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Llywodraeth Cymru
Welsh Government

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Jocelyn Davies AM
Chair, Finance Committee
Ty Hywel
Cardiff
CF99 1NA

14 July 2015

Dear Jocelyn,

TAX COLLECTION AND MANAGEMENT (WALES) BILL

To support the Committee's scrutiny of the Tax Collection and Management (Wales) Bill which I introduced into the National Assembly for Wales on 13 July, please find attached a statement of policy intent. This document provides information on the policy intent for the delegated powers within the Bill, if enacted.

I trust Members will find this document helpful and I look forward to providing evidence to the Committee in due course.

A copy of this letter and the attachment referenced is also being sent to David Melding, Chair of the Constitutional and Legislative Affairs Committee,

Best wishes
Jane

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

CC: Chair of the CLA Committee



Llywodraeth Cymru
Welsh Government

TAX COLLECTION AND MANAGEMENT (WALES) BILL

Policy intent for regulations, directions and
guidance

July 2015

TAX COLLECTION AND MANAGEMENT (WALES) BILL 2014

POLICY INTENT FOR SUBORDINATE LEGISLATION, DIRECTIONS AND GUIDANCE

This document provides an indication of the current policy intention for the subordinate legislation, directions and guidance that the Welsh Ministers are empowered or required to make under the provisions of the Tax Collection and Management (Wales) Bill ('the Bill'). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with Chapter 5 of the Explanatory Memorandum and Explanatory Notes.

The Tax Collection and Management (Wales) Bill is the first of three anticipated bills to establish devolved tax arrangements in Wales. This Bill will be followed by tax specific legislation establishing new Welsh taxes - Land Transaction Tax and Landfill Disposals Tax. The provisions in this Bill will ultimately need to be considered as part of this wider legislative programme.

The purpose of this Bill is to put in place the legal framework necessary for the future collection and management of devolved taxes in Wales. In particular, the Bill provides for:

- the establishment of the Welsh Revenue Authority (WRA) whose main function will be the collection and management of devolved taxes;
- the conferral of appropriate powers and duties on WRA (and corresponding duties and rights on taxpayers and others) in relation to the submission of tax returns and the carrying out of enquiries and assessments so as to enable WRA to identify and collect the appropriate amount of devolved tax due from taxpayers;
- comprehensive civil investigation and enforcement powers, including powers allowing WRA to require information and documents and to access and inspect premises and other property;
- duties on taxpayers to pay penalties and interest in certain circumstances;
- rights for taxpayers to request internal reviews of certain WRA decisions and to appeal to the First Tier Tribunal against such decisions; and
- the conferral of criminal enforcement powers on WRA.

Apart from some technical provisions, the Bill will be commenced by Order.

Section	Description	Policy intention
PART 2: The Welsh Revenue Authority (WRA)		
Part 2 s3(3)	The Welsh Ministers may by regulations substitute any of the numbers in section 3(1) - that provides the Welsh Revenue Authority is to consist of a chairperson, no fewer than 3 and no more than 8 on-executive members, the chief executives and 1 or 2 members of WRA staff.	It is intended that this power would generally only be used if the number of people on the board is considered to be limiting or detrimental to the successful running of the WRA. It is the policy intention that the board of the WRA will always have a majority of non-executive members.
Part 2 s4 (k)	Section 4 sets out the offices that disqualify a person from becoming a non-executive member of the Welsh Revenue Authority (WRA). Section 4(k) provides that the Welsh Ministers may prescribe, through regulations, additional holders of an office, or members of staff of a body that may be disqualified.	<p>The offices that disqualify a person from becoming a non-executive member are listed on the face of the Bill.</p> <p>It is intended that this power would generally only be used to change the list if there is a significant change of circumstance, such as the creation of a new public office.</p>
Part 2 s13(1)	The Welsh Ministers may by regulations, under section 13(1), prescribe persons to whom WRA may delegate any of its functions.	We anticipate that this power will be exercised to allow WRA to delegate tax collection and management functions from the point of its establishment. The bodies that could be prescribed in regulations to which WRA might then subsequently delegate its functions were set out in a written statement on the 30 June 2015.
Part 2, s.14(1)	The Welsh Ministers may give to WRA directions of a general nature.	<p>It is intended that this power could be used, for example, by the Welsh Ministers to set out an annual remit for WRA to specify policy priorities. Any such remit would be published.</p> <p>In exceptional circumstances, the Welsh Ministers might direct the WRA where they consider an intervention is necessary to ensure the efficient and effective collection and management of devolved taxes.</p>

Part 2 s17 (2)	<p>Section 16 prohibits the disclosure of taxpayer information by a relevant official (as defined at section 16(2)) unless it is expressly permitted. Breach of this requirement is a criminal offence under section 19.</p> <p>Section 17(1) sets out the circumstances in which it is permissible to disclose protected taxpayer information. Section 17(2) provides that the Welsh Ministers may, by regulations, amend subsection (1).</p>	It is intended that this power would be used to enable information sharing between bodies for the purpose of supporting wider public service delivery.
Part 2 s26(7)(a)	Section 26 provides that the Welsh Revenue Authority must prepare a corporate plan. The corporate plan must be made by reference to a planning period and section 26(7)(a) gives the Welsh Ministers a regulation making power to prescribe the first planning period.	<p>The power allows the Welsh Ministers to set the planning period that WRA's corporate plan will cover. The corporate plan will set out WRA's main objectives, the outcomes that would demonstrate achievement of these objectives and the activities that WRA expects to undertake.</p> <p>WRA will be responsible for the collection and management of devolved taxes from 1 April 2018. WRA will need time to prepare, consider and consult on its first corporate plan. Section 26(9) requires the plan to be submitted for the approval of the Welsh Ministers not later than 6 months after the establishment of the WRA. The regulations provide that the Welsh Ministers may set a first planning period and this will be exercised in readiness for the establishment for WRA's establishment.</p>
Part 2 s26(8)	Section 26(7)(b) provides that when the Welsh Ministers have specified the first planning period (for the corporate plan), each subsequent planning period will be for three years after the first planning period. Section 26(8) provides that the Welsh Ministers may by regulations substitute for this three year period such other period as they consider appropriate.	It is intended that this power would generally only be used if there was a strong rationale for amending the planning period, related to the efficient and effective running of the WRA.

PART 3: TAX RETURNS, ENQUIRIES AND ASSESSMENTS

Part 3 s36 (6)	Regulation making power to specify particular records or supporting documents for tax returns that do or do not fall within the duty to be kept and preserved.	This power is intended to be used from time-to-time to bring the provisions up to date. For example, new technology may mean that records or supporting documents for tax returns take a different form.
Part 3 s37 (b)	Section 36 sets out taxpayer duties to keep and preserve records. Section 37 provides that the duty under section 36 may be satisfied by preserving the information contained in the records in any form and by any means, subject to any conditions or exceptions prescribed by regulations made by the Welsh Ministers under section 37(b)	This power is intended to be used from time-to-time to bring the provisions up to date. For example, new technology may mean that records or supporting documents for tax returns take a different form, and therefore different provisions are required for their preservation.
Part 3 s39 (3)(b)	Regulation making power to allow the Welsh Ministers to amend the relevant date for filing a tax return.	It is intended that this power would generally only be used if there was a strong rationale for amending the date for filing a tax return, related to the efficient and effective running of the WRA.
Part 3 s50 (7)	<p>Section 50 makes provision for the WRA to make a determination of tax chargeable if no tax return made.</p> <p>Subsection (6) provides that no WRA determination may be made more than 4 years after the relevant date. Subsection (7) provides that the relevant date is either the relevant filing date, or such other date as the Welsh Ministers may by regulations prescribe.</p>	It is intended that this power would be used if, in the operation of the collection of devolved taxes, it was found to be necessary to amend the relevant filing date to ensure that tax owed was paid.
Part 3 s64 (1)	<p>Section 62 provides a defence to a claim to the WRA for repayment of overpaid tax.</p> <p>The defence is that “repayment or, as the case</p>	The provisions are designed to prevent repayments of overpaid tax where the cost of the overpaid tax has not actually been borne by the taxable person. This is on the basis that any repayment would be a windfall to (and so would unjustly enrich) the taxable person. In other words, there is no repayment where the cost of the tax has

	<p>may be, discharge of the amount would unjustly enrich the claimant.”</p> <p>The Welsh Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 62, except where the person complies with the arrangements required by those regulations.</p> <p>Regulations under this section, among other things, may impose obligations on persons specified in the regulations to make repayments to WRA.</p> <p>Regulations under this section may also make provision for penalties.</p>	<p>been passed on (normally, to the customer). However, loss or damage suffered by the taxable person because of the passing on may mean that repayment of overpaid tax will not result in a windfall. In these circumstances, repayment to the extent it compensates the taxable person for his loss or damage is allowed.</p> <p>Currently, the equivalent regulation-making power under UK legislation is used to provide for the reimbursement ‘scheme’. The scheme is not compulsory as it gives those registered landfill site operators who accept they would be unjustly enriched by receiving a tax refund a choice. They can either:</p> <ul style="list-style-type: none"> • do nothing; or • claim the refund. If they do they must abide by the terms of the scheme and reimburse consumers in a set manner.
Part 3 s67(3)	<p>Section 67 places a duty to keep and preserve any records enabling a person to make a claim to recover overpaid tax.</p> <p>The regulation making power in s.67 (3) provides Welsh Ministers with the power to specify particular records or supporting documents that must be kept and preserved to enable a person to make a correct and complete claim.</p>	<p>This power is intended to be used from time-to-time to bring the provisions up to date. For example, new technology might lead to records or supporting documents for tax returns taking a different form.</p>
Part 3 s68 (b)	<p>Section 68 provides that the duty under section 67 to preserve records may be satisfied by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by regulations made by the Welsh Ministers under</p>	<p>This power is intended to be used from time-to-time to bring the provisions up to date. For example, new technology might lead to records or supporting documents for tax returns taking a different form, and therefore different provisions are required for their preservation.</p>

	section 68 (b).	
PART 4: INVESTIGATORY POWERS OF THE WRA		
Part 4 s83 (2)	<p>Section 83 sets out what is meant in Part 4 by references to the ‘carrying on a business.’</p> <p>Section 83(2) enables the Welsh Ministers to specify by regulation what activities are or are not to be treated as the carrying on of a business.</p>	This power would be used if a broader definition of ‘carrying on a business’ was required for the fair and efficient collection of taxes, for example to encompass a broader definition of landfill business.
Part 4 s94 (2)	<p>Section 93 sets out the conditions for complying with compliance notice. Section 94 (1) sets out that unless original documents are required in the notice, a copy may be used to comply.</p> <p>Regulations made by the Welsh Ministers under section 94 (2) enable the Welsh Ministers to make conditions and exceptions relating to subsection (1).</p>	This power is intended to be used from time-to-time to bring the provisions relating to copies of original documents up to date.
Part 4 s99 (3)	Regulations to make provision for the resolution by the Tribunal of any dispute as to whether any information or a document (requested in an information notice) is legally privileged.	Administrative matters relating to resolutions by the Tribunal in relation to information notices (and whether the documentation that supports the notices is legally privileged) may need to be updated from time to time.
PART 5: PAYMENT OF PENALTIES		
Part 5, s154	Power to make regulations about the amounts of penalties and the procedure for assessing them under Part 5.	It is intended that the power would only be used to make adjustments to the amounts of penalties or the mechanism for their application, for example, to encourage compliance in Wales or to ensure comparability with the rest of the UK.
PART 6: INTEREST		
Part 6, s161 (1)	Regulations to enable the Welsh Minister to set the rate of interest that applies to late payment interest.	It is intended that the power would only be used to make adjustments to the amounts of interest, for example, to ensure comparability with the rest of the UK.
Part 6, s161	Regulations to enable the Welsh Minister to set	It is intended that the power would only be used to make adjustments to the

(2)	the rate of interest that applies to repayment interest.	amounts of interest, for example, to ensure comparability with the rest of the UK.
PART 7: PAYMENT AND ENFORCEMENT		
Part 7, s165	<p>The Welsh Ministers may by regulations provide that where a person pays a relevant sum in respect of tax, interest or penalties to WRA using a method of payment prescribed by the regulations, the person must also pay a fee prescribed by, or determined in accordance with, the regulations.</p> <p>Regulations under this section may make provision about the time and manner in which the fee must be paid.</p>	<p>The WRA expects that it, or the person authorised by it, will be required to pay a fee in connection with the use of certain payment methods used by taxpayers. For example, a fee in connection with amounts paid where internet authorisation is given for payment by credit card.</p> <p>This power is intended to be used from time-to-time to bring the provisions relating to a fee for payment (for example a fee to accompany payment by cheque or credit card) up to date.</p>
Part 7, s167 (6)	<p>Section 167(1) sets out that where a relevant sum of any one of the descriptions specified in section 162, (e.g. interest on a devolved tax) is payable by a person, and it does not exceed £2,000; it is recoverable summarily as a civil debt.</p> <p>Under subsection (6) the Welsh Ministers may by regulations increase the sum specified in subsection (1).</p>	<p>The power relates to the amount that can be summarily recovered as a civil debt, which may need to be amended from time-to-time, for example, as a result of inflation.</p>
PART 8: REVIEWS AND APPEALS		
Part 8, s 170(7)	<p>Sections 170(2) and (3) set out the decisions by the WRA that are appealable decisions and those that are not respectively.</p> <p>The Welsh Ministers may by regulations add or remove a decision from subsections (2) or (3) or vary the description of a decision in those</p>	<p>This provision provides the Welsh Ministers with power to modify or amend the appeals provisions to reflect, for example, the circumstances of the specific devolved taxes as they are developed. Any amendment to the provisions would be subject to public engagement and consultation with taxpayers.</p>

	<p>subsections.</p> <p>Section 170(5) limits the grounds upon which a review or appeal of specified appealable decisions can be made.</p> <p>The Welsh Ministers may by regulations amend Part 8 to make provision about the grounds on which a review or appeal can be made.</p>	
PART 9: INVESTIGATION OF CRIMINAL OFFENCES		
Part 9, s183 (1)	<p>The Welsh Ministers may by regulations direct that any provision of the Police and Criminal Evidence Act 1984 which relates to investigations of offences conducted by police officers or to the detention of persons by the police is to apply to investigations conducted by WRA. They may also make provision permitting a person exercising a function conferred on WRA by the regulations to use reasonable force in the exercise of such a function.</p>	<p>Section 183 amends the Police and Criminal Evidence Act 1984 (“PACE”) to provide the Welsh Ministers with the power to make regulations to apply certain provisions of PACE to the investigation of criminal offences conducted by the WRA.</p> <p>This would enable WRA to use specified PACE powers during the investigation of various criminal offences relating to devolved taxes, such as the offences created in this bill, as well as those established by the Fraud Act 2006, or the common law offence of cheating the public revenue.</p> <p>The powers provided by PACE include the standard tools of criminal investigations, such as search warrants, the power to arrest and detain a person in connection with an investigation; and orders requiring the production of certain information.</p> <p>Section 114 of PACE provides HM Treasury with a similar power to apply certain provisions of PACE to the criminal investigation of offences conducted by HMRC.</p> <p>Any proposed additional powers would be subject to public engagement and consultation with taxpayers before regulations would be made by the Welsh Ministers using this power.</p>
Part 9, s183 (2)	<p>The Welsh Ministers may by regulations direct that any provision of the Criminal Justice and Police Act 2001 is to apply to investigations</p>	<p>Section 183(2) provides the Welsh Ministers with a power to make regulations to apply the provisions in Part 2 of the Criminal Justice and Police Act 2001 (“the CJPJA”) to investigations undertaken by WRA, which give investigators certain</p>

	conducted by WRA. They may also make provision permitting a person exercising a function conferred on the Welsh Revenue Authority by the regulations to use reasonable force in the exercise of such function.	<p>powers to seize and retain material found during the course of a search.</p> <p>Any proposed additional powers would be subject to public engagement and consultation with taxpayers before regulations would be made by the Welsh Ministers using this power.</p>
Part 9, s184(4)	The Welsh Ministers may by Order provide that a specified reference in the Proceeds of Crime Act 2002 to an accredited financial investigator includes a reference to a person exercising a function of the Welsh Revenue Authority who falls within a specified description.	<p>Section 184 provides for various amendments to the Proceeds of Crime Act 2002 (“POCA”) to give WRA access to certain powers contained in POCA.</p> <p>Subsection (4) will insert a new Order-making power into POCA so that the Welsh Ministers are able to specify those staff of WRA able to exercise certain functions under POCA, which will enable WRA to recover the proceeds of criminal conduct relating to devolved taxes.</p>
Part 9, s185 (2)(b)	The Welsh Ministers may make an Order under the Regulation of Investigatory Powers Act 2000 to prescribe persons exercising WRA functions as persons designated for the purposes of sections 28 and 29 of that Act.	<p>Section 185 amends the Regulation of Investigatory Powers Act 2000 (“RIPA”) so as to give WRA access to certain powers to undertake directed surveillance (as defined by section 26(2) of RIPA), and covert human intelligence surveillance (as defined by section 28(2) of RIPA, subject to necessary safeguards provided by RIPA.</p> <p>Subsection (2)(b) will insert a new Order-making power into RIPA to enable the Welsh Ministers to prescribe the persons within WRA that are able to grant authorisations for directed surveillance or covert human intelligence under sections 28 and 29 of RIPA.</p>
General		
Part 10, s.186 (1)	The Welsh Ministers can make supplementary, incidental, consequential, transitional or saving provisions in order to give full effect to a provision of the Bill	<p>This power would only be used for such matters as making changes to other legislation needed in consequence of the provisions of this Bill, or to deal with unforeseen details arising out of the implementation of the new system.</p> <p>Transitional, saving and consequential elements are designed to cater for the process of moving from one regime to another, so that the process is as “seamless” as possible and that the new law works.</p>