

**HMRC evidence to the Welsh Assembly Finance Committee –  
the Tax Collection and Management (Wales) Bill**

Background

1. The Welsh Government has asked HMRC to administer their Land Transaction Tax (LTT) when this is introduced in place of Stamp Duty Land Tax (SDLT) in Wales in April 2018. HMRC has agreed to carry out this work and looks forward to working with the Welsh Government, the Welsh Revenue Authority (WRA) and the National Assembly for Wales in introducing the new tax.

HMRC's existing powers

2. HMRC was legally established by the Commissioners for Revenue and Customs Act 2005 (CRCA). This sets out the functions of the Commissioners and also legislates in a number of other areas, including HMRC's information powers.
3. Following the creation of HMRC, the Review of HMRC Powers, Deterrents and Safeguards was put in place – this ran from 2005 to 2012. This was a programme of consultation and legislative change to provide a modern framework of law and practice for tax administration. Its aim was to secure the benefits of the merger of HM Customs and Excise and the Inland Revenue by aligning powers, deterrents and safeguards across the taxes and duties administered by HMRC, where it made sense to do so. The resulting legislation spanned a number of Finance Acts, but the key provisions (including those not derived from the Review of Powers) are found in the following Acts:

- Tax returns, enquiries and assessments and Investigatory Powers (Parts 2-4 of the Taxes Management Act 1970 (TMA) and Part 6 of the Finance Act (FA) 2007. Further powers include information and inspection powers (Schedule 36 to FA 2008), data-gathering powers (Schedule 23 to FA 2011) and powers in relation to dishonest tax agents (Schedule 38 to FA 2012).

For Income Tax, the legislation contains a requirement for taxpayers to notify their chargeability to tax within six months of the end of the tax year and for certain taxpayers to submit returns. HMRC have a one year period from the date the return is received to commence an enquiry. This timeframe may be extended where the return is received after its due date, or is amended by the taxpayer.

HMRC has a duty to collect the correct amount of tax as required by statute, but can apply limited discretion, where this results in the highest net return. HMRC may also remit duties where the customer has a legitimate expectation that HMRC will act in a certain way, where it is stipulated it will do so. Collection and management powers allow HMRC to consider a concession from the strict letter of the law. Such discretionary powers are limited in use.

- Penalties (The main cross-tax penalties provisions are at section 97 of and Schedule 24 to FA 2007, Chapter 3 of Part 7 of and Schedules 40 and 41 to FA 2008 and sections 106 and 107 of and Schedules 55 and 56 to FA 2009 (as amended by subsequent FAs). Penalties are applied where customers fail to meet their obligations. There are many different penalties, but they break down into three broad areas:
  - penalties for failing to meet a time-bound obligation, such as submitting a return or making a payment by a specified deadline. Such penalties are generally automated;
  - penalties for failing to meet a regulatory obligation such as notifying taxable status or not complying with a regulatory regime, for instance by handling goods subject to unpaid excise duty; and
  - behavioural-based penalties for submitting inaccurate returns and documents.

Other penalties exist that fall outside these groups, including penalties for failure to keep certain records, or those that are specific to particular taxes and systems.

- Interest (Schedules 53 and 54 to FA 2009, Schedule 9 to F(No.3)A 2010)  
The law requires a person to pay the correct amount due under an enactment to HMRC by the due and payable date. HMRC charges interest when the person does not fulfil this obligation and pays interest when the person pays too much. Interest is recompense for the loss of use of money over time. It is not a penalty. To compensate either party for the loss of use of money, HMRC:
  - charges interest when a person pays late – this is known as late payment interest; and
  - pays interest on overpayments and repayments – this is known as repayment interest.
- Payment and enforcement (Chapter 5 of Part 7 of FA 2008)  
For any tax charge, there must be a due date to prevent postponement of payments ad infinitum. For any payment that is made, an effective date of payment must be determined in order to establish whether a payment is made on time or not. Where an effective date of payment is not the same or prior to the due date there may be interest and /or penalties due from the taxpayer. The purpose of such is to compensate HMRC for a loss of timely access to the money and to deter delayed payment. It is not for the purpose of raising additional revenue.
- Reviews and appeals.  
Where taxpayers disagree with an appealable decision made by HMRC they can ask HMRC to review the decision or make an appeal to an independent tax tribunal, or take both actions. Cases may proceed from the tax tribunal to higher courts. For direct taxes the taxpayer may apply to HMRC to postpone the tax due pending the outcome of the appeal, while for other taxes tax can be stood over only on the grounds of hardship. Each tax has its own legislation for this (for example Part 5 of TMA or Part 5 of the VAT Act 1994). HMRC also has powers to make secondary legislation in connection with review and appeals under section 124 of FA 2008. Appeals in respect of certain taxes must also be notified to HMRC.
- Investigation of criminal offences (Part 6 of FA 2007)  
HMRC is not a prosecuting authority in its own right and cases are taken through the Courts by the Crown Prosecution Service. HMRC usually reserves criminal investigations for cases where HMRC needs to send a strong deterrent message, or where the conduct involved is such that only prosecuting an offender is appropriate. However, HMRC has the discretion to undertake a criminal investigation in any geographical location, and across any tax regime, for which the Commissioners for HMRC have responsibility. Criminals, including organised criminals, seek to attack the UK's tax and duty systems to steal taxpayer's money. To counter this HMRC needs similar criminal investigation powers to those that are available to other law enforcement agencies. In particular it needs powers to:
  - apply for orders requiring information to be produced - production orders;
  - apply for search warrants;
  - make arrests; and
  - search suspects and premises following arrest.In England and Wales these powers are made available through the Police and Criminal Evidence Act 1984 (PACE). FA 2007 amended PACE for all HMRC criminal investigations.

Not all the powers in PACE are made available to HMRC. For example, HMRC does not take fingerprints, charge or bail suspects. This has to be done by the police. Some of the powers in PACE are modified for HMRC. For example, a search warrant may allow HMRC to search persons found on the premises without the need for arrest. This allows HMRC to search a bookkeeper who may have evidence in a briefcase or laptop when a company's premises are searched but who is not considered a suspect.

4. It should be noted that particular rules apply to the operation of SDLT, which differ from some of the wider provisions above. These are set out in Schedule 10 to FA 2003. Similarly, further provisions about Landfill Tax can be found in Part 3 of FA 1996.
5. Additionally, while this sets out the position at present, HMRC is currently in the process of moving towards greater use of digital technology in its interactions with taxpayers. This may well necessitate changes to our existing approach and provide opportunities to carry out enforcement activity in different ways. Our digital plans will transform the way we operate and serve our customers.
6. HMRC's compliance strategy is based on three basic principles: Promote, Prevent and Respond. It is designed to make it easier for our customers to get things right first time, rather than chasing them to meet their tax and payments obligations after they have dealt with us.
  - **Promote** is about ensuring customers have the information they need to get their tax and entitlements right first time; that they clearly understand their obligations and risks they face through non-compliance; designing out careless errors; looking for risk; and giving active help to customers to meet their obligations.
  - **Prevent** is about exploiting our digital channels and using what we know about customers to identify risks as they arise and intervening to give customers the opportunity to correct their mistakes (in registration or filing) when they transact with HMRC, and before we make payments or repayments.
  - **Respond** is about tailoring our enforcement and compliance activities and interventions to address specific customer behaviours and compliance risks. We will use technology where we can to automate tasks and to support the successful investigation of non-compliant behaviours. Our activities will be more personalised as a result of our increased ability to analyse customer information.
7. HMRC are also exploring how penalties need to change in the future so that they better reflect the principles of Promote, Prevent and Respond and work as effectively as possible in the digital environment. As part of this work we will consider how non-financial sanctions and behavioural nudges could support improvements in compliance as well as ensuring that financial penalties are well-targeted and drive behavioural change. Our current thinking is based around five principles which we consider should underpin any new penalty regime. They are:
  - The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues.
  - Penalties should be proportionate to the offence and may take into account past behaviour.
  - Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant.
  - Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner.

- Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.
8. Any changes to HMRC's penalty regimes would follow the usual policy development process and need primary and secondary legislative changes. As part of that process, we would follow the tax impact assessment process, and build a good understanding of the possible impact on our customers – businesses and individuals – the Exchequer and HMRC. Any changes made would take account of HMRC's developing IT capability and the wider transformation of the way in which we administer taxes.

#### Digitalisation

9. In line with the development of social media and business technology across the world, the UK tax system is moving towards greater digitalisation whereby individuals and businesses will have Digital Tax Accounts in which data will be uploaded (by customers and or/HMRC), in many cases more frequently than data is currently provided by statutory returns. The Digital Account will become the way by which tax liability is calculated and notified to customers. Digitalisation also enables convergence of processes and possibly statutory reporting/payment dates across a range of differing taxes.
10. To support the move to digitalisation, we are currently reviewing the tax administration framework in order that it both reflects the changes in the way that data is reported to HMRC, and the greater alignment of process/payment across differing taxes. Crucially, the reporting of data in real time and the advent of Digital Tax Accounts will enable HMRC to apply "promote" and "prevent" in a more targeted way by messaging to customers' Digital Accounts in order to influence positive behaviour. Data in real time will also enable the quicker identification of serious non-compliance and we are currently considering how most effectively to respond in real time to such non-compliance and what changes will be needed to the current administrative framework to accommodate compliance interventions in a digital environment. This work will also provide an opportunity for cost saving for both customers and the Government.

#### Administering the Land Transaction Tax

11. Section 7(13) of the Wales Act 2014 amended CRCA to make clear that functions conferred on HMRC relating to devolved taxes are not functions of HMRC, meaning that the UK legislative framework under which HMRC operates more generally will not apply to HMRC's administration of LTT. This will be governed by the provisions in the Tax Collection and Management (Wales) Bill and any future legislation amending this or made under powers within the Bill. It is worth noting that HMRC may still carry out SDLT compliance activity in Wales after April 2018 in relation to transactions that took place before that date, which would continue to be governed by its existing powers
12. HMRC's initial intention is to adapt its existing SDLT system to operate the devolved tax and also to use existing staff working on SDLT to carry out administration activities (for example, processing returns, following-up errors etc). SDLT is largely administered by HMRC from an office in Birmingham where an experienced operational team carries out this activity.
13. HMRC will also be carrying out some compliance work on LTT, which will be carried out by a specialist LTT team working closely with the operational team and the WRA. The Welsh Government has set out that WRA will undertake complex compliance, avoidance and enforcement work for LTT – HMRC will work with Welsh Government to establish how the two organisations can most readily work together on these cases.

14. HMRC will be discussing the requirements for administering LTT with the Welsh Government in more detail in the autumn and will support the Welsh Government in producing initial costings ahead of the Stage 1 debate on the Bill. These costs will continue to be developed and refined on an ongoing basis.

#### Tax Collection and Management (Wales) Bill

15. HMRC welcomes the fact that much of the content of the Bill builds on the existing UK Government legislation that applies for the same purposes. This will make the transition to the new tax more straightforward for customers and follows the approach taken in Scotland. HMRC's processes and the legislation that underpins them are well-understood by advisers and professional bodies and were the subject of a lengthy period of consultation.
16. There are some minor differences in approach, for example in areas such as enquiry powers. However, this is a natural consequence of devolution and similar minor differences also exist between UK legislation and the Revenue Scotland and Tax Powers Act 2014.
17. HMRC has not currently identified any potential barriers to implementation. HMRC has not begun detailed work in developing systems changes to implement the LTT as yet, so there is time to accommodate any differences in approach here and in the legislation to implement LTT. Additionally, many aspects in the Bill, such as differences in enquiry powers, will not require systems changes but, instead, will be addressed via guidance for staff.

**HM Revenue & Customs**  
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