

Number: WG34739



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Tackling Avoidance of Non-Domestic Rates in Wales

October 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This document provides a summary of the responses received by the Welsh Government to the consultation document *Tackling Avoidance of Non-Domestic Rates in Wales*, in which the Welsh Government sought views on policy proposals and measures to tackle avoidance of non-domestic rates in Wales.

Audience

Business owners, Welsh local authorities, interest groups, individuals with an interest in the application of non-domestic rates to Welsh businesses.

Further Information

Non-Domestic Rates Policy Branch
Cathays Park
Cardiff
CF10 3NQ
Email: LGF1Consultations@gov.wales

Additional Copies

This document can be accessed from the Welsh Government website at:
<https://beta.gov.wales/tackling-avoidance-non-domestic-rates-wales>

Table of Contents

- Table of Contents..... 3**
- Introduction 4**
- Proposals..... 4**
- Engagement 4**
- Overview of Responses..... 5**
 - Summary of Responses 5
 - Obligations on ratepayers to report a change in circumstance 5
 - Ratepayers and third parties to provide information at the request of a local authority..... 6
 - Local authorities to enter and inspect non-domestic properties..... 7
 - Local authorities to publish a list of ratepayers receiving relief 8
 - Proposals for changing empty property rates and relief 10
 - Abuse of mandatory charitable relief 12
 - General Anti-Avoidance Rules 12
 - Non legislative measures to reduce avoidance 13
 - Welsh language..... 14
- Annex A – List of respondents 15**

Introduction

The Welsh Government is committed to tackling avoidance of non-domestic rates to improve the compliance and efficiency of a vital source of revenue for local services. Reducing avoidance ensures the rates burden is shared more fairly among ratepayers. While rates avoidance may involve a small minority of ratepayers, when they do not contribute their fair share it is local services, the wider community and other ratepayers that suffer. Ensuring the correct rates are paid also provides stability and certainty to ratepayers by reducing the risk of large backdated liabilities.

The consultation *Tackling Avoidance of Non-Domestic Rates in Wales* was published on 4 April 2018 on the Welsh Government's website. The consultation period lasted 12 weeks and closed on 27 June 2018.

The purpose of the consultation was to seek views from a broad range of stakeholders on a number of proposals to reduce avoidance. Responses to the consultation will help to shape consideration of future changes to legislation, policy and working practices.

Proposals

The consultation focused on how the system for addressing non-domestic rates avoidance in Wales could be improved, listing several proposals to address concerns raised by businesses, third sector and public sector bodies. The consultation invited respondents to comment on four proposals and the potential introduction of several new principles including a General Anti-Avoidance Rule and whether and to what extent certain elements of relief should be amended or removed.

Engagement

As well as being published on the Welsh Government website and social media, the consultation was emailed directly to stakeholders and partner agencies with interest in the issues raised. In total 42 substantive responses were received. Respondents were able to submit their views and comments on paper or online, in either Welsh or English. A summary of the responses to each question is provided below. A list of respondents to the consultation is provided at Annex A.

The majority of respondents answered all questions. Some also provided additional comments, which have been analysed and noted. All respondents were invited to request anonymity. Four respondents asked for this and will not be identified at any point in this document.

Thank you to all who participated in the consultation.

Overview of Responses

Summary of Responses

This document is intended to be a summary of the responses received. It does not aim to capture every point raised by respondents, but to highlight the key themes.

Obligations on ratepayers to report a change in circumstance

1. The consultation asked whether there should be a legal obligation on ratepayers to inform the local authority of a change in their circumstances that would affect their liability for non-domestic rates. This section asked for views about how such an obligation could work in terms of notification periods and appropriate penalties for failure to comply.

Question 1: Do you agree that ratepayers should be obliged to provide notification of a change in their circumstances?

2. Of the 41 responses to this question, 30 agreed ratepayers should be obliged to provide notification of a change in circumstances that would affect their rates liability. Of those 30 who agreed, two were caveated with the opinion that notification should only be required in the event of an occupancy change.
3. One respondent noted that the Land Registry already holds information of this kind and there was no need to add a further level of administration. Some respondents highlighted the need to clearly define what a change in circumstance might be, so that ratepayers could understand any new obligation.

Question 2: Do you agree that a 21 day period is sufficient time for a ratepayer to notify the local authority about the change of circumstance?

4. Of the 39 respondents who expressed a preference, 17 agreed the 21-day period was sufficient. Two of those responses suggested there should be a longer timeframe allowed in cases of bereavement and requests for ownership information.
5. Of the 22 responses disagreeing with the 21-day period, most felt the time allowed was too short. The alternative timeframes suggested ranged from a slightly longer 28-day period to six months. There was no clear consensus about how much longer the notification period should be.

Question 3: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where the ratepayer has failed to notify, knowingly withheld information or knowingly provided false information?

6. Of the 38 responses to this question, 20 agreed the penalty was reasonable. One respondent suggested that while the penalty was appropriate it should be available for appeal by independent assessor with fees proportionate to the penalty.
7. One respondent felt the penalty should be served to the current occupier rather than the ratepayer. Another respondent advised the penalty was appropriate but was unlikely to have a real effect on larger ratepayers.
8. Of those who disagreed with the penalty, most thought the amount was too low and should align with either the seriousness of the offence or the size of the rateable value.

Ratepayers and third parties to provide information at the request of a local authority

9. The consultation sought views on a new legal power for local authorities to request information from ratepayers and third parties relevant to their billing and collection function.

Question 4: Do you agree that ratepayers and third parties should be obliged to provide information at the request of a local authority, for the purposes of verifying rates liability?

10. 30 of the 38 responses expressing a preference agreed with the proposal. One respondent commented that there should be an automatic requirement for ratepayers to provide information without local authorities having to specifically request it.
11. One respondent agreed with the principle but felt it would be difficult to implement effectively. One respondent felt that while the provision of information was appropriate it should be considered best practice rather than mandated.

12. Another respondent also agreed in theory but stated the right for authorities to request information from third parties should be limited to cases where the authority reasonably suspects that avoidance is occurring.

Question 5: Do you agree that a 21 day period is sufficient time for ratepayers and third party organisations to provide information that has been requested by a local authority about a non-domestic property?

13. Responses to this question were for the most part in line with the responses for Question 2. 17 of the 38 responses felt the 21-day period was appropriate. One respondent suggested that an extension should be available if required, but only to ratepayers.
14. Those who disagreed, as for Question 2, believed the time allowed was too short and offered alternatives ranging from 28 days to six months.

Question 6: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where an organisation has knowingly withheld information or knowingly provided false information?

15. 25 of 40 respondents agreed the proposed civil penalty was appropriate, though one felt it could be higher for limited companies. One respondent agreed but added there should be right of appeal.
16. Most who disagreed with the penalty did so on the grounds the amount owed was not high enough.

Local authorities to enter and inspect non-domestic properties

17. The consultation sought views about a legal power for local authorities to inspect a non-domestic property to verify information for billing purposes, how this could work practically and what safeguards are required to protect ratepayers.

Question 7: Do you agree that the proposed safeguards (approval by a tribunal and 24 hours notice) are appropriate to the procedure for local authorities to inspect non-domestic properties?

18. Respondents were generally supportive of the proposed safeguards, with 29 in favour of the measures. There was some concern however that having only 24

hours' notice was not long enough. In particular, the Federation of Small Businesses preferred at least a week's notice.

19. One respondent agreed notice should be given but saw no reason for why approval needed to be obtained by a tribunal, or why ratepayers would need such a safeguard as inspection would only need to be carried out to evidence that a property was empty or in use.
20. One respondent suggested mandatory inspection would only be appropriate after other means of obtaining information had been unsuccessful. One respondent advised additional requirements for health and safety purposes but did not elaborate further on what those measures might be.

Question 8: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where a person wilfully delays or obstructs an inspection?

21. Of the 38 responses provided, 25 agreed the penalty was appropriate.
22. One respondent agreed with the premise of the penalty but said a standard fee of £200 appeared disproportionate given the range of rateable values available. It suggested a level 1 penalty would be appropriate where the rateable value is £50,000 or below, level 2 where the rateable value is above £50,000 and up to £250,000 and level 3 where the rateable value is higher than £250,000.
23. One respondent was of the opinion a penalty would only be appropriate in situations where an inspection could genuinely take place within 24 hours, citing instances where this may not be possible. For example industrial process or in cases of quarantine.
24. As in previous questions about civil penalties, some respondents believed larger ratepayers should receive larger penalties.

Local authorities to publish a list of ratepayers receiving relief

25. This section sought views about whether local authorities should publish a list of ratepayers in receipt of mandatory and discretionary reliefs to improve transparency and what the data protection issues would be surrounding this.

Question 9: What are the advantages and disadvantages of local authorities publishing a list of properties that attract mandatory and discretionary reliefs? Would this improve transparency and compliance?

Question 10: What types of information should or should not be published?

Question 11: What are the data protection issues and how could these be addressed?

26. Overall, respondents felt the publication of a list could be very beneficial in increasing transparency, but what data should be included in any published list proved to be a divisive issue.
27. 22 of the 35 respondents broadly agreed with the premise of a list of properties. Several cited the Barclay Review (Scotland) and expressed approval of the proposal being in line with the review's recommendations.
28. It was recognised, however, that this proposal could lead to increased administrative pressures on local authorities as well as potentially highlighting inconsistencies in application.
29. Respondents broadly agreed that details of properties including rateable value and some information about available relief could be published, but information about individuals within the property or the personal financial and tax information of those individuals should not be included.
30. Opinion on whether specific details about available and applied relief should be included was split fairly evenly. One respondent said only information obtainable through a Freedom of Information request should be included.
31. Respondents agreed any lists should be GDPR compliant. One respondent advocated that local authorities should be under the same legal obligations as HMRC with regards to the tax information of individuals.
32. Several local authorities advised asking residents to give written permission through an application to allow their data to be published.
33. The Institute of Revenues Rating and Valuation took the view that since companies or charities are already public, data protection would not be a major issue in this matter. It commented further that an opt-out provision would defeat the intention of the legislation.

Proposals for changing empty property rates and relief

34. This section of the consultation outlined that the most common method of rates avoidance is artificial arrangements to claim repeated cycles of empty property relief. The consultation proposed four options for addressing this, including changes to the level of relief, the length of relief periods and how the concept of occupation is defined in law.

Question 12: Which option(s) (1-4) to change empty property rates relief do you believe would be the most effective in reducing avoidance?

Question 13: What are the key issues which arise from changing the 're-set' period (as outlined in options 1- 3) in respect of empty property rates relief?

Question 14: Do you have any comments about reducing empty property rates relief to 50% as outlined in Option 3?

Question 15: In respect of option 4, do you agree that where properties are occupied for a short period, additional criteria about the extent of that occupation should be met in order to qualify for further periods of relief?

35. Of the four options provided, 14 of the 22 respondents who directly stated a preference chose option 3. The second most favoured was option 2 with five respondents in favour.
36. Several respondents felt that a return to pre-2008 arrangements would be the most beneficial course of action, which in some cases factored into agreement with option 3 as they felt it was the closest available option.
37. The proposed extension of the 42-day 'reset' period in options 1, 2 and 3 was seen as potentially discouraging to ratepayers and disadvantageous to those running seasonal businesses. One respondent commented that extending the re-set period would make it easier for local authorities to gather necessary information.
38. The majority of respondents thought a reduction in empty property rates charged from 100% to 50% as suggested in option 3 was fair and would reduce the incentive to engage in avoidance. Several respondents commented that it may, on the other hand, also have a detrimental effect to the overall rates yield and reduce the incentive to bring property back into use.

39. Respondents were largely opposed to the proposal of further criteria for relief as suggested in option 4. Many commented that the alteration to legislation could have negative effects and defining precisely what would be needed in that legislation would be difficult.
40. Respondents also noted the increase in administration for local authorities as a result.

Question 16: What are your views on keeping, removing or changing the legislative provisions which exempt empty properties from rates where the ratepayer is a charity or a Community Amateur Sports Club, and when next in use it is likely to be wholly or mainly used for charitable purposes?

Question 17: Are there any other options which may reduce this type of avoidance?

41. Most respondents believed that in legitimate cases the provision should not be changed, however some respondents felt the legislation does not currently act as originally intended and change may be required to ensure it addresses the issue appropriately where cases are not genuine.
42. Four respondents expressed the opinion that oversight of this issue should be left to the Charity Commission instead of direct intervention by the Welsh Government. Some respondents felt the Charity Commission had been moderately successful in reducing or addressing avoidance and misuse of relief amongst charities, though one respondent suggested they could be more strict in dealing with such cases.
43. One respondent suggested further research should be done in order to gauge the extent of avoidance in this manner. Another respondent suggested the exemption for empty properties should be changed to a maximum entitlement of 12 months.
44. One respondent commented that disputes on relief and liability should be brought to the Valuation Tribunal rather than the Magistrates Court, to reduce the cost and administrative burden on local authorities.

Abuse of mandatory charitable relief

45. This section sought views on ways to reduce the practice of bogus or disingenuous charities being established to help the ratepayer claim relief.

Question 18: Are there any additional measures that the Welsh Government and/or local authorities can take to reduce the prevalence of avoidance in relation to mandatory charitable rate relief?

46. Most respondents either had no further comment to this question or did not make any specific suggestions. Some were not aware or did not believe that this type of rates avoidance was prevalent.
47. One respondent commented that the regulations should be amended to remove the phrase 'when next occupied' as it creates a loophole that can be misused.
48. Several respondents felt that the focus should be on an effective system for monitoring and reporting illegitimate charities, to aid in identifying cases of avoidance and misuse of rates relief.
49. One respondent felt local authorities should challenge cases of occupation by a charity where it appears that relief is being claimed disingenuously.
50. One respondent suggested placing a requirement on the applicant to prove there was a need for the property of choice, and to ensure the type of property is in line with the intended use.
51. One respondent proposed compelling wealthier businesses to give 1% of their business income to local charities, though this is a proposal outside the scope of the consultation.

General Anti-Avoidance Rules

52. This section of the consultation sought views on creating a localised general anti-avoidance rule for non-domestic rating in Wales. A general anti-avoidance rule exists for the newly devolved taxes, Land Transactions Tax and Landfill Disposals Tax.

Question 19: Is it appropriate to put in place a General Anti-Avoidance Rule in Wales that would enable authorities to withhold reliefs and exemptions where they can reasonably conclude that the main purpose of a ratepayer's arrangements is to avoid non-domestic rates?

Question 20: What are the key issues that would need to be considered in putting in place a General Anti-Avoidance Rule for non-domestic rates in Wales?

53. Of the 36 responses, 19 were in favour of introducing a General Anti-Avoidance Rule (GAAR). Most felt it was a sensible approach but few offered further comment on precisely how this would be expressed and implemented. Those that did, believed a GAAR would help in targeting avoidance. One respondent commented that the proposal was in line with the Barclay Review and would help close loopholes in the process.
54. Of the 17 that were against the proposal, the most common concern was the potential of enabling local authorities to disproportionately refuse relief and exemptions, as well as introducing further rules when sufficient powers to address avoidance were believed to already exist in legislation.
55. Few respondents provided an answer to question 20, but those who did expressed a strong desire for a right of appeal for the ratepayer, expressing concern that not doing so could lead to abuses of the system by billing authorities. One respondent suggested a distinction should be made between evasion and avoidance.

Non legislative measures to reduce avoidance

56. This section asked for views about any other ways to reduce rates avoidance.

Question 21: The Welsh Government would like to hear views about how local authorities and other organisations could be supported to take forward investigations and reduce avoidance behaviour.

57. Most respondents cited a lack of adequate information sharing as a considerable obstacle in addressing avoidance. Several suggested establishing a data-sharing gateway between local authorities and bodies such as HMRC and the VOA to better target avoidance.

58. Some respondents also felt local authorities and the Welsh Government should engage more with ratepayers and adopt a case-by-case approach in conjunction with third sector organisations.
59. One respondent suggested improving the identification and assessment of properties not in the rating list.

Welsh language

Question 22: The Welsh Government would like to know your views on the effects these proposals would have on the Welsh language, specifically on:

i) opportunities for people to use Welsh; and

ii) on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 23: Please also explain how you believe the proposed policy could be formulated or changed so as to have:

i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and

ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

60. No impacts to the Welsh language were indicated by any respondents. One respondent commented that any policy introduced as a result of the proposals should specify that where a language preference is known it should be adhered to and, if preference is not known, both English and Welsh should be used.

Annex A – List of respondents

Name of respondent or organisation
Anonymous
Anonymous
Anonymous
Anonymous
Diane Paul
Wales Council for Voluntary Action
Altus Group
Anglesey Council
Association of Convenience Stores Limited
Avison Young
Bircham Dyson Bell
British Beer and Pub Association
Caerphilly Council
Cardiff Council
Charity Law Association
Charity Tax Group
Colliers International
Conwy County Borough Council
Cytûn (Churches Together in Wales)
Daniel Watney LLP
Deloitte
Destin Solutions
Federation of Small Businesses
Flintshire County Council

General Plastics
Gerald Eve LLP
GL Hearn
Gwynedd County Council
Institute of Revenues Rating & Valuation
Matthews & Goodman LLP
Merthyr Tydfil County Borough Council
National Farmers' Union
Pembrokeshire County Council
Rating Surveyors' Association
Rhondda Cynon Taf County Borough Council
Royal institute of Chartered Surveyors
Torfaen County Borough Council
Dewi Loveluck
Welsh Revenue & Benefits Manager (Chair)
Welsh Water
Wrexham County Borough Council