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Llywodraeth Cymru
Welsh Government

Welsh Government

Consultation Document

Tax Devolution in Wales – Enabling changes to the Welsh Tax Acts

Date of issue: 16 July 2020

Action required: Responses by 15 October 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview	Policy consultation seeking views on Tax Devolution in Wales: Enabling changes to the Welsh Tax Acts.
How to respond	Responses to this consultation can be emailed or posted to the address below to arrive by 15 October 2020 at the latest.
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>The consultation document can be accessed at the Welsh Government's website at https://gov.wales/consultations</p>
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Also available in Welsh at:	https://llyw.cymru/ei-gwneud-yn-bosibl-cyflwyno-newidiadau-i-ddeddfau-trethi-cymru

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Foreword by the Minister for Finance and Trefnydd

The devolution of taxes in Wales marked an historic moment in Welsh political history. For the last two years, the Welsh Government has successfully implemented our own Welsh taxes that reflect our distinctive circumstances.

The introduction of two devolved taxes - land transaction tax and landfill disposals tax – and the establishment of the Welsh Revenue Authority (WRA) all owe much to the valuable contributions provided by a wide range of stakeholders and organisations.

With the introduction of Welsh rates of income tax on 6 April 2019, around £5 billion of spending in Wales is now funded through devolved and local taxation - land transaction tax, landfill disposals tax, Welsh rates of income tax, council tax and non-domestic rates. The two devolved taxes have already brought in over £500 million in their first two years, revenue which directly funds public services in Wales.

I have also embarked on the next stage of tax devolution by considering new taxes for Wales. This has the potential to make a real difference to Wales - helping us to deliver our policy priorities, whether this is by changing behaviour, raising revenue to invest in our public services, improving equity, or a combination of all. For the first time, we are navigating the Wales Act process to transfer the relevant powers to Wales in relation to a new tax (a vacant land tax), and I am keen to test the mechanism which could open further opportunities for tax policy to support our objectives.

My principles for Welsh taxes are well established. I am looking to develop taxes that are fair to the businesses and individuals who pay them; which are simple, with clear rules, aiming to minimise the costs of compliance and administration; that support growth and jobs, which in turn will help tackle poverty; and which provide stability and certainty for taxpayers. Ultimately, the aim is to use taxation as a lever for policy objectives and revenue generation for critical public services in Wales upon which our residents depend, helping to create a country that we all want to live in, now and in the future.

We now need to consider whether we have the right and appropriate tools to ensure we can make changes to the “Welsh Tax Acts” at short notice in a number of circumstances. This includes if we become aware of avoidance or evasion activity that can be stopped with immediate effect by a legislative change and also to ensure the Welsh Tax Acts continue to comply with international obligations. Most significant though, is where changes are made to “predecessor” UK taxes by the UK government.

Now, more than ever, we need to protect revenues available for our essential public services. At the moment, every time there is a UK budget cycle we take the risk that there may be a change which impacts on a devolved tax. Such changes could have implications for businesses, the property market and a direct budgetary impact on resources. And this may now be more likely as recovery measures start to be implemented.

I am determined to ensure we have the appropriate tools in place for our devolved taxes. A key aim is to provide Welsh Ministers with powers to be able to respond to the UK Budget in a timely, proportionate and agile way in order to protect Welsh revenues.

I consider the legislative proposal provides a sensible solution, both for our current devolved taxes and any potential future Welsh taxes. I hope you will be willing to share your thoughts on both the proposal and any other ideas on how we should tackle this issue. I look forward to reading your responses.

Rebecca Evans

Minister for Finance and Trefnydd

July 2020

Chapter 1 – Introduction and policy background

Background to Devolved Taxes in Wales

- 1.1 This chapter provides an overview of the background to devolved taxation in Wales and the aims of the Welsh Government’s proposed introduction of a legislative mechanism to enable changes to be made in specific scenarios to the Tax Collection and Management (Wales) Act 2016, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and the Landfill Disposals Tax (Wales) Act 2017. For brevity, this document uses the label “Welsh Tax Acts” to capture those Acts and the subordinate legislation made under those Acts.
- 1.2 The Wales Act 2014¹ amended the Government of Wales Act 2006 to provide for the establishment of devolved taxes and the disapplication of the predecessor² UK taxes in Wales. The Act also created a mechanism for additional taxes to be devolved to the Senedd Cymru (“the Senedd”) which may either replace existing UK taxes or are new taxes designed by the Welsh Government. The *Wales Bill: Financial Empowerment and Accountability* Command Paper³ contained explanatory information on the process for devolving new taxes to the Senedd.
- 1.3 Two devolved taxes were introduced in Wales in 2018: land transaction tax (“LTT”) which replaced stamp duty land tax (“SDLT”), and landfill disposals tax (“LDT”) which replaced landfill tax. The Tax Collection and Management (Wales) Act 2016⁴ established a clear and strong governance framework in Wales to support the effective collection and management of Welsh devolved taxes and established the Welsh Revenue Authority (“WRA”).
- 1.4 A portion of the resources available to the UK government is allocated to Wales and this is known as the ‘block grant’⁵. The *Wales Bill: Financial Empowerment and Accountability* Command Paper confirmed that there would be a reduction in the funding received from the UK government’s block grant by an amount comparable to the forecast tax revenue foregone by the UK government. This is to reflect the fact that the Welsh Government’s new revenue-raising powers as a result of devolving the powers associated with SDLT and landfill tax and the Welsh rates of income will mean that those revenues will now flow directly to the Welsh Government rather than the UK Exchequer. The amount deducted from the block grant is known as the block grant adjustment.

¹ Wales Act 2014 is available at: <http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

² ‘Predecessor taxes’ currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.

³ *The Wales Bill: Financial Empowerment and Accountability* Command Paper (March 2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294470/Wales_Bill_Command_Paper_-_English.pdf

⁴ Tax Collection and Management Act 2016 is available at: <http://www.legislation.gov.uk/anaw/2016/6/contents/enacted>

⁵ The funds are allocated to the Welsh Government in accordance with the Barnett formula, which provides funding based on the levels of funding of devolved areas in England.

1.5 The Welsh Government closely monitors UK government announcements on the predecessor taxes to see how they may impact the devolved taxes. The Welsh Government will respond appropriately to ensure that its budget and plans remain funded and that the taxes raised in Wales remain fair, balancing fiscal considerations with the impact on taxpayers and the wider economy. Any response to a UK government announcement will be aligned to the Welsh Government's tax principles, which set out that Welsh taxes should:

- raise revenue to fund public services as fairly as possible
- deliver Welsh Government policy objectives, in particular supporting jobs and growth
- be clear, stable and simple
- be developed through collaboration and involvement, and
- contribute directly to the Well-Being of Future Generations Act goal of creating a more equal Wales.

1.6 Finally, the Welsh rates of income tax were introduced in April 2019. The Welsh Government has fulfilled its commitment not to increase income tax for Welsh taxpayers compared to English and Northern Irish taxpayers⁶ during the current Senedd term. It has set the Welsh rates of income tax at 10p, matching the reductions made by the UK government to those rates in Wales. As a result, Welsh taxpayers are subject to the same overall tax rates as those in England and Northern Ireland. The Welsh Government is also continuing to seek the necessary powers for the devolution of air passenger duty (powers have already been granted to Scotland and Northern Ireland) and for a new tax on land suitable for development (a vacant land tax).

Purpose of legislation to enable changes to be made to the Welsh Tax Acts

1.7 The ability to make changes to tax legislation very quickly is intended to enable the Welsh Government to respond to scenarios where it is desirable for the change to have effect immediately or very soon thereafter. A change of this kind may be appropriate where the Welsh Treasury and the WRA need to promptly 'close-down' tax avoidance schemes, tackle tax evasion, or maintain compliance with international obligations. In the case of tax avoidance and evasion, the WRA already has a range of powers available to it and is actively using them to ensure everyone pays the right amount of tax and no-one gains an unfair advantage. In some cases, though, a legislative change may also be needed to provide further clarity or to tighten the application of the provisions in question.

1.8 It is also intended to enable the Welsh Government to respond quickly to immediate changes to those UK taxes which have been devolved to Wales ("predecessor taxes"). Such changes can have a direct budgetary impact on the

⁶ The Scottish Government has used its powers to create different tax rates and bands for Scottish taxpayers

resources available to the Welsh Government via the block grant adjustment process (see paragraph 1.4).

- 1.9 Any changes to the predecessor taxes that impact on the block grant adjustment may have implications for businesses, the property market and the environment. For example, immediate changes to SDLT which result in an increase to UK government tax revenues will increase the block grant adjustment and reduce the Welsh Government's budget. In this scenario, the Welsh Government would either need to operate with a reduced budget or find alternative ways of raising such revenues to maintain existing resource levels.
- 1.10 Conversely, where the UK government makes changes which reduce UK tax revenues from SDLT, the block grant adjustment will decrease and the Welsh Government's budget will increase. In these types of scenarios when tax reductions are made to UK predecessor taxes there may be a need to act quickly to reduce potentially undesirable distortions to markets which could harm businesses in Wales.

Current budgetary processes in Wales and the UK

- 1.11 Changes to UK taxes are generally announced as part of UK budgets. In recent years, these have been held in the autumn (29 October 2018 and 22 November 2017) as the UK government moved to a single annual fiscal event⁷. However, the number and timing of UK fiscal events each year can still vary. For example, there was no UK Budget in 2019 and there was a March Budget in 2020.
- 1.12 The UK government's guidance in 2017 noted that most tax policies will continue to be developed through an established cycle, whereby a policy announcement at the budget is followed by a policy consultation, the publishing of draft legislation, and finally legislated in the next Finance Bill. However, the timings of this cycle have since changed: policies are now announced at the budget in the autumn, consulted on in winter and over the spring. Draft legislation will then usually be published in July for technical consultation ahead of the next Finance Bill being introduced in the autumn. The aim is for the Finance Bill to reach Royal Assent before the start of the following tax year. Alongside this, there are also a number of tax changes that will not be preceded by consultation and draft legislation, or where the timeframe is considerably reduced. Chapter 4 sets out examples of where the UK government has introduced new tax elements immediately or very shortly after an announcement is made. Immediate or very quick changes may be made in order to prevent taxpayers forestalling or delaying their transactions to benefit from pre-announced tax changes, both of which may impact on government revenues.
- 1.13 Typically, the Welsh Government will publish its draft budget in October, before the UK government's budget later in the autumn. The Welsh Government's final budget must be approved by the Senedd early in the following

⁷ <https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process>

March at the very latest, in order that local authorities and other organisations can set their budgets before the new financial year. There is therefore usually a cross over between the Welsh Government's budget cycle and the annual UK Finance Bill. In typical years, the Welsh Government will have published its draft budget and tax proposals prior to the UK budget, but may still need to respond to UK changes to spending plans and taxation rules. The Welsh Government can introduce updates prior to the final budget being voted on, or in supplementary budgets during the year in question. The Welsh Government's budget is usually voted on prior to the Finance Bill receiving Royal Assent, which could potentially create complexity if there are further last minute changes to UK tax legislation.

1.14 As already noted, the UK government's budgetary timetable is not fixed. The March budget this year was after the publication of the Welsh Government's final budget on 25 February. Furthermore, it is not uncommon for there to be two UK budgets in the 12 months following a general election. This uncertainty makes it more difficult to plan and respond quickly to any UK government changes.

1.15 The Welsh Government can defer the impact of in-year changes to the block grant adjustments arising from UK tax policy changes. If an in-year change results in a reduction to the block grant adjustment, then this can be postponed until the following financial year. However, that deferral could result in additional budgetary pressures in future financial years. It is not possible for the financial consequences to be removed or to avoid the impact of such changes.

Chapter 2 – Current mechanisms to change taxes

Overview

2.1 This chapter provides context on current routes and powers available to the Welsh Government to make changes to the Welsh Tax Acts, and considers how changes are made to tax legislation by the UK and Scottish governments for illustrative and comparison purposes. It also outlines potential future budget, tax and finance scrutiny processes in Wales.

Welsh Government

Primary legislation

2.2 The Welsh Government may introduce primary legislation into the Senedd to make changes to the Welsh Tax Acts. If, for example, the UK government chooses to announce new proposals or a consultation in relation to the predecessor UK taxes at a budget, then the Welsh Government has the opportunity to make those changes to the corresponding devolved taxes through a Bill. Other changes could be introduced through primary legislation as a result of the Welsh Government's own innovative tax policies, or in response to wider events. As a general rule, the process for developing and passing primary legislation in Wales can take between 12-18 months depending on the scope of the legislation and other government business passing through the Senedd.

2.3 The UK government can on occasion announce a new tax element but defer its introduction: for example, making an announcement at a budget, consulting and then legislating in a future Finance Bill. In this scenario, the Welsh Government is likely to have adequate time to respond using the Senedd's primary legislation processes.

2.4 However, the UK government has often chosen previously to introduce new tax elements immediately or very shortly after an announcement is made. Any substantive reform to predecessor taxes would raise tax policy issues for the Welsh Government and might also impact on the Welsh Government's revenues through the block grant adjustment (see paragraphs 1.8-1.10).

2.5 It would be helpful for the Welsh Government to have forewarning about any plans to revise the UK predecessor taxes, in order to understand the effects of the UK changes on the block grant adjustments and to consider the implications for Welsh Government tax revenues and broader policies. The Welsh Government will continue to press HM Treasury for advanced notice, however, we cannot currently rely on this happening due to HM Treasury strict preferences for UK budget and Finance Bill secrecy. Currently this means that the Welsh Government (along with other devolved administrations and the public generally) only have knowledge of the content of the UK budget and Finance Bill during and following the Chancellor's speech. The Welsh Government will often therefore be unable to use primary legislation to implement a policy change in a similar

timeframe to the UK government. If the Welsh Government wanted to implement a similar policy change, time would be needed to understand and replicate the changes into legislation, which would result in the introduction of changes significantly later than the UK government, with the potential impacts on revenue.

2.6 Chapter 4 sets out examples of where such UK government policy changes have been introduced with immediate effect (and also examples of changes with delayed effect).

Emergency and 'fast-track' Bill process

Emergency Bills

2.7 The use of Emergency Bills in the UK Parliament and at the other devolved legislatures is rare. In Wales, an Emergency Bill is a Welsh Government Bill that needs to be enacted more quickly than the Senedd's usual legislative process allows⁸. A definition of an Emergency Bill is not provided in the Government of Wales Act 2006 (GoWA 2006) or in the Senedd's Standing Orders, however Standing Order 26.95 states that:

“If it appears to a member of the government that an Emergency Bill is required, he or she may by motion propose that a government Bill, to be introduced in the Senedd, be treated as a government Emergency Bill.”

2.8 The purpose of introducing an Emergency Bill is to enable the quick enactment of urgent legal provisions. The Senedd's Standing Orders set out a streamlined version of the Senedd's usual legislative processes to avoid any time delays. The way in which the Senedd considers an Emergency Bill broadly follows the usual Stages of the Senedd's consideration of a Bill (known as Stage 1, Stage 2, Stage 3 and Stage 4), but with some significant alterations to speed them up.

⁸ Legislation handbook on Senedd Bills, May 2019, p.179:
<https://gov.wales/sites/default/files/publications/2019-05/legislation-handbook-on-assembly-bills.pdf>

Table 1: Stages of a Bill

Stage	Activity
Introduction	Bill introduced and announced in Welsh and English (Written and Oral Statements made by the Lead Minister)
Stage 1	Consideration of the Bill by a Committee of the Senedd
General Principles	Senedd is asked to agree the general principles of the Bill (if agreed the Bill proceeds to Stage 2, if not agreed the Bill falls)
Stage 2	Detailed consideration by a Committee of the Senedd (the Bill can be amended during this Stage)
Stage 3	Detailed consideration by Plenary (the Bill can be amended during this Stage)
Stage 4	Senedd is asked to pass the Bill as amended (if agreed the Bill proceeds towards Royal Assent, if not agreed the Bill is rejected)

2.9 The Welsh Government has, to date, introduced two Emergency Bills, which were both passed by the Senedd and became the Agricultural Sector (Wales) Act 2014, and the Law Derived from the European Union (Wales) Act 2018. The timings and the need to use the emergency process are considered on a case by case basis, and Welsh Ministers must seek the Senedd's approval to proceed in this manner. The Senedd process may happen very quickly (as short as one day) but the intimation and determination periods remain a necessary part of the Bill process (see paragraphs 2.19-2.21).

2.10 To take the second as an example, the timings of the Law Derived from the European Union (Wales) Act 2018 were as follows:

- Introduced on 7 March 2018
- Stage 1 - 13 March 2018
- Stage 2 - 20 March 2018
- Stage 3 and 4 - 21 March 2018
- Royal Assent - 6 June 2018.

2.11 Overall, the legislative process from introduction to Royal Assent took thirteen weeks, with only three weeks between the introduction of the Bill and its approval by the Senedd. To provide a comparison of timings in a more typical primary legislative process, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 passed through the Senedd in just over 35 weeks:

- Introduced on 12 September 2016
- Stage 1 – 10 January 2017
- Stage 2 – 16 February 2017
- Stage 3 – 28 April 2017

- Stage 4 – 4 April 2017
- Royal Assent – 24 May 2017.

Fast-track Bills

2.12 The term ‘fast-track’ or ‘expedited’ in Wales is given to Bills which follow the usual four stage legislative process, but do so in the shortest time possible. In particular, fast-track Bills are usually not referred to a Senedd Committee for detailed consideration. Instead, fast-track Bills proceed straight to the Stage 1 general principles debate after being introduced⁹ subject to the agreement of the Senedd’s Business Committee.

2.13 Fast-track Bills are not Emergency Bills, and do not attract the same requirements and differences in Standing Orders. A fast-track Bill moves through the Stages as quickly as possible but still according to the requirements of Standing Orders for a normal Bill. Therefore expediting legislation is more of a question of managing timing than of a formalised procedure. If a Bill usually takes between 6 and 8 months to pass through the Senedd, a fast-track Bill could take around 3 months¹⁰.

2.14 As with Emergency Bills, the use of fast-track Bills is rare. The Welsh Government has to date brought forward two such Bills, both of which were passed by the Senedd; they have become the National Health Service Finance (Wales) Act 2014¹¹ and the Control of Horses (Wales) Act 2014¹².

2.15 Neither the Government of Wales Act 2006 nor Standing Orders provide a definition of what is to be considered as an ‘Emergency’ or ‘fast-track’ Bill. Research into Emergency Bills brought forward in the UK Parliament and other devolved legislatures shows that they usually occur in response to crises, specific events or court rulings¹³.

2.16 In 2009, the House of Lords Constitution Committee considered such legislation and gave a number of reasons why Bills had been fast-tracked in the UK Parliament¹⁴. These included:

- a. remedying an anomaly, oversight, error or uncertainty that has come to light in legislation;
- b. responding to the effects of a court judgment;

⁹ Legislation handbook on Senedd Bills, May 2019, p.182:

<https://gov.wales/sites/default/files/publications/2019-05/legislation-handbook-on-assembly-bills.pdf>

¹⁰ Legislation handbook on Senedd Bills, May 2019, p.182:

<https://gov.wales/sites/default/files/publications/2019-05/legislation-handbook-on-assembly-bills.pdf>

¹¹ This Act responded to reports by Senedd Committees and the Wales Audit Office and was fast-tracked in order to meet the recommendation that the powers be in place for the next financial year

¹² This Act was to provide local authorities the powers required to address fly-grazing of horses before winter

¹³ Legislation handbook on Senedd Bills, May 2019, p.181:

<https://gov.wales/sites/default/files/publications/2019-05/legislation-handbook-on-assembly-bills.pdf>

¹⁴ Legislation handbook on Senedd Bills, May 2019, p.181:

<https://gov.wales/sites/default/files/publications/2019-05/legislation-handbook-on-assembly-bills.pdf>

- c. ensuring legislation is in force in time for a forthcoming event;
- d. dealing with economic crisis;
- e. changing a public authority's borrowing or lending limit or other funding issues;
- f. dealing with a crisis in prisons as a result of industrial action;
- g. responding to international agreements;
- h. implementing Treasury announcements in the Budget or autumn statement.

2.17 Although 'implementing Treasury announcements in the budget or autumn statement' is included at 'h.' there are only limited examples of the UK government using an expedited or Emergency Bill process outside of the annual Finance Bills to make policy changes to tax legislation (see paragraph 2.32 – 2.41 for examples of the legislative mechanisms available to the UK government to make changes). A recent example was the introduction of a slice charging¹⁵ regime for residential property transactions for SDLT announced at Autumn Statement 2014. Example 4 in Chapter 4 sets out the truncated timescales for the introduction of the new slice structure through the Stamp Duty Land Tax Act 2015, which introduced the changes announced at the 2014 Autumn Statement immediately through Provisional Collection of Taxes Act 1968 resolutions on 4 December 2014. The Bill received Royal Assent on 12 February 2015. The UK government's annual Finance Bills also follow a faster route through Parliament than most Bills. There is no equivalent Senedd process.

2.18 For example, the Scottish Government used an expedited Bill process to ensure it could follow the same timeline as the UK government in early 2016 to introduce a similar policy to the SDLT higher rates on purchasing additional residential premises (the land and buildings transaction tax additional dwelling supplement ("ADS")). This demonstrates that it is possible to use an Emergency Bill process to make changes quickly. For example, the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill 2016 route through the Scottish Parliament was:

- introduced on 28 January 2016,
- Stage 1 on 23 February,
- Stage 2 on 2 March,
- Stage 3, and passing of the Bill on 8 March,
- Royal Assent was received on 24 March enabling Revenue Scotland to start collecting the ADS from 1 April, the same date that HMRC started collecting the higher rates for additional dwellings element of SDLT.

¹⁵ Stamp duty land tax is charged in 'slices', so you pay a certain rate on the part of the property's value that falls within that slice, in a similar manner to the way income tax is charged.

2.19 In Wales, as with other Bills introduced into the Senedd, a Government Emergency Bill will need to be considered by the Llywydd so he/she may make a statement under Standing Order 26.4, before it can be introduced; however, the period of determination is likely to be considerably less than the usual four weeks¹⁶.

2.20 Similarly, after the Senedd passes a Bill at Stage 4, it enters the intimation period where the Counsel General or the Attorney General may refer the Bill to the Supreme Court¹⁷. Such a referral would be made for a ruling on whether the Bill or any of its provisions are within, or out of, the legislative competence of the Senedd. This intimation period also provides the Secretary of State for Wales with a power to intervene¹⁸ in exceptional, specified circumstances to prevent a Bill receiving Royal Assent.

2.21 A combination of convention and statutory requirement for proper review and scrutiny by Members of the Senedd can add around 8 weeks (although this is likely to be shortened by agreement) on top of the actual passage of an Emergency or fast-tracked Bill through the Senedd. This potentially adds to the time for the Bill to become an Act, and the effect of the policy changes effected by that Act to apply to Welsh taxpayers.

2.22 While it might, in certain circumstances, be possible to bring these changes into effect earlier by making the provisions retrospective to ensure they come into force at the same time as the corresponding provisions in UK legislation, such an approach carries a number of potentially significant issues. Retrospective legislation must be carefully considered to balance the conflicting public interests, having regard to overarching legal obligations, including those conferred by the European Convention on Human Rights. Moreover, since the application of the retrospective provisions can only occur once those provisions have received Royal Assent, such an approach is unlikely to provide certainty to taxpayers which, in turn, could cause compliance issues, and costs, for taxpayers and the WRA.

2.23 The use of Emergency and fast-track Bills is necessary on occasion. However, it is not always desirable as it may come at the cost of less opportunity for scrutiny. The lack of time for detailed scrutiny is considered in the Constitutional and Legislative Affairs Committee's Making Laws report in the 4th Senedd¹⁹. The inquiry considered the curtailed scrutiny afforded to three Welsh Government Bills:

- Agriculture Sector (Wales) Bill – subject to the emergency procedure under Standing Orders
- Control of Horses (Wales) Bill – by-passed Stage 1 scrutiny;
- National Health Service Finance (Wales) Bill – by-passed Stage 1 scrutiny.

¹⁶ Legislation handbook on Senedd Bills, May 2019, p.180:

<https://gov.wales/sites/default/files/publications/2019-05/legislation-handbook-on-assembly-bills.pdf>

¹⁷Section 112 of the Government of Wales Act 2006

¹⁸Section 114 of the Government of Wales Act 2006

¹⁹ Constitutional and Legislative Affairs Committee's Making Laws report in the 4th Assembly:
<https://senedd.wales/laid%20documents/cr-ld10379/cr-ld10379-e.pdf>

2.24 The inquiry noted there are potential drawbacks to both emergency procedures and fast-tracking legislation. This includes losing an opportunity for stakeholders who have not been consulted by the Welsh Government to provide any formal evidence to the Senedd on the proposals, and in addition, in situations where there is broad agreement that an issue needs to be addressed, losing an opportunity to test with all stakeholders whether the drafting of the Bill represents the best possible solution. The report also noted that Members of the Senedd may be unfamiliar with a Bill's content, potentially making for less-informed scrutiny at Stages 2 and 3.

2.25 The inquiry concluded that any decision to adopt curtailed scrutiny should not be taken lightly and agreed with the Llywydd commenting:

“It is important that the reputational risks and resource implications of using fast-track and emergency procedures, especially if these are subsequently found to be inappropriate, are fully considered when such decisions are made.”

2.26 Finally, the compressed timescales combined with the requirements of an Emergency or 'fast-track' Bill may require a significant allocation of Welsh Government resources, albeit for a short period, and this may impact on (and even potentially delay) other Welsh Government business.

2.27 Fast-tracking legislation can place enormous pressure on Bill teams, and significant demands on drafters and translators, and those who work alongside Bill teams. The impact for the Bill team, and for other Bills within the Government's legislative programme, will need to be assessed as part of the consideration of whether such an approach is the right one in all of the circumstances.

Question 1

Do you consider Emergency or 'fast-track' Bills to be appropriate legislative processes to make immediate or very quick changes to the Welsh Tax Acts?

Question 2

Can you suggest any changes to the Emergency or 'fast-track' Bill process to make them better suited to make immediate or very quick changes to the Welsh Tax Acts?

Secondary legislation

2.28 The Welsh Government can use a number of regulation making powers to make changes to the Welsh Tax Acts as set out in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, the Landfill Disposals Tax

(Wales) Act 2017, and the Tax Collection and Management (Wales) Act 2016. The regulations are limited to specific areas of the Welsh Tax Acts and are subject to scrutiny and, in most cases, a vote in the Senedd following the regulations having been laid in draft (the 'draft affirmative' procedure). In part, the taking of these regulation-making powers was linked to areas where change in UK rules could have an impact on devolved taxes in Wales, or where it was known the UK version of the tax was especially 'alive', where it was new, or where longstanding pressure for change existed.

2.29 For example, the Welsh Ministers can make secondary legislation (subject to Senedd approval) through draft affirmative regulations to make any changes to the partnership rules in LTT. Currently, only four sets of regulations in relation to devolved taxes have been made since the taxes went live in April 2018. All were in relation to landfill disposals tax; two to improve identified operational issues with the tax in relation to site restoration relief and quarry relief, and two to introduce changes to the rates payable. To date, landfill disposals tax rates for the lower, standard and unauthorised disposals rates have been varied each year through regulations using the provisional affirmative procedure.

2.30 There are, however, parts of the legislation where it was not considered appropriate or necessary to take specific regulation-making powers; for example, in LTT the provisions relating to linked transactions and substantial performance. One key area is the provisions relating to the calculation of tax: for example, it is unlikely that if the Welsh Government were to consider the introduction of a new surcharge (similar to the 3 per cent higher rates rules on additional residential premises announced by the UK government at the 2015 Autumn Statement and legislated for in Finance Act 2016 – see Chapter 4, example 4) this could be fully achieved through the existing suite of regulation-making powers.

2.31 The likelihood of it being necessary to make changes to the rates and bands for Welsh devolved taxes was anticipated and led to the introduction of bespoke powers which enable those changes to be made through regulations. Mindful of the particular risk of forestalling associated with rate and band variations, regulations made under those powers are subject to a provisional affirmative procedure. This enables regulation-making changes to tax rates and bands to have provisional, but immediate, legal effect from the date the regulations are made. Provided the regulations are subsequently approved by the Senedd within 28 sitting days, the regulations will have permanent effect. The use of the provisional affirmative procedure is particular to the power to vary tax rates and bands – the remaining suite of regulation-making powers in the Welsh Tax Acts are subject to the draft affirmative or negative procedures.

UK government

Finance Bill

2.32 The Finance Bill is the principal legislative vehicle for tax legislation to be enacted by the UK government²⁰. The Bill can only include provisions relating to

²⁰ <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN00813>

the imposition and alteration of taxes to raise money for financing central government as a whole. It is an annual process, partly because income tax and corporation tax are annual taxes which must be renewed by legislation each year, but also in recognition of the scale and regularity of change required to the UK taxes.

2.33 The Finance Bill will include measures that are to come into effect at the date of Royal Assent or later, or that have been brought into temporary immediate effect through a ways and means resolution made by the powers in the Provisional Collection of Taxes Act 1968 (“PCTA”). It is worth noting the Finance Bill is untypical of UK government’s legislative processes in several respects. In general, the Finance Bill usually takes around 4 months to pass through UK Parliament. This timetabling is quite short compared to the majority of Bills passed by the UK Parliament and, as a result of this, the use of evidence sessions by the relevant committees occur extremely rarely, if at all. By convention, Finance Bills are not amended by the House of Lords. More frequently, evidence of the impact of the Finance Bill provisions is provided in writing to the relevant government departments and members of the House of Commons Public Bill Committee.

2.34 Furthermore, in cases of extreme urgency, the stages of Finance Bills have been accelerated. For example, on 24 April 2017, the House agreed a Business of the House motion which enabled the Finance Bill to be committed to a Committee of the whole House and go through all subsequent stages the following day²¹.

Provisional Collection of Taxes Act 1968

2.35 As noted above, the UK government makes most of its changes to tax legislation through the Finance Bill. Those changes will either come into force at some point after the Bill receives Royal Assent, or, in certain circumstances, may have already come into force on a temporary basis through a series of resolutions (known as “the ways and means resolutions”) approved by the House of Commons under the Provisional Collection of Taxes Act (“PCTA”) 1968. This enables proposals for tax changes and tax continuations, such as the annual re-imposition of income tax, to have immediate provisional legal effect pending the necessary primary legislation receiving Royal Assent. However, new taxes cannot be brought into effect in this way. Changes will have permanent effect providing Parliamentary stages are reached within a fixed period following the passing of the resolution. It is also possible to introduce changes to tax legislation outside a budget cycle using a PCTA resolution, but only if there is draft primary legislation published accompanying the resolution in order to bring the change into permanent effect.

2.36 For example, in the case of the 2016 Budget on 16 March, the resolution allowed for new rates of duty on tobacco products to take effect from 6pm that

²¹ UK Parliament, Erskine May, “Intervals between stages of taxation legislation”: <https://erskinemay.parliament.uk/section/5706/intervals-between-stages-of-taxation-legislation/?highlight=finance%20Bill#footnote-item-7>

day; it also allowed for changes to SDLT in relation to the slab to slice charging regime (see Chapter 4, example 3) for non-residential property transactions to take effect from 17 March, and new rates of duty on some categories of alcoholic drink from 21 March²².

2.37 There is no equivalent provision to the Provisional Collection of Taxes Act 1968 in Welsh law.

Section 109(1) Finance Act 2003

2.38 Section 109(1) of the Finance Act 2003 provides HM Treasury (HMT) with a general power to make regulations to vary SDLT legislation, other than to rates and thresholds:

“The Treasury may if they consider it expedient in the public interest make provision by regulations for the variation of this Part in its application to land transactions of any description”.

2.39 Regulations under this section may have immediate, but temporary effect and are therefore subject to a provisional affirmative procedure. This means they must be approved by the House of Commons within 28 sitting days, and cannot have effect for more than 18 months, meaning the changes are often incorporated into the next Finance Bill. If the House of Commons does not approve the regulations within 28 sitting days, the changes do not have effect and taxpayers may make a claim for the repayment of any additional tax paid as a result of the regulations.

2.40 In practice, the UK government has seldom used this power as most changes to SDLT are made through Finance Bills. The most notable instance was in December 2006 when it was used to amend the Finance Act 2003 to tackle SDLT tax avoidance schemes, by the introduction of Section 75A Finance Act 2003. It was also used twice in 2003 in relation to the introduction of SDLT.

2.41 There is no equivalent provision in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 as there is no annual (or less frequent) Welsh Finance Bill in place to give permanent effect to such changes (see paragraphs 2.43 – 2.47)

Future budget, tax and finance scrutiny processes in Wales

2.42 The Welsh Government understands that the Senedd Finance Committee intend to report on its inquiry into legislative budget processes. It is recognised that the conclusions of this report may be of relevance, and that this will need to be taken into consideration in any response issued by the Welsh Government to the report.

²² HC Deb 16 March 2016 c968. HM Treasury, Notes on Finance Bill 2016 resolutions, March 2016

2.43 The potential implications for this policy area will depend on what options for legislative budget processes are recommended and which may then be considered by Welsh Ministers in the future. Although the merits of introducing of a legislative budget process in Wales is not within the scope of this consultation, a brief outline is provided of two potential legislative budget options which interlink with devolved taxes in Wales:

- A '**Finance Bill**' would essentially include revenue raising measures and some tax setting decisions, but not spending plans. This would provide a mechanism for making changes to the Welsh Tax Acts.
- There could also be the potential for a single '**Budget and Finance Bill**' that includes both the budget (spending) Bill aspects, should the Welsh Government and Senedd agree that the budget should be approved by legislation rather than Senedd motion, and the finance (rate setting and Welsh Tax Acts changes) Bill aspects. This would provide a mechanism for making changes to the Welsh Tax Acts.

2.44 It is possible that the Senedd could adopt an annual (or less frequent) **Finance Bill** process to make changes to the Welsh Tax Acts, although there will be some difficulties that would need to be resolved. Similar to the UK government's **Finance Bill** (see paragraph 2.32-2.34) this is likely to require a slightly different procedure.

2.45 A Finance Bill would need to be aligned to the Welsh Budget process as the Bill may change the amount of resources available in that budget. The Welsh Budget process generally starts in early October. If there were Welsh Government tax changes planned, then a Finance Bill would need to be laid at the same time as the Welsh Budget. The Welsh Budget must be agreed by early March and the Finance Bill would also need to be agreed at this point given its direct link to the budget. Therefore, this would require a new primary legislation process to allow the prospective Finance Bill to reach Royal Assent within around 4 months (see paragraph 2.2 on the typical timescales for developing and passing primary legislation in Wales).

2.46 In addition, there are likely to be difficulties in aligning the timings of both the UK Budget and the Welsh Government budgetary processes. Whilst generally there is an intention that the UK Budget will be held in the late autumn, that date is not fixed. In general, the timing of the UK Budget and introduction of the UK Finance Act around 7 days later will mean that a Welsh Finance Bill may well have passed Stage 1, and perhaps Stage 2, before the amendments to respond to the UK changes are ready to be introduced. Furthermore, in general election years it is not uncommon for there to be a subsequent additional UK budget which may introduce a change with significant effect on SDLT revenues. This may well occur outside of the timescales of the Welsh Budget process, leading to a delay in the Welsh Government being able to respond, unless it does so by an Emergency Bill. Consequential adjustments would then be given through the supplementary budget process, even though a Welsh Finance Bill would also be introduced later in the same year. The inability to provide suitable scrutiny for

Welsh Government proposals, or (on rare occasion) the need to have both an Emergency Bill and Welsh Finance Bill in a single year is undesirable.

- 2.47 Additionally, should it be necessary for a change to come into force immediately from the date of a policy announcement (for example, to align with corresponding changes in UK tax law), the Finance Bill giving effect to that change would, in the absence of a Bill to provide the Welsh Government and Senedd with powers similar to the Provisional Collection of Taxes Act 1968, need to be introduced with retrospective effect.
- 2.48 Given the link between the tax effort made by the UK predecessor taxes and their impacts on the Welsh Government's resources, an ability to respond quickly, flexibly and outside of the Welsh budget process is essential. Otherwise, there may be potentially negative impacts on Welsh Government resources, businesses, the property market or the environment.
- 2.49 Furthermore, in relation to the introduction of a Finance Bill, a key consideration for the Welsh Tax Acts specifically is the volume of secondary legislation that these Acts generate and whether it is more practical to consolidate that legislation into an annual Bill. Currently, only four sets of regulations in relation to devolved taxes have been made since the taxes went live in April 2018 and all were in relation to landfill disposals tax (see paragraph 2.29).
- 2.50 There could also be the potential for a **single Bill** that includes both the budget and rate setting, and provide for making changes to the Welsh Tax Acts. This would, however, be a highly unusual approach encompassing a number of risks. For example, the need for multiple (in year) budget approvals because of the number of block grant adjustments, legislative competence issues and the interaction between revenue raising and its expenditure.

Question 3

Although the Welsh Government does not currently consider an annual Welsh Finance Bill to be a proportionate mechanism to make changes to the Welsh Tax Acts, we would be interested in your views on the potential to introduce such a Bill in the future. When would be the right time? How might this work? How should this link to the Welsh budget process?

Scottish Government

Devolved Taxes Legislation Working Group

- 2.51 In Scotland, the Devolved Taxes Legislation Working Group sought views on their interim report²³ which sets out the challenges and opportunities of alternative options for devolved tax legislation in Scotland. Submissions closed on 27 March and the Scottish Parliament have published responses online, although indicating that this work has currently been paused. The report suggests that, if taken forward a Finance Bill in Scotland would be highly predicated on the Scottish Budget, which has always been set through a legislative budget process, as required by the Scotland Act 1998. In contrast in Wales since devolution, the budget has been approved through a budget motion. The considerations therefore in Scotland in relation to a Finance Bill are different to Wales as there is already an annual budget event involving primary legislation.
- 2.52 A key part of the Working Group's consideration was whether the Scottish Parliament and its Finance and Constitution Committee have capacity to consider another Bill during the budget period (where they already consider the Budget Bill). Moreover, as a Finance Bill would follow a significantly shorter timescale than other Government Bills, there would be less time available for Members of the Scottish Parliament ("MSPs") to consider and report on the Bill.
- 2.53 The Working Group also discussed the merits of a Tax Bill in Scotland. The main distinction from a Finance Bill is that a Tax Bill would not include changes to the rates and bands of taxes²⁴ (although those changes may change the amount of tax collected, unless the changes are restricted to administration issues). In this respect, a Tax Bill would not necessarily be predicated on the Scottish Budget and therefore could be introduced at another point in the year, or less frequently as appropriate.
- 2.54 Finally, it is worth noting that in other jurisdictions similar processes to a Finance Bill are used, such as in the Republic of Ireland. The Welsh Government would be interested in exploring any such processes.

Question 4

Do you agree that arrangements are needed, beyond those already available, to enable amendments to the Welsh Tax Acts to be introduced promptly in particular circumstances?

Question 5

Are you aware of any examples of international tax legislative change processes that would be helpful for the Welsh Government to explore?

²³ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/114453.aspx>

²⁴ Existing secondary legislative powers would continue to be used to set rates and bands.

Chapter 3 – Enabling changes to the Welsh Tax Acts

Overview of legislative proposal

- 3.1 The Welsh Government’s proposal is to provide the Welsh Ministers with flexible and proportionate powers, subject to appropriate Senedd scrutiny, to make changes to the Welsh Tax Acts. There are several scenarios in which changes may need to be made immediately, or very quickly, to the Welsh Tax Acts:
- i. to stop avoidance or evasion of the devolved taxes,
 - ii. to comply with international obligations,
 - iii. other circumstances of exceptional need, and
 - iv. in specific circumstances where Welsh Ministers consider it expedient in the public interest to do so. In particular, in response to tax policy changes made by the UK government to predecessor UK taxes which will affect the Welsh block grant adjustment and therefore the revenues available for our essential public services.
- 3.2 The Welsh Revenue Authority and Welsh Government may become aware of avoidance or evasion activity that can be stopped with immediate effect by legislative changes. This includes cases where the Welsh Revenue Authority and the Welsh Government believe that the un-amended legislation does not permit the avoidance activity in any case but increased clarity in the legislation will put beyond doubt the intended application of the legislative provisions.
- 3.3 There may also be times when the Welsh Tax Acts need to be amended at short notice to comply with the UK’s international obligations, such as where a new trade deal is concluded with another country which has tax implications. Devolved taxes “*may not be imposed where to do so would be incompatible with any international obligations*”²⁵. It is important that the Welsh Tax Acts can be amended very quickly if it is found that there is an incompatibility with the UK’s international obligations. As the UK government makes new trade deals following the UK exiting the European Union (EU) it is possible that there will be situations where the Welsh Tax Acts will require amendment in order to ensure compliance. To provide an example, land transaction tax currently provides relief to EU and European Economic Area (EEA) charities that meet the relief’s qualifying conditions. If the UK leaves the EU without a future trading deal, that relief will no longer be available to those EU and EEA charities. This may be something Welsh Ministers would wish to address.
- 3.4 There will also be occasions when it may be necessary to make changes quickly to the Welsh Tax Acts as a result of some exceptional issue that cannot be anticipated at the present time. For example, a court or tribunal might identify an issue that requires legislative change (including decisions relating to the UK predecessor taxes) to provide clarity or ensure compliance with other legal obligations.

²⁵ Section 116A Government of Wales Act 2006

3.5 It is also possible that changes will be necessary as a result of the UK government making changes to the predecessor taxes that impact on the block grant adjustment (see paragraph 1.9). It is therefore considered appropriate that legislation should provide for changes to be made to the Welsh Tax Acts, subject to Senedd approval, for situations where those changes are needed and are in the best interests of Wales and Welsh citizens.

3.6 Chapter 2 sets out the most pressing situations where changes to the predecessor UK taxes are made with immediate effect in a UK budget and those changes could have a material and negative effect on the Welsh Government's overall resources.

Legislative mechanism to make changes to the Welsh Tax Acts

3.7 The Welsh Government is keen to ensure that any option taken forward is flexible and balances the need for it to be in a position to respond quickly (especially where there are consequences to the resources available for Welsh public services) with the essential work of the Senedd, and other interested parties, in scrutinising the Government and its legislative proposals.

3.8 The Welsh Government's proposal is to introduce new powers to enable Welsh Ministers to amend the Welsh Tax Acts through regulations. This option would confer three regulation-making powers on Welsh Ministers to enable them, subject to Senedd approval, to make changes to the Welsh Tax Acts:

- **'Power 1'** –proposed changes to have immediate, but temporary legal effect, with their permanent effect subject to approval by the Senedd following the standard period of scrutiny for provisional affirmative regulations (a period of not more than 28 days from the making of the regulations),
- **'Power 2'** - proposed changes have immediate, but temporary legal effect, with their permanent effect subject to approval by the Senedd following an extended scrutiny period to allow for evidence sessions (a 'super' provisional affirmative procedure). This power would also be subject to a Senedd motion or 'lock' prior to its use.
- **'Power 3'** - a power to make draft affirmative regulations to amend the rules created by the use of power 1 or power 2.

3.9 The key feature of powers 1 and 2 is that the effect of the changes can be brought in with immediate effect. This will enable Welsh Ministers to have parity to the UK government to make immediate changes to devolved taxes thereby minimising any impact on the block grant adjustment. This also ensures taxpayers can benefit from those changes as quickly as possible, reducing the risk of forestalling and uncertainty.

3.10 The Welsh Government does not propose that powers 1-3 should be used to make routine policy changes to the devolved taxes that are initiated by the Welsh Government (see paragraphs 3.30-3.32).

Question 6

Do you consider the principle of using regulation-making powers appropriate to give effect to these changes (as compared to using primary legislation or some other means such as the UK government's PCTA process)?

Question 7

Are there any risks with using a regulation-making powers to give effect to these changes? Please describe using examples if possible.

Power 1: regulations made subject to the provisional affirmative procedure

3.11 The Welsh Government anticipates that the scope of power 1 would be defined to enable the Welsh Ministers to make regulations to make urgent amendments to the Welsh Tax Acts, which might be necessary in response to:

- tax avoidance or evasion activity,
- comply with international obligations, or,
- such other circumstances where it is necessary and appropriate to address cases of exceptional need, for example in response to a tribunal or higher courts decision.

3.12 Power 1 is therefore anticipated to address relatively small aspects of the Welsh Tax Acts which would impact only a small number of taxpayers. It is therefore considered appropriate that in these cases, the regulations would be subject to a provisional affirmative procedure, enabling the changes to have temporary, but immediate effect. In order for the changes made by the regulations to have permanent legal effect, they would need to be approved by the Senedd within a fixed time period. A time period of 28 sitting days²⁶ of the regulations being made by the Welsh Ministers is considered appropriate and is consistent with the time period used in other powers subject to the provisional affirmative procedure²⁷.

3.13 If the regulations are approved by the Senedd, then the changes made will have permanent effect, as is the case with regulations changing the rates and bands of the devolved taxes. Conversely, if the regulations are not approved within that time period, the taxpayer would be entitled to the repayment of any additional tax paid as a result of the regulations.

²⁶ Sitting days are those days when the Senedd are not in recess for 4 days or more.

²⁷ See, for example, section 24 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and certain powers under Part 2A of the Public Health (Control of Disease) Act 1984.

3.14 Examples 1 and 2 in Chapter 4 set out how regulations made under this process may be used. Where the power is used to amend the Welsh Tax Acts to tackle tax avoidance or evasion, making those regulations quickly after the avoidance or evasion is identified will protect the tax base. In addition, making a legislative change will create early certainty for taxpayers and their advisers. This is seen as a clearly preferable situation compared to the position where a UK minister may announce changes that are to be made in a future Finance Bill and publishes the draft legislation that will be included in that future Bill with retrospective effect back to the date of the announcement.

Question 8

Do you agree that power 1 should only apply to changes needed to respond to tax avoidance or evasion activity, compliance with international obligations, or, to address cases of exceptional need? If not in what circumstances should it not apply, and which additional situations should it apply?

Question 9

*Do you agree that a Senedd motion for power 1 should **not** be necessary for the Welsh Ministers to make provisional affirmative procedure regulations under power 1?*

Power 2: regulations made subject to the ‘super’ provisional affirmative procedure

3.15 Power 2 would enable the Welsh Ministers to make regulations to amend the Welsh Tax Acts in specific circumstances where they consider it expedient in the public interest to do so. In particular, this would be in response to tax policy changes made by the UK government which have a material impact on the Welsh Government’s overall resources through changes to the block grant adjustment.

3.16 As with power 1, regulations made under this power would have immediate but temporary effect, with their permanent legal effect dependent on the regulations being approved by the Senedd.

3.17 To ensure the power is only used where it is expedient in the public interest, the Welsh Government proposes that a Senedd ‘lock’ is imposed on the power. This would effectively mean that the Welsh Ministers could only use the power where the Senedd agrees that the circumstances giving rise to the change mean it is necessary for the changes to come into force immediately. The Senedd would signify its agreement through a motion which, if approved, would ‘unlock’ the power for the Welsh Ministers to then exercise. This approach is broadly based on the Emergency Bill process, and would require a statement by the Welsh Government explaining why the regulations should be subject to this procedure, and the estimated costs and other consequences of not making the regulations.

- 3.18 As well as ensuring the power is only used in appropriate cases, the Welsh Government recognises that regulations made using this power could affect a greater number of Welsh taxpayers, and is therefore keen that there is sufficient opportunity for the relevant Senedd committees and other interested stakeholders to scrutinise the changes before they have permanent effect.
- 3.19 It is proposed therefore, that rather than the regulations being subject to the 28 day approval rules as for regulations as is the case for power 1, they will be subject to a longer scrutiny period: a ‘super’ provisional affirmative procedure. This would ensure that there is a sufficient scrutiny period that is proportionate to the nature of the change being made. This could, for example, enable the relevant committees to take evidence and to write their respective reports, and for stakeholders to provide comments on the changes. The Welsh Government recognises the length of the extended sitting day period needs to strike the right balance between the desire to provide good scrutiny and to ensure that legislative certainty is provided to the changes contained in the regulations.
- 3.20 It is recognised that there could be a range of types of changes. Having a longer period in which the regulations must be approved enables the Senedd to determine the scrutiny period commensurate with the nature of the changes.
- 3.21 An additional advantage of this approach concerns the accessibility of the legislative changes. As set out in paragraph 2.33, the UK government primarily brings its changes into immediate effect through ways and means resolutions. While a description of these changes will normally be found in the UK Treasury ‘Red Book’, and HMT and HMRC’s websites, the only record of the changes being approved by Parliament is generally found in Hansard. Consequently, there is no record of the ways and means resolutions on legislation.gov.uk or through the commercial legal databases such as Westlaw or LexisNexis. The Welsh Government recognises that being able to access legislative changes quickly and easily is a fundamental aspect of the Rule of Law, and by making changes through regulations, members of the public and practitioners will be able to locate those changes without difficulty on legislation.gov.uk and the commercial databases.

Question 10

What length of period do you consider to be appropriate to provide adequate scrutiny time for changes to be made under power 2?

Question 11

Do you agree that the use of power 2 should be subject to a Senedd ‘lock’?

Question 12

Do you agree that power 2 should only apply to changes needed to respond to UK budget changes that impact on the resources available to the Welsh Government? If you think it should apply to more circumstances, please set these out.

Power 3: Amending the effect of the regulations made subject to the provisional and 'super' provisional affirmative procedures

3.22 Regulations made under powers 1 and 2 will usually be made quickly to ensure the tax policy changes can come into force immediately or at short notice. However, there may be some instances where the Welsh Government subsequently identifies further changes that it may need to make to the regulations to ensure the full effect of the tax policy change is achieved. There may also be instances where the Welsh Government wishes to make changes in response to points identified during the scrutiny of the regulations, or as a result of feedback from stakeholders.

3.23 To ensure that the Welsh Government can give effect to these 'subsequent' changes, it is proposed that the Welsh Ministers are provided with a further regulation-making power ('power 3'). Regulations made under power 3 would be subject to the usual draft affirmative procedure, and would enable the Welsh Ministers to make amendments to the tax rules introduced by the initial, power 1 or 2, provisional affirmative regulations.

3.24 Regulations made under this power would be laid in draft before they are approved by a resolution of the Senedd, in line with the current Senedd procedures for draft affirmative regulations²⁸. The Welsh Government would aim to lay the regulations in draft as soon as possible after the need for the changes have been identified.

Retrospection

Powers 1-3

3.25 Exceptionally, it may be desirable or necessary for certain changes to have retrospective effect. This will normally be limited to cases where the impact of the regulations is to confer a benefit to Welsh taxpayers. To provide an example, if the Welsh Government wanted Welsh taxpayers to benefit from a reduction in their tax liability from the same date that a similar change was introduced in England (be that as a result of adopting the same or a different policy), or, where the need for compliance with international obligations is before the date the regulations were made. Any use of the power on a retrospective basis would need to be carefully considered on a case-by-case basis.

²⁸ Standing Order 27.7 prohibits the Senedd from considering a motion to approve affirmative regulations until either (i) the Committee responsible for considering the regulations has reported on them, or (ii) 20 days have elapsed, whichever is earlier.

3.26 The guiding principle will be that making changes that have retrospective effect before the date of the original provisional affirmative regulations will not be possible where a taxpayer would incur a greater tax charge. However, where liabilities are increased by retrospection, and taxpayers could have reasonably expected retrospective changes to be introduced, the Welsh Ministers may make regulations that increase a taxpayer's liability. For example, where an inappropriate tax avoidance scheme is identified, Ministers may announce that the scheme will be closed down through future regulations from the date of that announcement.

3.27 Retrospective legislation has been used in relation to SDLT by the UK government²⁹, and its use has been considered by the courts³⁰. However, the use of retrospective legislation in the UK that increases the liability of a taxpayer before the date the legislation was made is subject to a protocol for making retrospective legislation³¹. If legislation is taken forward in Wales, then it is proposed that this would include a duty on the Welsh Ministers to publish a protocol on the use of retrospective legislation, and a draft of that protocol would be published alongside a Bill.

Question 13

Do you consider the use of retrospective legislation to make changes to tax laws appropriate in certain circumstances? If so, under which circumstances?

Question 14

Are there any particular points that you think should be included or addressed in the protocol document?

²⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207423/026_stamp_duty_land_tax_avoidance.pdf

³⁰<https://www.bailii.org/ew/cases/EWCA/Civ/2015/648.html>

³¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/197112/Tackling_tax_avoidance.pdf, p.19

Dealing with cases where the regulations are not approved

3.28 The powers that would be conferred by this legislation would provide the interim authority, for changes set out in the regulations. Recognising the temporary nature of these changes, provision will also need to be made to deal with circumstances where the Senedd does not approve the regulations – either because it expressly rejects the regulations through a vote, or because it fails to approve the regulations within the specified time period.

3.29 In these circumstances, the legislation would make provision to enable the repayment of taxpayers who have paid additional tax as a result of the changes. It is likely that such a provision would be modelled on section 63A of the Tax Collection and Management (Wales) Act 2016, which already makes such provision in the event that the Senedd fails to approve the regulations varying tax rates and bands. Conversely, where taxpayers have paid less tax than they would have, and the regulations fail to achieve Senedd approval, the WRA will not be able to seek that additional tax. The risk of the regulations not receiving Senedd approval is therefore borne by the Welsh Government alone.

Question 15

Do you agree with the proposal for repayments that where the:

- a) taxpayer has overpaid as a result of the failed regulations they should be entitled to a repayment; and*
- b) taxpayer has underpaid as a result of the failed regulations the WRA should not be able to collect the shortfall.*

Making other changes to the Welsh Tax Acts

3.30 The proposals set out above relate to powers that the Welsh Ministers would use to make changes to the Welsh Tax Acts that are in response to events that can be considered to be external to the Welsh Government. These are:

- the changes to tackle avoidance and evasion are to respond to attacks by a minority of taxpayers on the tax regimes,
- the changes to comply with international obligations are to respond to any treaties etc. entered into by the UK government in the future (the Welsh Tax Acts comply with the UK's current international obligations),
- the changes to respond to exceptional circumstances are to enable the Welsh Ministers to respond to situations that are unanticipated but considered to require urgent action (for example court decisions that require a legislative response, or more exceptional circumstances such as the Covid-19 crisis), and,
- the changes made to respond to UK changes to predecessor taxes that impact upon the block grant adjustment, either negatively or positively, are to ensure that the Welsh Ministers are able to respond so that the revenues

available to the Welsh Government are protected by increasing the taxes collected in Wales, or to pass on reductions in tax liabilities to Welsh taxpayers.

3.31 The Welsh Government does not propose that powers 1-3 should be used to make routine policy changes to the devolved taxes that are initiated by the Welsh Government. In these circumstances, the Welsh Government will, where it is appropriate to do so, use powers to make regulations that already exist in the Welsh Tax Acts, or where necessary will use primary legislation. If a policy change is instigated by the Welsh Government (and not in response to the situations identified), the change will need to be implemented using the powers that already exist in the Welsh Tax Acts, or will be introduced through primary legislation. It is clear that the more significant the change is, the greater the need to make those changes in consultation with Welsh citizens and interested stakeholder groups.

3.32 However, it is recognised that this would be in contrast to HM Treasury's position, where most policy changes to stamp duty land tax that are initiated by HM Treasury can be made through regulations under section 109 of the Finance Act 2003, as long as the Treasury consider the changes "expedient in the public interest". Regulations made under this power are subject to a sunset clause which, in practice, means that the change is included in the following Finance Bill. The UK government rarely uses the section 109 of the Finance Act 2003, as more usually effects changes to the SDLT legislation through the annual Finance Acts.

Question 16

Do you consider that power 2 should be used to make any changes to the Welsh Tax Acts that the Welsh Ministers consider to be expedient in the public interest, other than those specified for power 1?

Chapter 4 – Case studies

Overview

4.1 To demonstrate how the Welsh Government's proposal could operate, this chapter sets out examples of some recent changes that have been made to tax legislation by the UK government. It considers the effect and consequences of using existing powers available to the Welsh Government and how those changes could be made should legislation be taken forward.

Avoidance

Example 1 – to combat avoidance activity

The Finance Act 2003 makes various provision to relieve certain property transactions from SDLT where 'alternative property finance' arrangements are used. Among the various conditions applicable to a number of the reliefs was a requirement that the buyer in the transaction was "financial institution" as defined by section 46 of the Finance Act 2005. This definition was particularly broad and included persons authorised to carry on a consumer credit or consumer hire business.

In the UK government's Spring Budget 2011, the definition was changed so that it no longer included a person authorised to carry on a consumer credit or consumer hire business. This change was made to stop the use of SDLT avoidance schemes that exploited the ease (compared, for example, to the requirements to be a bank) with which such authorisation could be obtained by a person purporting to be a consumer credit business. The avoidance schemes used an authorised consumer credit business to act as a financial institution for the purposes of enabling the avoidance of stamp duty land tax.

These changes were made with effect from the day after the date of the UK Budget and made effective through a ways and means resolution made using the Provisional Collection of Taxes Act 1968.

Welsh Government's current ability to respond

In this particular instance, the Welsh Government would have been able to respond to this change through regulations, because the equivalent rules would have been contained in a schedule to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

The regulations would be subject to the draft affirmative resolution procedure, which would mean draft regulations would need to be laid and approved by majority vote by the Senedd before the regulations could be made and have effect, and the motion to approve the draft regulations could only be moved after either 20 sitting days have elapsed since the draft regulations were laid, or the relevant Committee has reported on the regulations (whichever is earlier).

Whilst the Welsh Ministers would therefore have had the ability to respond to this particular avoidance activity through regulations, they would not have had the ability to respond in the same time frame as the UK government. There could therefore be a continued attack on the land transaction tax regime that was no longer possible in the stamp duty land tax regime.

For example (and using the 2019-20 Senedd recess timetable for illustrative purposes), if there had been a UK Budget on 27 November 2019 and the Welsh Ministers draft regulations were published and laid on 4 December, with Senedd recess occurring on 16 December to 5 January, the earliest that the regulations could be voted on would be Wednesday, 15 January 2020 (20 sitting days after the laying of the draft regulations). However, the earliest date a vote could take place would have been at Plenary on Tuesday 21 January 2020. There would therefore be nearly 8 weeks when the potential avoidance route could continue to be promoted or exploited.

The circumstances in relation to LTT today are, however, different in that the Welsh Tax Acts include the General Anti Avoidance Rule³² (GAAR) and therefore it would not be possible to market such a scheme in Wales today without addressing why the GAAR did not apply to the arrangements. However, making a legislative change may still be desirable to clarify the legislation to stop promoters being able to promote their scheme.

Welsh Government's proposed ability to respond

If the Welsh Government's proposed option was available at the time this change was identified, the Welsh Ministers would be able to lay regulations subject to the provisional affirmative procedure under power 1 (see paragraph 3.11). The effect of this would be that the changes became law on the date the regulations are made creating early certainty of the law, and removing the risk of a continued attack on the Welsh tax base. The permanent effect of the change would be subject to Senedd approval, which would need to follow within 28 days. In the event that the Senedd rejected the regulations then taxpayers would be able to make claims to the Welsh Revenue Authority for repayment of any additional tax paid as a result of the changes made by the regulations.

Using the example above, the provisional affirmative regulations made on 4 December would become law on that date. The Senedd would need to vote to approve those regulations by 17 January 2020 (28 sitting days from the date the regulations were made³³), but the vote would occur on Tuesday 14, or Wednesday 15 January at Plenary.

³² Sections 81A-81I Tax Collection and Management (Wales) Act 2016

³³ Senedd Cymru recess dates 21 December 2019 to 5 January 2020 inclusive.

Example 2 – Closing an avoidance scheme

If the UK government wishes to respond to avoidance activity outside the period when a Finance Bill is before Parliament, then a public announcement will be made, and legislation published that will be included in the next budget³⁴.

For example, the UK government announced on 21 December 2012 that it would immediately close an avoidance scheme “which was being marketed as a way for companies to artificially reduce their corporation tax bills”³⁵. Draft legislation was published at the same time and it was announced that the legislation would be included in the Finance Bill 2013 (which was published after the budget on 20 March 2013). Finance Bill 2013 received Royal Assent on 17 July 2013.

Corporation tax is not devolved to Wales and this example is to demonstrate how the UK government takes action against avoidance activity outside the UK budget process (albeit that the legislation is subsequently included in a Finance Bill).

Welsh Government’s current ability to respond

As the example above is in relation to a reserved tax, it may be useful to consider how the Welsh Government would be able to respond currently should there be a similar announcement closing an avoidance scheme outside of a UK Budget, but in relation to Stamp Duty Land Tax rather than corporation tax.

It is possible that the Welsh Revenue Authority and the Welsh Government became aware of the avoidance scheme at the same time as the UK government (that is, before the date of the UK Budget date).

As was the case in example 1, the Welsh Government could, using its powers to make amendments to reliefs in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, have taken action to close the supposed avoidance route prior to the action taken by the UK government in the Finance Bill. The Welsh Ministers could therefore protect the Welsh tax base as soon as possible rather than wait for a fixed fiscal event, such as the laying of a Finance Bill. That action would though still be subject to regulations made under the draft affirmative procedure, so would need to be laid (in draft) prior to a vote in the Senedd and then being made. Such regulations cannot be made with retrospective effect.

³⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/197112/Tackling_tax_avoidance.pdf, p.19

³⁵<https://www.gov.uk/government/news/government-closes-tax-avoidance-scam>

Welsh Government's proposed ability to respond

The effect would be similar to example 1, namely, that, subject to Senedd approval, the changes would become law on the date the provisional affirmative regulations made using power 1. However, the proposed ability to respond would result in earlier action and early certainty would be provided for taxpayers, their advisers and the Welsh Government.

Fundamental changes to the tax regime

Example 3 – Changing the method of calculating tax liabilities, from a slab system to a marginal system

At the UK government's Autumn Statement 2014, the change from a slab to a marginal system for calculating the rates of residential stamp duty land tax was announced. The changes were to come into force from 4 December 2014, the day after the date of the Autumn Statement, through a ways and means resolution made using the Provisional Collection of Taxes Act 1968.

One condition for a ways and means resolution to remain in force is that a Bill includes a provision which makes that variation must be read for a second time by the House of Commons within 30 sitting days of the passing of the resolution. On this occasion, a Finance Bill was not used to give effect to the change but on 3 December 2014 the Stamp Duty Land Tax Bill³⁶ was introduced, thereby providing the legislative vehicle to ensure that the ways and means resolutions would remain in effect until that Bill received Royal Assent.

Subsequently in the Spring Budget 2016, marginal rates for non-residential transactions were introduced. This change came into force from the day after the date of the Budget through ways and means resolutions made using the Provisional Collection of Taxes Act 1968. The subsequent Finance Bill included provision which, through the PCTA process, gave permanent legal effect to the change initially implemented through the resolution.

Welsh Government's current ability to respond

The Welsh Ministers would not be in a position to respond to the changes to the calculation of tax liabilities through any of the current regulation-making powers contained in the Welsh Tax Acts. To give effect to this change, primary legislation would be required, either using the standard Bill process or the Emergency Bill or fast-track process.

³⁶ <https://www.gov.uk/government/publications/draft-legislation-stamp-duty-land-tax-reform-of-structure-rates-and-threshold>

Welsh Government's proposed ability to respond

Under the proposal set out in Chapter 3, this change would require the Welsh Ministers to ask the Senedd to 'unlock' power 2 to enable them to make 'super' provisional affirmative regulations. At the same time new rates and bands, based on the changed calculation method, would be set within the same power 2 regulations using the same provisional affirmative procedure. This will ensure that the rules and the rates related to them either succeed, or fail, to obtain Senedd approval together.

This would mean the changes to the calculation method (and the consequential changes to the tax rates and bands) would have temporary, but immediate legal effect once the regulations have been made by Ministers. However, the changes would not have permanent legal effect unless the Senedd approved the regulations. The enhanced scrutiny period offered by power 2 would provide time during which the relevant committees of the Senedd could scrutinise and, where it considered appropriate, obtain evidence on the effect of the changes from stakeholders and report on the changes made by the regulations.

If the Senedd approves the regulations, the changes will have permanent legal effect. In the event that the Senedd rejects the regulations, then taxpayers would be able to make claims to the Welsh Revenue Authority for repayment of any additional tax paid as a result of the changes made by the rejected regulations.

In the event improvements to the regulations are identified during the extended scrutiny period, the Welsh Ministers will be able to bring forward regulations under power 3 to make further changes to deal with those improvements. These regulations could be back-dated to the date the initial changes came into force, if that was considered appropriate and was approved by the Senedd.

Example 4 – Introduction of a new charging regime, higher rates for specific property types and buyers

At the UK government's Autumn Statement held on 25 November 2015, the Chancellor announced that new, higher rates of stamp duty land tax would be charged on purchases of dwellings where the buyer already holds an interest in another dwelling. Following that announcement, a consultation was launched on 28 December 2015 that ran until 1 February 2016. The consultation response was published on 16 March 2016, the same date as the UK budget itself. The draft legislation for the stamp duty land tax higher rates was published on 16 March and included in a ways and means resolution made using the Provisional Collection of Taxes Act 1968 to bring the new charging regime with effect from 1 April 2016,

thereby providing a small window between the announcement of implementation of the new policy and its coming into force.

Welsh Government's current ability to respond

The higher rates in Wales raised around £60 million in 2018-19. Had Wales not been in a position to respond and introduce a similar regime in the period between 25 November 2015 and 1 April 2016, the combination of an increase to the block grant adjustment and foregoing the additional revenues would have resulted in a significant reduction to the Welsh Government's overall resources. This is because the SDLT would have been making a greater tax effort and the block grant adjustment would have been adjusted to include that greater effort (see paragraph 1.9). This was an issue that did not arise as LTT had yet to come into force and a higher rates regime was included in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 following the Welsh Government seeking views on its approach to higher rates of land transaction tax.

The Scottish Government considered that the announcement of higher rates by the UK government on 25 November 2015 created the need for a rapid response. The Scottish equivalent of LTT (Land and Buildings Transaction Tax) had started to operate in Scotland on 1 April 2015. The Scottish block grant adjustment operates in a similar way as for Wales and therefore the greater tax effort in SDLT would result in a similar proportional impact on the Scottish block grant adjustment.

The Scottish Government introduced draft primary legislation for the Additional Dwelling Supplement into the Scottish Parliament on 28 January 2016, ahead of the UK government's consultation closing, and the UK government's legislation being published on 16 March 2016. Given the timing, there was no formal Scottish Government consultation, although the Scottish Finance Committee published a call for evidence on 6 January 2016. The Scottish Government also held two "*Stakeholder Reference Group meetings ... at which various interested parties were invited to comment on policy details*"³⁷.

For the Scottish Government to have its Additional Dwelling Supplement in place by 1 April 2016, it was necessary for that legislation to have received Royal Assent prior to that date (as the Scottish Government did not have powers to make ways and means resolutions as provided to the UK government in the Provisional Collection of Taxes Act 1968). There was therefore a limited period in which the Scottish Parliament could carry out its scrutiny. The Scottish Finance Committee report was published on 12 February, the Stage 1 debate was held in the Scottish Parliament on 23 February, Stage 2, in committee, was completed on 2 March, Stage 3 where the Bill was approved by the Scottish Parliament was held on 8 March and Royal Assent received on 24 March 2016.

³⁷ https://www.parliament.scot/S4_FinanceCommittee/Reports/FIS042016R03.pdf

In total, from the date of the publication of the legislation to approval by the Scottish Parliament took 34 sitting days.

Welsh Government's current ability to respond

It is considered unlikely that the Welsh Ministers could fully and effectively respond to the introduction of a new charging regime similar to the higher rate regime through any of the powers contained in the Welsh Tax Acts. Therefore, to implement the change, primary legislation would be required, either using the standard Bill process or the Emergency Bill or fast-track process, with similar time pressures as experienced by the Scottish Government and Parliament.

Welsh Government's proposed ability to respond

As in example 3, under the proposals set out in Chapter 3, a significant change with Welsh Budget implications could be effected by making regulations using power 2, and any regulations made would be subject to enhanced 'super' provisional affirmative scrutiny procedure. Before the regulations could be made, the power would need to be 'unlocked' by the Senedd.

This would mean the new charging regime (and the consequential tax rates and bands) would have temporary, but immediate legal effect once the regulations have been made by Ministers. However, the changes would not have permanent legal effect unless the Senedd approved the regulations. The enhanced scrutiny period offered by power 2 would provide time during which the relevant committees of the Senedd could scrutinise and obtain evidence on the effect of the changes from stakeholders, and report on the changes made by the regulations.

If the Senedd approves the regulations, the changes will have permanent legal effect. In the event that the Senedd rejects the regulations then taxpayers would be able to make claims to the Welsh Revenue Authority for repayment of any additional tax paid as a result of the changes made by the regulations.

In the event improvements to the regulations are identified during the extended scrutiny period, the Welsh Ministers will be able to bring forward regulations under power 3 to make further changes to deal with those improvements. These regulations could be back-dated to the date the initial changes came into force, if that was considered appropriate and was approved by the Senedd.

Reliefs

Example 5 - Introduction of a new relief

At the 2017 UK government Autumn Budget, the Chancellor introduced a first-time buyer's relief³⁸ that would be effective from the date of the budget speech (22 November 2017). A ways and means resolution was made using the Provisional Collection of Taxes Act 1968 to bring the relief into immediate effect.

The Welsh Government adopted a different approach and did not include a first time buyers' relief in land transaction tax. However, this example is used to explore the Welsh Government's ability to respond if the UK government introduces a new relief into a predecessor tax in a UK Budget.

Welsh Government's current ability to respond

Section 30 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 enables Ministers to introduce a new relief through regulations. This could have been used to introduce an equivalent first-time buyers relief, if the Welsh Government had decided that was an appropriate response to the UK government's SDLT change.

Welsh Government's proposed ability to respond

Under the proposal set out in Chapter 3, a significant change, with Welsh Budget implications, would require the Welsh Ministers to ask the Senedd to 'unlock' power 2 to enable them to make 'super' provisional affirmative regulations. The effect of using the 'super' provisional affirmative route to introduce the relief would have the advantage that the relief could become effective on the date that the regulations are made, not when they receive approval in the Senedd meaning that Welsh taxpayers are able to claim the relief as early as possible.

This would mean the new relief would have temporary, but immediate legal effect once the regulations have been made by Ministers. However, the changes would not have permanent legal effect unless the Senedd approved the regulations. The regulations would be subject to the enhanced scrutiny period offered by power 2, which would provide time during which the relevant committees of the Senedd could scrutinise and obtain evidence on the effect of the changes from stakeholders, and report on the changes made by the regulations.

If the Senedd approves the regulations, the changes will have permanent legal effect. In the event that the Senedd rejects the regulations, then taxpayers would still benefit from the relief for the period prior to the Senedd vote rejecting the regulations (if they had submitted their return prior to that date with the relevant claim). The WRA would not be able to seek from those taxpayers the additional tax that they would have paid had the regulations not been made.

³⁸ <https://www.gov.uk/government/publications/stamp-duty-land-tax-relief-for-first-time-buyers-guidance-note>

In the event improvements to the regulations are identified during the extended scrutiny period, the Welsh Ministers will be able to bring forward regulations under power 3 to make further changes to deal with those improvements. These regulations could be back-dated to the date the initial changes came into force, if that was considered appropriate and was approved by the Senedd.

Example 6 – amendment to a relief

On 1 April 2018 landfill disposals tax replaced landfill tax in Wales. Shortly following this, landfill operators in Wales contacted the Welsh Revenue Authority to raise two possible mismatches between the intentions of the Welsh Government and the legislation as drafted in relation to the operation of those two reliefs.

Welsh Government's current ability to respond

The Welsh Ministers used powers in the Landfill Disposals Tax (Wales) Act 2017 to make regulations, subject to the draft affirmative procedure, to amend the reliefs. The regulations were made as quickly as possible and the rapid action of the Welsh Government led to early legal clarity and certainty because the changes became law at the point that the regulations were made, which followed the approval by the Senedd. The first change became effective from 11 October 2018³⁹ and the second from 19 July 2019⁴⁰.

The changes ensured that landfill site operators could proceed with their site restoration projects as planned.

Welsh Government's proposed ability to respond

The action taken above demonstrates the Welsh Government's responsiveness to feedback in relation to how the taxes are operating.

However, in the event that the Welsh Government's proposed ability to respond is taken forward, it would be possible for Welsh Ministers to act even more quickly and have introduced the changes with almost immediate effect under proposed power 1.

It could be considered that the 'exceptional need' reason is applied to enable site operators to commence restoration as quickly as possible thereby enhancing the protection of the environment.

³⁹ <http://www.legislation.gov.uk/wsi/2018/1057/contents/made/welsh/> / <http://www.legislation.gov.uk/wsi/2018/1057/contents/made>

⁴⁰ <http://www.legislation.gov.uk/wsi/2019/1143/contents/made/> / <http://www.legislation.gov.uk/wsi/2019/1143/contents/made/welsh>

Whilst the UK government has many such regulation making powers to make changes to its taxes, it will frequently wait until a subsequent Finance Bill to make a change. In doing so it has an advantage that changes made can be readily identified in a Finance Act. However, this may result in changes being made later than would otherwise have been ideal. A good example of this is provided at example 2 above.

Question 17

Do you have any comments on the examples of tax legislative changes described in examples 1 to 6?

Question 18

Are you aware of any other examples of tax legislative changes in the UK that will be helpful for the Welsh Government to explore in the context of amending the Welsh Tax Acts?

Appendix 1

INITIAL REGULATORY IMPACT ASSESSMENT

Scope

1. The scope of the initial regulatory impact assessment is to consider:
 - the options by which changes can be made to the Welsh Tax Acts at short notice in certain circumstances,
 - at a high level the costs and benefits associated with the processes through which changes to the Welsh Tax Acts are made, rather than the impact of the changes in the taxes themselves (which are unknown at this stage),
 - the different administrative costs associated with each option and any short-term impacts arising from the differing timescales for passing the legislation.
2. If a legislative route is taken forward to implement the powers to make changes to the Welsh Tax Acts at short notice, a full Regulatory Impact Assessment will be undertaken to assess the relative costs and benefits of the proposed changes. This will consider the likely impact of the proposals on Welsh taxpayers, key stakeholders and the Welsh economy.

Background

3. The Welsh Revenue Authority (WRA) was established in October 2017, and has collected the Welsh devolved taxes, land transaction tax and landfill disposals tax, for over two years. There is scope, now that the taxes are firmly established, to review and consider whether the best and most appropriate tools are in place to ensure the Welsh Tax Acts can operate effectively. This includes ensuring that changes can be made to the Welsh Tax Acts at short notice in a number of circumstances, including:
 - v. to stop avoidance or evasion of the devolved Welsh taxes,
 - vi. to comply with international obligations,
 - vii. in situations of exceptional need, such as in response to a tribunal or higher courts decision, or in response to national emergencies such as Covid-19, and
 - viii. where changes are made to predecessor UK taxes⁴¹ by the UK government, which could have implications for businesses, the property market, the environment and the resources available to the Welsh Government.

⁴¹ See glossary

4. For the purposes of this consultation the Welsh Government has prepared an initial assessment of the costs and benefits associated with each option. Any comments are welcomed and will be used to inform the full assessment.

Options

5. The costs and benefits of the following three options are considered:

- Do nothing,
- Implement legislation to enable regulations to be introduced to make changes to the Welsh Tax Acts in certain circumstances at short notice, and
- Implement legislation equivalent to the UK government's annual Finance Bill.

Option 1: Do nothing

6. In this scenario, should it be identified that one of the types of changes set out in paragraph 3 is required to the Welsh Tax Acts at short notice, the Welsh Government would be able to use one of two existing mechanisms to action the change:
 - the existing Emergency or 'fast-track' Bill process. There would be costs attached to this process and potential shortened or limited scrutiny opportunities. In addition, Welsh Ministers may potentially be criticised for using this mechanism which has rarely been used previously and only in exceptional circumstances,
 - the existing standard primary legislation process, which is likely to take around 12-18 months. The implications of this for the three types of changes set out in paragraph 2 is as follows:
 - i. Accepting that any **evasion or avoidance activity** will continue in Wales for around 12-18 months. The costs of not being able to halt avoidance and evasion activity as quickly as possible will depend, of course, on the activity targeted. It could amount to significant amounts of tax revenue.
 - ii. Accepting that Wales will not comply with its **international obligations** for around 12-18 months. The potential cost here is generally likely to be more reputational. In the event that the Welsh Tax Acts do not comply with international obligations, a person would be able to rely on the provisions in the Government of Wales Act 2006 to ensure that they are not disadvantaged financially⁴².
 - iii. Accepting that Welsh Ministers will not be able to respond to **exceptional circumstances** for around 12-18 months, resulting in potential reputational and financial costs.

⁴² Section 116A(3) of the Government of Wales Act 2006 provides that "a devolved tax may not be imposed where to do so would be incompatible with any international obligations".

- iv. Accepting that Welsh Ministers will not be able to respond to **changes made to predecessor taxes** and subsequent adjustments to the Welsh block grant⁴³ for around 12-18 months, resulting in a potential loss of revenue for Wales. In this scenario, the Welsh Government would either need to operate with a reduced budget or find alternative ways of raising such revenues to maintain existing resource levels.
7. It should be noted that for both Emergency, 'fast-track' and primary legislation, the tax effects of any change could potentially, with Senedd approval, be applied with retrospective effect. This could help mitigate the risk of increased costs, particularly for primary legislation given the time it can take for a Bill to pass through the Senedd stages. There would, however, still be a potential cost associated with the uncertainty created as to what law will apply to a taxable event or activity until the legislation receives Royal Assent and commences.
 8. It would also create additional cost for the WRA (and taxpayers) to collect tax from those taxpayers who paid based on the current law, rather than the law including the changes contained in the primary legislation prior to Royal Assent. In nearly all cases it is likely that the tax paid would be based on the current law and not based on the changes. The use of the Emergency or 'fast-track' bill procedures may reduce some of that uncertainty due to the shorter timescales.
 9. The compressed timescales combined with the requirements of an Emergency or 'fast-track' Bill may require a significant allocation of Welsh Government resources, albeit for a short period, and this may impact on (and even potentially delay) other Welsh Government business. There may also be less opportunity for scrutiny (see paragraphs 2.23-2.27).

Benefits

10. A benefit of this option is that no resource is required at the present time to take this forward. However, if the Welsh Government did need to make a change at short notice then an Emergency or 'fast-track' Bill would be required and this would incur additional resource.

Option 2: Implement a Bill to enable regulations to be introduced to make changes to the Welsh Tax Acts in certain circumstances at short notice

11. In this scenario, Welsh Ministers would be provided with the powers to make certain changes at short notice to the Welsh Tax Acts. For each of the types of changes outlined in paragraph 3, this would mean that Welsh Ministers would have a tool in place to respond promptly and proportionately:
 - i. **To stop avoidance or evasion of the devolved Welsh taxes.** The ability to stop avoidance and evasion activity is in the interests of Welsh citizens as it will protect the revenues on which public services depend. It is unfair

⁴³ See glossary

for people to seek to avoid, or worse, evade, their fair share of their tax liabilities. The ability of the Welsh Government to respond as quickly as possible to stop this activity is essential.

- ii. **To comply with international obligations.** The ability to quickly make changes to ensure compliance with international obligations is aimed primarily at upholding the reputation of the Welsh Government.
- iii. **In other situations of exceptional need.** This is an area where the Welsh Government is looking to be able to respond timeously to unanticipated situations. It is difficult to anticipate any costs associated with the use of the power in relation to this area. However, the use of the power would be used sparingly in these circumstances.
- iv. **Where changes are made to predecessor UK taxes by the UK government which will affect the Welsh block grant adjustment and the overall amount of the Welsh Government resources.** Responding in a timely manner would enable changes to be made to the devolved taxes to protect the revenues available for our essential public services in Wales.

12. The inability to respond promptly to changes made to predecessor UK taxes is the most likely to have significant impact on Welsh revenues. The potential cost depends on the scale of policy change implemented by the UK government on the predecessor taxes to those devolved to Wales. However, this could be very significant; for example, scenario 4 in Chapter 4 provides the recent example of the introduction of the SDLT higher rates for additional dwellings in 2016 which increased the tax effort⁴⁴. The higher rates in Wales raised around £60 million in 2018-19. Had Wales not been in a position to respond and introduce a similar regime (through an amendment to the Land Transaction Tax and Anti-avoidance of Devolved Taxes Act (Wales) 2017 during its passage through the Senedd) the block grant adjustment would have been far larger than the revenues from land transaction tax, resulting in a reduction to the overall resources available to the Welsh Government.

Impact on taxpayers of the use of the provisional affirmative and 'super' provisional affirmative procedure

13. It is proposed that power 1 and power 2 would use a provisional affirmative procedure and a 'super' provisional affirmative procedure respectively. This procedure differs from draft affirmative procedure as the effect of the regulations can be made, and come into force, before the Senedd has approved the making of the regulations. The regulations made subject to the provisional affirmative procedure have provisional effect until the Senedd vote. If the Senedd approves the regulations they will have permanent effect. If the regulations fail to secure the approval of the Senedd, taxpayers who have paid more tax as a result of those unsuccessful changes will be entitled to claim a repayment of that overpaid

⁴⁴ "the SDLT effort" refers to the amount of tax that the predecessor tax to land transaction tax collects. If the effort is greater, the block grant adjustment will increase resulting in a larger reduction to the Welsh Government's budget, reducing overall resources. If the SDLT effort decreases the opposite occurs, resulting in more resources for the Welsh Government overall.

tax from the WRA. Conversely, where tax-payers have paid less tax than they would have, and the regulations fail to achieve Senedd approval, the WRA will not be able to seek that additional tax. The risk of the regulations is to be borne by the Welsh Government alone and not by Welsh taxpayers.

14. The direct costs of introducing the legislation will be met from current funding of the Welsh Government's officials and legal services. There are no identifiable separate costs of introducing this legislation.

Benefits

15. The key benefit of this option is that it provides Welsh Ministers with an appropriate tool to make changes to the Welsh Tax Acts at short notice in certain circumstances flexibly whilst ensuring appropriate scrutiny by the Senedd. This is particularly significant where changes are made to predecessor UK taxes by the UK government which could have implications for Welsh businesses, the Welsh property market and the resources available to the Welsh Government.

Option 3: Introducing an equivalent to the UK government's annual Finance Bill

16. Paragraphs 2.42-2.50 briefly consider potential options around future budget, tax and finance scrutiny processes in Wales. The introduction of a potential annual Finance Bill (as opposed to a Budget Bill⁴⁵) for Wales clearly has wider implications than for the purposes of achieving the policy aims of making changes to the Welsh Tax Acts. It would include revenue raising measures and some tax setting decisions, but not spending plans. A Finance Bill could therefore be used to provide a mechanism for making changes to the Welsh Tax Acts. However, Welsh Ministers do not consider it proportionate at the present time to have an annual (or less frequent) Finance Bill.
17. If in the future, if a Finance Bill is considered an appropriate legislative vehicle for Wales, then there would be additional costs attached to the introduction of an annual Bill process. It is also likely that an additional bill equivalent to the UK government's Provisional Collection of Taxes Act 1968 ("PCTA") would need to be introduced which would also incur costs. The PCTA enables measures to be brought in with temporary immediate effect through a ways and means resolution. Without equivalent legislation in Wales, any changes introduced through a Finance Bill would need to be introduced either with retrospective effect to the date of introduction or the date of Royal Assent.
18. Finally, Chapter 2 sets out that although it would be possible to use a Finance Bill to make changes to the Welsh Tax Acts, there would be limitations. There is

⁴⁵ A '**Budget Bill**' would include the appropriation of funds and authorisation of expenditure by each section of the Welsh Government. This option would **not** provide a mechanism for making changes to the Welsh Tax Acts. A '**Finance Bill**' would essentially include revenue raising measures and some tax setting decisions, but not spending plans. This **would** provide a mechanism for making changes to the Welsh Tax Acts.

likely to be difficulties in aligning the timings of the UK budget and the Welsh Government budgetary processes. There may be additional UK budgets which introduce a change with significant effect on, for example, SDLT revenues which might occur outside of the timescales of the Welsh budget process, leading to a delay in the Welsh Government being able to respond. Alternatively, where there is a degree of alignment between the Welsh and UK budget cycles it may only be possible to introduce the changes at stage 2 or 3 of a potential Welsh Finance Bill limiting scrutiny opportunities. Given the link between the tax effort made by the UK predecessor taxes and their impacts on the Welsh Government's resources, an ability to respond quickly, flexibly and outside of the Welsh budget process is essential. Otherwise, there may be potentially negative impacts on Welsh Government resources, businesses, the property market or the environment.

19. The key benefit of this option would be to minimise the legislative resource implications by including a mechanism to make changes to the Welsh Tax Acts in an existing legislative vehicle rather than a standalone Bill. However, it is not currently a viable option as Welsh Ministers have no plans to introduce a Finance Bill.

Summary

20. Option 2 is the Welsh Government's preferred option. The intention is to provide Welsh Ministers with an appropriate and proportionate tool to make changes to the Welsh Tax Acts at short notice in certain circumstances, whilst ensuring that appropriate scrutiny time is provided to the Senedd. This is particularly significant where changes are made to predecessor UK taxes by the UK government which could have implications for the resources available to the Welsh Government for essential public services.

21. The Welsh Government has previously set out three key benefits in relation to the introduction of the Welsh Tax Acts:

- Improving the efficiency and effectiveness with which public resources are used in Wales
- Boosting the resources available for public bodies in Wales to invest in improving well-being, and
- Delivering enhanced fiscal levers for Welsh Ministers and using these levers to improve outcomes for the people of Wales.

22. These benefits are aligned to the requirements of the *Well-being of Future Generations (Wales) Act 2015*⁴⁶ which came into effect in April 2016. The Act seeks to improve social, environmental, economic and cultural well-being in Wales and help to create a country that we all want to live in, now and in the future.

⁴⁶ Well-being of Future Generations (Wales) Act 2015, available to view at: <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

23. This proposed legislation is intended to continue to support the identified benefits of the Welsh Tax Acts in the following ways:

- ii. **Improving the efficiency and effectiveness with which public resources are used in Wales.** The legislation is intended to provide an additional tool to quickly close down identified opportunities for evasion and avoidance, ensuring that those who are due to pay, do pay in a timely way and enabling compliance.
- iii. **Boosting the resources available for public bodies in Wales to invest in improving well-being.** The legislation supports the aim to adapt a tax collection and management system to meet Welsh priorities. It provides an additional tool to ensure Welsh Ministers can make changes to the Welsh Tax Acts in a flexible and proportionate way, particularly in response to the UK government making changes to predecessor taxes which may have impacts on the Welsh Government's overall resources. This will enable the Welsh Government to protect its finances which are used to fund public services. It also supports the well-being goal to create both a prosperous Wales and cohesive communities.
- iv. **Delivering enhanced fiscal levers for Welsh Ministers.** A key feature of powers 1 and 2 is that the effect of the changes can be brought in with immediate effect thereby increasing revenues, or decreasing where the Welsh Government's policy is to do so, and providing clarity to taxpayers. This enhanced fiscal lever will enable Welsh Ministers to have parity to the UK government and enable the Welsh Government to make immediate changes to the devolved taxes, thereby minimising the potential impact on the Welsh Government's overall resources. Enabling legislative changes to have immediate effect also ensures taxpayers can benefit from those changes as quickly as possible. This gives Welsh Ministers better control over the budget for Welsh public services. This is in line with the well-being goal to create a prosperous Wales, allowing us to deliver enhanced fiscal levers for Welsh Ministers and using these levers to improve outcomes for the people of Wales as timeously as possible.

Question 19

Do you agree with our assessment of the alternative options?

Question 20

Are there any particular impacts or costs associated with the any of the options outlined that you wish to raise?

Question 21

We would like to know your views on the effects that the options would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh
- ii) treating the Welsh language no less favourably than the English language.

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

Question 22

Please also explain how you believe the options 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
- 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.

Glossary

1.	Affirmative procedure / draft affirmative procedure	<p>A type of Senedd procedure that applies to statutory instruments (SIs).</p> <p>SIs subject to the affirmative procedure must be approved by the Senedd before they are made or brought into effect by the Welsh Ministers. The Minister lays the SI in draft and only if it is approved by a resolution of the Senedd can the Minister sign the SI in order to make it. The SI can only have effect following approval by the Senedd. The Welsh Government would aim to lay the SI in draft as soon as possible after the need for the changes have been identified.</p>
2.	Provisional affirmative / made affirmative procedure	<p>A type of Senedd procedure that applies to statutory instruments (SIs).</p> <p>The procedure enables an SI to come into force on the day it is made by the Minister. However, in order for the SI to remain in force, it must be approved by the Senedd within a fixed time period, usually 28 sitting days of the SI being made by the Welsh Ministers.</p>
3.	'Super' provisional affirmative procedure	<p>A type of Senedd procedure proposed that would apply to statutory instruments (SIs), where the additional procedural requirements would need to be set out in primary legislation.</p> <p>This would be a similar to the provisional affirmative procedure in that it would enable an SI to come into force on the day it is made by the Minister. However, in order for the SI to remain in force, it would have to be approved by a Senedd resolution. The additional procedural requirements might include:</p> <ul style="list-style-type: none"> • a longer period between the making of the SI and the Senedd vote to approve the SI, to enable Members of the Senedd and the relevant Senedd committees to have an appropriate opportunity to scrutinise those changes. • a Senedd 'lock' imposed on the use of the power. The Welsh Ministers could only use the power where the Senedd agrees that the circumstances giving rise to the change mean it

		is necessary for the changes to come into force immediately.
4.	Block grant	The portion of the resources available from the UK government that is allocated to Wales.
5.	Block grant adjustment	The amount deducted or added from or to the block grant. This reduction or addition is comparable to the forecast tax revenue foregone by the UK government from the predecessor taxes and the partial devolution of income tax.
6.	Failed regulations	Cases where the Senedd does not approve an SI. This may be either because it expressly rejects the regulations through a vote, or because it fails to approve the regulations within the specified time period by which approval must be given.
7.	Predecessor taxes	This currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.
8.	Welsh Finance Bill	<p>A Welsh ‘Finance Bill’ would make provision relating to the devolved Welsh taxes (e.g. changes to the Welsh Tax Acts to introduce or change reliefs, and set the rates of tax), but would not include spending plans. This would provide a mechanism for making changes to the Welsh Tax Acts.</p> <p>Welsh Ministers do not consider it proportionate at the present time to introduce an annual (or less frequent) Finance Bill.</p>
9.	Welsh Budget and Finance Bill	<p>A single Welsh ‘Budget and Finance Bill’ would make provision relating to:</p> <ul style="list-style-type: none"> • the Welsh Government’s budget (spending) decisions (should the Welsh Government and Senedd decide to replace the current mechanism where the budget is approved by a Senedd motion); and • the devolved Welsh taxes (for example, changes to the Welsh Tax Acts to introduce or change reliefs, and set the rates of tax). <p>This would provide a mechanism for making changes to the Welsh Tax Acts; however, it would be a highly unusual approach encompassing a number of risks and challenges.</p>