



Consultation Response

Tax Collection and Management (Wales) Bill

Call for Evidence

Date: 7 September 2015

Introduction

1. The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners and those with an economic, social and environmental interest in rural land and the rural economy. CLA Cymru has 3,500 members in Wales who between them own and manage about half of the rural land in Wales. Our membership is engaged in all sectors of the rural economy and includes farmers, landowners and around 250 types of rural business.
2. We welcome this opportunity to respond to the call for evidence by the Finance Committee. In commenting on the Tax Collection and Management (Wales) Bill we have focused on our areas of concern.

General Comments

3. We welcome the statement made by Welsh Ministers that there will be no divergence from the UK tax administration, Welsh tax collection and management arrangements where there is no good policy reason to do so.
4. Page 43 of the explanatory memorandum addresses the issue of Costs to Businesses but the analysis seems unclear. For example, paragraph 152 says the cost of these changes 'is not anticipated to be a significant amount for businesses and it will reduce quickly', whereas paragraph 153 says 'the costs are not quantifiable'.
5. The Rural Proofing Checklist on page 50 of the explanatory memorandum only identifies one major issue for Rural Businesses in relation to the requirement for Broadband for delivery of the service. It says:

"It is probable that a digital by default approach will be taken and this could have an impact in rural areas with poor Internet connection."

6. We would caution against the adoption of a digital by default approach as this will discriminate against taxpayers or their advisers based in rural areas who do not have the capacity to deal with the WRA digitally due to non-existent or slow broadband connectivity. We recognise that the ability to file tax returns electronically can be beneficial to the taxpayer and the relevant revenue authority, such as the WRA or HMRC as a well designed system can aid completion and thus compliance and enable the taxpayer or their

agent to receive and instant acknowledgement of receipt. However, there are still many taxpayers or their agents who do not have the ability to file electronically. To impose any requirements to support a digital by default approach will inevitably mean that unnecessary expense will be incurred in having to instruct intermediaries to do so on their behalf. Before any system that imposes a 'digital by default' approach can be introduced it will be essential for the WRA to ensure that:

- There is appropriate free software available on the WRA website, since even where people do have the necessary hardware and internet connection already, it is wrong to force them over to a system which they cannot use without involving them in extra annual expenditure for commercial software.
 - Even more significantly, the WRA must make available the facility to submit attachments (in common file formats) with online returns where additional information is required and the "white space" on a return form itself is insufficient to provide an adequate explanation or disclosure, or it may be incapable of presenting information in a sensibly formatted way (e.g. information in a table). There should be no limitation on the number of attachments that can be included.
 - Public confidence must be gained in the absolute security of any online system. A single breach of security would dent this confidence and discourage electronic filing.
7. In a significant number of cases the provisions of the Bill are to be supplemented by regulations which have not yet been published in draft form. This makes it difficult to assess the full impact of the legislation contained in the Bill. Regulations are generally not subject to the same level of Assembly scrutiny as primary legislation. While we understand the logistical pressures that compel the use of regulations to supplement primary legislation, we feel that it is important that regulations should be published in draft form and should be the subject of a consultation so that there is adequate consideration given to their effectiveness. We also recommend that the default position is that the regulations should be made by a positive approval procedure rather than the negative resolution procedure.

Part 2: The Welsh Revenue Authority (WRA)

8. We agree with the approach taken by the Welsh Government that the collection and management should be undertaken by a body that is operationally separate from Welsh Ministers.
9. We note that the responsibility for the appointment of the chairperson and non-executive members of the board are to be appointed by Welsh Ministers. Although paragraph 38 of the explanatory memorandum indicates that the non-executive members of the WRA will be appointed in accordance with the Code of Practice for Ministerial Appointments to Public bodies (the Nolan principles) if it is not clear that the application of the Nolan principles will also extend to the chairperson. In any event the commitment to comply with the Nolan principles should be set out in clause 3 of the Bill.

10. We also recommend that the non-executive members appointed have experience of tax 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. Such non-executive directors should be appointed through open competition for their experience, ability and diversity of skills.
11. As we noted in our response to the White Paper on the collection and management of taxes, HM Revenue & Customs (HMRC) faces a huge challenge applying complex and lengthy tax legislation in a fair and consistent way and has substantial resources to assist it in this task. On 30 June 2015 the Finance Minister announced her preferences as to the bodies the WRA would delegate its powers to. Whilst we are reassured that the initial intention is for the WRA to work with HMRC on the new Land Transaction Tax to *“support the development of Welsh tax expertise and capability, providing a smooth transition”* we are concerned that this may be reviewed and the decision taken for the WRA to take over the collection and management of tax itself rather than allowing HMRC to continue to operate on behalf of the WRA under delegated powers. The WRA will be a much smaller body than HMRC and may struggle to acquire staff with appropriate expertise to manage Welsh taxes particularly as the existence of the WRA would just spread the limited pool of people, expertise and funding even further. Sharing expertise as currently proposed would be the most beneficial and cost effective way forward.

Part 3: Tax returns, Enquiries and Assessments

12. This chapter refers to a person who has made a tax return. Whilst we can see that such an obligation will rest with the relevant taxpayer, in reality, in many instances a return will be held on the taxpayers behalf by their ‘agent’. The Bill would be clearer if the term “the person who made the tax return” were defined since this is a term used later in the Bill.
13. Clause 40 deals with the correction of a tax return. The Bill gives the WRA power to correct any error or omission in the return. The Bill also gives the WRA power to correct an ‘error of principle’. Such an error of principle could simply be a different interpretation of the law. It is then up to the taxpayer to give notice to the WRA that the corrections is rejected. We are pleased to see that the Bill gives a period of 3 months in which to reject any correction, whereas they only have 30 days in relation to any correction by HMRC. This longer period will better enable taxpayers to seek professional advice as to their position before making a decision as to whether to accept or reject any such corrections.
14. In clause 41 the term “person who made the return” is used. It is not clear if this is a reference to the taxpayer or the person who actually filed the return. We anticipate that in relation to the land transactions tax, the taxpayer will not file the return themselves as this will be done by the solicitor or licensed conveyancer who handles the property transaction. Will such a notice be sent to the taxpayer and their lawyer in these circumstances.
15. If the WRA were to correct a return some months after a transaction was completed, it is likely that the professional dealing with the matter will have closed their file. The notice should be served to both the taxpayer *and* any agent who acted on their behalf to submit the return.

16. Clause 43 provides that the WRA may during an enquiry issue a notice amending a return and requiring the payment of any insufficiency in tax payable. The clause provides that any further sum due *must* be paid in 30 days. Yet it is not clear what steps the taxpayer can take if they do not agree with the WRA on the amount of tax due, particularly as clause 44 requires both the WRA and taxpayer to jointly refer a question to a tribunal for determination. What happens if agreement cannot be reached as to whether a referral should be made? Is a decision of the WRA to refuse to make a joint referral appealable?
17. It is disappointing that the only way a taxpayer can compel the WRA to complete an enquiry is to make an application to the Tribunal. We believe that consideration should be given to an alternative process that avoids the cost of tribunal proceedings.
18. Clause 71 requires the WRA to either issue a notice of decision or give effect to a claim for overpaid tax “as soon as practicable”. It is not clear what this means. This will create uncertainty as to how long a taxpayer may wait for a decision or repayment. We recommend that a time limit be set as to how long the WRA has to make a decision so that the taxpayer does not suffer undue delay in receiving sums due to them from the taxpayer.

Part 4: Investigatory Powers of WRA

19. Clause 99 provides that regulations will be made to establish a procedure to resolve any dispute as to whether any information or a document (requested in an information notice) is subject to legally professional privilege. Legal professional privilege is a fundamental human right and it is imperative that any regulations should be the subject to consultation before being laid before the Welsh Assembly. We note that these regulations as with the majority of regulations to give effect to the Bill are to be passed by the negative procedure. This will inevitably mean that they will be passed with minimal scrutiny by legislators if any. We consider that these important regulations to ensure the protection of taxpayers rights should be passed by way of affirmative resolution.

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