



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Cyllid](#)

[The Finance Committee](#)

21/09/2016

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mike Hedges Bywgraffiad Biography	Llafur Labour
Steffan Lewis Bywgraffiad Biography	Plaid Cymru The Party of Wales
Eluned Morgan Bywgraffiad Biography	Llafur Labour
Nick Ramsay Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Mark Reckless Bywgraffiad Biography	UKIP Cymru UKIP Wales
David Rees Bywgraffiad Biography	Llafur Labour
Simon Thomas Bywgraffiad Biography	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Mark Drakeford Bywgraffiad Biography	Aelod Cynulliad, Llafur (Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol) Assembly Member, Labour (The Cabinet Secretary for Finance and Local Government)
Andrew Hewitt	Rheolwr Polisi, Llywodraeth Cymru Policy Manager, Welsh Government
Gareth McMahon	Cyfreithiwr y Llywodraeth, Llywodraeth Cymru Government Lawyer, Welsh Government

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Cath Hunt	Clerc Clerk
Lakshmi Narain	Cynghorydd Adviser
Georgina Owen	Dirprwy Glerc Deputy Clerk
Christian Tipples	Y Gwasanaeth Ymchwil Research Service
Joanest Varney- Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Dechreuodd y cyfarfod am 09:15.

The meeting began at 09:15.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau Introductions, Apologies, Substitutions and Declarations of Interest

[1] **Simon Thomas:** Bore da a chroeso i gyfarfod o'r Pwyllgor Cyllid, lle'r rŷm ni'n cyfarfod heddiw yn bennaf i drafod y Mesur trafodiadau tir a gwrthweithio osgoi trethi datganoledig. Fe fyddwn ni'n derbyn tystiolaeth gan y Gweinidog mewn munud. Cyn i ni wneud hynny, rwyf jest yn eich atgoffa bod cyfieithu i gael ar sianel 1 ac fe gewch chi glywed y sain wreiddiol ar sianel 0; i roi'ch ffonau symudol ar 'tawel', os gwelwch yn dda; ac yn gofyn, ar ddechrau'r broses o edrych ar y Mesur, a oes unrhyw fuddiannau gan Aelodau i'w datgan. Pawb yn hapus, felly.

Simon Thomas: Good morning and welcome to the meeting of the Finance Committee, where we're meeting today specifically to discuss the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill. We will be taking evidence from the Minister in a minute. Before we do that, just to remind you that interpretation is available on channel 1 and the floor language is on channel 0; please put your mobiles on 'silent'; and ask you, at the beginning of looking at this Bill, whether there are any interests to declare. Everyone is content, then.

Papurau i'w Nodi Papers to Note

[2] **Simon Thomas:** Yn gyntaf oll, a gaf i jest ofyn i aelodau'r pwyllgor nodi'r papurau sydd wedi'u cyflwyno? Mae gennym lythyr oddi wrth yr Ysgrifennydd Cabinet dros Gyllid a Llywodraeth Leol yn dilyn ein craffu ni ar y gyllideb atodol. Hefyd, mae gennym lythyr gan y Pwyllgor Busnes parthed—llythyr gan y Llywydd, fe ddylwn i ddweud—y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru) ynglŷn â natur hawliau dynol, a byddwn ni'n dod at hynny yn ystod y drafodaeth y bore yma. Ac mae gennym ddau set o gofnodion y ddau gyfarfod a gawsom cyn toriad yr haf. A ydy pawb yn hapus i nodi'r papurau? Rwy'n gweld bod pawb yn hapus. Diolch yn fawr.

Simon Thomas: First, then, could I just ask members of the committee to note the papers that have been submitted? We have a letter from the Cabinet Secretary for Finance and Local Government following our scrutiny on the supplementary budget. Also, we have a letter from the Business Committee regarding—a letter from the Llywydd, I should say—regarding the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill regarding human rights, which we'll come to during the discussion this morning. And we have two sets of minutes from the previous meetings that we had before the summer recess. Is everyone content to note the papers? I see that everyone is content. Thank you.

09:17

Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru): Sesiwn Dystiolaeth 1 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Evidence Session 1

[3] **Simon Thomas:** Felly, fe wnawn ni droi at graffu ar y Bil. A gaf i groesawu Mark Drakeford, yr Ysgrifennydd Cabinet dros Gyllid a Llywodraeth Leol? A gaf i ofyn yn gyntaf i Mr Drakeford gyflwyno'r swyddogion sydd gydag ef?

[4] **Simon Thomas:** So, we'll now turn to scrutiny of the Bill. Could I welcome Mark Drakeford, the Cabinet Secretary for Finance and Local Government? Could I ask him to introduce the officials who are with him?

[5] **Ysgrifennydd y Cabinet dros The Cabinet Secretary for Finance**

Gyllid a Llywodraeth Leol (Mark Drakeford): Diolch yn fawr, Gadeirydd. Gyda fi y bore yma mae Andrew Hewitt, rheolwr polisi ar gyfer y Bil, a Gareth McMahon, cyfreithiwr yn Llywodraeth Cymru.

and Local Government (Mark Drakeford): Thank you very much, Chair. With me this morning is Andrew Hewitt, policy manager for the Bill, and Gareth McMahon, Welsh Government lawyer.

[6] **Simon Thomas:** Diolch yn fawr. Awn ni'n syth ati, felly, i ofyn cwestiynau ar sail y Mesur rŷch chi wedi'i gyflwyno i'r Cynulliad. A gaf i ofyn yn gyntaf: a fedrwch chi grynhoi pwrpas y Bil hwn, ond yn fwy penodol hefyd, a fedrwch chi esbonio pam rŷch chi'n dewis cyflwyno Bil i gyflwyno rhywbeth yn lle y dreth stamp, i bob pwrpas, a pham nad ydych chi wedi, er enghraifft, dewis opsiwn arall o beidio cael y dreth yma a mynd am drethi gwahanol? Mae hwn yn dreth ar, os liciwch chi, drafodiadau—treth ar fusnes economaidd, yn hytrach na threth ar gyfoeth, er enghraifft. Mae gyda chi nawr rychwant o alluoedd ynglŷn â threthi busnes, trethi tai cyngor ac ati. Pam penderfynu cario ymlaen â'r ffordd yma o drethu?

Simon Thomas: Thank you. We'll move on, then, to ask questions on the basis of the Bill that you've introduced to the Assembly. Could I ask you first: could you summarise the purpose of this Bill, but more specifically again, could you explain why you've chosen to introduce this Bill to displace the stamp duty, and why you haven't chosen, for example, another option of not having this tax and going for different kinds of taxes? This is a tax on transactions, if you like—a tax on economic business, rather than a tax on wealth, for example. You have a range of abilities in terms of business tax, council tax and so on. Why decide to continue with this kind of taxation?

[7] **Mark Drakeford:** Diolch yn fawr, Gadeirydd. Jest i ddweud i ddechrau—

Mark Drakeford: Thank you, Chair. Just to say to start—

[8] the key purpose of the Bill is to respond to the circumstances created by the Wales Act 2014, which make it clear that, sometime in April 2018, the Westminster Government will turn off stamp duty land tax as far as Wales is concerned. Of course, you are absolutely right to say that there are a whole range of things that a Welsh Government could propose in those circumstances. You could propose not to replace the tax at all and live with the £240 million or so that you wouldn't have as a result, or you could try and design something very different to the system that is being turned off.

We've not decided to do either of those things. For me, the key—

[9] **Simon Thomas:** Did you even consider that, or did you just decide that it wasn't a consideration?

[10] **Mark Drakeford:** All those options were there to begin with and I'll try and explain just why we decided not to do things differently—well, first of all, why we decided not just to do without the money. Because there will be some arguments that would say that not having stamp duty land tax in Wales would create different sets of circumstances in property and land transactions and make Wales a more attractive place to carry out such transactions and so on. That was not my conclusion, or the conclusion of the Government. The key purpose of the Bill, for me, is to ensure that a flow of revenue for core public services in Wales is continued when stamp duty land tax no longer applies to Wales. I thought that was the first duty the Government had: to ensure that continuing flow of revenue for those purposes.

[11] Why did we not do it in some completely different way? Well, because in the very extensive consultation that preceded the Bill, if there was one message that came back absolutely loud and clear from all those who are involved in all of this, it was that, in the first instance at least, continuity, stability and a smooth transition into the first taxation area that will fall to the National Assembly was of paramount importance. And for that reason, we have tried to design a Bill that allows for that, it allows the system that we create to be easily recognisable to all of those, on both sides of the border, who advise people who want to buy and sell houses or to exchange land and so on that the system would be recognisable to them and that they would not be in the position of risking giving poor advice and leading people into doing things that would have disadvantageous consequences for them, while, at the same time, building into the Bill a set of possibilities for greater differentiation as the systems bed in and we're able to do that.

[12] **Simon Thomas:** Diolch am osod hynny allan fel cyd-destun. Rwy'n siŵr y byddech chi'n cytuno hefyd mai cyd-destun arall o ran cyflwyno'r Bil yma yw'r fframwaith cyllidol a'r cytundeb rhyngoch chi a Llywodraeth San Steffan ynglŷn â'r fframwaith yna. A fedrwch chi
Simon Thomas: Thank you for setting that out as the context. I'm sure that you would agree that another context in introducing this Bill is the fiscal framework and the agreement between you and the UK Government regarding that framework. Could you also update the committee about

ddiweddaru'r pwyllgor hefyd ynglŷn â ble ydych chi o ran y trafodaethau gyda Llywodraeth San Steffan ar osod y fframwaith yna, a sut y mae hynny'n mynd law yn llaw â'r amserlen ar gyfer y Bil hwn?

where you are in the discussions with the Westminster Government on setting that framework, and how that goes hand in hand with the timetable for this Bill?

[13] **Mark Drakeford:** Wel, wrth gwrs, rwy'n cytuno, mae'r fframwaith yn hollbwysig i'r Bil yma. Mae'n ehangach na'r Bil, ond mae'r Bil yn ffitio i mewn i'r fframwaith. Dros yr hydref, byddwn ni'n gwneud gwaith manwl gyda'r Trysorlys i greu fframwaith ac i ddod yn ôl i lawr y Cynulliad gyda'r awgrymiadau am y fframwaith i Gymru.

Mark Drakeford: Well, of course, I agree, the framework is vital to this Bill. It's broader than this Bill, but the Bill fits in to that framework. In the autumn term, we are going to be doing detailed work with the Treasury to create the framework and to come back to the floor of the Assembly with suggestions for that framework for Wales.

[14] That is a very important piece of work. It is fundamental to the new era that this Bill, which is one of three—it's from a suite of three Bills—will come in front of the National Assembly and will mean, for the first time, the National Assembly for Wales will be a revenue-raising, as well as a revenue-dispersing body. That's very important for this committee particularly, of course. But, in doing that, we have to have a set of rules that govern the new relationship between us and the Treasury. We've embarked on that already. I had a meeting with the Chief Secretary to the Treasury before the summer break. It was introductory, as he had been in that post himself for a matter of days. But, it was, I felt, a constructive introductory meeting. We agreed a timetable to work on the detail, and I will meet him again for the first of those meetings on the twenty-eighth of this month. We will then—

[15] **Simon Thomas:** Roeddwn i jest yn mynd i ofyn—. Felly mae amserlen bendant; ydy'r amserlen yn rhedeg gyda Bil Cymru, neu a yw'n fwy ystwyth, os dyna'r gair, na hynny?

Simon Thomas: I was just going to ask—. So there is a definite timetable; does the timetable run alongside that of the Wales Bill, or is it more flexible, if that's the right word, than that?

[16] **Mark Drakeford:** Na, mae'r cysylltiad rhwng y fframwaith a Bil Cymru yn un pwysig dros ben, achos,

Mark Drakeford: No, the link between the framework and the Wales Bill is very important, because, at the end,

yn y diwedd, bydd yn rhaid inni ddod i lawr y Cynulliad gyda'r *legislative consent motion* ar Fil Cymru, a rhan o'r LCM yw gallu rhoi'r fframwaith i'r Cynulliad ac i ddweud, we will have to come to the floor of the Assembly with the legislative consent motion on the Wales Bill, and part of that LCM will be to be able to give the framework to the Assembly and to say,

[17] 'We are prepared to recommend the LCM to you, because we have a fiscal framework that is fit for purpose'. I believe that that is well understood at the London end. They understand that there is not an indefinite period in which a fiscal framework can be negotiated. It has to be negotiated against the timetable of the Wales Bill and the need for the National Assembly to consider an LCM of which the fiscal framework is an important component part.

[18] So, that's why the work needs to go ahead over the autumn. That's why we have agreed essentially a monthly set of meetings to attempt to conclude that negotiation. I begin it in a spirit of optimism that we will be able to derive a set of rules that are fair to the Treasury—because they will be losing the income they otherwise would have had from Wales—but make it clear that we are to be held responsible for decisions that we make, and the consequences of those decisions, and not to be held responsible for decisions over which we have no control. That no-detriment principle is the fundamental principle of those discussions.

[19] **Simon Thomas:** There's quite an interest in the committee on that.

[20] So, Steffan ac wedyn Eluned. So, Steffan and then Eluned.

[21] **Steffan Lewis:** Diolch, Gadeirydd. Roeddwn i'n moyn gofyn: sut fydddech chi'n 'characteris-o' eich trafodaethau hyd yn hyn gyda'r Trysorlys ynglŷn â'r fframwaith *fisca*? Rwy'n gwerthfawrogi yn fawr iawn fod pethau mewn trafodaethau cychwynol ar hyn o bryd, ond a allech chi roi ryw fath o syniad, yn enwedig yng nghyd-destun y trafodaethau a ddigwyddodd rhwng Llywodraeth yr Alban a San Steffan, a **Steffan Lewis:** Thank you, Chair. I wanted to ask: how would you characterise your discussions so far with the Treasury regarding the fiscal framework? I do very much appreciate that things are very much in the initial stage at the moment, but can you give some kind of idea, especially in the context of the discussions that occurred between the Scottish Government and Westminster, which were very lively,

oedd yn rhai hwyliog iawn, fe allech ddweud? A oes yna wersi wedi cael eu dysgu gan y Trysorlys, ac efallai gan Lywodraeth Cymru hefyd, ynglŷn â beth ddigwyddodd ar yr achlysur yna?

[22] **Mark Drakeford:** Wel, y trafodaethau rhwng y Llywodraeth yn yr Alban a'r Trysorlys—mae hynny'n creu'r cyd-destun i fi am y trafodaethau rŷm ni'n mynd i'w cael gyda nhw. Dyna un o'r pwyntiau yr oeddwn i'n rhoi i'r *Chief Secretary*. nid oes rhaid inni ail-wneud popeth maen nhw wedi'i wneud yn barod rhwng y Trysorlys a'r Alban. Os oes rhai pethau, rhai egwyddorion maen nhw wedi'u cytuno, yna, i fi, mae'n bwysig i drosglwyddo'r egwyddorion yna i'r fframwaith yr ŷm ni'n mynd i'w gytuno. So, jest i roi un enghraifft—

you could say? Have lessons been learned, by the Treasury and by the Welsh Government, about what happened on that occasion?

Mark Drakeford: Well, the discussions between Scotland and the Treasury—that creates the context for me for the discussions that we are going to have with them. That's one of the points that I put to the Chief Secretary, namely that we don't have to redo or replicate everything that they've done already between the Treasury and Scotland. If there are some things, some principles that they've agreed, then, to me, it's important to transfer those principles to the framework that we're going to agree. So, just to give you one example,

[23] in the discussions with Scotland the final framework agrees that there should be an element of independent commentary on areas of unanticipated consequence that will undoubtedly arise. You know, not everything is anticipatable and some things will arise. When those things come to be worked out, it cannot simply be the Treasury determining the outcome. So, in Scotland they have their own—

[24] **Simon Thomas:** Fiscal commission.

[25] **Mark Drakeford:** Yes, which they will be able to deploy in those circumstances. The principle, therefore, is one of having a degree of independence that both sides are able to mobilise. I would expect that principle to be reflected in a fiscal framework for Wales.

[26] **Steffan Lewis:** Thank you for that answer. In terms of the Scottish and, indeed, now the Northern Irish experience, I think it's fair to say that there is a far higher level of maturity in terms of those two administrations being

fiscal entities in as much as those Governments publish regularly the fiscal states of their respective nations—through GERS, Government Expenditure and Revenue Scotland, in Scotland, and the Northern Ireland Executive has its own modelling. There appears to me, probably because they've had a longer period of time of a tradition over being revenue-raising bodies, that there are greater political occasions where Governments can be scrutinised and held to account, more generally, on the fiscal conditions of their administrations. In light of that, and in light of your negotiations with the Treasury on the fiscal framework, are you considering now, as a Government, whether you ought to be having an annual state of the nation fiscal address as the Cabinet Secretary for the treasury on the floor of the Assembly, which would provide us, then, with a general suite of economic and fiscal indicators? Because as you become more and more responsible for the fiscal well-being of the country, shouldn't that then automatically lead us to greater opportunities and greater transparency on the actual fiscal state of the country?

[27] **Mark Drakeford:** Well, Chair, I agree with the basic proposition that the fundamental shift of which this Bill is an outcrop should change the way in which Government will go about its business and the National Assembly will wish to scrutinise that work. We are in the process of discussing, between the committee and the Government, a budget process that will reflect these things too. So, without thinking that today I'm signing up to any particular ways of doing things, the basic proposition that Steffan offers—that this is a very big change and therefore it should lead to changes in the way in which business is conducted and scrutinised—I think that that is both inevitable and right.

09:30

[28] **Simon Thomas:** A gaf i jyst **Simon Thomas:** Could I just note that nodi bod datganiad gennyf i y I have a statement this afternoon in prynhawn yma yn y Cynulliad yn the Assembly reflecting the adlewyrchu ochr y pwyllgor o'r committee's side of this discussion? drafodaeth?

[29] **Mark Drakeford:** Wrth gwrs. **Mark Drakeford:** Of course.

[30] **Simon Thomas:** Eluned Morgan.

[31] **Eluned Morgan:** I just want to be absolutely clear. You are saying that,

if there is no agreement on a financial framework, you will recommend the Assembly to vote against the legislative consent motion that will come before the Assembly.

[32] **Mark Drakeford:** Well, Chair, that's not the position that I am working towards.

[33] **Eluned Morgan:** No, no.

[34] **Mark Drakeford:** But it's important for me to be clear with those with whom I carry out the negotiations that being able to persuade the National Assembly that there is a fiscal framework that is fair to Wales and will stand up to the task that will be required under it will be an integral part of persuading the National Assembly to pass a legislative consent motion. I remind those that I'm in conversation with that we are a Government without a majority, and that that means persuading a wider body of opinion than just the Government itself. Given the significance of all of this, that's what you'd want to do in any case. As I say, I do think they are appraised of that context and understand that that's the background against which these negotiations have to be conducted.

[35] **Simon Thomas:** Nick Ramsay.

[36] **Nick Ramsay:** Diolch. Cabinet Secretary, you mentioned earlier the Scottish Fiscal Commission. Are you advocating a similar sort of system—a fiscal commission for Wales? Or do you think that we could do it differently with an independent aspect to it without actually having a commission?

[37] **Mark Drakeford:** I am not wedded to the idea of a commission—the particular practical way in which that independence is secured. I am very attached to the principle that there should be an independent source of advice that we can apply from a Welsh perspective to any of these areas. How we secure it, I think, is a matter we can—. There will be options. A commission is one, but it's not the only one. We need it to be proportionate to the task. The Scottish commission is expensive. It has a very significant budget. It employs about half the number of people that the Office for Budget Responsibility employs. They are getting their independent advice, and they are certainly paying for it. So, you'd want to be sure that the scale and nature of advice you need—that how you secure it is proportionate to the task.

[38] **Eluned Morgan:** Sorry, can I come back to the negotiation on that financial framework? Just to be clear about what exactly is being negotiated. So, obviously, this is partly about what powers would come to Wales as a result of the new Wales Bill. Barnett is not being discussed in the context of this, as I understand it—or maybe it is—but can you just talk about that? And also the implications of Brexit: are those on the agenda, or are they not on the agenda in this negotiation?

[39] **Simon Thomas:** Without straying too far from the Bill.

[40] **Mark Drakeford:** No. Brexit is not a specific item in these negotiations. They are being discussed elsewhere, and they form the context, but they're not an item on the agenda. The core purpose of a fiscal framework is to make sure that, when we start raising taxes in Wales, there's a rule book that shows how deductions from the block grant will be carried out in those circumstances. There are some other things that go alongside it, such as enhanced borrowing powers. We have an agreed amount that we can borrow, based on the taxes that are being devolved to us. As those taxes potentially rise, so you might assume, as in the Scottish case, that your ability to borrow will be increased as well. So, there are some other issues around the core issue, as well as the block grant deduction mechanism, which is the real thing that they're talking about most of the time.

[41] **Eluned Morgan:** Can I just have one more little question? That is about the timetable. I think there's an assumption that people would like to see the Wales Bill concluded by the end of this year. In that timetable, the Treasury will be focused on the budget. They're also obviously very distracted by the Brexit situation. You suggested that you've got one meeting per month. That suggests that we've got two meetings to conclude all of this negotiation. Is that realistic?

[42] **Mark Drakeford:** We're not confined to two meetings, Chair. The timetable that I have with the Chief Secretary goes on through the rest of this calendar year. So, that's the basis on which we are proceeding. Of course, while I meet him monthly, an enormous amount of work goes on in between. Officials are meeting much more regularly than that. While the monthly cycle is what we are currently committed to, if other timetables change or move more quickly than anticipated, then we'd need to be flexible about how we meet on this issue too.

[43] **Simon Thomas:** Diolch, **Simon Thomas:** Thank you, Cabinet

Ysgrifennydd Cabinet. Rwy'n gwybod ein bod ni wedi trafod tipyn ar y cyd-destun, ond mae yn bwysig. Oni bai bod y cyd-destun yn iawn, nid yw'r Bil yma'n mynd i fod yn gymwys i gael ei gymeradwyo gan y Cynulliad.

Secretary. I know that we have discussed quite a bit of the context, but it is important. Unless the context is right, then this Bill won't be appropriate to be accepted by the Assembly.

[44] Awn ymlaen yn awr i drafod mwy ar berfeddion y Bil, fel petai. Rwy'n troi at Mark Reckless.

We will now move on to discuss the Bill in more detail. I turn to Mark Reckless.

[45] **Mark Reckless:** Cabinet Secretary, as recently as last June, the Welsh Government was saying that it wanted HMRC to do the transactional and routine compliance work associated with the land transaction tax. Why has that changed?

[46] **Mark Drakeford:** There are a number of reasons that tipped what was always—and I think in June of last year—described as a finely balanced calculation between either asking HMRC to do this work or to ask the Welsh Revenue Authority to do it. Over the months that followed, the arguments moved towards the WRA, but there still is some balance between the two courses of action. The reasons why things moved in favour of the WRA, I think, include the following: the experience of Revenue Scotland, which suggests that taking on stamp duty land tax was at the easier end of the spectrum that they had anticipated, and the fact that a great deal of these transactions are doable in an electronic and mechanical sort of way. So, I think we've worked very closely with Scotland over the whole of these things and their experience gave us some comfort that we would be able to do the same for the Welsh Revenue Authority.

[47] There were some concerns, which I think this committee's predecessor raised as well, about the extent to which HMRC would be able to deliver a Welsh language service in this area. I'm quite happy to be understandable [correction: understanding] about the fact that that would be at the margins of what they would normally think of as core business and whether or not they were geared up to doing it in a way that we would expect and want to do and think that the Welsh Revenue Authority can do. There is the fact that the HMRC's work programme for updating their systems in relation to stamp duty land tax, and therefore able to do something different for us, is fairly distant. It's in their work programme, but it's not in the early part of it and we are able to do that if we do it through the WRA.

[48] Finally, there is the argument about the fact that, as Wales takes on more of these responsibilities, so we will need to build up the capacity of our own institutions to be able to carry these things out. If we did feel that we were able to get the WRA to do these things from the beginning, then that's an investment not just at the start, but in the longer-term way in which we will wish to do things.

[49] **Mark Reckless:** What implications does that decision have for the costs and budget of the Welsh Revenue Authority and the £1 million estimate we have to pay for switching off these two taxes? Is that necessarily the case?

[50] **Mark Drakeford:** Well, it has no immediate implications for the costings that we have set out for the Welsh Revenue Authority. We will update those costings during the passage of this Bill, but, at the moment, our anticipation is that the cost will remain within the ambit that we set out in the explanatory memorandum. The £1 million switch-off cost—we put that into the explanatory memorandum just to be clear for the committee and others that, when stamp duty land tax stopped in Scotland, HMRC charged them £1 million for shutting down the systems that they would otherwise have used. They then pay you an annual amount of money back for the work that they're now not doing. So, we are in negotiations and discussions with HMRC over what that sum of money might be for Wales. I'm not saying that it will be identical, but those are the figures that were agreed in the Scottish context, so I just wanted to be clear with you that those costs will be there. We will have to pay to have the system switched off, but we will then receive an annual repayment. The figures are still to be confirmed.

[51] **Mark Reckless:** And what support do you anticipate still requiring from HMRC permanently, going forward, but also in the transition period?

[52] **Mark Drakeford:** Well, we are very keen to continue to work with HMRC. There is a joint transition project board, which has been set up with them at official level to make sure that the detailed discussions and arrangements go on. So, that's well in place and I feel confident that that will do that sort of business there. Beyond the establishment of the WRA, I think there's two ways in which we would hope to continue to be able to work closely with HMRC. The vast bulk of the work that will be needed in this area is routine. Most of the transactions that are covered are not complex and are happening every single day, in everyday life. So, we will want to be able to just continue to have a dialogue with them about that, but at the other end,

where there are a much smaller number, but much more complex cases, then we will negotiate with HMRC to continue to have access to advice from them in those much more unusual sets of circumstances, where they have a long history of being involved, and where we will want to make sure that that advice is still available to Wales. It might be through secondments; we might be able to have an agreement to have some people come and work in the WRA to begin with, to make sure there's some continuity. It might be just through dedicated access to advice of that sort.

[53] **Mark Reckless:** What communications strategy do you have for this tax transfer? In particular, do you think it's something that the Welsh public need to know about? Another group I'm concerned about, in terms of communications, is English solicitors, conveyancing firms—particularly smaller and medium-sized ones that might very occasionally do a Welsh transaction. Are they going to be confident and able to deal with a new system, or are they going to throw up their hands and not do such work?

[54] **Mark Drakeford:** Both of those are important questions, I believe, Chair. They track back to the point that I made right in the beginning: that the single, most powerful message in consultation was the need for continuity at the point of introduction. So, this is not going to be the sort of Bill where there will be the need for an enormous new equipping of people on either side of the border to understand a completely different system for which they have no familiarity. So, it's very important to say that we have designed the Bill deliberately to be able to address that point. Thereafter, there are two different audiences where we need to make sure that people are aware of the change, and know how to get good advice and find out about the changes when they've happened.

09:45

[55] So, we have a joint communications campaign, which we will run with HMRC, aimed at the professional audiences—exactly the sorts of groups of practitioners that Mr Reckless has identified: people working on both sides of the border and so on. That's why it's important to do it jointly with HMRC, and we will use all sorts of networks—professional networks, professional publications, formal communications from ourselves and HMRC, through stakeholder groups and so on—to try and reach those people. But it is important that the public in Wales understand what's happening here, both in the specifics of the Bill but also the big picture change that the Bill represents. So, we are working on a communication campaign—a public

awareness campaign—that we plan to institute from April of next year. As I say, that’s got a dual purpose, really. One is for people to understand the latest move in the devolution journey that this represents, and also to explain to them that there will be some specific changes coming in this area in particular.

[56] **Mark Reckless:** Finally from me, Chair, on the Land Registry relationship with the Welsh Government, but particularly the Welsh Revenue Authority, how will that change, firstly with the head office in Croydon, but then with the Wales office of the Land Registry in Swansea? Would you envisage that becoming more of a genuinely devolved institution within the Land Registry, or relations remaining similar to now?

[57] **Mark Drakeford:** I may ask Andrew if wants to add anything to this. It’s a difficult question to answer. In this context, the UK Government, of course, has been consulting on the future of the Land Registry. That consultation closed in May of this year. Some Members here will have read stuff in the newspapers that suggests the conclusion that the Government is coming to, although there has been no announcement of a conclusion. So, trying to form a relationship with a moving target adds a bit of complexity to all of this. The WRA implementation team, which is now being formed and some key members are in place—one of the things that they are doing already is talking to the Land Registry about information-sharing requirements, the processes that both organisations have to have in place, and about how those can be properly dovetailed with one another. On the specific relationship between the two headquarters and things, I’m probably not close enough to the detail. I’m not sure whether Andrew can add—

[58] **Mr Hewitt:** I’m not sure I can add anything in the sense of whether it will lead to a more devolved Land Registry in Wales, but, certainly, the WRA will seek to continue the relationship that HMRC has with the Land Registry. Part of the registration process that HMRC has is the production of SDLT5 forms, which are certificates that demonstrate that the taxpayer has sent in a return for the transaction. The Land Registry cannot register land in the absence of an SDLT5. The WRA is replicating that system, so we will still have a very similar relationship with the Land Registry, in the sense that the Land Registry will not be able to register land in the absence of the certificate produced by the WRA. In terms of information exchange, certainly, we’ll be looking to continue HMRC’s information exchange with the Land Registry for the WRA, because that information is important.

[59] **Mark Reckless:** Thank you.

[60] **Simon Thomas:** Mike Hedges.

[61] **Mike Hedges:** Before I ask my question, may I just remind people that the Land Registry in Swansea deals with land transactions outside Wales as well as inside Wales? Any movement to it dealing only with Wales would lead to a large number of job losses in my constituency. So, people need to give some thought to the repercussions of actions that seem quite reasonable at the beginning, but can lead to a lot of people losing their jobs in the end.

[62] **Mark Reckless:** Chair, can I just clarify that I wasn't proposing job cuts in this context?

[63] **Mike Hedges:** No, I'm just saying that we perhaps need to realise that there is an awful lot of cross-border work. The questions I've got are on land transaction tax and stamp duty land tax—when there are changes to one, how it affects the other. We know, for example, that HMRC intends to cut the payment and filing window from 30 to 14 days. Are we likely to follow suit or will we have our own policy on it? What I'm trying to get around is, with Scottish tax devolution, for example, they had lots of powers, none of which they've ever used. Are we going to be driven, effectively, by changes that are taking place with stamp duty land tax? If they change something, are we under pressure to do exactly the same thing?

[64] **Mark Drakeford:** Chair, the Bill is constructed in a way that allows us to act in line with changes elsewhere, if that's what we think is the right thing to do for Wales, but to do something different if we want to do something different. There is no automaticity about us following changes elsewhere. What you have to try and do, in the context of the Bill, is to provide a set of flexible mechanisms that allows the Welsh Government to move swiftly if we needed to if we felt that a change going on across our border might have a consequence for us in Wales that we would wish to address.

[65] It's partly why the Bill has a series of regulation-making powers. The bulk of those are through the affirmative procedure to make sure that the Assembly itself is able to scrutinise the use of those regulation-making powers. But it is why we have the provisional affirmative procedure in there, so that, if you needed to move quickly to protect the Welsh revenue because of a decision made somewhere else, then the Welsh Government is able to

make that decision. It's able to have immediate effect and, within 28 days, the National Assembly is able either to confirm the course of action the Government has taken or to overturn it. But the Bill is, I think, very alert to the point that Mike is making, and constructs the powers that it provides in a way to be able to leave the decisions about how to respond to changes in SDLT across our borders firmly in the hands of Welsh Ministers and the National Assembly.

[66] On the specific point that Mike raised, there is a proposal by the Government at Westminster to reduce the period for filing from 30 to 14 days. It is possible that that will be introduced prior to our Bill taking effect, but not inevitable. The timetables are very close and it would not be, by any means, unusual to find that that change didn't happen in England until after April 2018.

[67] If it does take effect, at the moment, my intention would be to revert to a 30-day filing period for Wales. I'm not convinced of the immediate urgency of moving to 14 days, and I'm particularly not persuaded of the case for putting extra time pressure into the system at the point when it's changing. When people are having to come to terms with other changes, expecting them to do it in half the time that they've been used to doesn't seem to me to be a sensible step. There are regulation-making powers in the Bill that would allow Welsh Ministers to reduce that period in the future, and maybe not very long into the future, if we felt that the system had settled quickly and that was a sensible thing to do.

[68] **Mike Hedges:** Would you make any comments on bringing in higher rates for additional properties?

[69] **Mark Drakeford:** This is an important matter, because the 3 per cent premium for additional properties is now part of the landscape. If we were not to follow it, therefore, we would be between £9 million and £14 million worse off in Wales, because in the block-grant adjustment the Treasury would quite properly say that, had the system that they've instituted continued, they would've been able to collect that revenue in Wales. So, I published a paper on this earlier in the year. We've had a very healthy number of responses to it. We're looking at those responses now.

[70] My anticipation would be that we will want to maintain that system here in Wales, but that we will want to calibrate it. We will not simply—. In fact, the English system has been changing—or rather, not the English

system; the system that is now in place in England and Wales has been changing, even as it's been introduced. So, I will want to look at the results of people's views on this, calibrate a system—. My current anticipation—I don't want to make a decision in advance of making it, but my current anticipation is that we would want to have such a supplement in Wales.

[71] **Mike Hedges:** That takes me back to the first question I asked: the pressure is always on, because of the Treasury changes, to replicate the changes that are being made there that will increase revenue, but the pressure is also on the other way, of course, because people will say, 'Ah, in England, they're doing better because—'. Do you acknowledge that there is always that pressure to replicate what's being done? One is financial and the other one is political.

[72] **Mark Drakeford:** Well, personally, it has always been one of the frustrations for me of the devolution era that we seem to be more interested in imitation than innovation, or at least the pressures are often there to imitate what is happening somewhere else and forever to be comparing ourselves to what happens across our border, so that what happens across our border is the template and anything we do is somehow to be regarded as a departure from the default position. That's never been my view of devolution. My view of devolution is that we have a separate set of powers and we exercise them, we try and exercise them the best way we can, and we have a fighting chance of doing it better because we are closer to the circumstances that we are trying to address. If that leads to departures from elsewhere, it's every bit as much of a question for somebody else as it is for us. But I recognise exactly what you say, Mike, that, in practice, the dynamic has not been like that and it may just be, you know—I try and comfort myself with the conclusion that it's just part of the maturing of a very new way of doing things. There will be some real pressures if things happen across our border because there will be practical things that will be different, but our eyes should be on exercising our responsibilities—the new responsibilities we have—in the best way we can, making the full use of what we will know about Welsh needs and possibilities.

[73] **Mike Hedges:** Can I return to something that Mark was raising earlier, that we have this situation of it will be different in Wales than in England as the Bill goes through? It'll be dealt with, especially in north-east Wales, by a number of solicitors in Wrexham and Chester who tend to work cross-border, and I think Mark raised that there will be some in other parts who deal with very few Welsh transactions but may have one or two—maybe

somebody in Gloucester or somebody in Bristol who may deal with very few transactions in Wales, but still deals with some. That means there's a need for technical guidance and support, particularly with regard to any areas where there's a deviation between land transaction tax and stamp duty land tax. It'd be critical to ensure that compliance errors are minimised. How would you ensure that there is adequate technical resourcing?

[74] **Mark Drakeford:** Can I just address the general point that you made there, Mike? I think the role of Government is to make sure that we do everything we reasonably can to make sure that practitioners are properly informed about changes that this Bill will introduce. There then is a professional obligation on anybody who puts themselves in the position of providing advice to the public that they are properly equipped to provide that advice. So, the Government goes so far, but it's not the Government's whole responsibility, is it? You know, if you are a practitioner in Gloucester, and lots of stuff has been done to make sure that you are aware of the change in the law, and somebody comes in to your office who has a property in Wales, then you have a professional obligation as well to make sure that, before you give advice, you've done your homework to make sure the advice you're giving them is the correct advice. So, it's a shared responsibility. We make sure we're doing everything we can to put them in that position, but there are then obligations on them as well.

10:00

[75] **Mike Hedges:** Should the professional organisations have a responsibility to ensure that their members actually know of the changes?

[76] **Mark Drakeford:** We've been very lucky, I think, in the run-up to the preparation of the Bill. We've had lots of engagement with professional organisations. They've been very keen to be involved in preparing the Bill. I haven't seen the list of witnesses, Chair—

[77] **Simon Thomas:** We will be involved—

[78] **Mark Drakeford:** —but I would imagine that you will be hearing directly from some of them and I would want to comment very positively this morning on the contribution that they've made already and want to go on making because it is in their interests for the reputational side of their professions to make sure that people do the job in the best possible way. So, yes, I completely agree—there is a role for them to play and I feel that

they've demonstrated their willingness to play that fully.

[79] In terms of technical security of the rules that we will set out in the Bill, then we work with HMRC and we work with those professional organisations. Andrew, largely, has been leading on lots of those discussions and can probably tell you more about how we make sure we've got the technical aspects of this correct.

[80] **Mr Hewitt:** In terms of the differences between the stamp duty land tax legislation and the land transaction tax legislation and the guidance differences, I would anticipate that it would be beneficial for the WRA to list the areas where there are differences and to maintain that list of differences in a single set of instructions or in guidance so that conveyancers can easily identify where the WRA has itself identified the differences between the LTT legislation and the SDLT legislation. So, that should help conveyancers who are not embedded within the Welsh system to check whether they need to identify or flag up areas where they may need to refer specifically to the Welsh legislation.

[81] **Mike Hedges:** The Chartered Institute of Public Finance and Accountancy have produced a book on local government finance, where they actually have a section that said, 'Wales'. It used to be an England-and-Wales book, and is still an England-and-Wales book, but then it might have four pages on one form and about a page, then, 'the Welsh differences are'. Do you foresee the same sort of information that we're finding within legal handbooks?

[82] **Mr Hewitt:** I can only speak obviously for what the Welsh Government could produce, but I would imagine that, certainly within the LTT guidance, there would be something similar to that. If the bodies, like Tolley's et cetera, which produce taxation manuals, wish to follow that course, then obviously that is entirely up to them.

[83] **Mike Hedges:** Just further to that, these changes have very little impact on individual taxpayers because most of it—nearly every one, if not every one—is done via a solicitor or a legal practitioner as opposed to being done by individuals. On this committee, before the last election, was Peter Black, who used to work in the Land Registry, who was not able to do his own transaction despite having a level of expertise in that area because of some of the complexities of doing it.

[84] **Simon Thomas:** He must have been gutted. [*Laughter.*]

[85] **Mike Hedges:** He had to pay. Yes, he was.

[86] **Mark Drakeford:** It's certainly the case, Chair, that most people rely on professional services to conduct these transactions and that's why I made the point about the professional obligation that those practitioners have to keep themselves well-informed about the nature of the law.

[87] **Simon Thomas:** A brief question, Steffan.

[88] **Steffan Lewis:** On that point, obviously, Wales isn't the only country on earth with a land border with another one and with different rules on either side of the border, and other countries appear to be carrying on quite swimmingly. Even in these islands, we have different jurisdictions, where solicitors deal in different jurisdictions on a regular or often daily basis. I wondered what international examples you looked at in terms of informing professional bodies of the changes that are to come. Obviously, your approach to this Bill has been to minimise the initial differentiation so that the exercise is basically to inform that differences could occur in the future. But I wondered what international examples you looked at in a normal situation, where two countries share a land border and have different arrangements.

[89] **Mark Drakeford:** We have looked at some other examples, because Steffan is absolutely right: this is not a unique set of circumstances. There is a Scottish-English border, so we've probably most of all kept in close contact with Scottish colleagues in Revenue Scotland to look at the way they've done things. There is the north of Ireland and the Republic of Ireland and, if Members are particularly interested in this topic, then Andrew can spend some time talking to you about the Belgian exclave.

[90] **Simon Thomas:** We may ask for a note rather than an explanation.

[91] **Mark Drakeford:** Okay. So, this is a Belgian town in Holland that has bits of Holland inside the Belgian town.

[92] **Simon Thomas:** Oh, yes. Yes.

[93] **Steffan Lewis:** And they're functioning and they keep their homes and land—

[94] **Mark Drakeford:** Apparently, people have houses to live in and are able to buy and sell those.

[95] **Simon Thomas:** Cyn i ni symud ymlaen, rwyf jest eisiau bod yn glir ynglŷn ag un peth: wrth ateb Mike Hedges roeddech chi'n trafod cyfraddau uwch ar gyfer tai—wel, nid tai, ond eiddo ychwanegol. Rwy'n deall nad ydych yn mynd i gyhoeddi'r cyfraddau tan lawer yn nes at ddyddiad cyflwyno'r dreth ei hun, ond a ydych yn bwriadu gwneud rhyw ddatganiad ynglŷn â'r egwyddor o gyfraddau uwch ai peidio cyn ein bod ni'n cyrraedd y pwynt yna?

Simon Thomas: Before we move on, I just wanted to be clear about one thing: in answering Mike Hedges you discussed higher rates for houses—well not houses but additional properties. I understand that you're not going to publish the rates until much nearer to the introduction of the tax itself, but do you intend to make any kind of statement on the principle of higher rates or not before we reach that point?

[96] **Mark Drakeford:** Diolch, Gadeirydd. Yn Lloegr, mae'r Deddf—y Finance Act—ond newydd gael Cydsyniad Brenhinol.

Mark Drakeford: Thank you, Chair. In England, the Act—the Finance Act—has only just been given Royal Assent.

[97] It was on 18 September that it finally had the Royal Assent, which meant that we were not able to plan into this version of the Bill. What we intend to do—and thank you for giving me a chance to say this—is to come forward at Stage 2 with amendments that will set out our intentions in relation to that issue and I'm very happy to offer members of the committee a technical briefing in advance of Stage 2 as to where we have come to on that issue and how we plan to take it forward within the amending stage of the Bill.

[98] **Simon Thomas:** Diolch. Roeddwn jest eisiau bod yn glir a diolch am hynny. Rwy'n deall bod yna broses, o leiaf.

Simon Thomas: Thank you. I just wanted to be clear and thank you for that. I understand that there's a process, at least.

[99] **Mark Drakeford:** Diolch yn fawr. Mae proses yma.

Mark Drakeford: Thank you. There is a process here.

[100] **Simon Thomas:** David Rees. **Simon Thomas:** David Rees.

[101] **David Rees:** Diolch, Gadeirydd. **David Rees:** Thank you, Chair.

[102] Cabinet Secretary, in previous answers to Mike Hedges's questions you highlighted, quite rightly perhaps, the importance of having a taxation that suits Wales and therefore that won't necessarily be the same as what comes from England. But, perhaps, can you highlight some of the changes and some of the reasons you omitted things or made alternative arrangements? For example, section 30 deals with reliefs. You've not included the demutualisation of insurance companies or building societies in that. You've got some changes in the multiple properties and the acquisitions relief. Can you just give us some details as to why you've left those out?

[103] **Mark Drakeford:** Fine. Thank you—thank you, Chair. When I was asked this question during the statement on the introduction of the Bill, I focused on some of the changes that the Bill has in it in terms of leasehold, leases. Maybe this morning what I'll do is I'll pick up the point about avoidance and say something about two or three ways in which the Bill departs already from the system that the SDLT arrangements have in relation to avoidance. So, SDLT relies on sections 75A to 75C of the Finance Act 2003 for anti-avoidance measures and we have decided not to replicate those in this Bill. You won't find them here. Those sections have been heavily criticised by stakeholders in the past as not providing a clarity that they think is necessary in relation to anti-avoidance measures. In Scotland, they decided not to replicate those aspects of the Finance Act. We've looked at that. We've come down on the side of, in this case, the Scottish analysis. We don't think that is necessary. We think it can be simpler and clearer for users if we rely on the overarching protection that the general anti-avoidance rule will provide to practitioners and taxpayers here in Wales. So, that's one significant way in which we are different.

[104] That leads us on, in a way, to how we construct the GAAR—the general anti-avoidance rule—in this Bill. So, in stamp duty land tax, the test for general anti-avoidance measures is that they are there to deal with arrangements that are abusive. That's the threshold that you have to have reached in order to apply the anti-avoidance rule. The Scottish legislation has a threshold of artificial tax arrangements. You can apply the GAAR if you believe that the measures that you're looking at are artificial. We have gone for the artificial threshold in this Bill. So, that's another significant change between the current system and the system that we will have.

[105] At section 31, we draw together the targeted anti-avoidance rules—a general targeted anti-avoidance rule for the purpose of this Bill, and that is very much in the area of reliefs, of making sure that the reliefs that the Bill provides are not abused by people trying to construct their affairs in a way that is designed not for the conduct of commerce or for economic reasons, but simply to avoid the tax that the National Assembly will have legitimated.

[106] In the specific examples you referred to, I decided not to include a relief for demutualisation of building societies or insurance companies, for two reasons, really. One is that these reliefs have not been used for many, many years and, secondly, it is not my policy to encourage demutualisation, so why would I want to incentivise it by offering a tax relief to make it easier to happen? You know, we are in favour of a mixed set of possibilities in the market there, and we don't want to favour non-mutual models over others.

[107] In relation to the questions you asked about multiple dwellings and—

[108] **David Rees:** Acquisition.

[109] **Mark Drakeford:** Acquisition. Andrew will explain the reasons why those have been constructed in the way they are.

[110] **Mr Hewitt:** For multiple dwellings relief, we've followed the UK model predominantly, other than the complicated three-year withdrawal period that exists in the UK. The decision was taken not to follow that, largely because of the differences in house prices between, particularly, London and Wales generally. The economic motivation to split properties to sell them as multiple dwellings and then to recombine them afterwards just doesn't exist in the property market that exists in Wales, even in Cardiff, in comparison to the centre of London. So, that was the reason that we went for a different and simpler rule. And also, as the Cabinet Secretary said, multiple dwellings relief will still be covered by the overarching targeted anti-avoidance rules, so there still will be protections—it just won't be the complicated protections that don't seem right for Wales.

[111] In relation to acquisition relief, fundamentally, it's exactly the same as the UK rules. There's a minor change at the end in relation to the ability for the WRA in this case, and HMRC currently, to pursue tax from an associated company or a controlling director. The rule there, we've adopted that, that we can still pursue other people for the tax if necessary, but the UK rules

state that you cannot claim—that the person who pays that other person's tax cannot claim—that as a deduction in the computation of income profits or losses. We in Wales will not have any taxes that include the computation of income profits or losses—that's things like income tax and corporation tax. So, that rule is not necessarily for Wales in that circumstance.

[112] **David Rees:** Okay, but obviously the Wales Bill does—will possibly—confer income-tax powers to us. So, would that be something you would look at in the future as a consequence?

[113] **Mr Hewitt:** The income-tax powers are only rate-setting powers, rather than actually managing the tax. So, it is still the UK legislation that would cover the technical aspects of that tax.

[114] **Mark Drakeford:** The general point that I think David is asking is: if things change in the future, can you revisit reliefs? There is a very specific regulation-making power in the Bill that allows either existing reliefs to be amended or dispensed with, or new reliefs to be introduced. So, as circumstances change, the Bill allows a very clear mechanism for responding to that.

[115] **David Rees:** And did you consider—because you've identified the reasons as to why we're different to England, but did you identify any reason as to why there could be a new relief, or a different relief introduced specifically for Wales?

10:15

[116] **Mark Drakeford:** Well, thank you, Chair. That's, again, an important question and one that—as with everything else that the committee says, of course—I will look very carefully at. But the business of reliefs I will look at with particular interest, because we asked this question very explicitly in the consultation: were there reliefs that could be proposed that would be particularly aligned with the policies and needs in Wales? There was no compelling case, actually, made during the consultation on that point, but I'm sure it is a topic the committee will want to consider, and I'm very keen to look carefully at what you conclude.

[117] Reliefs have to be carefully constructed and they have to have a proper policy purpose behind them. You have to be sure that there is an evidence base that allows you to be confident that they would be effective in the

pursuit of that policy purpose. They need to be cost-effective, and they need to reach their intended policy target. That was especially important, for example, in the debate about a first-time buyers relief, which was attempted through SDLT and then abandoned. It was largely abandoned because the evidence was that the relief for first-time buyers did not end up in the pockets of first-time buyers, but ended up in the pockets of sellers, because people priced their property to take into account the relief that the buyer could claim. So, you've got to be confident that, in wanting to do a very important policy purpose—. We're keen to support first-time buyers, but the relief didn't do that; it ended up in the pocket of the person selling the property, not the person buying it. So, you've got to be confident that your relief will reach its intended policy target as well. So, there are some very important tests for reliefs, but we are still very open to looking at whether there are reliefs that would be effective in the Welsh context particularly.

[118] **Simon Thomas:** Is this on reliefs, Mark?

[119] **Mark Reckless:** It's on the anti-avoidance rule. I wanted to comment on what the Minister has said.

[120] **Simon Thomas:** Is that okay?

[121] **David Rees:** Yes, I've also got a couple of questions that will follow on on the anti-avoidance rule.

[122] **Mark Reckless:** Thank you. Minister, my understanding is that adopting the artificial, as opposed to the abusive, hurdle is intended to bring a wider range of anti-avoidance measures into the net, where action can be taken against them. But, I've concerns about this in that, for previous avoidance activity that may have been determined as abusive, lawyers may seek to argue that, notwithstanding that, it isn't artificial, and I wonder what thought you have given to that.

[123] Secondly, I was quite concerned about how you explained it in your answer a few minutes ago, because you said the change to the artificial hurdle was designed, or intended, to prevent abuse. That struck me as circular and very concerning if the intention is to have a wider number of activities coming into this. If you then define the artificial as being to prevent abuse, you may undermine what I had understood was your intention.

[124] **Mark Drakeford:** Well, Chair, let me put it in a different way. What's the

principle that we are trying to achieve here? We are trying to achieve an outcome in which, regarding arrangements that are constructed for the purpose of avoiding legitimate taxation, we are able to bear down on those in Wales. And as we take on these new revenue-raising responsibilities, it is very important that we send out a message that says that we will take a robust attitude on these matters here in Wales. That's what these rules to do with general avoidance and targeted avoidance are all about: it is making sure that those people who pay their taxes in the proper way and make the contribution that is expected of them are not disadvantaged by people who, without a proper commercial or economic purpose, construct their affairs in such a way that the primary purpose is to avoid paying tax. That is not how we wanted to see our new responsibilities discharged in Wales, and the arrangements in the Bill are designed to try and make sure that we have the powers and procedures in place in Wales to tackle that—to begin with, by deterring it. The main reason is to stop these things from happening, and to make it clear to people that there is a rule book that is expected to be followed. But if things are done that ought not to be done, then you have to have ways of pursuing those things and resolving them.

[125] **Mark Reckless:** So, Cabinet Secretary, you're saying here that the purpose of this, the phrasing of the legislation, is to send out a message. Again, I'm concerned about this use of legislation. Surely what matters is how those words will later be interpreted by tribunals and courts, and if the intention is instead to use a word you consider sounds more robust in order to send a message, is there not a danger that that may undermine your professed intention when these matters are later litigated? Could you give some examples, perhaps, of avoidance arrangements that would be artificial but not abusive?

[126] **Mark Drakeford:** Gareth, I'll ask you to start on this.

[127] **Mr McMahon:** Yes, if I can just clarify the UK and the Scottish rules, the UK uses the term 'abusive' and Scotland uses the term 'artificial'. We've taken 'artificial' for our rule, and what that actually is, if you break it down, is a label used for a particular test that's set out in legislation. At the core of all three rules, I would say, is a test, and the test is: is the arrangement a reasonable course of action when you have regard to the particular provisions of the tax legislation being applied here? The question really is: is this a transaction that has a genuine economic or commercial purpose to it? That's the same for all three rules.

[128] **Mark Reckless:** So, if the test is the same, why change the language?

[129] **Mr McMahon:** The reason why we've used the 'artificial' word rather than 'abusive' is simply because we think it better reflects the test as a whole. What we've got here is a reasonable-course-of-action test in our legislation, the same as the UK and Scotland; what we don't have in our legislation compared to the UK—and this is the same for Scotland as well—is what's known as a double-reasonableness test. That is a test that basically requires HMRC to consider whether the arrangement cannot reasonably be regarded as a reasonable course of action. HMRC would probably say that that is the reason why they have chosen the 'abusive' rather than the 'artificial' word, and that's the reason why we have chosen 'artificial'.

[130] **Mark Reckless:** Thank you.

[131] **Mr McMahon:** We haven't got that second test in our legislation.

[132] **Simon Thomas:** Could I just make one thing clear on the record? It is intended that these principles apply wider than just being specific to the tax in this Bill, isn't it? These are principles that you intend to apply across tax-varying and tax-raising powers as you gain those.

[133] **Mark Drakeford:** Chair, the way that it works is that the general anti-abuse rule arrangements in this Bill are there as amendments to the Tax Collection and Management (Wales) Act 2016 because they will apply to all taxes that are collected in Wales. The TAAR—the targeted anti-avoidance rule—is in this Bill only, because it is specific to land transaction tax.

[134] **Simon Thomas:** Ocê. Diolch. **Simon Thomas:** Okay. Thanks. Back to David.
Nôl at David. to David.

[135] **David Rees:** Thank you, Chair. Just to continue on this a little bit, in the answers you gave to me and to Mike Hedges you identified the regulation process that is included in the Bill for tax bands, in particular, but also, as you say, there is a possibility for reliefs. You talked about the provisional affirmative procedure. Now, if I am right, that actually gives you 28 days to get approval. In a sense, what circumstances do you foresee where you will need to impose a change, and where those 28 days aren't critical? Or are critical because you need to do it now, and you can't wait 28 days for it. So, why do we have the provisional arrangement?

[136] **Mark Drakeford:** Chair, to give you a different example altogether, because this is an analogy for this Bill: if a Chancellor puts up duty on petrol, then it comes in immediately, and it doesn't give you 28 days for everybody to try and fill up their tank to avoid the extra duty. So, that's a parallel example. If we needed to act quickly to make sure that people weren't going to try to arrange their affairs in a way to offset taxes that would otherwise be payable to them, where we would need to take action quickly to avoid people trying to arrange their affairs to artificially take advantage of changes, we would do it in that way.

[137] The Assembly then gets 28 days to decide whether or not the Government has acted in a way that the Assembly would wish to endorse or not. If the Assembly does not endorse the course of action taken by the Government, then the Bill is constructed in such a way that there is no detriment to the taxpayer. If the Government has done something where the taxpayer has benefited and the Assembly decides not to endorse that, the taxpayer keeps the benefit that they have had for those 28 days. If the Government has acted in a way that takes money away from the taxpayer and the Assembly decides not to endorse that, then the Government pays that money back to the taxpayer. So, the taxpayer is protected from the position where the Government has done something that the legislature then decides not to pursue.

[138] **David Rees:** So, can I confirm then that this provisional affirmative procedure is more a part of your anti-avoidance process, to avoid abuse rather than allow abuse to happen?

[139] **Mr Hewitt:** It's not so much abuse, I would say, it's more to stop people being able to forestall. So, if the rates were to come in 28 days after an affirmative or an Order that requires an affirmative rules came in or the rates—. I'm sorry, let me start again. If the rates were to change 28 days after they were announced, a lot of people would try to push through transactions that might have been planned for the month later or the month after that. So, the aim is not to allow taxpayers to forestall by bringing their transactions forward.

[140] **David Rees:** Okay.

[141] **Simon Thomas:** Okay. Mike Hedges, I think, now.

[142] **Mike Hedges:** I keep on going back to this, the cross-border. Can you

update the committee on how it will be apportioned to properties overlapping the border, and what will ensure that there is no financial advantage to building across the border? There's an awful lot of border between England and Wales. Quite a lot of it is likely to be built on or possibly being built on. What's to stop there being a financial advantage, especially up in the Wrexham–Chester or Alyn and Deeside–Merseyside areas to have an advantage from building on the border, as opposed to building in either England or Wales?

[143] **Mark Drakeford:** Chair, I think the first point I have to make is that the rulebook is set here in the Wales Act 2014. So, this isn't the Bill that actually set up the rulebook in part of the way that Mike's question might imply. The 2014 Act sets out how transactions across border properties are to be taxed and this Bill operates within that framework. That's the Act that says that if a property is partly in England and partly in Wales, then you apportion taxes according to how much of the property is in either place. It's why a taxpayer would have to make two returns in those circumstances: one to the WRA and one to HMRC. So, there are limits to how far this Bill is able to address some of those questions, I think, is what I'm saying.

[144] **Mike Hedges:** I'm well aware of the Government of Wales Act, but the point is this: you've got a £200,000 property, which is 50 per cent in England and 50 per cent in Wales, will it be taxed as a £200,000 property and it'll be apportioned, or will it be taxed as two £100,000 properties? If it's taxed as two £100,000 properties, there may be tax advantages to building on the border.

[145] **Mark Drakeford:** Well, I think that example does demonstrate that, because, for that house, it would be £100,000 liable in Wales and £100,000 in England, and then both of those would be below the threshold, so you would end up paying no tax, whereas if the whole of the house was on one side of the border, you would pay on a marginal tax basis the tax above the threshold. So, the point that the Member makes is correct. I suppose it's for any individual to wonder as to whether or not the relatively small number of thousands of pounds that that might give you would be enough for you to decide that you would go to the trouble of constructing a house that lies on the border in those proportions. Now, maybe it does; maybe it introduces that distortion, but I don't know that I'm completely convinced that it would.

10:30

[146] **Simon Thomas:** Would you regard such a thing as a breach of GAAR?

[147] **Mark Drakeford:** Well—*[Laughter.]*

[148] **Simon Thomas:** Shall we leave that one hanging just for the moment?

[149] **Mark Drakeford:** That would certainly be for lawyers.

[150] **Simon Thomas:** Nick Ramsay.

[151] **Nick Ramsay:** I'm just contemplating a house on stilts on the river Wye and wondering how that would be—. Not really, Cabinet Secretary.

[152] You mentioned earlier that this is a work in progress; that during the formulation of this Bill, things are changing on the UK level. We've discussed this in the meeting as well. The UK Government is currently considering applying sanctions against those who enable tax avoidance arrangements. Has this been considered for the Welsh GAAR?

[153] **Mark Drakeford:** Well, Chair, there is an issue of timing here, I'm afraid, because the consultation on those arrangements wasn't issued until 17 August. So, the consultation hasn't even closed on it, let alone the conclusions on them, and you will have seen, I'm sure, that the proposals were controversial. I'm sure there will be a considerable response to them that the UK Government will need to think through. So—

[154] **Nick Ramsay:** So, the timing doesn't work.

[155] **Mark Drakeford:** The timing doesn't work during the passage of the Bill, but the regulation-making powers that the Bill sets up would allow a Welsh Government to return to this issue once it is resolved.

[156] **Mr McMahon:** If I can just clarify, actually, the regulation-making powers in the Tax Collection and Management Act—. The Tax Collection and Management Act 2016 sets out a number of penalties that would be applied to certain taxpayers. The way in which that Act has been framed is that it doesn't allow Ministers to create new penalties through regulations, but it allows them to change the assessment process, or the amount of those penalties. So, if there was a decision later on to impose GAAR penalties, or penalties on tax advisers, then that would need to be brought forward through primary legislation or potentially as an amendment to this Bill, if

there is still time.

[157] **Nick Ramsay:** But that relates to the tax collection Bill, rather than the land transaction tax.

[158] **Mr McMahon:** It could potentially be put in this Bill. If there was a decision to adopt those penalties in Wales, and there was obviously time to do so, then yes, it could go in this Bill.

[159] **Mark Drakeford:** But the timing doesn't look promising.

[160] **Mr McMahon:** No.

[161] **Mark Drakeford:** Given that the consultation doesn't close until 12 October and we're already well into Stage 1.

[162] **Nick Ramsay:** So, it's come at exactly the worst point, really, for its incorporation at this point. Okay.

[163] What consideration has been given to the implementation of a disclosure of tax avoidance schemes for devolved taxes—DOTAS?

[164] **Mark Drakeford:** Thank you, Nick. So, DOTAS was a specific issue rehearsed during the consultation on the Bill. I think it is fair to say that there were very mixed views—almost 50/50—those respondents who said that we ought to take a DOTAS power in Wales and those who argued that it was disproportionate to the nature of the taxes that we will inherit at this point.

[165] Scotland rehearsed the same arguments and decided not to proceed with a DOTAS regime. But, it's an issue on which if, the committee heard evidence and felt that there was a different outcome, then I would be very happy to look very closely at the arguments, because it is very closely balanced and I'm sure it's an argument worth revisiting and seeing whether the committee believes that we've come down on the right side of that argument.

[166] **Nick Ramsay:** You've used that phrase a lot this morning, Cabinet Secretary—'closely balanced'. So, are you confident that—. There are a lot of balls being juggled in the air during the course of progressing this Bill. Are you confident that you are going to get the balance right across all these areas when it comes to finalising it?

[167] **Mark Drakeford:** Well, Chair, in all the—. I've been lucky enough; I've been involved in quite a lot of legislation during the time that the Assembly's had these powers. It always seems to me that there's a list of policy issues; some of them are easily resolvable and the arguments are very clearly on one side of the argument or the other. There will always be a number of issues where the arguments are more closely balanced. I have tried to highlight some of them this morning, in the sense that, in my previous experience, it is those issues where committee work at Stage 1 I have found to be especially valuable. Where you're weighing up policy issues where arguments are more finely balanced, it is always good to be able to take another look at those and to hear about those issues from a committee that has had another opportunity to take evidence and to weigh them up. So, I have probably drawn to the surface more than their number warrants, because there aren't that many of them. But, in my experience, they are especially useful at the Stage 1 part of scrutiny.

[168] **Simon Thomas:** A gaf i ofyn rhywbeth ar y mater hwnnw, jest er mwyn rhoi cyd-destun? Ar hyn o bryd, nid oes bwriad yn y Mesur ar gyfer cynllun datgelu ymlaen llaw, sef DOTAS. A yw hynny'n golygu y bydd yn rhaid ystyried pa adnoddau y bydd gan yr awdurdod cyllido i fonitro'r hyn sy'n digwydd yn y system? A fyddwch yn gorfod ystyried ym mha ffordd y byddwch yn ariannu'r awdurdod a fydd yn casglu'r trethi hyn? Ar un ochr mae gennych y rheol gyffredinol ynglŷn ag osgoi trethi. Ar yr ochr arall, mae gennych absenoldeb y DOTAS. Felly, yn y canol, bydd rhywun yn gorfod gwneud tipyn o waith monitro i wneud yn siŵr nad oes unrhyw camddefnyddio'n digwydd.

Simon Thomas: Could I just ask something on this, to give context? Currently, there is no intention in the Bill for a DOTAS scheme. Does that mean that you have to consider which resources the Welsh Revenue Authority will have to monitor what's happening in the system? Would you have to consider in which way you fund the WRA, which will be collecting these taxes? On one side, you have the GAAR, and on the other side, you have the absence of the DOTAS. So, in the middle, someone has to do quite a bit of monitoring work to ensure that there is no abuse going on.

[169] **Mark Drakeford:** That's absolutely right. The arguments about whether or not to introduce a DOTAS regime include: is it proportionate, and do you need such a regime for the taxes that you've got? But, secondly: are there

other ways in which a Welsh Revenue Authority will have access to intelligence that it could use that means it doesn't need a DOTAS because it would be able to do it in other ways? I think there are other ways. That's what the consultation suggested. For this tax, the WRA would be able to spot LTT avoidance through the tax return itself, through liaison with the Land Registry, through knowledge of local markets, and so on. So, it's not DOTAS or nothing; it's, do you need a DOTAS when you've got these other sources of intelligence that would allow you to be able to spot things that a DOTAS would otherwise have given you?

[170] **Simon Thomas:** Like the general avoidance rule, DOTAS is also a principle. So, if you're going to have a general avoidance rule in this Bill that applies not only to this tax but, in principle, across the range of taxation that you might engage in as a Welsh Government, by ruling out DOTAS in this Bill, are you saying, 'Well, for the future, we are not going to go down the path of having this more iterative process with the taxpayer about their tax liability that could arise in a certain set of circumstances'? Are you still open-minded? You say that you want the committee's view, but I'm not sure whether your view is that firm or not at this stage.

[171] **Mark Drakeford:** My view at the moment is that it would be disproportionate for the purpose of this particular tax to need a DOTAS regime. Does that mean that it is ruled out for the future, when a different suite of taxes might be devolved? I don't think so. Is there a case for introducing it now, against the day when it might be needed? I'm sure there is a case. That's why I said that, if you look at what people said in consultation, you see arguments on both sides of this matter. At the moment, the Bill is constructed on the basis that we don't have such a regime. I will look closely at what the committee hears and concludes on this particular matter.

[172] **Simon Thomas:** Diolch. Eluned Morgan.

[173] **Eluned Morgan:** I would like to focus my questioning on the compatibility of this Bill with the European convention on human rights—for as long as we are going to be signed up to that. If I could start by looking at this right to a fair trial, which is article 6 in that convention. My understanding is that for the taxpayer, in relation to tax liability, there is no recourse to the courts, which may contravene that right to a fair trial. So, are you confident that the Bill, as it is written, does not contravene that article 6? How has that been tested? This must be the case for tax law everywhere. So,

can you just talk about, maybe, the case law—?

[174] **Mark Drakeford:** I can have a very preliminary go about that, Chair, and then I'm definitely going to ask people who know more about this than me. The advice I have is that relevant case law suggests that article 6 is not generally engaged with tax laws, but that there are some provisions in this Bill that might be capable of engaging article 6 rights. How do we make sure that those rights are protected? Well, I'm not sure whether what I'm saying is different to what Eluned said, but my understanding of the Bill is that all decisions made by the Welsh Revenue Authority about a person's liability to LTT, including decisions about any penalties that might be payable, are subject to two levels of protection. First of all, the person has a right to require the WRA itself to review that decision, and if you're not satisfied with the WRA's own review, then the taxpayer—it's at the taxpayer's initiative—there is a right to appeal to the first-tier tribunal. Once you have a right to the first-tier tribunal, that automatically triggers all the other rights that anybody going to a tribunal would have to challenge the outcome of the first-tier tribunal. So, I think that we have constructed the Bill in a way that has proper safeguards and, therefore, is article 6 and article 8 compliant.

[175] **Mr McMahon:** If I can just add to that, your specific question was about disputes as to a person's tax liability. A tax liability is going to be determined through one of a small number of ways: either through a self-assessment and that person declaring, 'I accept that this is my tax liability', or through some sort of assessment or determination by the tax authority. In both of those cases, the decision of the WRA will be appealable. As the Cabinet Secretary said, initially that person could request a review. The WRA undertakes its own internal review of whether that decision was correct, and ultimately it could be appealed to, initially, the first-tier tribunal and then into the wider court structure. As to whether tax disputes generally engage article 6, there is case law to say that tax disputes about the liability of tax, as a general rule, don't engage article 6. Where there are disputes about certain penalties because of their nature—if the penalties are punitive in nature, for example—there is an argument on some occasions that they do engage article 6. So, that's the starting point that we have taken with this Bill. As the Cabinet Secretary said, the majority—if not all—of the WRA's decisions are reviewable and appealable. So, we are satisfied that there are sufficient safeguards in the Bill to protect that.

[176] **Eluned Morgan:** Okay. So, if I can follow up on that issue of it being punitive and the line between punitive and compensatory. That, I think, is

something that we need to consider. How did you determine that level in terms of penalty and how can you be confident that you've got the right side of that discussion between compensatory and punitive?

[177] **Mark Drakeford:** Well, the Bill has to weigh up a number of potentially competing interests. There are the interests of the individual taxpayer, and the Bill is carefully constructed, I think, to make sure that that person has checks and balances to allow for any penalties imposed to be challenged where the person thinks that they are unfairly being imposed. But, there are the rights of the community at large as well at play here, because the taxes go to pay for all those public services on which we all rely and to which most people, almost all of the time, make the contribution that is expected of them. So, when an individual or a body is not doing that, there is a community interest at stake in making sure that that is properly pursued.

[178] In relation to how some of the penalties are constructed, if I've got this right, Schedule 22 of the Act deals with some of the ways in which the compensation and penalty issues are constructed and the aim is to make sure that other than fixed penalties—so, there's a fixed penalty of £300 here if someone doesn't pay their tax—that the rest of the liability should not exceed the amount you would've paid in tax had you paid the right amount of tax in the first place.

10:45

[179] **Mr Hewitt:** The level of penalties are relatively established now. The penalties that we've adopted are largely those that have been adopted from the UK legislation and also from the legislation in Scotland. So, to some extent, it's part again of the continuity between how taxpayers are treated. The level of penalties in this Bill are fundamentally the same as the levels that exist currently for taxpayers.

[180] **Eluned Morgan:** So, I think I'm right—. So, if you don't pay your taxes, then—. You can go after these people and then they will have to pay up but they won't pay up necessarily much more than they would've paid had they complied with the law in the first place.

[181] **Mr Hewitt:** It depends on what they've done. There are three sorts of penalties. There are penalties for failing to send a return in. So, fundamentally, tax systems—well, certainly self-assessment systems work on the taxpayer telling the authority what they think they owe. So, if they don't

tell them what they owe then, clearly, there needs to be a penalty regime there. Secondly, that return could contain inaccuracies. So, there are penalties there. So, if you send in a return saying you owe nothing when you owe £100,000, then obviously that is a serious offence in size. So, that would attract a penalty as well. Then, finally, there are also penalties to disincentivise people from not paying their tax. For example, if a taxpayer sends in a return and doesn't pay the tax within 30 days of the due date that they're meant to pay it, then they would incur a 5 per cent penalty. Five months after that there would be another 5 per cent penalty of the amount of tax unpaid. So, there, they've been compliant but they're just not paying the tax, having told the WRA what their liability is.

[182] **Eluned Morgan:** It's not much is it—5 per cent for being naughty?

[183] **Mr Hewitt:** That's for not paying, and there's interest running as well, of course, and then, obviously, there'll be the potential for court action to pursue the non-payment of the tax. So, fundamentally, the larger penalties are for where the non-compliance is more significant: where somebody's return contains an inaccuracy or they've actually failed completely to tell the WRA that they owe any money at all.

[184] **Eluned Morgan:** Okay. Can I ask you about this issue of entitlement of possession, so that's article 1, protocol 1, which is that this article is breached if policies are without foundation? So, I guess my issue here is that we don't have on the face of this Bill the rates or bands that will be set. So, how can we be confident that when you do set those bands, they will not breach this without foundation issue? Do you have any kind of guidance that you'll be following to make sure that you don't breach those, because that will be difficult for us to call back later?

[185] **Mark Drakeford:** Well, Chair, the reason for not setting rates and bands in the Bill itself is understood and things—. How do we pass that test? Well, it's partly why we published the research paper a week or so ago in order to demonstrate that we are approaching the whole business of setting rates and bands in a way that is reasonable, that has a case for the way in which we do it, in which there is evidence that we will draw on for how we go about doing it, and that there is history of parallel activity, both through SDLT and in Scotland that we can draw on as well. And when you put all those things together, then we are confident that we will be able to demonstrate a proper foundation for the way in which the rates and bands will be set.

[186] **Mr McMahon:** Sorry, if I could just add, it's worth keeping in mind that the regulations [correction: rates and bands] aren't on the face of the Bill. They will be set through regulations. Those regulations will have to comply with the convention in the same way as this Bill does.

[187] **Mark Drakeford:** And, they're all affirmative as well. So, the Assembly gets a proper check on them each time.

[188] **Simon Thomas:** Jest un cwestiwn yn dilyn cwestiynau Eluned: mae grym yn y Mesur fel y mae i gosbi am beidio â dychwelyd ffurflen dreth, fel petai—peidio â dychwelyd eich manylion treth. Roeddech yn sôn am £300, ond mae hefyd yno hyd at 95 y cant o'r dreth, sydd yn edrych yn uchel iawn, mae'n rhaid dweud, ac yn edrych fel ei fod yn gallu tramgwyddo ar y busnes yma os nad yw'r person wedi cael naill ai cyngor priodol—. Rwy'n mynd yn ôl at y cwestiwn: a fydd gan yr awdurdod cyllido y gallu i roi cyngor i fonitro yn iawn—? A fydd modd i'r awdurdod cyllido ystyried y ffactorau o gwmpas y methiant gan y person i dychwelyd y manylion treth? Gan fod hynny'n edrych mor uchel, a ydych chi'n gysurus eich bod yn cwrdd â'r gofynion o ran hynny?

[189] **Mark Drakeford:** Ydyn, wrth gwrs, Gadeirydd. Bydd yn rhaid inni fod yn hyderus cyn rhoi'r Bil ymlaen. Ac mae'n rhaid i'r Llywydd hefyd ystyried yr un peth. Ac mae hi wedi dod at yr un casgliad â ni.

[190] **Simon Thomas:** Gan nodi bod hyn yn gymwys?

Simon Thomas: Just one question following on from Eluned's questions: there is power in the Bill as it stands to punish for not returning tax forms. You said £300, but it also says up to 95 per cent of the tax, which seems quite high, I must say, and it looks as if it could interfere with this business if the person has not either had sufficient advice—. I go back to the question: will the WRA have the ability to give advice to monitor correctly—? Will the WRA be able to consider the factors around a failure by a person to return tax details? Given that this seems so high, are you comfortable that you meet those requirements?

Mark Drakeford: We are, of course, Chair. We'll have to be confident before putting the Bill forward. The Presiding Officer also has to consider the same thing. She has come to the same conclusion as us.

Simon Thomas: Noting that this is appropriate?

[191] **Mark Drakeford:** Wrth gwrs, ie, ac y mae. Rwy'n hollol hapus, os byddai'n helpu'r pwyllgor, i roi pethau ar bapur i ddangos y ffordd rydym wedi dod at y casgliad.

Mark Drakeford: Of course, yes, and it is. I'd be happy to put things down on paper for the committee, just to show how we've reached our conclusion.

[192] **Simon Thomas:** Byddai hynny'n briodol iawn. Diolch am hynny. Jest i gloi, os caf i, a ydych chi wedi gorfod ystyried bod y Mesur yma fel y mae ef angen cydsyniad Ei Mawrhydi a Dug Cernyw? Ac os ydych chi wedi dod i'r casgliad yna, ym mha ffordd ydych chi'n mynd i sicrhau bod y cydsyniad priodol yn cael ei gyflawni?

Simon Thomas: That would be appropriate. Thank you very much. Just to close, if I can, have you had to consider that this Bill needs the consent of Her Majesty and the Duke of Cornwall? And if you have come to the conclusion, how are you going to ensure that that consent is achieved appropriately?

[193] **Mark Drakeford:** Chair, we have indeed come to the conclusion that the Welsh Government's position on the Bill is that it does not require consent of the Queen or the Duke of Cornwall. The basis on which we've come to that conclusion is that the Crown Private Estates Act 1862, which Chancellor Gladstone put on the statue book—. If it's good enough for Gladstone, it's good enough for—no, no. [*Laughter.*] That Act makes the sovereign liable to pay tax on her private estates. The Bill does nothing to upset that long-standing position and, as a result, we have concluded that consent is not required.

[194] **Simon Thomas:** Ocê. Diolch am gadarnhau hynny. A oes unrhyw gwestiynau eraill gan aelodau'r pwyllgor? Os felly, a gaf i ddiolch ichi, Ysgrifennydd Cabinet, a'r swyddogion hefyd, am ddod i roi tystiolaeth? Rydym yn edrych ymlaen at y broses graffu Cyfnod 1 yna ar y Mesur ac, wrth gwrs, adrodd nôl i'r Cynulliad. Diolch yn fawr iawn i chi.

Simon Thomas: Okay. Thank you for confirming that. Are there any other questions from members of the committee? If not, may I thank you, Cabinet Secretary, for being here, and your officials, to give evidence? We look forward to that Stage 1 process of scrutinising the Bill and, of course, reporting back to the Assembly. Thank you very much.

[195] **Mark Drakeford:** Diolch yn fawr iawn.

Mark Drakeford: Thank you very much.

10:53

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o
Weddill y Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Remainder of the Meeting**

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[196] **Simon Thomas:** A gaf i ofyn i'r pwyllgor, o dan Reol Sefydlog 17.42, i fynd yn breifat am weddill y cyfarfod? A ydy pawb yn hapus? Rwy'n gweld bod pawb yn hapus. Rydym yn mynd i gyfarfod preifat, felly. Diolch yn fawr iawn.

Simon Thomas: If I could ask the committee, under Standing Order 17.42, that we resolve to meet in private for the remainder of the meeting? Is everyone content? I see that everyone is content. We will go into private meeting, therefore. Thank you very much.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:53.

The public part of the meeting ended at 10:53.