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Ms Jocelyn Davies AM
Chair, Finance Committee
National Assembly for Wales
Cardiff Bay CF99 1NA

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Dear Jocelyn

**THE TAX COLLECTION AND MANAGEMENT (WALES) BILL:
CONSULTATION ON GENERAL PRINCIPLES**

Thank you for the invitation to provide evidence to the Finance Committee on the general principles of the Tax Collection and Management (Wales) Bill.

In responding to the Committee's call for evidence, I have focused my comments primarily on those parts of the Bill that are relevant to the exercise of my functions. I have also offered some observations on certain of the clauses that address the operation of the Welsh Revenue Authority, informed by our experiences in setting up the Wales Audit Office in accordance with the Public Audit (Wales) Act 2013.

My specific comments set out in the attached Annex therefore refer principally to Part 2 of the Bill.

The Committee may also be interested to know that it is currently my intention to issue short progress reports on the state of the Welsh Government's preparations to implement fiscal devolution for Wales, including the provisions of this Bill once enacted.

At present, I envisage issuing the first of those reports in the autumn of 2016, with a follow-up report in the autumn of 2017. These reports should enable any issues with preparedness to be identified, scrutinised and addressed well in advance of the planned commencement of the legislation implementing devolved taxes on 1 April 2018.

I look forward to appearing before your Committee on 15 October 2015 to provide oral evidence on these matters.

Yours sincerely



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Enc: Annex

**RESPONSE OF THE AUDITOR GENERAL FOR WALES TO THE
FINANCE COMMITTEE CONSULTATION ON THE GENERAL PRINCIPLES OF THE
TAX COLLECTION AND MANAGEMENT (WALES) BILL**

Clause 3

1. Clause 3(1)(d) of the Bill requires the Welsh Revenue Authority (WRA) itself to nominate one or two of its employees to become members of the WRA. This seems to be slightly circular and amounts to the „board“ selecting its own members. Perhaps it would be more appropriate for the employee members of the WRA to be nominated by the Chief Executive for approval by the board.

Clause 9

2. This clause grants a wide discretion on the WRA to be able to regulate its own procedure, including quorum. This could potentially allow it to operate without the control of the non-executive members appointed by the Welsh Ministers. To prevent this, clause 9 could include a provision that the quorum set by the WRA must require there to be a majority of non-executive members present.

Clause 12

3. This clause would allow for the WRA to adopt an entirely hands-off approach to its functions, allowing it to authorise its staff to exercise all of its functions to any extent, without further consideration by the WRA itself. It would, in my view, be consistent with good governance if certain important functions (such as approval of: the Corporate Plan; the Annual Report; the annual Accounts; and the annual Tax Statement) were reserved to the WRA itself and could not be delegated to its staff.

Clause 14

4. Given the fact that subsection 6 of this clause allows for some directions not to be published if the Welsh Ministers consider that doing so would prejudice the functions of the WRA, it would be helpful if clause 14 included a requirement on the Welsh Ministers to copy all directions given to the WRA to the Auditor General. This would ensure that I am informed of (and can then consider the potential audit implications of) all such directions at the time that they are made, rather than only finding out about those not published at a later date during the course of my annual audit.

Clause 25

5. There is no deadline set by which the WRA must publish the initial Charter. It would perhaps be appropriate for such a deadline to be set given the important function of the charter to set out the standards of behaviour and values to which the WRA will aspire.

Clause 26

6. Clause 26(2)(b) requires the Corporate plan to set out the “outcomes by reference to which the achievement of the main objectives may be measured”. However, many qualitative “outcomes” are inherently difficult to measure and therefore it is not always possible to determine if a certain outcome has been achieved. It may therefore be more appropriate to use terminology such as “key performance measures” instead of “outcomes”. I also note that there is no deadline by which the Welsh Ministers must approve the WRA’s Corporate Plan under clause 26 of the Bill.

Clause 27

7. Currently, the Annual Report must be prepared “as soon as is reasonably practicable after the end of the financial year”. It would, however, aid the exercise of my functions in relation to the WRA if the Annual Report was required to be prepared no later than the submission deadline for the WRA’s accounts, that is 31 August in the following financial year to which it relates. Publication of the Annual Report alongside the Annual Accounts and the Annual Tax Statement would significantly enhance accountability, transparency and scrutiny of the operations of the WRA.

Clause 30

8. I think it would be appropriate for clause 30(2)(b) to be rephrased to acknowledge that I will submit two reports to the National Assembly: one in relation to the WRA’s annual accounts and one in relation to the annual Tax Statement. Submission of a single report would not in my view be appropriate, given the differing nature of the Tax Statement and the WRA’s annual accounts. The reporting arrangements would then mirror the position in respect of the Comptroller & Auditor General’s (C&AG) annual audit of HMRC.
9. In my view it would be appropriate for clause 30(3)(a) to be rephrased to “that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and”. This would ensure that the wording of the audit provision is consistent with that of the audit provision for the Welsh Ministers set out in section 131 of the Government of Wales Act 2006.
10. I think I should also mention that the mandatory element of the Auditor General’s examination functions with respect to the Tax Statement under clause 30(4) is narrower than the equivalent requirements on the C&AG in respect of UK taxes (section 2 of the Exchequer & Audit Act 1921). However, the provisions of clause 30 (and 31) present the AGW with the discretion to apply an equally comprehensive and rigorous approach.
11. The duty on the C&AG under section 2 of the 1921 Act is to ascertain whether “adequate regulations and procedure have been framed to ensure an effective check on the assessment, collection and proper allocation of revenue”. C&AG must also be satisfied that “such regulations and procedure are being duly carried out”. The legislation therefore requires the C&AG to be satisfied that the systems

of HMRC are adequate and effective at checking that taxes are being assessed, collected and properly allocated.

12. The duty under clause 30(4) of the Bill only requires the Auditor General to be satisfied that WRA has collected taxes lawfully (and that only lawful disbursements have been made). This is narrower than the duty on the C&AG; it only requires assessment of whether the money that has in fact been collected has been lawfully collected; it does not require the AGW to look at WRA's systems generally and whether or not they are effective. The Bill would not therefore require the Auditor General to be satisfied that the WRA's systems were effective at ensuring it is collecting all the tax it is entitled to collect. The situation could arise where the WRA were omitting to collect tax by having poor procedures for identifying when tax is owed, but the Auditor General would not be obliged by the Bill to consider this in examining the Tax Statement.
13. In my view, the narrower requirements of clause 30(4) do not stop the Auditor General commenting on the effectiveness of the WRA's systems if he is so minded. He would just not be under an obligation to do so by virtue of clause 30(4). For my own part, while I cannot speak for any successor, I am inclined to pursue a broader approach in line with that which the C&AG applies to UK tax statements.
14. In connection with clause 30, I think I should also mention that, in the absence of any fee provisions in the Bill, the examination of the Tax Statement seems to fall outside the WAO's fee charging provisions. Section 23(2) of the Public Audit (Wales) Act 2013 says, "The WAO may charge a fee in relation to the audit of a person's accounts or statement of accounts". While there may be scope for argument, it appears that the Tax Statement is not a "person's accounts or statements of accounts". In the absence of a fee, the cost of the examination will need to be borne by the WAO's Estimate.
15. Again, I do not see this as real problem, provided that the Welsh Government and the Assembly do not specifically want the WAO to charge fees for the examination of the Trust Statement. To my mind, it would be more appropriate to have the cost of the Trust Statement funded through the Estimate process, as this would match C&AG's practice and the Tax Statement is not a statement of accounts of an entity for which normal accounting practice requires the disclosure of an audit fee.

Clause 32

16. Clause 32(3)(a) states particularly that the chief executive of the WRA may have responsibilities for the time being specified by the Welsh Ministers in "relation to the signing of accounts". It would in my view be appropriate to explicitly mention both the WRA's annual accounts and the annual Tax Statement in that subsection, as in my view the signing of the Tax Statement would not fall within the definition of "signing of accounts".

Clause 190

17. The definition of “financial year” in subsection 2 of this clause appears to me to be appropriate and will prevent the need for me to conduct a full audit of the WRA for the financial year ending 31 March 2018, provided that the WRA is established on or after 1 January 2018. If, however, the WRA were to be established, say, in November 2017, this would result in the need for a full audit despite the accounting period only covering five months.

7 September 2015