill. The committee may wish to explore with the Cabinet Secretary whether the Welsh Government will be seeking such consents.

This is a short summary of the issues. If you would like further information and advice on these, or any of the other competence tests I applied to the Bill, the officials supporting your work will be pleased to assist.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee, the First Minister and the Member in Charge of the Bill.

Yours sincerely



Elin Jones AM  
Presiding Officer



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# Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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