

National Assembly for Wales
Finance Committee

**Tax Collection and Management
(Wales) Bill**
Stage 1 Committee Report

November 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Finance Committee

The Committee was established on 22 June 2011. The Finance Committee's role is to carry out the functions set out in Standing Order 19. This includes consideration of the use of resources by the Assembly Commission or Welsh Ministers, and in particular reporting during the annual budget round. The Committee may also consider any other matter relating to expenditure from the Welsh Consolidated Fund.

The Finance Committee's remit also includes specific statutory powers under the Public Audit (Wales) Act 2013 relating to new responsibilities for governance oversight of the Wales Audit Office.

Current Committee membership:



Jocelyn Davies (Chair)
Plaid Cymru
South Wales East



Peter Black
Welsh Liberal Democrats
South Wales West



Christine Chapman
Welsh Labour
Cynon Valley



Mike Hedges
Welsh Labour
Swansea East



Alun Ffred Jones
Plaid Cymru
Arfon



Ann Jones
Welsh Labour
Vale of Clwyd



Julie Morgan
Welsh Labour
Cardiff North



Nick Ramsay
Welsh Conservatives
Monmouth

The following members attended as a substitute for Ann Jones during the course of this inquiry:



Mick Antoniw
Welsh Labour
Pontypridd



Jenny Rathbone
Welsh Labour
Cardiff Central

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Recommendations

Recommendation 1. The Committee recommends that the National Assembly agrees to the general principles of the Bill. (Page 20)

Recommendation 2. The Committee recommends that the Welsh Government commit to undertaking an enhanced awareness raising campaign to encourage widespread public awareness of the Welsh Revenue Authority and devolved taxes prior to 2018. (Page 20)

Recommendation 3. The Committee recommends that the Bill be strengthened to ensure the independence of the Welsh Revenue Authority from the Welsh Government and this should be expressly provided for on the face of the Bill. (Page 26)

Recommendation 4. The Committee recommends that section 3(1)(d) of the Bill should be amended to ensure the members of staff appointed to the board are done so by a process of Chief Executive nomination in the first instance and then by a staff ballot process when future vacancies arise. (Page 27)

Recommendation 5. The Committee recommends that the Bill should include more detail on the appointment period for non-executive members and would recommend the model specified in the Public Audit (Wales) Act 2013 as a good example, whereby non-executive appointments should be for a period of no more than four years and a person may not be appointed more than twice. (Page 27)

Recommendation 6. The Committee recommends that provisions in Part 2 in relation to the chairperson and the deputy chairperson are consistent unless there is a valid reason for differing provisions. (Page 27)

Recommendation 7. The Committee recommends that section 8(4) which provides for Chief Executives “to be appointed by WRA” (subsequent to the first appointment by the Welsh Ministers) should be amended to ensure that the non-executive members make the final appointment decision (rather than the employee members of the Board). (Page 27)

Recommendation 8. The Committee recommend the Bill is amended to ensure the Board’s quorum prescribes a majority of non-executive members. (Page 30)

Recommendation 9. The Committee recommend that at least one non-executive member should be a member of each committee/sub-committee, unless it is a non-decision making committee/sub-committee. (Page 30)

Recommendation 10. The Committee recommends that the Welsh Revenue Authority produces a publication scheme and that all decisions taken by committees/sub-committees of the Welsh Revenue Authority should be made publicly available. If there is a valid reason not to publish a decision, the reasons for this should be made publicly available in accordance with the publication scheme. (Page 30)

Recommendation 11. The Committee recommends that Tax Impact and Information Notes (or equivalent documents) should be introduced for all significant variations in the devolved taxes. Where appropriate the Welsh Government should ensure that these notes are produced alongside their budget announcements. These notes should be reviewed by the Welsh Revenue Authority at least every three years and be subject to scrutiny by an Assembly Committee before the Welsh Revenue Authority’s budget is agreed. (Page 38)

Recommendation 12. The Committee recommends that section 12 should be amended to clarify that certain important functions (such as approval of the Corporate Plan, the Annual Report, the annual Accounts and the annual Tax Statement) are reserved as the responsibility of the Welsh Revenue Authority and should not be delegated to staff. (Page 39)

Recommendation 13. The Committee recommends that clear lines of accountability are provided, through a publicly available memorandum of understanding or service level agreement, between the Welsh Revenue Authority and the delegated bodies with responsibility for tax collection and management. The memorandum of understanding or service level agreement should set out clear standards for dealing with taxpayers. (Page 48)

Recommendation 14. The Committee recommends that where the Welsh Revenue Authority delegates any of its functions to an organisation/s, consideration should be given to ensuring the organisation/s provides a high level of expertise to Welsh taxpayers, including taking Welsh Language provisions into account and setting out provision for Welsh speakers in a Statement of Service Standards. (Page 48)

Recommendation 15. The Committee recommends that the Bill is amended to prevent the Welsh Government intervening in the exercise of the Welsh Revenue Authority's operational functions. (Page 52)

Recommendation 16. The Committee recommends that the Charter must specifically refer:

- to a quality service for the taxpayer;
- to its application to delegated bodies with responsibility for collection and management of taxes. (Page 58)

Recommendation 17. The Committee recommends that the first Charter should be published prior to the relevant taxes being formally devolved to Wales in April 2018. (Page 58)

Recommendation 18. The Committee recommends that the Bill is amended so that:

- section 25(2)(a) replaces the word "aspire" with "adhere to";
- the requirement to review the Charter "from time to time" under section 25(3)(b) should include the provision for a review at least every five years. (Page 58)

Recommendation 19. The Committee recommends that section 26(2) is amended to ensure the Corporate Plan includes key performance measures. (Page 62)

Recommendation 20. The Committee recommends section 27 of the Bill should specify that the Annual Report should be published no later than 31 August to ensure the Annual Report and Accounts are available within a set time period to ensure accountability, transparency and effective scrutiny of the operations of the Welsh Revenue Authority. (Page 62)

Recommendation 21. The Committee recommends that the Bill includes provision which enables the National Assembly to authorise a Committee to scrutinise the Welsh Revenue Authority. (Page 62)

Recommendation 22. The Committee recommends section 30(3)(a) is amended to ensure the wording of the audit provision in the Bill is consistent with that of the audit provision for the Welsh Ministers' accounts as set out in section 131 of the Government of Wales Act 2006. (Page 64)

Recommendation 23. The Committee recommends section 32(3)(a) regarding the responsibilities of the Accounting Officer in relation to the signing of the accounts should expressly refer to the annual accounts and the annual Tax Statement. (Page 64)

Recommendation 24. The Committee recommends that the Welsh Revenue Authority issues a Statement of Practice on a tax by tax basis to provide flexibility in the case of individual taxes whilst providing certainty over timescales for service users. (Page 71)

Recommendation 25. The Committee recommends the Minister reviews the position in relation to the Public Services Ombudsman for Wales' role in dealing with complaints against the Welsh Revenue Authority and in relation to tribunal arrangements for devolved tax collection and management and brings forward amendments if appropriate. (Page 71)

Recommendation 26. The Committee recommends that the definition of rewards should be clarified on the face of the Bill. (Page 80)

Recommendation 27. The Committee recommends the Bill is amended to ensure the Welsh Revenue Authority are not permitted to treat rewards as a deduction from the amounts paid into the Welsh Consolidation Fund. (Page 80)

Recommendation 28. The Committee recommends that section 22 of the Bill should be replaced with a provision that would treat the Welsh Revenue Authority as an additional "relevant person" in section 124 of the Government of Wales Act 2006. The Committee urges the Welsh Government to obtain the Secretary of State's consent to ensure that should an amendment to amend section 124 of the Government

of Wales Act 2006 be agreed by the National Assembly, the Bill would be able to be passed at Stage 4. (Page 81)

Recommendation 29. If it is not possible to obtain the Secretary of State's consent to amend section 124 of the Government of Wales Act 2006, the Committee recommends that the Welsh Revenue Authority's budget is identified separately and hypothecated in the Welsh Government's annual budget motion. (Page 81)

1. Introduction

1. On 13 July 2015, the Minister for Finance and Government Business (the Minister), Jane Hutt AM, introduced the Tax Collection and Management (Wales) Bill (the Bill) and accompanying Explanatory Memorandum.¹ The Minister made a statement on the Bill in plenary on 14 July 2015.²

2. At its meeting on 23 June 2015, the National Assembly's Business Committee agreed to refer the Bill to the Finance Committee (the Committee) for consideration of its general principles (Stage 1), in accordance with Standing Orders 26.9. The Business Committee agreed that the Committee should report to the National Assembly by 27 November 2015.

Terms of scrutiny

3. The Committee agreed the following terms of reference for its Stage 1 inquiry:

4. "To consider:

- The general principles of the Tax Collection and Management (Wales) Bill and the need for legislation;
- In coming to a view on this you may wish to consider addressing the individual Parts of the Bill:
 - Part 2: The Welsh Revenue Authority (WRA) – including the establishment of a new public body; membership of the WRA board; its main function, delegations and directions; statutory powers of the WRA; protected taxpayer information; and organisational and governance arrangements.
 - Part 3: Tax returns, enquires and assessments – including duties on taxpayers to keep and preserve records; tax returns; WRA enquires and referral to tribunal during an

¹ Tax Collection and Management (Wales) Bill and Explanatory Memorandum: www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=12989

² Plenary Statement, 14 July 2015: www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3179&assembly=4&c=Record%20of%20Proceedings#234466

- enquiry; WRA determinations and assessments; claim for tax relief in case of excessive assessment or overpaid tax;
 - Part 4: Investigatory Powers of WRA – including WRA’s powers to require information and documents; restrictions on information notices; inspection of premises and other property;
 - Part 5: Penalties – including penalties for failure to make tax returns, inaccuracies, relating to record-keeping and reimbursement arrangements, relating to investigations; payment of penalties; and supplementary;
 - Part 6: Interest – including interest on sums payable to and by WRA; and rates of interest;
 - Part 7: Payment and enforcement – including payment and certification of debt; and recovery;
 - Part 8: Reviews and appeals – including appealable decisions; reviews; appeals; consequences of reviews and appeals; and settlement agreements;
 - Part 9: Investigation of criminal offences – including powers to investigate criminal offences; proceeds of crime; and regulation of investigatory powers;
 - Part 10: Final provisions – including power to make consequential provision; regulations; issue of notices; and giving notices and other documents to WRA.
- any potential barriers to the implementation of these provisions and whether the Bill takes account of them;
 - whether there are any unintended consequences arising from the Bill;
 - the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum;
 - the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).”

The Committee’s approach

5. Between 15 July 2015 and 8 September 2015, the Committee conducted a public consultation to inform its work, based on the

agreed terms of reference. 16 responses were received and published on the National Assembly's website.³

6. In addition, the Committee held a stakeholder event and oral evidence sessions with a number of witnesses. Details are available at Annex B.

7. The following report details the Committee's conclusions and recommendations, based on the evidence received during the course of its inquiry.

8. The Committee would like to thank all those who have contributed to its work. The Committee is also grateful to its Expert Adviser, Lakshmi Narain, for his advice and guidance during its consideration of this complex subject area.

³ Responses to the public consultation:
www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=183

The Finance Committee's consideration of the Tax Collection and Management (Wales) Bill

Between July and November 2015 the Finance Committee conducted its scrutiny of the Bill. The figures below present the different engagement methods adopted.

16

CONSULTATION
RESPONSES



10

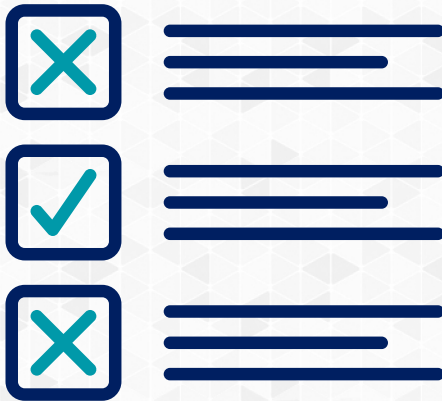
EVIDENCE
SESSIONS

(INCLUDING 2 WITH THE MINISTER FOR FINANCE AND GOVERNMENT BUSINESS)



29

RECOMMENDATIONS BY
THE COMMITTEE



12

STAKEHOLDERS
AT EVENT

10

ORGANISATIONS
ATTENDED
COMMITTEE
MEETINGS



8:25

HOURS OF
PUBLIC COMMITTEE
DISCUSSIONS

2. General principles and need for legislation

Background

9. The Wales Act 2014⁴ conferred on the National Assembly legislative competence over devolved areas of taxation and provided a clear framework for the policy options with regard to tax on transactions involving interests in land and tax on disposals to landfill.⁵

The White Paper

10. On 23 September 2014, the Welsh Government issued a consultation on its White Paper, *Collection and management of devolved taxes in Wales*.⁶ The White Paper stated:

“From April 2018 Wales will need to have a fully-functioning, efficient and effective regime for collecting and managing the two new Welsh taxes. The Welsh Government has decided to bring forward legislation on tax collection and management first, in particular to provide sufficient time after the passage of any legislation to implement and establish an effective tax regime.”⁷

11. The White Paper continued:

“The Welsh Government proposes that powers of tax collection and management should be vested in a new legally-constituted public body, to be known as the Welsh Revenue Authority.”⁸

12. The consultation closed on 15 December 2014 and a summary of responses was published.⁹ There was broad support for:

- establishing a WRA that would be operationally independent of the Welsh Ministers;
- the introduction of a Taxpayers’ Charter;
- the proposed core set of WRA duties;

⁴ www.legislation.gov.uk/ukpga/2014/29/contents/enacted

⁵ Explanatory Memorandum, paragraph 11

⁶ gov.wales/consultations/finance/devolved-taxes/?lang=en

⁷ White Paper, collection and management of devolved taxes in Wales, paragraph 1.3

⁸ White Paper, collection and management of devolved taxes in Wales, paragraph 2.8

⁹ gov.wales/docs/caecd/consultation/150210-devolved-responses-en.pdf

- the proposed obligations on taxpayers; and,
- that powers similar to those available to the UK tax authority would need to be made available to the WRA.

13. Some issues which were raised in the White Paper have not been encompassed in the Bill, including:

- how to define and operate a General Anti-Abuse Rule (GAAR) to limit opportunities for tax avoidance schemes; and
- Alternative Dispute Resolution (ADR) mechanisms using a third party to help resolve a tax dispute.

Finance Committee inquiry into the collection of devolved taxes

14. In preparation for the introduction of the Bill, the Committee undertook an inquiry into the collection of devolved taxes with the aim of taking a view on which organisations were the most appropriate organisations to collect devolved taxes in the short and longer term.

15. On 27 May 2015, the Committee published its report¹⁰ and the Minister issued a written response on 1 July 2015.¹¹ In that report the Committee made various recommendations, including:

- publishing the costs of administering the collection of taxes to allow decisions over which organisation should collect devolved taxes;
- managing the tax system in an integrated way, with the Finance Minister taking overall responsibility for all Welsh taxes;
- the approach to tax collection in Wales should not differ from that in the UK unless there are clear reasons for doing so; and
- the need for a decision on whether to create a Welsh Fiscal Commission to assist with forecasting tax receipts.

The purpose of the Bill

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

- the establishment of the WRA whose main function will be the collection and management of devolved taxes;

¹⁰ www.assembly.wales/laid%20documents/cr-ld10214/cr-ld10214-e.pdf

¹¹ www.assembly.wales/laid%20documents/gen-ld10275/gen-ld10275-e.pdf

- the conferral of appropriate powers and duties on WRA (and corresponding duties and rights on taxpayers and others) in relation to the submission of tax returns and the carrying out of enquiries and assessments so as to enable WRA to identify and collect the appropriate amount of devolved tax due from taxpayers;
- comprehensive civil investigation and enforcement powers, including powers allowing WRA to require information and documents and to access and inspect premises and other property;
- duties on taxpayers to pay penalties and interest in certain circumstances;
- rights for taxpayers to request internal reviews of certain WRA decisions and to appeal to the First Tier Tribunal against such decisions; and
- the conferral of criminal enforcement powers on WRA.¹²

17. This Bill is the first of three anticipated tax bills. The Explanatory Memorandum accompanying the Bill states:

“This Bill will be followed by tax specific legislation establishing new Welsh taxes – Land Transaction Tax and Landfill Disposals Tax. The provisions in the Bill will ultimately need to be considered as part of this wider legislative package.”¹³

Minister’s announcement on preferred providers

18. On 30 June 2015, the Minister issued a written statement announcing the Welsh Government’s preferred providers to collect the devolved taxes. In her statement she confirmed her preferred way forward was for the WRA to work with HM Revenue and Customs (HMRC) to collect and manage Land Transaction Tax (LTT).¹⁴

19. In relation to the collection of Landfill Disposals Tax (LDT), the Minister said the WRA would undertake most of the collection and management functions and would delegate compliance and enforcement of LDT to Natural Resources Wales (NRW).¹⁵

¹² Explanatory Memorandum, paragraph 2

¹³ Explanatory Memorandum, paragraph 1

¹⁴ gov.wales/about/cabinet/cabinetstatements/2015/taxes/?lang=en

¹⁵ *ibid*

20. The Minister said it was her intention to review the delegation arrangements that are put in place from April 2018 after three to five years of operation.¹⁶

Evidence from respondents

Purpose of the Bill

21. There was wide support for the general principles of the Bill and most respondents welcomed the level of engagement by the Minister in its development.

22. NRW supported the introduction of the Bill and recognised it was necessary to establish the legal framework required for the future collection and management of devolved taxes in Wales.¹⁷

23. The Welsh Local Government Association (WLGA) stated it had:

“long been supportive of greater devolution as we believe that decisions about services and how they are delivered, managed and funded should be taken as close to the point of delivery as possible. The ability for the Welsh Government to be responsible for these elements of taxation in Wales will enhance accountability with the electorate.”¹⁸

24. The Institute of Chartered Accountants in England and Wales (ICAEW) welcomed the drafting of the Bill so that substantive provisions are included on the face of the Bill rather than relegated to schedules. They recommend this approach should be adopted for future Bills.¹⁹

Consistency of tax system with UK

25. Most respondents including HMRC, NRW and ICAEW, agreed that a consistent approach to the UK tax system would be beneficial to taxpayers.

26. HMRC said that much of the content of the Bill builds on existing UK Government legislation that applies for the same purposes. They considered this would make the transition to the new taxes more

¹⁶ gov.wales/about/cabinet/cabinetstatements/2015/taxes/?lang=en

¹⁷ RoP, paragraph 312, 1 October 2015

¹⁸ Written Evidence TCM 15

¹⁹ Written Evidence, TCM 09

straightforward for customers and follows the approach taken in Scotland. They said that processes and the legislation that underpins HMRC are well-understood by advisers and professional bodies.²⁰

27. ICAEW believed that any variation in the legislation should only be applied if there is “benefit in cost, in simplification, or, indeed, in behaviour”.²¹ They continued:

“it’s really important that we seek to change as little as possible from the perception of the taxpayer, or, indeed, the tax collector. So, any change should be either to simplify or to improve.”²²

28. The Bevan Foundation agreed and said:

“We welcome that proposal that tax policies should not diverge from UK operational processes and arrangements without good reason. In the event that new taxes are introduced in addition to LTT and LDT, it is important that the issue of comparability of operational processes and arrangements does not obstruct compliance.”²³

Public awareness of scope and impact

29. There was a general recognition amongst respondents that as the two proposed devolved taxes, LTT and LDT, mainly affect businesses and professionals. Public awareness campaigns should be targeted at these groups in the first instance.

30. This was the approach taken by Revenue Scotland who said they had worked “very hard with two particular communities”, solicitors in relation to land and buildings transaction tax, and landfill operators, in relation to landfill tax.²⁴

31. The Association of Chartered Certified Accountants (ACCA) felt that members of the public and businesses would be likely to hear about tax changes “when they are actually dealing with an accountant”. Therefore, they felt sufficient awareness in the profession was

²⁰ Written Evidence, TCM 13

²¹ RoP, paragraph 196, 7 October 2015

²² *ibid*

²³ Written Evidence, TCM 04

²⁴ RoP, paragraph 12, 1 October 2015

important as “they will be able to act as channels to pass information on to the taxpayers more generally”.²⁵

32. ICAEW considered that public awareness for general taxpayers needs only to be raised when there is a fundamental change. They stated:

“The danger with tax devolution is that it’s overcomplicated or that we try and do too much with it...If Wales generally follows the same principles and the same approach, then the best way for the public is not actually to be aware that the changes happen but simply to be paying the taxes and for those taxes to be collected.”²⁶

33. The LITRG highlighted the “general disinterest or unawareness to do with tax” and suggested the Charter [covered in chapter 8] would be a good opportunity to raise awareness of the Welsh Revenue Authority:

“so that, in future, if other taxes are devolved, people are aware of the values and the standards and what their role is.”²⁷

Evidence from the Minister

34. The Minister confirmed there was no alternative to legislation “if we want to raise devolved taxes in Wales, we need to legislate for it”.²⁸ She said the provisions of the Bill are drawn from, and are broadly consistent with, UK and Scottish tax legislation.²⁹

35. The Minister confirmed that the Wales Act 2014 “conferred new competence on the Assembly, adding devolved taxes as a new subject...and there are no provisions of the Bill that require the consent of the UK Government”.³⁰

36. In relation to engagement with stakeholders, she said:

“We’ve engaged widely across Wales, listening to the views, questions and concerns raised by the public, stakeholders and

²⁵ RoP, paragraph 182, 7 October 2015

²⁶ RoP, paragraph 184, 7 October 2015

²⁷ RoP, paragraph 419, 1 October 2015

²⁸ RoP, paragraph 25, 17 September 2015

²⁹ RoP, paragraph 7, 17 September 2015

³⁰ RoP, paragraph 31, 17 September 2015

business, and, of course, you are aware of my tax advisory group and tax forum and tax expert group, which have contributed greatly to the process. I think our approach to devolved taxes has to be based on clear principles—and I've laid those out: fairness, simplicity, supporting jobs and growth, stability and certainty."³¹

Our View

37. The Committee received positive feedback from stakeholders regarding the Minister's consultation and stakeholders said many of their views have been incorporated into the Bill. The Committee welcomes the approach to engagement taken by the Minister and believe this inclusive approach should be seen as best practice for future Welsh Government bills.

38. The Committee acknowledges the views from the majority of respondents that professional agents are most likely to be the first point of contact for LTT and LDT. However, the Committee believe it is also important to recognise that one of the major objectives of fiscal devolution is to increase the responsibility and accountability of the Welsh Government. Therefore, even if there are no differences between devolved legislation and UK legislation relating to stamp duty land tax and landfill tax, it is still essential that Welsh taxpayers understand that responsibility for these taxes lies with the Welsh Government.

Recommendation 1: The Committee recommends that the National Assembly agrees to the general principles of the Bill.

Recommendation 2: The Committee recommends that the Welsh Government commit to undertaking an enhanced awareness raising campaign to encourage widespread public awareness of the Welsh Revenue Authority and devolved taxes prior to 2018.

³¹ RoP, paragraph 7, 17 September 2015

3. Part 2 - The Welsh Revenue Authority

Background

39. Part 2 of the Bill establishes the WRA, makes provision for its board membership, describes its main functions, defines how taxpayer information can be used, and allows the WRA to instigate court proceedings.

40. The Explanatory Memorandum states that Section 2 establishes the WRA as a corporate body with its own legal personality. The WRA will be a Crown body with the status of a non-ministerial department, as distinct from the status of a Welsh Government sponsored body. The Explanatory Memorandum continues:

“The decision to establish a separate corporate entity to collect and manage devolved Welsh taxes reflects the international best practice in ensuring that the tax body can exercise its functions without political interference in taxpayers’ affairs. The accountability arrangements reflect the need for a clear separation between the corporate body and the Welsh Ministers.”³²

41. Sections 3–6 provide for the membership of the WRA, which will comprise non-executive and executive members and consist of between six and twelve members.

42. Sections 5-6 provide for the Welsh Ministers to appoint and remove non-executive members including the chairperson and deputy chairperson and to make regulations to amend the number of members.

Evidence from respondents

Welsh Revenue Authority

43. Most respondents supported the establishment of the WRA as a non-ministerial department which is separate from the Welsh Government. CLA Cymru stated:

³² Explanatory Memorandum

“collection and management should be undertaken by a body that is operationally separate from Welsh Ministers.”³³

44. The Bevan Foundation agreed:

“it is important that the legal responsibility for tax collection management remains with the WRA, and that responsibility for tax policy remains with Welsh Government Ministers as it has the potential to support (or harm) other policy areas.”³⁴

45. Revenue Scotland initially operated within Scottish Government but is now a non-Ministerial department. They said that being a non-ministerial department is “quite a standard model...in jurisdictions around the world” and they “still have a very good working relationship with Scottish Government”.³⁵

46. HMRC confirmed it is also an independent body although they are “ultimately accountable to the Treasury”.³⁶ They said:

“...we do have that degree of operational independence...The main objective for that is so that Ministers can’t interfere with the day-to-day affairs that we have with taxpayers: so, deciding who we investigate...”³⁷

47. ICAEW said:

“it should be very clear that the Welsh Government are setting policy and the WRA are applying the system and the management...Obviously, if the WRA have an independent board then they should be very clear on where those lines are.”³⁸

Membership of WRA

48. Most respondents were generally content that the membership of the WRA would consist of executive and non-executive members. The WLGA said:

³³ Written Evidence, TCM 03

³⁴ Written Evidence, TCM 04

³⁵ RoP, paragraph 39, 1 October 2015

³⁶ RoP, paragraph 155, 1 October 2015

³⁷ RoP, paragraph 226, 1 October 2015

³⁸ RoP, paragraph 240, 7 October 2015

“A non-executive Board with a chief executive responsible would seem appropriate, this being an understood and effective model for public sector bodies across the UK and consistent with the Nolan principles (the Code of Practice for Ministerial Appointments to Public Bodies) and international best practice.”³⁹

49. However, the WLGA did raise concerns that section 6 which deals with how Welsh Ministers may remove a person from the WRA does not deal with the process for the removal of the non-executive chairperson, whilst section 6(2) refers specifically to the removal of the deputy chairperson.⁴⁰

50. The Auditor General for Wales (AGW) expressed concern that the Bill requires the WRA to nominate “1 or 2 other members of staff”⁴¹ to become members of the WRA. He suggested this is a little circular “and amounts to the “board” selecting its own members”. He felt it would be more appropriate for the employees to be nominated by the Chief Executive for approval by the board.⁴²

51. Several respondents including CLA Cymru, ICAEW and Deloitte recommended that non-executive Members should have knowledge or experience of law and/or tax administration “such as professionally qualified lawyers, accountants or chartered tax advisers with experience of advising taxpayers) as they will be able to provide valuable insights to the WRA”.⁴³

Evidence from the Minister

52. On the issue of the WRA being a non-ministerial department, the Minister stated:

“The Bill fully protects the confidentiality of taxpayer information and specific taxpayer situations from any involvement from Welsh Ministers, and ensures the operational independence of the WRA.”⁴⁴

³⁹ Written Evidence, TCM 15

⁴⁰ *ibid*

⁴¹ Tax Collection and Management (Wales) Bill

⁴² Written Evidence, TCM 02

⁴³ Written Evidence, TCM 03

⁴⁴ FIN(4)-21-15 PTN1: Letter from the Minister for Finance and Government Business

53. She said there was a “significant safeguard against inappropriate interference in taxpayers’ affairs” in sections 16 and 19 of the Bill which makes it a criminal offence for anybody working in WRA (or organisations acting under delegation) to disclose protected taxpayers’ information, other than in tightly defined circumstances.⁴⁵

54. The Minister confirmed that preparatory work on establishing the WRA is underway with a WRA Implementation Director (Chief Operating Officer) expected to be appointed in summer 2016 and a Chief Executive likely to be appointed in the autumn of 2017. She estimated the WRA would have between 25 and 32 members of staff.⁴⁶

55. The Committee questioned the Minister as to what controls would be in place to ensure that key decisions made in relation to WRA’s processes remain objective during the implementation period when work will be undertaken by Welsh Government officials.⁴⁷ The Minister confirmed:

“this is about making sure that all the preparations are under way and that we’re in a state of readiness before the WRA is established. Then, of course, the WRA will approve—. They’ll be responsible for approving and receiving the preparatory work that’s being undertaken on the systems, and taking ownership of them.”⁴⁸

56. In relation to the above, the Minister said this issue also relates to when the WRA board will be appointed. She said lessons had been learnt from Scotland where they appointed its Revenue Scotland Board three-months prior to “going live” and it was her intention to appoint the WRA Board six-months beforehand.⁴⁹ Her official continued:

“It will then have time as well to consider that work that’s already been done, and refine it, if necessary, before it’s then brought in place on 1 April.”⁵⁰

⁴⁵ FIN(4)-21-15 PTN1: Letter from the Minister for Finance and Government Business

⁴⁶ FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business, 4 November 2015

⁴⁷ RoP, paragraph 15, 21 October 2015

⁴⁸ RoP, paragraph 12, 21 October 2015

⁴⁹ RoP, paragraph 14, 21 October 2015

⁵⁰ RoP, paragraph 15, 21 October 2015

57. The Minister confirmed the non-executive members of the Board would be made by public appointments in accordance with the Code of Practice for Ministerial Appointments to Public Bodies.⁵¹

58. She said the terms and conditions of non-executive members would be set by Welsh Ministers and that such appointments would be for the next Welsh Government to make. She continued:

“I would not anticipate that the terms and conditions of appointments would depart significantly from the existing terms and conditions model used for non-executive appointments to the Welsh Government Board. These are generally for a fixed period of two years with the possibility of extension. The Seven Principles of Public Life would apply.”⁵²

Our view

59. Section 2(3) states that the WRA’s functions are performed on behalf of the Crown and Section 8(6) makes it clear that WRA staff will be civil servants. The Committee considers that this effectively makes the WRA a government entity, which is legally separate from the Welsh Government.

60. However, the Committee believes the Bill should be strengthened to reinforce this separation/independence. The equivalent Scottish legislation; *Revenue Scotland and Tax Powers Act 2014*⁵³ (RSTPA 2014), contains a specific provision under section 7 “*Independence of Revenue Scotland*”. We believe a similar provision should be included in this Bill. [This issue is discussed further under chapter 7]

61. Overall, the Committee is content with the proposed executive and non-executive members’ composition of the WRA Board. The Committee views this model of combined boards as an effective model in the private sector and has been successfully implemented for some public sector bodies in Wales.

62. However, the Committee is concerned that there is a lack of detail in the Bill regarding the mechanism that will be used for nominating staff members to the WRA board. We commend the approach

⁵¹ FIN(4)-21-15 PTN1: Letter from the Minister for Finance and Government Business

⁵² *ibid*

⁵³ Revenue Scotland and Tax Powers Act 2014:
www.legislation.gov.uk/asp/2014/16/contents

advocated by the AGW; that it would be more appropriate for the “1 or 2 other members of staff” to be nominated by the Chief Executive for approval by the board in the same way the AGW is able to “... recommend a person to the non-executive members for appointment...” as detailed in the *Public Audit (Wales) Act 2013* (PAWA 2013).⁵⁴

63. Additionally, the Committee recognises the benefit of appointing staff members to the board via a ballot system and advocate this approach when future vacancies arise, as detailed in the PAWA 2013.⁵⁵

64. The Committee welcomes the Minister’s assurance that non-executive appointments to the Board will be made in accordance with the Code of Practice for Ministerial Appointments to Public Bodies. However, the Committee notes there are several boards across Wales governed by varying legislation with different periods of appointment and re-appointment. The Committee believes generally there should be a more consistent approach on the length of appointments and whether re-appointments should be permitted.

65. The Committee notes that Part 2 on the composition of the WRA makes various provisions in relation to the deputy chairperson, provisions which are often silent in relation to the chairperson. For consistency and clarity the Committee believes provisions in relation to the chairperson and deputy chairperson should be similar, unless there is a valid reason for the variations. Should there be any valid reasons the Committee would like the Minister to provide clarity on the reasons for the variation.

66. The Committee notes the Minister’s intention to appoint a Chief Executive to undertake preparatory work prior to the establishment of the WRA and that the board will be appointed six months before the taxes go live in 2018. The Committee is content with this approach and appreciates the importance of ensuring the WRA is effectively formed prior to April 2018.

Recommendation 3: The Committee recommends that the Bill be strengthened to ensure the independence of the Welsh Revenue Authority from the Welsh Government and this should be expressly provided for on the face of the Bill.

⁵⁴ www.legislation.gov.uk/anaw/2013/3/contents/enacted

⁵⁵ *ibid*

Recommendation 4: The Committee recommends that section 3(1)(d) of the Bill should be amended to ensure the members of staff appointed to the board are done so by a process of Chief Executive nomination in the first instance and then by a staff ballot process when future vacancies arise.

Recommendation 5: The Committee recommends that the Bill should include more detail on the appointment period for non-executive members and would recommend the model specified in the Public Audit (Wales) Act 2013 as a good example, whereby non-executive appointments should be for a period of no more than four years and a person may not be appointed more than twice.

Recommendation 6: The Committee recommends that provisions in Part 2 in relation to the chairperson and the deputy chairperson are consistent unless there is a valid reason for differing provisions.

Recommendation 7: The Committee recommends that section 8(4) which provides for Chief Executives “to be appointed by WRA” (subsequent to the first appointment by the Welsh Ministers) should be amended to ensure that the non-executive members make the final appointment decision (rather than the employee members of the Board).

4. Committees and sub-committees; and Procedure

Background

67. Section 7 makes provisions for the WRA to establish committees (which may establish sub-committees) for any purpose relating to its functions. The WRA may determine the composition of committees and also appoint to committees people who are not members of the WRA and remunerate them for their services, (such remuneration to be approved by the Welsh Ministers).

68. Section 9 allows the WRA to regulate its own procedures and that of its committees and sub-committees, including setting a quorum.

Evidence from respondents

69. Many respondents including CIOT and ICAEW welcome the ability for the WRA to establish committees to allow it to supplement the skills and knowledge of the Board. The ICAEW felt the provisions would:

“ensure a greater coverage and understanding of the effect, or potential effect, of their work and gather more directly the views of those involved in business and the economy as a whole.”⁵⁶

70. The LITRG agreed and said it would enable the WRA to receive advice and support from experts in particular areas of tax, which they felt would be “imperative as it is unknown how Welsh taxes will develop in the future”.⁵⁷

71. Revenue Scotland confirmed they have established an audit and risk committee “which it was more or less required to do” and a staffing and equalities committee, which was discussed and agreed by its Board.⁵⁸

72. In relation to section 9 on the WRA’s procedures, the AGW was concerned that the WRA would be able to regulate its own proceedings which could potentially allow it to operate without the control of the non-executive members. He recommended section 9 should include a

⁵⁶ Written Evidence, TCM 09

⁵⁷ Written Evidence, TCM 01

⁵⁸ RoP, paragraph 59, 1 October 2015

provision that the quorum set by the WRA must require there to be a majority of non-executive members present.⁵⁹

73. The WLGA agreed that non-executive members should outnumber the executive members.⁶⁰

Evidence from Minister

74. On the issue of the quorum of the Board, the Minister's official explained:

“If you count up the number of non-execs and execs, obviously, the idea of the board will always be top-heavy as far as non-execs are concerned. That's an important principle, which the Minister established early on.”⁶¹

75. The Minister's official continued to say:

“it doesn't go into that level of detail when it comes to the committees or sub-committees because that's within the gift of the WRA as to how they set their procedures.”⁶²

76. He said this was to provide “maximum flexibility” as it will depend what committees or sub-committees the WRA may wish to establish.⁶³

77. The Committee asked the Minister why there is a distinction between the membership structure for the WRA and the membership structure under the PAWA 2013. The Minister said:

“The WRA is the first ever Welsh non-ministerial department. It is a different body in terms of the provisions that came through the Public Audit (Wales) Act. And it's our first ever one; there are no precedents for the model. So, we have to recognise different governance provisions, and it's important that we look to what is needed for the WRA.”⁶⁴

⁵⁹ Written Evidence, TCM 02

⁶⁰ Written Evidence, TCM 15

⁶¹ RoP, paragraph 214, 21 October 2015

⁶² *ibid*

⁶³ RoP, paragraph 218, 21 October 2015

⁶⁴ RoP, paragraph 199, 21 October 2015

Our view

78. The Committee supports the ability for the WRA to establish committees for any purpose relating to its functions, as this will allow the skills and knowledge of the Board to be supplemented by others. However, the Committee is concerned that the Bill allows the WRA complete control over its own procedures which could potentially allow it to operate without the input of the non-executive members.

79. The Committee believes that to aid transparency of the WRA, decisions taken by committees/sub-committees should be made publicly available, unless there is a valid reason not to do so. The Committee believes the WRA should prepare a publication scheme which should include the circumstances when decisions would not be published to ensure a consistent approach is taken across committees/sub-committees.

Recommendation 8: The Committee recommend the Bill is amended to ensure the Board's quorum prescribes a majority of non-executive members.

Recommendation 9: The Committee recommend that at least one non-executive member should be a member of each committee/sub-committee, unless it is a non-decision making committee/sub-committee.

Recommendation 10: The Committee recommends that the Welsh Revenue Authority produces a publication scheme and that all decisions taken by committees/sub-committees of the Welsh Revenue Authority should be made publicly available. If there is a valid reason not to publish a decision, the reasons for this should be made publicly available in accordance with the publication scheme.

5. WRA's main functions

Background

80. Section 11 sets out the WRA's functions, including its general function to collect and manage devolved taxes and particular functions relating to such taxes including providing information and assistance to the Welsh Ministers, taxpayers and others; resolving complaints and disputes; and, promoting tax compliance and working to protect against tax evasion and tax avoidance. The WRA may undertake other actions which it considers necessary or expedient in connection with exercising its functions.

81. The Explanatory Memorandum states that it is probable that a 'digital by default' approach will be taken for collection and management of tax but notes this could have an [adverse] impact in rural areas with poor internet connection.⁶⁵

82. Section 12 provides the WRA with the authority to "authorise the carrying out of any of its functions (to any extent)" to a member of WRA, a committee or a sub-committee of WRA or the chief executive or any other member of staff of WRA.

Evidence from respondents

83. Most respondents were satisfied that the Bill would not lead to additional compliance burdens for taxpayers.

84. Discussing the situation in Scotland, Revenue Scotland confirmed that they were "not aware of any significant additional burden". They said they had received positive feedback from solicitors in relation to Land and Buildings Transaction Tax (LBTT).⁶⁶ They continued:

"There's nothing to indicate that the compliance burden on landfill operators is markedly worse. They've had to learn to use a new online system, which HMRC didn't have. They are not telling me that they're finding it difficult. So, I think that's all positive."⁶⁷

⁶⁵ Explanatory Memorandum

⁶⁶ RoP, paragraph 19, 1 October 2015

⁶⁷ *ibid*

85. In terms of any additional costs to taxpayers for complying with the new tax regime for landfill disposals tax, NRW stated “any burden on the taxpayers would be minimised”.⁶⁸ They continued:

“The only thing I can think of, really, would be the fact that, at the moment, a landfill operator who operates in England and Wales only has to produce one tax return. When the tax is devolved to Wales, they would have to produce two. So, a small burden on them. But I’m not aware of any proposals that would significantly increase the cost on taxpayers.”⁶⁹

86. ICAEW agreed stating “I think the opportunity to make things simpler, and therefore relieve the system of compliance issues, needs to be taken”.⁷⁰

General Anti-Abuse Rule

87. The GAAR is part of the UK Government’s approach to managing the risk of tax avoidance. HMRC’s website states that GAAR:

“has been introduced to strengthen HM Revenue and Customs’ (HMRC’s) anti-avoidance strategy and help HMRC tackle abusive avoidance. The GAAR legislation defines what are, for its purposes, tax arrangements that are abusive.”⁷¹

88. The GAAR was considered during the Welsh Government’s White Paper to limit opportunities for tax avoidance schemes but was not included in the Bill.

89. There was general consensus from respondents that GAAR is a useful tool but not necessarily appropriate for this Bill and would be better included in specific tax legislation.

90. The Law Society said “it is preferable that, drawing on an anti-abuse approach, that is actually attached to individual taxes”.⁷² They said the advantages of this approach is that:

“you would be defining it in relation to an individual tax; you wouldn’t just to be defining it in relation to general operation.

⁶⁸ RoP, paragraph 403, 1 October 2015

⁶⁹ *ibid*

⁷⁰ RoP, paragraph 186, 7 October 2015

⁷¹ www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules

⁷² RoP, paragraph 363, 7 October 2015

It could apply more broadly, because what's going in place in the Bill is a tax system that will then incorporate other taxes that are devolved to Wales, it's not just looking at the two that we have currently."⁷³

91. ICAEW said that the GAAR "as applied at the moment, is aimed at individual taxpayers' income tax and corporation tax".⁷⁴ They said as these are:

"areas that are not yet in the devolution arena...I'm not sure that there would be any benefit at this stage for the Welsh Government to be looking at that."⁷⁵

92. However, HMRC considered it useful to have a GAAR across the spectrum of taxes because "it's very discouraging for people to enter into abusive transactions".⁷⁶ They continued:

"... quite apart from the fact that you've got powers to tackle abuse, it is a discouraging thing and, obviously, we don't want taxpayers to enter into abusive arrangements. But it's really for Wales to decide what they want to do in there."⁷⁷

Tax Information and Impact Notes

93. The UK Government publishes tax information and impact notes (TIINs) for tax policy changes when the policy is final or near final. HMRC's website states:

"TIINs provide a clear explanation of the policy objective together with details of the tax impact on the Exchequer, the economy, individuals, businesses, civil society organisations, as well as any equality or other specific area of impact."⁷⁸

94. In evidence HMRC expanded further on how they used TIINs:

"The tax information and impact note effectively serves two purposes: we publish a whole series of them at the autumn statement...But, basically, for every measure that goes into the finance Bill, and for other secondary legislation measures, the

⁷³ RoP, paragraph 365, 7 October 2015

⁷⁴ RoP, paragraph 199, 7 October 2015

⁷⁵ *ibid*

⁷⁶ RoP, paragraph 120, 1 October 2015

⁷⁷ *ibid*

⁷⁸ www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

idea of the tax information and impact note is really to give the sort of headline messages about what's in there—so, who's going to be affected, when the measure starts, what legislation's been changed, provide contact details for officials—so, really, just giving the key information so that someone can just pick that up and look at it, and immediately find out whether or not they're going to be affected and what's being changed, and then also provide details of the potential impacts on groups.”⁷⁹

95. HRMC said that TIINs very much focus on the “legislative side of things”, they said given the anticipated taxes would be “fully devolved tax, we wouldn't be producing TIINs for these sorts of measures”.⁸⁰ However, they said they would be:

“very happy to work with the Welsh Government in terms of how we go about producing these and the kind of information that we use to support them, particularly in areas such as calculating admin burdens on business. I think we've generally had positive feedback from customers in terms of how well they're received, both from giving that basic information but also then putting some more background around impacts, and so on. It's certainly something we'd be very happy to work on with the Welsh Government and the Welsh revenue authority to help them do something similar.”⁸¹

96. Other witnesses, including ICAEW suggested impact assessments on taxes should be prepared by the WRA. They said:

“Every time policy is set, there should be an objective to that tax policy, and the WRA should be able to measure the performance of that policy and report back to the Welsh Government so that you can measure whether the policy has succeeded.”⁸²

Digital by default

97. Most respondents recognised that many organisations are moving to a ‘digital by default’ model and the devolved taxes will mainly affect

⁷⁹ RoP, paragraph 222, 1 October 2015

⁸⁰ RoP, paragraph 223, 1 October 2015

⁸¹ *ibid*

⁸² RoP, paragraph 190, 7 October 2015

businesses and professionals who are more likely to be prepared to deal with digital services.

98. HMRC confirmed it is moving towards “digital tax accounts” for every taxpayer, with the aim of all individual taxpayers being able to access their own digital account by the end of the next Parliament in 2020.⁸³ They said;

“... there are definite advantages with the digital approach in terms of giving customers the facility to report much more regularly, perhaps monthly or quarterly, and pay their taxes as they arise rather than, necessarily, a long time after the fact. As well, I think there’s a particular challenge for HMRC to make better use of the data that we have.”⁸⁴

99. HMRC said for Stamp Duty Land Tax (SDLT) 97% of returns are filed online and 68% of payments are paid online. They said:

“... we need to work with the Welsh Government as part of taking this forward to work out what their approach is going to be to this, but, also, obviously, we are moving very fast in terms of digital change at the moment, and it’s trying to anticipate what the SDLT picture will look like in 2018 and making sure that, actually, things align as far as possible.”⁸⁵

100. NRW said they currently undertaking a number of waste collection activities via digital means. Aware of the Minister’s intention “for online activity to be put in place for landfill disposals tax” they said that depending on what their delegated role and responsibilities will be in future, they envisaged they “would be helping to support in undertaking that”.⁸⁶

101. Whilst LITRG believed there would be many benefits to using digital and online services, they were concerned that it shouldn’t be a “one size fits all” approach and there must be an alternative.⁸⁷

102. However, they did acknowledge that the proposed taxes being devolved “will be mainly businesses, so maybe the effect isn’t as if it were individuals”.⁸⁸

⁸³ RoP, paragraph 271, 1 October 2015

⁸⁴ RoP, paragraph 272, 1 October 2015

⁸⁵ RoP, paragraph 280, 1 October 2015

⁸⁶ RoP, paragraph 350, 1 October 2015

⁸⁷ Written Evidence, TCM 01

103. Other concerns were raised about the financial implications of setting up a digital by default system which are explored further in chapter 12.

Internal authorisation to carry out functions

104. The AGW was concerned that the ability for the WRA to authorise the carrying out of its functions by an employee would allow for the WRA to adopt an entirely “hands-off” approach to its functions and would not be consistent with good governance. The AGW suggested certain functions such as approval of the Corporate Plan, Annual Report, Accounts and Tax Statement should be reserved to the WRA and should not be delegated to its staff.⁸⁹

Evidence from the Minister

105. The Minister said she had consulted on the issue of GAAR a great deal and that tackling tax avoidance was a “top priority”. She stated:

“we’ve got to have robust anti-avoidance arrangements...I think whether there should be a single rule or one for each tax will be for the next Government to develop in tax-specific legislation. I do anticipate there’ll be an overarching measure. I think there has to be an overarching measure, but it’s got to be very clearly applied and relevantly applied to both the devolved taxes. So, the legislation for those devolved taxes will include specific proposals targeting areas where tax avoidance is identified in existing UK taxes.”⁹⁰

106. In relation to the digital by default approach, she said it is “very much part of HMRC’s strategy at the moment in terms of improving services” and it would be important over time that the WRA become digital as a default.⁹¹

107. However, she did recognise “there is digital exclusion” in Wales and said:

“I think this is where the charter consultation might be very helpful in terms of access for taxpayers. We have to look very

⁸⁸ RoP, paragraph 430, 1 October 2015

⁸⁹ Written Evidence, TCM 02

⁹⁰ RoP, paragraph 138, 21 October 2015

⁹¹ RoP, paragraph 124, 21 October 2015

carefully at how we can enable people to access the information if they're not digitally engaged.”⁹²

108. She said local government “can be helpful”⁹³ as they have experience in terms of moving towards the digital by default approach for universal credit and lessons could be learnt from initiatives such as Communities 2.0 and the work they have undertaken in terms of trying to improve digital inclusion.⁹⁴

109. In relation to section 12 on the internal authorisation to carry out functions, the Minister said “it is a matter for the WRA... as to which functions they would delegate” and the WRA “will still retain overall responsibility”.⁹⁵

110. Her official said the words (to any extent) were “just a matter of clarity in the drafting, putting it beyond doubt that there aren't any restrictions on any of the things that WRA cannot delegate internally”.⁹⁶ He continued:

“I don't think anyone would anticipate that such key documents, perhaps like a corporate plan or annual report, wouldn't still be signed off at the appropriate level.”⁹⁷

111. The Minister considered assessments on the impact of tax policy as “good practice” and said it was “vital” that the potential impact of tax policy was considered very carefully.⁹⁸ She continued:

“where there's any new tax legislation, we would obviously have to have specific impact assessments, and that would be looking at the impact on third sector businesses, small businesses, equality, protecting groups and human rights—you know, all the impact assessments that we undertake. That would be the case for both the new laws in terms of land transaction tax and landfill disposals tax, and, in fact, any other taxes that could be devolved to Wales. But it is a WRA function, as a result of this Bill, to provide information,

⁹² RoP, paragraph 124, 21 October 2015

⁹³ RoP, paragraph 127, 21 October 2015

⁹⁴ RoP, paragraph 126 & 127, 21 October 2015

⁹⁵ RoP, paragraph 75, 17 September 2015

⁹⁶ RoP, paragraph 79, 17 September 2015

⁹⁷ RoP, paragraph 83, 17 September 2015

⁹⁸ RoP, paragraph 120, 21 October 2015

assistance and advice to the Welsh Ministers, and that's going to be set out in a memorandum of understanding."⁹⁹

Our view

112. The Committee agrees that the evidence presented by the Minister and received from respondents that the GAAR should be included in specific tax legislation rather than this overarching Bill.

113. The Committee notes that many public sector organisations are moving towards a 'digital by default' approach and we agree that the WRA should aim to become digital as this may be beneficial and provide cost savings for taxpayers and the WRA. However, the Committee would be keen not to exclude taxpayers who do not have the skills or connectivity to engage with the WRA digitally and support should be given to assist all sectors with digital inclusion.

114. The Committee believes the requirement to produce TIINS (or an equivalent documents) would be best addressed through agreement between WRA and Welsh Government rather than in legislation. The Committee's Expert Adviser noted that there have been a number of instances where the assessments that have been made in TIINS for UK-wide taxes, have significantly differed from the outcome. This would clearly be a matter of concern if e.g. the cost of a relief was much greater than that expected as it may suggest the relief was being abused; it may also indicate that a relief was ineffective if the outcome was much less. The Committee believes that the content of TIINS (or equivalent documents) should be reviewed by the WRA every three years and that the review should be subject to scrutiny by an Assembly Committee.

Recommendation 11: The Committee recommends that Tax Impact and Information Notes (or equivalent documents) should be introduced for all significant variations in the devolved taxes. Where appropriate the Welsh Government should ensure that these notes are produced alongside their budget announcements. These notes should be reviewed by the Welsh Revenue Authority at least every three years and be subject to scrutiny by an Assembly Committee before the Welsh Revenue Authority's budget is agreed.

⁹⁹ RoP, paragraph 120, 21 October 2015

Recommendation 12: The Committee recommends that section 12 should be amended to clarify that certain important functions (such as approval of the Corporate Plan, the Annual Report, the annual Accounts and the annual Tax Statement) are reserved as the responsibility of the Welsh Revenue Authority and should not be delegated to staff.

6. Delegation of functions

Background

115. Section 13 makes provision for the WRA to delegate any of its functions to one or more organisations that have been prescribed by the Welsh Ministers in regulations. Provision is made for the WRA to pay an organisation to which it has delegated a function and to give directions about how delegated functions are to be exercised. The WRA must publish information about any such delegations and directions given.

Evidence from respondents

116. Most respondents were content with the delegation provisions within the Bill. NRW said there was a “high level of flexibility” in the Bill:

“... there is an ability there for them [WRA] to delegate with regard to extent, to who, and also to how long, but also to have the power to revoke that delegation when needed.”¹⁰⁰

117. NRW also felt the Bill allowed sufficient freedom to delegate functions whilst the “accountability and responsibility” would remain with the WRA.¹⁰¹

118. Much of the evidence stressed the need for formal service level agreements between the WRA and delegated bodies to ensure accountability. HMRC advocated the importance of “clear lines of accountability”.¹⁰²

119. CIOT agreed that the reporting back by delegated bodies and the framework for those reports would be crucial.¹⁰³

Delegated providers

120. Revenue Scotland said that Registers of Scotland assist them with the processing of paper returns and cheques, and the Scottish

¹⁰⁰ RoP, paragraph 378, 1 October 2015

¹⁰¹ *ibid*

¹⁰² RoP, paragraph 153, 1 October 2015

¹⁰³ RoP, paragraph 455, 1 October 2015

Environment Protection Agency work with them on the compliance side. However, they confirmed:

“...partner organisations don’t do any of the collection themselves; all of the money flows into Revenue Scotland.”¹⁰⁴

121. The Minister has announced her preferred provider to work with the WRA to collect and manage LTT is HMRC. HMRC confirmed it was their intention to adapt their existing SDLT system to operate LTT and utilise their experienced staff working on SDLT in its Birmingham Office to carry out administration activities, such as processing returns, following-up errors etc. However, they said for compliance with different reliefs for LTT:

“...we would probably need dedicated staff to actually deal with that compliance activity.... Certainly, with avoidance, we would see that that would actually be dealt with by Welsh Government rather than HMRC.”¹⁰⁵

122. In further evidence HMRC stated that they proposed:

“... to set up a specialist team to carry out compliance activities, which could be based in Wales that would also liaise with the WRA and assist in building up their knowledge and expertise on devolved taxes.”¹⁰⁶

123. HMRC said that whilst they don’t have a similar delegation function elsewhere, they do have experience of collecting student loans and “police the national minimum wage system” on behalf of the Department for Business, Innovation and Skills.¹⁰⁷ Therefore, HMRC felt they had experience of working with other departments:

“on taking forward these relationships and...having standards that we need to meet in delivering those things.”¹⁰⁸

124. In relation to LDT, the Minister’s preferred way forward is for the WRA to undertake most of the collection and management functions itself and delegate compliance and enforcement to NRW. NRW were concerned they:

¹⁰⁴ RoP, paragraph 85, 1 October 2015

¹⁰⁵ RoP, paragraph 175, 1 October 2015

¹⁰⁶ Written Evidence, TCM 13A additional information

¹⁰⁷ RoP, paragraph 161, 1 October 2015

¹⁰⁸ *ibid*

“have no expertise in terms of enforcement and compliance with regard to tax legislation and financial information.”¹⁰⁹

125. The City of Cardiff Council (Cardiff Council) felt there needed to be a distinction between “operating, collecting and regulating” and they did not consider tax collection to be in NRW’s skill set. They felt it was more suitable from within local government.¹¹⁰

126. Rhondda Cynon Taf County Borough Council (RCT CBC) made the point that “the only people with experience of collecting taxes in Wales at the moment are local authorities”. They noted their experience of collecting council tax, business rates and other debts and suggested they could build on this experience to reduce the level of bureaucracy and the burden on Welsh taxpayers.¹¹¹

127. Cardiff Council said during the Minister’s initial consultation, they did not have sufficient time to put forward a business case for local authorities to collect tax and on reflection they had “missed a golden opportunity”.¹¹² They said had they been given longer to prepare a business case, tax collection is “something that I think we would be extremely good at doing”.¹¹³

128. Cardiff Council went on to say:

“There’s a handful of local authorities that own and operate sites or own LAWDCs, which are local authority waste disposal companies. Cardiff and Newport, which are very local to here, and also RCT have a LAWDC. So, in that situation local authorities understand both from the point of view of paying and being tax collector and distributor of landfill tax credits, but, then, obviously, all local authorities are very familiar with paying landfill tax on municipal waste streams that they’re responsible for and accountable for.”¹¹⁴

¹⁰⁹ RoP, paragraph 327, 1 October 2015

¹¹⁰ RoP, paragraph 48, 15 October 2015

¹¹¹ RoP, paragraph 42, 15 October 2015

¹¹² RoP, paragraph 110, 15 October 2015

¹¹³ RoP, paragraph 30, 15 October 2015

¹¹⁴ RoP, paragraph 25, 15 October 2015

129. Whilst ICAEW said using HMRC is “the right decision” they were concerned about the risks in terms of ensuring a tailored service for Wales.¹¹⁵ They said:

“there is a real danger that there won’t be a Welsh bespoke service, that the service will be added on and perhaps not given the priority that we’d want. So, there must be some form of agreement with HMRC that recognises that we need a bespoke service.”¹¹⁶

130. The Law Society agreed and said there could be issues with HMRC providing a bilingual service as stamp duty queries can be “quite technical and very specific”. They continued:

“I can see there being an issue in actually resourcing an office to deal with guidance and deal with queries that is going to be at an appropriate cost, because we have to be conscious, I think, of the number of transactions in Wales as compared with England, and, presumably, HMRC, generally, can absorb that cost more easily than a distinct Welsh tax can. I can see there being issues on both those heads, really, in terms of the technical issues and, obviously, responding in the Welsh language as well.”¹¹⁷

131. The Law Society emphasised that:

“It’s that agency agreement that is going to be key. If the Welsh revenue authority is relinquishing its own operation then it’s down to the revenue authority to ensure that, in Wales, it’s within the law and so will include provision through the medium of Welsh.”¹¹⁸

Evidence from Minister

132. The Minister said that whilst the Welsh Government would “pave the way”, the final decision on delegation would be the responsibility of the WRA.¹¹⁹ The Minister’s official confirmed the WRA has the discretion to vary or revoke a delegation at any time, but they are only

¹¹⁵ RoP, paragraph 233, 7 October 2015

¹¹⁶ *ibid*

¹¹⁷ RoP, paragraph 384, 7 October 2015

¹¹⁸ RoP, paragraph 388, 7 October 2015

¹¹⁹ RoP, paragraph 32, 21 October 2015

able to delegate to somebody named in the regulations made by Welsh Ministers.¹²⁰

133. In relation to the Minister's preferred partners she noted that discussions with HMRC and NRW regarding delegation are "still at early stages" and emphasised it would be for the next Welsh Government to prescribe in regulations who the WRA will formally delegate functions to.¹²¹

134. In relation to HMRC the Minister said they have "a wealth of tax knowledge and experience". She continued:

"HMRC collected almost £11bn in Stamp Duty Land Tax, (SDLT) in 2014-15, handling well over 1 million transactions. They have an end-to-end processing and management office in Birmingham, which includes all transactional elements of SDLT collection (based on their existing ICT system), as well as addressing more complex and challenging compliance and avoidance issues, and making wider links to other UK taxes. Over 96% of SDLT returns are received online with over 60% of payments being made online and this proportion is rising. The WRA would gain the benefit of these service improvements."¹²²

135. The Minister went onto say:

"HMRC have offered a small, separate, ring-fenced Welsh Taxes Team, which could be based in Wales and possibly co-located with the WRA. This team would ensure that there is close liaison in Wales between HMRC and WRA on more complex compliance and avoidance in relation to LTT, and would transfer knowledge and expertise. This team could lead on LTT technical queries and guidance, risk analysis and liaison with WRA drawing on their experience of the HMRC office in Porthmadog."¹²³

136. The Minister clarified it was her intention that the WRA would undertake collection of LDT with NRW assisting with the compliance

¹²⁰ RoP, paragraph 162, 21 October 2015

¹²¹ RoP, paragraph 22, 21 October 2015

¹²² FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business , 4 November 2015

¹²³ *ibid*

side “which is what they’re already very much engaged in with landfill operators”. She said this was similar to the situation in Scotland where:

“Revenue Scotland is collecting the taxes, but they also have a management agreement in terms of delegation with their environmental body as well.”¹²⁴

137. However, the Minister acknowledged that compliance activity for LDT would be a new area for NRW and she anticipated that a small number of additional staff would be required to undertake this activity.¹²⁵

138. The Minister went said that she has agreed to set up a “joint working group with local government” to have further discussions and that local government “might have a much closer role in terms of tax collection in the future”.¹²⁶

139. On the issue of accountability, the Minister confirmed that there is a requirement under section 13 of the Bill that the WRA must publish information about delegation and this would ensure there could be scrutiny of the agreement between the WRA and the delegated body.

140. She said the WRA would receive regular reports from HMRC regarding performance and that Welsh Government officials are already developing a memorandum of understanding with HMRC.¹²⁷

141. In response to a query as to whether HMRC would be required to provide information on transactions where the aim is to avoid UK-wide taxes which may have an impact on devolved taxes, the Minister confirmed that data-sharing would form part of the memorandum of understanding. Her official stated:

“the initial memorandum of understanding is obviously at official level, so there’s clarity as to sharing of information. When we actually get to the partnership agreement, as we’re calling it, which will be between the WRA and HMRC, that will, obviously, be quite a different instrument that will set out what’s expected. So, that will clarify such things as service level

¹²⁴ RoP, paragraph 75, 21 October 2015

¹²⁵ FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business , 4 November 2015

¹²⁶ RoP, paragraph 26 & 36, 21 October 2015

¹²⁷ RoP, paragraph 42 & 44, 21 October 2015

expectations, and what have you, that are required and then, of course, that feeds in to the WRA's monitoring arrangements with HMRC as to the services that they're providing on their behalf. So, that should be then monitored regularly and progress against it then assessed and, as appropriate, details fed back to Ministers as to what that progress is, obviously, because, ultimately, WRA are delivering Ministers' tax priorities."¹²⁸

142. In further evidence, the Minister stated:

"All Welsh devolved tax data and information would be the property of the WRA, and would be separately provided to the WRA for use in complex compliance work, performance reporting and other analysis (for example forecasting). The Committee referred to a close link between Welsh and non-devolved taxes, but as confirmed at Committee, this would not be the case and Welsh taxes will be kept discreet from the other non-devolved taxes that are managed by HMRC."¹²⁹

143. The Minister also highlighted the requirement for the WRA to publish an Annual Report and lay a copy before the National Assembly. She said she would expect the annual report to include information about performance from HMRC and NRW on the collection and management of Welsh taxes and this would "mean the Assembly has the opportunity to scrutinise the entire operation of WRA, including the delivery by HMRC".¹³⁰

144. The Minister confirmed the Welsh Language (Wales) Measure 2011 automatically applies to the Bill and therefore specific provision in the Bill is not required. She said:

"...we will expect the WRA to have its own Welsh language standards, and it will need to agree that with the Welsh Language Commissioner."¹³¹

¹²⁸ RoP, paragraph 151, 21 October 2015

¹²⁹ FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business, 4 November 2015

¹³⁰ RoP, paragraph 91, 17 September 2015

¹³¹ RoP, paragraph 193, 21 October 2015

Our view

145. The Committee supports the provision that the WRA be able to delegate operational and management functions to other bodies as specified in section 13. However, the Committee believes these arrangements should be underpinned by formal service level agreements between the WRA and delegated bodies to ensure adequate accountability.

146. During the Committee's inquiry into *Collection of Devolved Taxes* it was apparent from the evidence received that local authorities have significant tax collection experience and the Committee is disappointed that, due to time constraints, local authorities were unable to prepare a submission to the Minister to be considered as a collection body.

147. The Committee notes the Minister is establishing a working group with local government. The Committee urges the Minister to consider the possibility of a local authority undertaking the collection of tax to capitalise on the extensive knowledge and experience.

148. The Committee strongly believes that if collection of tax is delegated to HMRC, there should be a requirement for HMRC to provide full information flow of tax enquiries being undertaken that may have a direct or indirect impact on the collection of LTT. Furthermore, WRA will need to be properly resourced to pursue collection of tax from tax avoidance structures where the main purpose may be the avoidance of non-devolved taxes but which have an adverse impact on the devolved taxes yield.

149. Despite the Ministers reassurance, the Committee remains concerned that the close link between Welsh taxes and non-devolved taxes may give rise to non-compliance and a loss of revenue to the WRA. A note setting out the background to our concerns and three illustrative scenarios are set out in Annex A.

150. The Committee heard that HMRC are likely to undertake LTT functions alongside SDLT from its Birmingham office. The Committee is concerned that if functions are delegated to HMRC there is a risk they may not provide a tailored service for Wales, leading to further concerns regarding HMRC's ability to deal with taxpayers through the Welsh language. The Committee firmly believes there is a need for a local service to ensure adequate provision is made for Welsh services.

Recommendation 13: The Committee recommends that clear lines of accountability are provided, through a publicly available memorandum of understanding or service level agreement, between the Welsh Revenue Authority and the delegated bodies with responsibility for tax collection and management. The memorandum of understanding or service level agreement should set out clear standards for dealing with taxpayers.

Recommendation 14: The Committee recommends that where the Welsh Revenue Authority delegates any of its functions to an organisation/s, consideration should be given to ensuring the organisation/s provides a high level of expertise to Welsh taxpayers, including taking Welsh Language provisions into account and setting out provision for Welsh speakers in a Statement of Service Standards.

7. General Directions

Background

151. Section 14 provides that the Welsh Ministers may give directions to the WRA of a general nature to which the WRA must, in the exercise of its functions, comply. The Explanatory Memorandum states:

“This might for example be in relation to strategic policy priorities or in relation to the exercise of delegation powers by WRA under section 13.”¹³²

152. Directions given by the Welsh Ministers must be published unless the Welsh Ministers believe this would prejudice the effective exercise by WRA of its functions.¹³³

Evidence from respondents

153. Revenue Scotland said that “Scottish Ministers do not have a power to direct them”.¹³⁴ However, they said the RSTPA 2014 provides that:

“Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions, and Revenue Scotland must have regard to any guidance given by Ministers.”¹³⁵

154. Revenue Scotland said this was a “careful balance” as they must have regard but are “not obliged to follow” the guidance.¹³⁶ They continued:

“... we’ve drawn a very clear distinction between a power of direction, which Ministers don’t have, and a power for Ministers to give guidance, which Revenue Scotland essentially would have to take into account, but isn’t under a specific statutory duty to give effect to.”¹³⁷

¹³² Explanatory Memorandum

¹³³ *ibid*

¹³⁴ RoP, paragraph 35, 1 October 2015

¹³⁵ RoP, paragraph 46, 1 October 2015

¹³⁶ *ibid*

¹³⁷ *ibid*

155. HMRC said that section 14 of the Bill is wider than the equivalent power in the *Commissioners for Revenue and Customs Act 2005 (CRCA 2005)*¹³⁸ and they did not believe the Bill “gives any particular cause for concern”.¹³⁹

156. HMRC said they receive directions via the Chancellor of the Exchequer’s annual remit letter to HMRC, which is published and sets out the key priorities.¹⁴⁰

157. The AGW felt “it’s perfectly reasonable for the Government to give it [WRA] directions...there may be some directions that the legislation sets out that are not disclosed to the public”.¹⁴¹ He also said it would be helpful if section 14 included a requirement on the Welsh Ministers to copy all directions given to the WRA to the Auditor General.¹⁴²

Evidence from the Minister

158. In commenting on the provision to issue directions the Minister said she had considered arrangements in other jurisdictions between Ministers and HMRC and Revenue Scotland and her preference was to:

“remain consistent with the current Treasury/HMRC model, although with the introduction of a greater degree of transparency (because Welsh Ministers will be under a duty to publish directions unless they consider that this would prejudice the effective exercise of WRA’s functions).”¹⁴³

159. The Minister emphasised that direction making powers were “necessary and proportionate” and that:

“Welsh Ministers need to have sufficient powers to further policy in Wales to ensure that Welsh tax arrangements are efficient and effective.”¹⁴⁴

160. The Minister said she would envisage a direction being given rarely and in unusual circumstances stating:

¹³⁸ www.legislation.gov.uk/ukpga/2005/11/contents

¹³⁹ RoP, paragraph 230, 1 October 2015

¹⁴⁰ RoP, paragraph 228, 1 October 2015

¹⁴¹ RoP, paragraph 209, 15 October 2015

¹⁴² Written Evidence, TCM 02

¹⁴³ FIN(4)-21-15 PTN1: Letter from the Minister for Finance and Government Business

¹⁴⁴ RoP, paragraph 95, 17 September 2015

“Firstly, the power itself is limited to issuing directions of a general nature. Welsh Ministers will simply not be able to interfere in individual taxpayer’s affairs. This is distinct from other bodies, for example Natural Resources Wales, where Ministers are able to issue directions of a specific nature.

“Secondly, Welsh Ministers must publish any directions given unless they consider that publication would prejudice the effective exercise of WRA’s functions. This goes further than the equivalent provision for HMRC, which does not require publication at all.”¹⁴⁵

161. She said this “openness and possibility for public scrutiny” would ensure that the powers were not inappropriately used and that such directions, issued publicly, would be subject to scrutiny by the National Assembly and to normal public law principles and could, potentially, be challenged in the courts.¹⁴⁶

162. During further evidence, the Minister confirmed her intention to bring forward an amendment at Stage 2 proceedings¹⁴⁷ to delete the caveat in section 14(6) that Ministers are not required to publish a direction if they consider publication would prejudice the effective exercise of WRA’s functions.¹⁴⁸

Our view

163. The Committee notes the Minister’s position that the direction making powers within the Bill are “necessary and proportionate”. Whilst the Committee accepts that some direction will be needed to set tax policy and maintain strategic oversight, we are concerned that the provision may be used by the Welsh Government to restrain the exercise of the WRA’s operational functions.

164. As referred to in paragraph 60 of this report, the RSTPA 2014 contains a provision that guarantees Revenue Scotland’s operational independence from the Scottish Government and we believe the same should be included in the Bill specifically in relation to the issuing of directions.

¹⁴⁵ FIN(4)-21-15 PTN1: Letter from the Minister for Finance and Government Business

¹⁴⁶ *ibid*

¹⁴⁷ Stage 2 proceedings is subject to the agreement of the Assembly at Stage 1

¹⁴⁸ RoP, paragraph 182, 21 October 2015

165. The Committee welcomes the Minister's commitment to bring forward an amendment at Stage 2 to remove the caveat in section 14(6) that Ministers are not required to publish a direction if they consider publication would prejudice the effective exercise of WRA's functions.

Recommendation 15: The Committee recommends that the Bill is amended to prevent the Welsh Government intervening in the exercise of the Welsh Revenue Authority's operational functions.

8. Charter of standards and values

166. Section 25 requires the WRA to prepare, consult, publish and lay before the National Assembly a Charter of standards and values setting out the standard of behaviour and values WRA's members and staff will aspire to when dealing with taxpayers and their agents.

167. The Explanatory Memorandum states:

“The Welsh Ministers consider it to be critical for the WRA to establish a positive culture of payment of taxes, to promote compliance and to deter avoidance. To that end, the WRA should seek to develop and maintain good relationships with taxpayers and their agents on an ongoing basis. To achieve this it needs to be clear in its expectations of taxpayers and also, what taxpayers can expect of it.”¹⁴⁹

168. The Explanatory Memorandum continues to state that the Charter will be developed in consultation with stakeholders and will be reviewed regularly, in consultation with stakeholders. The Bill also requires the WRA to report on the effectiveness of its Charter as part of its annual report.¹⁵⁰

Evidence from respondents

169. There was vast support amongst respondents for the inclusion of a Charter on a statutory basis that sets out the rights and responsibilities of both taxpayers and the WRA. However, it was generally considered not necessary to prescribe the content of the Charter on the face of the Bill.

170. The ICAEW said:

“I think the fact that it's [the Bill] mentioned the charter and it requires the WRA to put that charter out there is the important thing. It would be really difficult for the Bill to go into detail underneath that.”¹⁵¹

¹⁴⁹ Explanatory Memorandum

¹⁵⁰ *ibid*

¹⁵¹ RoP, paragraph 257, 7 October 2015

171. Several other witnesses shared this view including ACCA¹⁵² and HMRC¹⁵³. The WLGA promoted this approach saying “there needs to be flexibility to be able to develop it as it goes along”.¹⁵⁴

172. This follows the approach taken by Revenue Scotland who confirmed that under the RSTPA 2014 there is a requirement that they must have a charter. However, “the actual content of the charter isn’t in the legislation”.¹⁵⁵

173. Section 25(2)(a) of the Bill states:

“standards of behaviour and values to which WRA will **aspire** [*emphasis added*] when dealing with devolved taxpayers, their agents and other persons in the exercise of its functions.”¹⁵⁶

174. LITRG said although the word “aspire” is used in section 16A of the CRCA 2005 in relation to HMRC’s charter, they considered it to be a “poor choice of word” and recommended the words “adhere to” would be more appropriate as used in the RSTPA 2014 in relation to the Scottish Charter.¹⁵⁷ They stated:

“The advantage of using the word ‘adhere’ rather than ‘aspire’ is that it places a more balanced demand on both taxpayers and the WRA regarding their behaviour; adhering to the Charter would mean to ‘believe in and follow the practice of’ which would be in line with the purpose of the Charter of standards and values.”¹⁵⁸

175. The ICAEW believed that a Charter should aim to do more than merely reflect aspirations.¹⁵⁹ They said:

“... good tax compliance is encouraged by an efficient and effective tax administration service and the Charter should reflect this commitment. It needs to have some practical value and a reasonable set of service standards and behaviours that

¹⁵² RoP, paragraph 258, 7 October 2015

¹⁵³ RoP, paragraph 236, 1 October 2015

¹⁵⁴ RoP, paragraph 75, 15 October 2015

¹⁵⁵ RoP, paragraph 65, 1 October 2015

¹⁵⁶ Tax Collection and Management (Wales) Bill

¹⁵⁷ Written Evidence, TCM 01A additional evidence

¹⁵⁸ *ibid*

¹⁵⁹ Written Evidence, TCM 09

taxpayers can use and rely upon in their dealings with the revenue authority.”¹⁶⁰

176. Respondents including the Bevan Foundation and LITRG emphasised the importance of the Charter being developed with consultation from a range of stakeholders.¹⁶¹

177. Revenue Scotland said in creating their Charter they undertook a “two-stage consultation”, firstly writing to a number of professional bodies and interested groups asking what the key features of the Charter should include.¹⁶² They continued:

“We gathered all of that material together, then we drafted something, and then we put that out for full public consultation. We got some responses back, and we then produced the version that is now available on our website.”¹⁶³

178. The issue of when the initial Charter should be published was raised by respondents. LITRG said it was important that the Charter is ready and its purpose publicised before 1 April 2018 “as the Charter will only be effective and of value if devolved taxpayers are aware of it”.¹⁶⁴

179. The CIOT and the AGW agreed that a deadline should be set for publishing the initial Charter.¹⁶⁵

180. Whilst the Law Society and Cardiff Council were keen to see the Charter become part of the governance of the WRA, Cardiff Council suggested:

“there could be principles or standards within the charter that the WRA then report back to Welsh Government on every year, to set out that they’re actually reaching the standards that are set out within the charter.”¹⁶⁶

¹⁶⁰ Written Evidence, TCM 09

¹⁶¹ Written Evidence, TCM 04 and TCM 01

¹⁶² RoP, paragraph 65, 1 October 2015

¹⁶³ *ibid*

¹⁶⁴ Written Evidence, TCM 01

¹⁶⁵ Written Evidence, TCM 10 & TCM 02

¹⁶⁶ RoP, paragraph 80, 15 October 2015

181. The ICAEW also felt the Charter should specifically apply to any delegated bodies appointed by the WRA.¹⁶⁷

182. Much of the evidence taken indicated support for the Charter to be reviewed from “time to time”. ACCA felt that setting specific deadlines for reviewing the Charter “runs the risk of turning it into a tick-the-box process”.¹⁶⁸

183. However, CIOT said that whilst they recognised the need for flexibility, they would “prefer a more defined process and timeline or trigger for review” of the Charter.¹⁶⁹

Evidence from the Minister

184. The Minister said the Charter was “crucial in terms of the culture that we want the WRA to set and it is good practice.”¹⁷⁰

185. She confirmed that the approach taken was consistent with HMRC and Revenue Scotland, in that there is a requirement in the Bill for a Charter but the content is not prescribed other than “to establish the right relationship between the revenue authority and the taxpayer”.¹⁷¹

186. The Minister confirmed that she would be starting to consult on the Charter in the New Year with a focus on raising awareness and engaging with the public. She said it would “be good for us to instigate discussions and consultation on the charter”.¹⁷²

187. She confirmed it will be the WRA’s responsibility to produce the Charter but that “pre-WRA” work would be undertaken by the Welsh Government to “pave the way”.¹⁷³ Her official added:

“It’s absolutely right that it’s the responsibility of the Welsh revenue authority to ultimately publish the charter, and they have the responsibility for that. But, in getting a broad view as to what that content might be and helping them to be in a state of readiness... I think the key is around timing here as well. We are talking of 1 April 2018. That’s not a huge amount of time

¹⁶⁷ Written Evidence, TCM 09

¹⁶⁸ RoP, paragraph 271, 7 October 2015

¹⁶⁹ Written Evidence, TCM 10

¹⁷⁰ RoP, paragraph 170, 17 September 2015

¹⁷¹ RoP, paragraph 181, 17 September 2015

¹⁷² RoP, paragraph 170 September 2015

¹⁷³ RoP, paragraph 84, 21 October 2015

to prepare for this. So, the more things that are ready, so that the charter is there at the outset from when devolved taxes take effect, that's very important."¹⁷⁴

188. The Committee asked the Minister if a taxpayer believes they have not been treated in accordance with the Charter, what mechanisms would be in place for redress. The Minister said:

“We would see that charter, again, as signposting people to complaints procedures. The WRA will have to have a complaints procedure. In fact, those are exactly the sorts of questions that we would want to make very clear in the consultation about how we can help taxpayers if they feel they have been badly treated or they have a complaint—how they can manage that. But, also, it will be not just a complaints procedure that they would have access to but, ultimately, the public services ombudsman. The Bill provides for the WRA to fall inside the ombudsman's jurisdiction.”¹⁷⁵

189. In further evidence the Minister confirmed that any disputes between a taxpayer and the WRA as to compliance with the Charter would be a matter for the Public Services Ombudsman for Wales (PSOW) to consider, rather than the courts or tribunals.¹⁷⁶

190. In relation to the use of the word “aspire” the Minister said it was consistent with HMRC legislation. However, she would be “happy to consider the views of the committee” on this issue.¹⁷⁷

Our View

191. The Committee supports the inclusion of a Charter on the face of the Bill, which sets out the rights and responsibilities of taxpayers. The Committee believes the Charter should be principle based and should specifically refer to the need to ensure “a quality service to the taxpayer”.¹⁷⁸

¹⁷⁴ RoP, paragraph 181, 17 September 2015

¹⁷⁵ RoP, paragraph 88, 21 October 2015

¹⁷⁶ FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business , 4 November 2015

¹⁷⁷ RoP, paragraph 105, 21 October 2015

¹⁷⁸ RoP, paragraph 283, 7 October 2015

192. The Committee is content that the Bill is not prescriptive on the Charter's content which will provide the required flexibility to develop it in the future.

193. The Committee believes the Charter will be a useful tool in raising awareness and engaging with the public and could be useful in aiding the Welsh Government in meeting recommendation 2. The Committee believes the first Charter should be in place before any devolved taxes are introduced.

Recommendation 16: The Committee recommends that the Charter must specifically refer:

- to a quality service for the taxpayer;
- to its application to delegated bodies with responsibility for collection and management of taxes.

Recommendation 17 The Committee recommends that the first Charter should be published prior to the relevant taxes being formally devolved to Wales in April 2018.

Recommendation 18 The Committee recommends that the Bill is amended so that:

- section 25(2)(a) replaces the word "aspire" with "adhere to";
- the requirement to review the Charter "from time to time" under section 25(3)(b) should include the provision for a review at least every five years.

9. Corporate Plan and Annual Report

Background

194. Section 26 requires the WRA to prepare a Corporate Plan for each planning period. A planning period is defined in the Bill and the first plan is to be published no later than a date prescribed by Welsh Ministers by regulations. Subsequent plans are to be submitted thereafter at three-yearly intervals.

195. The Corporate Plan must describe WRA's main objectives, the outcomes by which these objectives may be measured and the activities it expects to undertake during the planning period. Corporate Plans must be submitted to the Welsh Ministers for approval and approved Corporate Plans must be laid before the National Assembly for Wales and published.

196. The WRA may submit a revised Corporate Plan at any time during the planning period for the approval of the Welsh Ministers. The Welsh Ministers may by order revise the three year planning period as they consider appropriate.

197. Section 27 requires the WRA to prepare and publish an Annual Report on what it has done to achieve its objectives during that financial year. The Annual Report must be sent to the Welsh Ministers and laid before the National Assembly.

Evidence from respondents

198. The Bill refers to the Corporate Plan setting out "outcomes by reference to which the achievement of the main objectives may be measured". The AGW recommends the Bill should refer to "key performance measures" instead of "outcomes". His official stated:

"I think the measures need to be outcome focused...It could be fairly sophisticated: responses on simple queries; responses on more complex queries; accuracy of information processing, as it's very important that they get it right first time; handling of complaints; handling of appeals. We expect to see something around those kinds of areas, which takes us back to those

customer service points and that sense of how it engages in its business.”¹⁷⁹

199. The AGW’s official considered the obvious comparator would be to look at HMRC in terms of how it captures its performance, what measures it uses and how and the frequency with which it reports.¹⁸⁰

200. Several other respondents highlighted concerns on the timing for publication of the Corporate Plan and Annual Report. CIOT said they were “a little vague”.¹⁸¹

201. The LITRG expressed concerns that the Bill refers to preparing the Annual Report “as soon as it is reasonably practicable” but does not provide a definition of “reasonably practicable”. They recommend that a time limit of four months after the accounting year end should be included within the Bill to ensure “there are no lengthy delays”.¹⁸²

202. The AGW agreed and said it would aid the exercise of his functions in relation to the WRA if the Annual Report was required to be prepared no later than the submission deadline for the WRA’s accounts, of 31 August in the following financial year to which it relates. He said this would “significantly enhance accountability, transparency and scrutiny of the operations of the WRA”.¹⁸³ He stated:

“The revenue authority will be subject to the Treasury’s broad financial reporting memorandum, and that requires that there is an annual report—it may not be called an annual report—sitting alongside the accounts. I will need to audit that because that’s the basis under which I give an opinion. If we have a separate document too far apart from that, which may start to include some financial figures, I’ll need to audit again that particular document.”¹⁸⁴

203. Revenue Scotland said it “has to agree its corporate plan, its strategy and its high-level targets with Ministers”. They said:

¹⁷⁹ RoP, paragraph 240, 15 October 2015

¹⁸⁰ *ibid*

¹⁸¹ Written Evidence, TCM 10

¹⁸² Written Evidence, TCM 01

¹⁸³ Written Evidence, TCM 02

¹⁸⁴ RoP, paragraph 243, 15 October 2015

“There would be a discussion between Ministers and the board of Revenue Scotland to reach a version of our corporate plan that they could all agree on.”¹⁸⁵

204. The LITRG welcomed the WRA’s accountability to the Welsh Ministers through the submission of a Corporate Plan and Annual Reports.¹⁸⁶

205. However, other respondents, including the Bevan Foundation and the FSB felt more consideration was needed over the National Assembly’s role in scrutinising the WRA. The FSB felt a provision should “be made in the Bill for closer scrutiny of the corporate plan” by an Assembly Committee.¹⁸⁷

206. The Law Society were also concerned that if accountability is not cited with an individual committee, “there wouldn’t be the relationship then between the authority and the scrutiniser”.¹⁸⁸

Evidence from the Minister

207. In commenting on the suggested proposal to produce the Annual Report no later than 31 August, the Minister stated:

“we would of course expect the annual accounts to be submitted and audited well in advance of that date. I mean, lawyers tell me it’s not necessary to have the legal provision for the annual report in the Bill, but I expect that copy of the annual report to be produced in the same time frame as the accounts.”¹⁸⁹

208. The Minister’s officials said it was about “striking a balance between allowing a certain degree of flexibility to WRA and proceeding in anticipation that things are going to work and that there won’t be problems”.¹⁹⁰

209. The Minister confirmed that the Corporate Plan, Annual Report, Annual Accounts and an annual Tax Statement (the Annual Report and annual Tax Statement are discussed further under chapter 10) would

¹⁸⁵ RoP, paragraph 49, 1 October 2015

¹⁸⁶ Written Evidence, TCM 01

¹⁸⁷ Written Evidence, TCM 08

¹⁸⁸ RoP, paragraph 455, 7 October 2015

¹⁸⁹ RoP, paragraph 190, 17 September 2015

¹⁹⁰ *ibid*

be laid before the National Assembly which would allow the National Assembly to decide how it scrutinises the WRA.¹⁹¹

Our view

210. The Committee agrees with the AGW that the Corporate Plan should measure key performance measurements, rather than outcomes. Qualitative “outcomes” are inherently difficult to measure and the Committee believe it may not be possible to determine if a certain outcome has been achieved.

211. The Committee acknowledges the requirement for the WRA to lay its Annual Report, Annual Accounts, Corporate Plan and Tax Statements. However, the Committee believes the Bill would be strengthened if there was a specific requirement to ensure an Assembly Committee has an allocated role to formally scrutinise the WRA in the same way that section 28 *Functions of the National Assembly* of the PAWA 2013, provides authority for the National Assembly to make provision within its Standing Orders so that one (or more) of its committees could exercise those functions relating to the oversight and supervision of the AGW.

Recommendation 19: The Committee recommends that section 26(2) is amended to ensure the Corporate Plan includes key performance measures.

Recommendation 20 The Committee recommends section 27 of the Bill should specify that the Annual Report should be published no later than 31 August to ensure the Annual Report and Accounts are available within a set time period to ensure accountability, transparency and effective scrutiny of the operations of the Welsh Revenue Authority.

Recommendation 21 The Committee recommends that the Bill includes provision which enables the National Assembly to authorise a Committee to scrutinise the Welsh Revenue Authority.

¹⁹¹ RoP, paragraph 184, 21 October 2015

10. Audit

Background

212. Section 30 sets out the timescales of when the accounts and Tax Statement must be presented by WRA to the AGW for audit purposes.

Evidence from respondents

213. The AGW said that section 30(3)(a) which states “that the expenditure to which the accounts relate has been incurred lawfully” should go further to include “and in accordance with the authority that governs it”.¹⁹² He said this would ensure that the wording of the audit provision is consistent with that of the audit provision for the Welsh Ministers’ accounts as set out in section 131 of the *Government of Wales Act 2006 (GOWA 2006)*.¹⁹³

214. Section 32 on *Accounting officer* states that the Chief Executive of WRA is the accounting officer of the WRA. The AGW said that under section 32(3)(a) the Chief Executive may have responsibilities for the time being in relation to signing of accounts. He considered it would be appropriate to explicitly mention:

“both the WRA’s annual accounts and the annual Tax Statement in that subsection, as in my view the signing of the Tax Statement would not fall within the definition of ‘signing of accounts.’”¹⁹⁴

215. The AGW was also concerned that the Tax Statement seemed to fall outside of the WAO’s fee charging provision.¹⁹⁵ He added:

“Section 23(2) of the Public Audit (Wales) Act 2013 says, “The WAO may charge a fee in relation to the audit of a person’s accounts or statement of accounts”. While there may be scope for argument, it appears that the Tax Statement is not a “person’s accounts or statements of accounts”. In the absence

¹⁹² Written Evidence, TCM 02

¹⁹³ www.legislation.gov.uk/ukpga/2006/32/contents

¹⁹⁴ Written Evidence, TCM 02

¹⁹⁵ *ibid*

of a fee, the cost of the examination will need to be borne by the WAO's Estimate."¹⁹⁶

Evidence from the Minister

216. The Minister confirmed that following the evidence from the AGW it was her intention to bring forward an amendment at Stage 2 to give the Wales Audit Office the power to charge a fee for the audit of the Tax Statement.¹⁹⁷

Our view

217. The Committee recognises the AGW's concerns in relation to charging for the audit of the Tax Statement and welcomes the Minister's commitment to bring forward an amendment at Stage 2 giving the WAO this power.

Recommendation 22: The Committee recommends section 30(3)(a) is amended to ensure the wording of the audit provision in the Bill is consistent with that of the audit provision for the Welsh Ministers' accounts as set out in section 131 of the Government of Wales Act 2006.

Recommendation 23: The Committee recommends section 32(3)(a) regarding the responsibilities of the Accounting Officer in relation to the signing of the accounts should expressly refer to the annual accounts and the annual Tax Statement.

¹⁹⁶ Written Evidence, TCM 02

¹⁹⁷ RoP, paragraph 203, 21 October 2015

11. Parts 3 - 9 Tax Returns, Investigations, Penalties, Interest, Payment and Enforcement, Reviews and Appeals, Investigation of Criminal offences

Background

218. Parts 3 to 9 of the Bill deal with the powers which WRA will have over tax collection and the various obligations on taxpayers. The Explanatory Memorandum is clear that the majority of these powers are consistent with those currently operated in Wales by HMRC. Much of the wording in the Bill has therefore been based on the equivalent UK legislation.

Evidence from respondents

Part 3: Tax returns, enquiries and assessments

219. Deloitte were content that from Part 3 of the Bill onwards it appeared to be based on current UK legislation concerning self-assessments taxes, such as corporation tax and were content that the Bill provides a sufficient framework in respect of operation of LTT in Wales.¹⁹⁸ However, Deloitte continued:

“It is our view that further legislation would be required, mirroring the provisions of the current UK Landfill Tax legislation, to ensure that the Welsh Revenue Authority (WRA) can manage the collection of Landfill Tax in Wales.”¹⁹⁹

220. Section 71 requires the WRA to give effect to a claim as soon as practicable after it has been made. CLA Cymru said it is not clear what “as soon as practicable” means and suggested this could create uncertainty as to how long a taxpayer may have to wait for a decision or repayment.²⁰⁰ They recommend a time limit be set as to how long the WRA has to make a decision to ensure “the taxpayer does not suffer undue delay in receiving sums due to them”.²⁰¹

¹⁹⁸ Written Evidence, TCM 07

¹⁹⁹ *ibid*

²⁰⁰ Written Evidence, TCM 03

²⁰¹ *ibid*

Part 8: Reviews and Appeals

Time to pay arrangements

221. HMRC offer a Time To Pay (TTP) arrangement which allows them to collect tax in a cost effective way. HMRC allows viable customers who cannot pay on the due date to make payment(s) over a period that they can afford. Arrangements are tailored to the ability of the customer to pay and are typically for a few months although they can be longer. TTPs lasting over a year are only agreed in exceptional cases. Most arrangements involve regular monthly payments being made but in exceptional cases may involve a short period of deferral.²⁰²

222. HMRC confirmed they have discretionary power contained in the CRCA 2005 to enter into a TTP arrangement. They considered TTP as “a cost-effective way of collecting tax in certain circumstances” as they allow viable taxpayers to pay their taxes over a period they can afford. They went onto say:

“At March 2015, we had about 800,000 time-to-pay arrangements for £2.7 billion and from August 2015, we insist on a direct debit arrangement for time-to-pay arrangements. They very rarely would last for more than a year, and normally, it would be a period of instalments, but in some cases, it might just be a short delay, for time to pay.”²⁰³

223. In relation to the above, HMRC later confirmed that this means “in practice, at any point in time, HMRC would expect to have around 15% of its debt balance included in time to pay arrangements”.²⁰⁴

224. HMRC also confirmed a TTP arrangement would include an element of interest, to “recover the full tax and the interest that’s appropriate to the effective late payment”.²⁰⁵

225. Several respondents supported the TTP arrangements, and most considered it should be a discretionary power and not included on the face of the Bill.

226. CIOT said it was “definitely very good to have that facility” but it would be more appropriately dealt with by secondary legislation. They

²⁰² www.hmrc.gov.uk/manuals/dmbmanual/DMBM800040.htm

²⁰³ RoP, paragraph 246, 1 October 2015

²⁰⁴ Written Evidence, TCM 13A additional information

²⁰⁵ RoP, paragraph 244, 1 October 2015

were concerned that “if you normalise it too much” it “does get out of hand, from the point of view of the public purse.”²⁰⁶

227. ACCA agreed there was a need for a discretionary power but felt that HMRC’s practical experience is that TTP can be very time-consuming on their part, and that “taxpayers have reported quite a shift in the way it seems to be operated”.²⁰⁷ ACCA continued:

“Sometimes, it will seem very lenient, very easy to get into and to flow through with; at other times, it can seem virtually impossible to actually get HMRC to agree to a Time To Pay arrangement, no matter what the circumstances are. So, the practicalities of how to operate it so that it doesn’t become such a drain on the WRA’s resources will need careful consideration, and there wouldn’t be space for all that in the Bill as it stands. But the authority to have that discretion I think has to be there.”²⁰⁸

228. CLA Cymru were disappointed that the only way a taxpayer can compel the WRA to complete an enquiry is to make an application to the tribunal and believed that consideration should be given to an alternative process that avoids the cost of tribunal proceedings.²⁰⁹

229. The PSOW welcomed the intention to bring the WRA within his jurisdiction and he expected that the WRA would have an appropriate complaints handling procedure.²¹⁰

230. The PSOW said that his role regarding tribunal arrangements for devolved tax collection and management had not yet been explored. However, in relation to a tribunal concerning the WRA he said “there appears to be a complication”.²¹¹ He continued:

“As I understand it, it is intended to enter into an arrangement with the UK’s Ministry of Justice (MoJ) and use that Ministry’s two-tier tax tribunal system. As the MoJ is a non-devolved government department, the question arises as to whether maladministration complaints about MoJ administered tribunals are ones that should come within the PSOW’s jurisdiction (as

²⁰⁶ RoP, paragraph 509, 1 October 2015

²⁰⁷ RoP, paragraph 289, 7 October 2015

²⁰⁸ *ibid*

²⁰⁹ Written Evidence, TCM 03

²¹⁰ Written Evidence, TCM 06A additional information

²¹¹ *ibid*

these are devolved matters), or the jurisdiction of the Parliamentary Ombudsman (who considers complaints about the MoJ and the staff of its tribunals). I would venture that this is a question for those with a role in advising upon ‘devolved competence’ matters to provide a view.”²¹²

Part 9: Investigation of criminal offences

231. Section 183 provides for an amendment to be made to *the Police and Criminal Evidence Act 1984*²¹³ (PACE 1984) to provide the Welsh Ministers with the power to make regulations to apply certain provisions of PACE to the investigation of criminal offences conducted by the WRA. The Explanatory Memorandum states:

“This would enable WRA to use specified PACE powers during the investigation of various criminal offences, such as the offences created in this bill, as well as those established by the Fraud Act 2006, or the common law offence of cheating the public revenue.”²¹⁴

232. Revenue Scotland said in relation to the powers of investigation and enforcement their starting point was to look at the “powers that HMRC have”. They said that in deciding whether to adopt them or not, they considered whether they were necessary, appropriate and proportionate in relation to the first two devolved taxes.²¹⁵ They continued:

“... for example, the basic powers to enter premises to require the production of documents, those standard investigative powers—the powers that were given in the Revenue Scotland and Tax Powers Act 2014 to Revenue Scotland are more or less identical to the corresponding powers that HMRC have. But we haven’t provided Revenue Scotland with what you might call the top of the range powers in relation, for example, to intrusive surveillance, because we didn’t think that that was either necessary or appropriate in relation to the two taxes for which Revenue Scotland are responsible.”²¹⁶

²¹² Written Evidence, TCM 06A additional information

²¹³ www.legislation.gov.uk/ukpga/1984/60/contents

²¹⁴ Explanatory Memorandum

²¹⁵ RoP, paragraph 94, 1 October 2015

²¹⁶ *ibid*

233. Revenue Scotland confirmed they share data with HMRC under the terms of the *Scotland Act 2012*.²¹⁷ They said that whilst they are “co-operating with HMRC in a number of areas” Revenue Scotland carry out their own inquiries and compliance work. However:

“If we uncover anything that looks like it might have implications for other UK taxes, we would notify them and, if they uncover something that might have implications for one of the devolved taxes, they would notify us and, generally, there’s a good cross-border co-operation.”²¹⁸

234. Most respondents were content that the powers in the Bill replicate that of HMRC, the Law Society noted:

“the Bill seeks to replicate existing powers across England and Wales. So, we have no strong feeling in terms of additional powers and also there will be a bedding-in period, both in relation to these two new taxes, which will be following on very quickly now from this legislation, and also looking ahead.”²¹⁹

235. ICAEW agreed the powers appear to replicate what is used currently and were “reticent at this stage to be adding to those powers”. However, they did note the WRA would be a new body and that the Welsh Government may want to review the performance of the WRA “if there are shortfalls in investigatory powers”. They continued:

“I think there needs to be some recognition, perhaps after three years of operation, that there is a review that could identify things that need to be added or amended in a legal sense.”²²⁰

Evidence from Minister

236. The Minister confirmed that under Part 4 relating to investigatory powers “there’s a high degree of consistency with HMRC and Revenue Scotland”.²²¹ However, the Minister felt improvements on arrangements, details about how the powers operate and safeguards for taxpayers had been made. She provided examples:

²¹⁷ www.legislation.gov.uk/ukpga/2012/11/contents/enacted

²¹⁸ RoP, paragraph 100, 1 October 2015

²¹⁹ RoP, paragraph 477, 7 October 2015

²²⁰ RoP, paragraph 333, 7 October 2015

²²¹ RoP, paragraph 223, 17 September 2015

- Section 84, WRA can only issue taxpayer notices requesting information with tribunal approval; HMRC and Revenue Scotland do not need tribunal authorisation to do that;
- Section 101, WRA can carry out an inspection of business premises in certain circumstances, but it can only do that with the agreement of the occupier of the premises or with the approval of the tribunal. In some circumstances, Revenue Scotland and HMRC can carry out those inspections without needing the occupier's agreement and without the approval of the tribunal;
- Sections 92 and 106 provide that, where the tribunal authorises the use of any powers under Part 4 to require information or inspect premises, that authorisation is valid for a maximum of three months. There is no equivalent deadline in UK or Scottish legislation.²²²

Our view

237. The Committee is generally content that Parts 3 – 9 are based on and consistent with UK legislation.

238. The Committee has considered the evidence in relation to a time limit being set prescribing how long the WRA has to make a decision under section 71 *Giving effect to claims and amendments*. However, the Committee believes an alternative approach to a time limit would be for the WRA to issue a Statement of Practice on a tax by tax basis similar to those issued by HMRC.²²³ This should provide flexibility in the case of individual taxes whilst providing certainty over timescales for service users.

239. The Committee believes that TTP arrangements offer an effective way of collecting tax from customers who cannot pay on the due date but are able to pay over a certain period. However, the Committee agrees with the majority of respondents that TTP should be a discretionary power and not included on the face of the Bill.

240. The Committee is concerned that the role of the PSOW and tribunals has not been fully considered and that the PSOW has said the

²²² RoP, paragraph 228, 17 September 2015

²²³ HMRC Statements of Practice explain their interpretation of legislation and the way the Department applies the law in practice. They do not affect a taxpayer's right to argue for a different interpretation, if necessary in an appeal to an independent tribunal.

“there appears to be a complication”. The Committee agrees that the various legislation in relation to tribunals is complicated and this area should be reviewed with relevant amendments being tabled to the Bill if required.

241. The Committee is content that the powers under Part 9 *Investigation of criminal offences* are appropriate and consistent with the investigatory powers and enforcement of HMRC. However, the Committee believe the Minister should consider reviewing these powers once the taxes have been established and in operation for a number of years.

Recommendation 24 The Committee recommends that the Welsh Revenue Authority issues a Statement of Practice on a tax by tax basis to provide flexibility in the case of individual taxes whilst providing certainty over timescales for service users.

Recommendation 25: The Committee recommends the Minister reviews the position in relation to the Public Services Ombudsman for Wales’ role in dealing with complaints against the Welsh Revenue Authority and in relation to tribunal arrangements for devolved tax collection and management and brings forward amendments if appropriate.

12. Financial implications of the Bill

Background

242. The Explanatory Memorandum accompanying the Bill states that the scope and scale of many of the WRA functions will be dependent on Ministerial decisions, in the context of the developing policy and legislation on LTT and LDT and that as such, the staff and infrastructure requirement will vary, depending on these later Ministerial decisions. It continues:

“Alongside this, Welsh Ministers will continue to develop cost estimates for the operation of these roles with potential partners, and agree roles based on cost-effectiveness. This cost information will become available over time, as the scale and scope of the role is clarified alongside the legislative provisions on LTT and LDT, and will be published at the appropriate opportunity.”²²⁴

243. The Regulatory Impact Assessment (RIA), included in the Explanatory Memorandum states that “it is difficult to provide a robust estimate for the costs of establishing and running the WRA at this stage”. However, the RIA does include costs for establishing Revenue Scotland which is regarded as a “comparator organisation”, although the costs have not been adjusted for Wales.²²⁵

244. Section 22 requires the Welsh Ministers to pay the WRA for undertaking tax collection and management functions. The Welsh Ministers will set the amount, times and any conditions of payment that they consider to be appropriate.

245. Section 23 provides for the WRA to pay a reward to a person for a service relating to any of its functions. For example, for information which leads to the collection of undeclared tax.

Evidence from respondents

Set-up costs of establishing WRA

246. Revenue Scotland said “since we went live, we’re running pretty much as we expected”. They confirmed there had been some

²²⁴ Explanatory Memorandum

²²⁵ *ibid*

additional costs of implementation which were mostly extra staff costs.²²⁶

247. Several respondents were concerned that the Explanatory Memorandum does not include an estimate of the cost of establishing the WRA, only the equivalent costs at Revenue Scotland. IEACW said:

“It is a cause for concern, in the sense that the Welsh Government is entering into an area of unknown. The WRA we believe is essential for this process. So, this is about ensuring that it is set up in the most efficient and appropriate way. It mustn’t be under-resourced, but at the end of the day, as we’re delegating the actual collecting activities then there should be some certainty about the management and collection through that delegation.”²²⁷

248. The LITRG also emphasised the need for the WRA to be sufficiently funded to be effective and achieve its objectives and that funding should be monitored on a regular basis as:

“if there is insufficient funding this could potentially result in taxpayers losing confidence with the new system which may lead to less compliance, placing additional burdens on the WRA and possibly affecting any decisions to devolve further taxes in the future.”²²⁸

249. The WLGA felt it was important that the size of the WRA and its costs are proportionate to the scale of the taxes that are devolved to Wales. However, they recognised the WRA needs to be suitable for the potential for further devolved taxes.²²⁹ They said:

“I think a particular concern is because these are existing taxes that are being devolved, that funding will be taken off the Welsh block grant. So, anything that means that there’s more cost involved, even if you manage to keep the yield the same, will mean that there will be less resource available to fund services at the end of the day. So, yes, we have concerns about the size and the range of the costs that are included within the

²²⁶ RoP, paragraph 73, 1 October 2015

²²⁷ RoP, paragraph 307, 7 October 2015

²²⁸ Written Evidence, TCM 01

²²⁹ Written Evidence, TCM15

explanatory memorandum, if that's indicative of where they're heading."²³⁰

Cost of delegation

250. HMRC confirmed they would be discussing the requirements for administering LTT with the Welsh Government in more detail in the autumn and would support the Welsh Government in producing initial costings ahead of the Stage 1 debate on the Bill. They said:

“these costs will continue to be developed and refined on an ongoing basis.”²³¹

251. In further evidence HMRC said that changes would be required to their systems to implement the new LTT tax, such as introducing different tax tables and reliefs and sharing LTT data with the WRA. They said other costs could arise including staff time in processing returns, issuing penalties and pursuing debtors and work involved in carrying out compliance activity for the new tax. They confirmed:

“Any cost savings that HMRC incurs from no longer administering Stamp Duty Land Tax (SDLT) and Landfill Tax in Wales will be passed onto the Welsh Government.”²³²

252. The Committee asked the WLGA if delegating functions to HMRC was the most cost-effective means of collection. The WLGA said “it probably is, in the first instance”.²³³

253. The Law Society advocated the approach of using HMRC as it “would keep down costs” as “they’re already established; they already have the set-ups with individual solicitors....all the IT systems”.²³⁴

254. LITRG were concerned that organisations collecting taxes should not be remunerated on a “payment by results” basis. They recommend that any organisation is paid independently of the amount they collect.²³⁵

²³⁰ RoP, paragraph 122, 15 October 2015

²³¹ Written Evidence, TCM 13

²³² Written Evidence, TCM 13A additional information

²³³ RoP, paragraph 93, 15 October 2015

²³⁴ RoP, paragraph 467, 7 October 2015

²³⁵ RoP, paragraph 461, 1 October 2015

255. On this issue, the Committee asked HMRC whether they intend to charge a fixed fee for collecting Welsh taxes, or a variable fee based on the volume of transactions. They said:

“In line with the Treasury Statement of Funding Policy, HMRC intend only to pass on the additional costs that arise as a result of this work, rather than charging a fixed fee. The precise arrangements for this will be governed by a Memorandum of Understanding to be agreed between the Welsh Government and HMRC (to 2018), and a partnership agreement with the Welsh Revenue Authority from then.

“Where HMRC charges for its services, it does so (following HM Treasury policy) at the full cost of providing the service, seeking to make clear the breakdown of the calculation. Full cost is based on the average salary cost for the relevant grade plus per capita overheads such as superannuation, HR, accommodation and finance costs. Where costs are incurred under contract by third parties, including HMRC’s IT supplier, these will be charged at cost.”²³⁶

256. In discussing their role in potentially assisting the WRA in delivering a more effective compliance and enforcement regime for LDT, NRW said recognition was needed that “any additional role would be a new burden” and they would expect to be fully funded.²³⁷

257. When asked whether NRW had estimated the costs to undertake this work, they said it was difficult to calculate as they were unclear as to their potential “role and scope for the future”. They continued:

“I am aware that the Minister for Finance and Government Business will be making a statement in relation to costs towards the end of autumn, and hopefully there will be more detail contained within that. As part of that, we’ll obviously be able to provide information in terms of how much it costs to undertake activities so that it meets our agreed understanding as to what our role will be for the future.”²³⁸

²³⁶ Written Evidence, TCM 13A additional information

²³⁷ RoP, paragraph 313, 1 October 2015

²³⁸ RoP, paragraph 401, 1 October 2015

Cost a Digital by default approach

258. RCT CBC said from their experience:

“it’s not going to be cheap to set up a digital-by-default system, which is going to be for a relatively small number of transactions per annum— 50,000-odd.”²³⁹

259. They said the cost-benefit analysis and the return on investment needed to be carefully considered before resources are spent on investing heavily in technology, which from their own experience “isn’t cheap”.²⁴⁰

260. However, Cardiff Council felt “if the investment is right, the actual running costs each year could be significantly reduced”. They said:

“We’re already investing in Cardiff in digitising services, and we have forms available on our Cardiff council website, where customers complete them online. We don’t manually touch that form; it automatically updates into our back office systems for council tax and produces revised bills and things, so we’re moving forward in that digitisation age. And, I think, with the Welsh revenue authority, we should certainly explore those opportunities...you are dealing with a different client group— companies that should be fairly confident using the internet.”²⁴¹

Revenue raised by devolved taxes

261. ACCA said it would be “quite dangerous to try and set an arbitrary monetary level” setting a limit for the proportion of the revenue raised by devolved taxes which would be taken up by collection costs. They said:

“There are examples—I’ve not been able to track down specific evidence, but anecdotally, capital gains tax in the UK, initially, cost more to collect than it did actually raise, but the point was it acted as a safety valve to prevent all sorts of other tax avoidance, and there would be similar examples elsewhere...Obviously, that’s a completely different situation to something like landfill tax or a land transaction tax, which is simply designed to raise revenue, and if that’s been delegated

²³⁹ RoP, paragraph 84, 15 October 2015

²⁴⁰ *ibid*

²⁴¹ RoP, paragraph 85, 15 October 2015

and the delegated authority is costing more to run it than it's collecting, then that's an issue and will need to be dealt with through governance there."²⁴²

262. Cardiff Council agreed that "it would seem a little bit foolish...if you actually had a higher cost of collection than the actual yield that you were collecting". They recognised that there might be other reasons to levy or tax to change behaviour, including environmental reasons, but "for the majority of taxes, it's about generating income."²⁴³

Payment of rewards

263. The ICAEW said that section 23 which gives power to the WRA to "pay a reward to a person in return for a service which relates to any of its functions" was not clear as to who might receive such an award as compared to, for example, remuneration or payment for services rendered. The ICAEW said they would welcome clarification as to the extent of this power and where it would be appropriate to apply it.²⁴⁴

264. CIOT agreed that this section was wide in scope and should be restricted to matters such as rewarding informers if that is the intention.²⁴⁵

Evidence from Minister

265. The Minister said it was difficult to provide "definitive costs at this stage" of establishing the WRA. She said she had looked at the cost of setting up Revenue Scotland which were £4m to £5m and £3m annual running costs. She felt the set-up costs for the WRA would inevitably be "pretty much the same" as for Revenue Scotland.²⁴⁶

266. In further evidence, the Minister provided an initial estimate of set-up costs of £4.8m-£6.3m over the period 2016/17 to 2018/19. With operating costs estimated at £2.8m-£4m annually, beginning in 2018/19.²⁴⁷

²⁴² RoP, paragraph 312, 7 October 2015

²⁴³ RoP, paragraph 101, 15 October 2015

²⁴⁴ Written Evidence, TCM 09

²⁴⁵ Written Evidence, TCM 10

²⁴⁶ RoP, paragraph 204 & 206, 17 September 2015

²⁴⁷ FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business , 4 November 2015

267. In relation to these figures the Minister said she was providing a range, rather than a specific figure to reflect the degree of uncertainty remaining over some elements of the arrangements.²⁴⁸

268. The Committee asked the Minister when she would make a final decision on delegation of the WRA's functions to HMRC and NRW and when the budget and running costs would be agreed. The Minister said she was having close discussions with HMRC and NRW but it would be for the next Welsh Government to prescribe in regulations who the WRA can formally delegates function to. She said at this stage it's about clarifying their roles, preparation, and looking at the initial requirements for such delegations.²⁴⁹

269. The Minister confirmed the collection costs of the WRA for carrying out its functions would be "met by Welsh Ministers" as set out in section 22. She said this would be separate from the tax revenue collected by WRA which would be paid into the Welsh Consolidated Fund.²⁵⁰

270. When questioned further as to whether it would be more appropriate to fund the WRA as a separate line in the annual budget, the Minister stated:

"the WRA, of course, will be undertaking a function for the Welsh Government and, therefore, it will, as I've said, be funded through the Welsh Government budget. That means that the WRA's budget will be set by Welsh Ministers, it will be scrutinised and it will be part of the budget process. It will be scrutinised and voted on by the Assembly, as part of the wider Welsh Government budget. So, it would be very clearly a separate line."²⁵¹

271. In the Minister's opinion it is not necessary to have a legal requirement that any new taxes should recover the costs they incur.²⁵²

²⁴⁸ FIN(4)-26-15 P3 Letter from Minister for Finance and Government Business, 4 November 2015

²⁴⁹ RoP, paragraph 22, 21 October 2015

²⁵⁰ RoP, paragraph 210, 17 September 2015

²⁵¹ RoP, paragraph 216, 17 September 2015

²⁵² RoP, paragraph 64, 17 September 2015

Our view

272. The Committee is disappointed with the lack of financial information that was available when the Bill was introduced, which resulted in the Committee being unable to take informed evidence from respondents on the financial implications. The Committee notes that the Minister has now provided set-up and operating costs of the WRA. However, the Minister has not provided any rationale or justification for how the lower and upper limits have been calculated.

273. Furthermore, the Committee is disappointed that no estimated costs and budgeted running costs for delegated bodies undertaking work on behalf of the WRA has been produced. Whilst we appreciate this is an emerging area and the full details of any delegation partnerships have not yet been finalised an estimate of these costs would have assisted the Committee in its consideration of the Bill.

274. Section 22 provides for Welsh Ministers to fund the WRA in respect of its operational costs. For funding purposes the Committee believes this puts the WRA in the same position as bodies sponsored by the Welsh Government. The Committee is concerned how appropriate this funding route is for WRA's status as a non-ministerial department. Therefore, we believe a more appropriate formulation would be for the WRA to be expressly referred to in section 124 of the *Government of Wales Act 2006* (GOWA 2006) as a "relevant person" ensuring the WRA's estimate is a separate entry in the annual budget motion tabled by Welsh Ministers under section 125 of the GOWA 2006. This mechanism of funding the WRA will allow it to draw directly from the Welsh Consolidation Fund, ensuring the WRA is funded in a similar manner to HMRC.

275. If it is not possible to obtain the Secretary of State's consent to amend section 124 of GOWA 2006, the Committee believes the WRA's budget should be separately identified and hypothecated in the Welsh Government's annual budget motion.

276. The Committee supports the provision under section 24(1) which requires WRA to pay tax collected into the Welsh Consolidation Fund. The Committee believes that in line with best practice and the arrangements in place for the block grant, such resources should not be used by the Welsh Government or any other public body until the

National Assembly has passed a budget authorising their withdrawal and use.

277. The Committee considers the payment of rewards permissible under section 23 as an expense incurred in collecting tax. HMRC and Revenue Scotland are not permitted to treat rewards as a deduction from the amounts paid into the respective consolidated funds. As such, the Committee believe that a provision for rewards should be included in WRA's estimate and be subjected to scrutiny and authorisation via the annual budget motion process. The Committee believe that without this safeguard, in the extreme, WRA could pay rewards of any value (up to the amount of additional tax collected) without such expenditure being authorised.

278. The Committee notes that whilst on the primary purpose of tax policy is to raise revenue, it would be unusual for any tax to be simply about generating income without some form of policy rationale or behavioural impact. The Committee believes that whilst there should not be a higher cost of collection than the actual yield of the tax, it is difficult to put a figure on this as some taxes will be aimed at modifying behaviour. Nevertheless, the Committee believes the Minister should monitor the cost of collection and review if collection costs exceed the yield of the tax return.

279. The Committee notes the approach offered by Cardiff Council in relation to the digitalisation of information and the savings this could generate. The Committee believe the WRA should explore the opportunities for fully integrated digitisation rather than only offering an online service to customers. A simple online service only has the potential to generate additional work for WRA staff in processing and inputting the information. A full cost-benefit analysis should be undertaken to ensure the benefits of any online/digitalisation service.

Recommendation 26: The Committee recommends that the definition of rewards should be clarified on the face of the Bill.

Recommendation 27: The Committee recommends the Bill is amended to ensure the Welsh Revenue Authority are not permitted to treat rewards as a deduction from the amounts paid into the Welsh Consolidation Fund.

Recommendation 28: The Committee recommends that section 22 of the Bill should be replaced with a provision that would treat the Welsh Revenue Authority as an additional “relevant person” in section 124 of the Government of Wales Act 2006. The Committee urges the Welsh Government to obtain the Secretary of State’s consent to ensure that should an amendment to amend section 124 of the Government of Wales Act 2006 be agreed by the National Assembly, the Bill would be able to be passed at Stage 4.

Recommendation 29: If it is not possible to obtain the Secretary of State’s consent to amend section 124 of the Government of Wales Act 2006, the Committee recommends that the Welsh Revenue Authority’s budget is identified separately and hypothecated in the Welsh Government’s annual budget motion.

Annex A - Interaction between devolved taxes and UK-wide taxes

Legislation

This note has been prepared by the Committee's Expert Adviser.

SDLT (and the proposed LTT) is a transaction tax and as such is integrated into the legislative framework that encompasses other transaction taxes. Many terms, such as "partnership", "control", "connected person", "company", "charity" etc. are defined in other tax, and non-tax Acts and the interpretation (both statutory and based on HMRC guidance) of these terms have implications for both SDLT and the other taxes. In consequence, it is necessary to consider the scope of these terms and taxes when considering the application of SDLT. Unless it is intended to explicitly define **all** the terms to be used for the LTT, it is not possible to "ring-fence" the devolved taxes. This has not been done for LBTT in Scotland and we assume it will not be done for LTT.

Case management - tax enquiries

Practically it would not be possible for the devolved taxes to be managed as a discreet subset of the activities of HMRC unless an enormous amount of information is to be accessed from the general body of HMRC to the separate unit. It is understood that HMRC are only expecting to create a small unit within Stamp Taxes to deal with the processing of returns.

Further, it is generally acknowledged that HMRC are resource constrained. Tax enquiries are thus managed so as to make the most of the specialist skills available. Cases are risk assessed and, prioritised on the basis of the need to ensure that the enquiry is effective and efficient. Stamp Taxes, it is understood, do not have the resources to manage enquiries that straddle a number of taxes and the lead is therefore taken elsewhere. This is the case with a very large number of cases: the SDLT angle is not, typically, the main issue. Inevitably, where there is a dispute as to the correct application of the tax legislation to a transaction the person leading the enquiry will therefore need to consider the impact of a range of taxes.

As a case gets close to being litigated, it is necessary for the parties to agree the points to be argued in Court. At this stage it will be necessary to ensure consistency- it will not be possible, for example, to argue that there is a partnership for income tax but not for SDLT / LTT unless the legislation specifically envisages different treatment for each tax. Further, it would be unusual for a case to be heard that required the Court to look at a multitude of disparate issues. A choice would need to be made as to the technical matter(s) to be pursued - the others would be left to one side for many years. We are, for example, aware of an argument regarding the appropriate amount of tax on trade-related premises (restaurants, hotels, pubs, nursing homes etc) - see example 1 below - where a large number of cases are still unresolved some 7 years later (litigation is expected sometime next year).

Example 1: trade related premises

A taxpayer may have acquired a restaurant from another taxpayer for, say, £1.5m and be arguing that £600,000 is for the property and the balance for the business. Of the balance, £900,000, it may be argued that £100,000 is for equipment and the remainder for intangibles (licences, customer list, goodwill etc).

The appropriate apportionment of the consideration will have implications as regards *capital allowances* (for the equipment) for both the vendor and the purchaser, *capital gains tax or corporation tax on capital gains* for the vendor (on the land and building), a *corporation tax deduction* (for intangibles) for the purchaser, the *tax cost* of the land and buildings for the purchaser on a future sale of the property, *income tax or capital gains tax* (on any loan account or any undervalue) if the vendor and purchaser are connected. Further, there may be an argument that the accounting figures are not correct (they are sometimes used as the starting point for tax) and the transaction may have some unusual features such as a split of the business ownership, an Opco/Propco structure (Operating company/ Property Company) or a licence to occupy, so that the property is owned separately from the business. Finally, the vendor may be arguing for a different split and this will complicate the enquiry for HMRC. In a case such as this Stamp Taxes will take a back seat and HMRC will be much more concerned about the possible loss of revenue (both in the specific case and, very importantly, others that may involve the same point of law) as regards the other taxes. It is difficult to see how this would not be even more likely where the trade-off was between a non-devolved and a devolved tax.

Example 2: partnership

The SDLT legislation has specific rules for the treatment of partnerships. Further, it is acknowledged that these rules have been extensively used for tax avoidance purposes and the legislation has been regularly amended (almost yearly) since being enacted in 2004. It is possible that HMRC would be arguing that there is actually no partnership, in order that the taxpayer cannot obtain the advantage of the special *CGT* rules whilst for *SDLT* (and *LTT*) it would be better to

argue that there is a Property Investment Partnership. In other cases, whilst the transaction may have involved some SDLT avoidance, the avoidance of other taxes (income, capital gains tax and corporation tax) may be the main issues and Stamp Taxes are only involved if/when the taxpayer concedes: this may be many years after the transaction was undertaken and it may not then be possible for assessment to SDLT / LTT to be raised.

Example 3: by reason of employment

The SDLT legislation specifically invokes a charge at a prescribed value where the transaction is by reason of the employment of the purchaser or a person connected with the purchaser. By way of example, the employer may allow an employee to occupy or acquire company premises for a nominal (or nil) consideration. In such a case the SDLT should be on the prescribed value. If the transaction is not by reason of the employment then the consideration is a question of fact. Whether the transaction is by reason of the employment is something that Stamp Taxes will generally be unaware and even if they are aware of a possible link, there are technical arguments which they will need to be referred to other departments for an opinion. There will be significant implications as regards *income tax and national insurance* for the purchaser and *PAYE*, and *income or corporation tax* obligations as the regards the vendor (employer).

Annex B - Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at

www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=1243

Name	Organisation
<i>17 September 2015</i>	
Jane Hutt AM	Minister for Finance and Government Business, Welsh Government
Richard Clarke	Tax Administration project manager, Welsh Government
Sean Bradley	Senior Lawyer, Welsh Government
Jeff Andrews	Specialist policy adviser responsible for Finance and European matters, Welsh Government
<i>1 October 2015</i>	
Eleanor Emberson	Chief Executive, Revenue Scotland
Colin Miller	Tax Powers Bill Team Leader, Revenue Scotland
Neil Broadfoot	Communications Officer, Revenue Scotland
Doug Stoneham	Senior Policy Adviser, Devolution, Her Majesty's Revenue & Customs
Geoff Yapp	Deputy Director, Corporation Tax, International and Stamps, Head of Stamp Taxes, Her Majesty's Revenue & Customs
Isobel Moore	Head of Business, Regulation and Economics, Natural Resources Wales
Rebecca Favager	Waste and Resources Manager, Natural Resources Wales
John Cullinane	Tax Policy Director, Chartered Institute of Taxation
Claire Thackaberry	Technical Officer, Low Incomes Tax Reform Group
<i>7 October 2015</i>	
Martin Warren	Director for Wales, Institute of Chartered Accountants in England and Wales
Jason Piper	Senior Manager—Tax and Business Law, The Association of Chartered Certified Accountants
Kay Powell	Policy Adviser, The Law Society
Richard Beech	Partner, Glamorgan Law LLP

15 October 2015

Mari Thomas	Policy Officer Finance, Welsh Local Government Association
Nick Jones	Service Director for Operational Finance, Rhondda Cynon Taf County Borough Council
Tara King	Assistant Director, Environment, City of Cardiff Council
Gary Watkins	Revenue Services Manager, Cardiff City Council
Huw Vaughan Thomas	Auditor General for Wales
Martin Peters	Wales Audit Office
Mike Usher	Wales Audit Office

21 October 2015

Jane Hutt AM	Minister for Finance and Government Business, Welsh Government
Richard Clarke	Tax Administration Project Manager, Welsh Government
Emma Cordingley	Lawyer, Welsh Government
Jeff Andrews	Specialist Policy Adviser Responsible for Finance and European matters, Welsh Government

Annex C - List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at

www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=183

<i>Organisation</i>	<i>Reference</i>
Low Incomes Tax Reform Group (LITRG)	TCM 01
Auditor General for Wales (AGW)	TCM 02
CLA Cymru	TCM 03
Bevan Foundation	TCM 04
One Voice Wales	TCM 05
Public Services Ombudsman for Wales (PSOW)	TCM 06
Deloitte	TCM 07
Federation of Small Businesses (FSB) Wales	TCM 08
Institute of Chartered Accountants in England and Wales (ICAEW)	TCM 09
Chartered Institute of Taxation (CIOT)	TCM 10
Natural Resources Wales (NRW)	TCM 11
Monmouthshire Mediation Practice	TCM 12
HM Revenue and Customs (HMRC)	TCM 13
The Law Society	TCM 14
TCM 15 Welsh Local Government Association (WLGA)	TCM 15
The Association of Chartered Certified Accountants (ACCA)	TCM 16