

Shan Morgan
Ysgrifennydd Parhaol
Permanent Secretary



Llywodraeth Cymru
Welsh Government

20 Rhagfyr 2019

Annwyl Gadeiryddion Pwyllgorau

Rwyf yn ysgrifennu i'ch hysbysu fy mod i fel Ysgrifennydd Parhaol a Phrif Swyddog Cyfrifyddu Llywodraeth Cymru wedi ysgrifennu at Brif Weinidog Cymru yn gofyn am Gyfarwyddyd Gweinidogol i fwrw ymlaen â newidiadau arfaethedig i drefniadau pensiwn y GIG ar gyfer 2019/20.

Mae'r cynnig yn golygu bod GIG Cymru'n cydymffurfio ag ateb GIG Lloegr ar gyfer 2019/20 i fynd i'r afael â'r heriau gweithredol sy'n codi o ganlyniad i'r trefniadau presennol ar gyfer trethi pensiynau. Nid yw cynllun pensiwn y GIG a'r ddeddfwriaeth ar drethi pensiynau wedi'u datganoli inni yng Nghymru.

Mae'r angen am Gyfarwyddyd Gweinidogol wedi codi gan mai cynllunio trethi yw'r cynllun arfaethedig ac felly mae'n codi mater o reoleidd-dra gan nad yw'n gydnaws â pharagraff 5.6.1 o Reoli Arian Cyhoeddus Cymru. Cafwyd yr un mater o reoleidd-dra yn Lloegr.

Er bod cyfarwyddydau'n brin, mae hon yn sefyllfa dra anghyffredin gan fod Lloegr wedi cyhoeddi cyfarwyddyd ar y mater hwn, ac felly nid oes gan Gymru fawr o ddewis ond gwneud yr un peth. Byddai methiant i roi'r newid arfaethedig ar waith yn golygu y byddai clinigwyr y GIG ar eu colled o'u cymharu â chlinigwyr y GIG yn Lloegr.

Cyhoeddodd y Prif Weinidog y cyfarwyddyd yn ffurfiol ar 18/12/2019.

Mae'r Prif Weinidog a minnau'n cytuno am yr angen i fynd i'r afael â'r materion gweithredol sy'n cael eu trafod gan y GIG ac i sicrhau bod staff GIG Cymru yn cael eu trin yr un mor deg â staff y GIG sy'n gweithio yn Lloegr.

Yn gywir,

Shan Morgan
Ysgrifennydd Parhaol / Permanent Secretary
Llywodraeth Cymru / Welsh Government



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Shan Morgan
Ysgrifennydd Parhaol
Permanent Secretary



Llywodraeth Cymru
Welsh Government

Mark Drakeford
First Minister
PS.FirstMinister@gov.wales

18 December 2019

Dear First Minister

I am writing to you to formally request a Ministerial Direction.

On 26 November 2019, officials in Health and Social Services Group provided advice to the Minister for Health and Social Services in respect of NHS Pension Tax Proposal 2019/20. The proposal sought to bring NHS Wales in line with NHS England's solution to the tax implications of the pension scheme for clinicians who incur tax charges for undertaking work in 2019/20. This recommendation was subsequently agreed by the Minister for Health and Social Services.

A subsequent review of the mechanism for introducing this solution in England, has enabled us to identify that recommendations in the earlier advice should have drawn attention to the fact that this recommendation raises an issue of regularity due to its contravention of Managing Welsh Public Money (MWPM). MWPM specifically states (para 5.6.1) that "*Public Sector organisations should not engage in or conspire at, tax evasion, tax avoidance or tax planning.*"

The same issue of regularity has already been encountered in England (Managing Public Money and Managing Welsh Public Money are aligned on this issue). Therefore, on 22 November the Secretary of State for Health and Social Care issued a Direction to the Accounting Officer for NHS England to proceed with the NHS Pension Tax Proposal 2019/20.

It is my duty as Principal Accounting Officer to ensure the regularity of expenditure within the Welsh Government but the need has arisen for a Direction because tax planning is considered an issue of irregularity. Whilst Directions are rare, this is the exceptionally unusual position that, as a UK Government Minister has issued a



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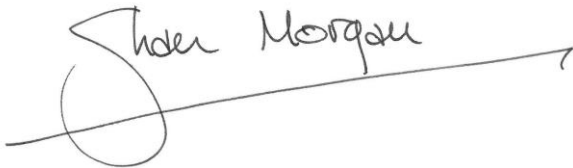
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Direction on this matter in England, I have little alternative but to follow suit and seek one from you for Wales.

Annex A contains the extracts from Managing Welsh Public Money and Managing Public Money regarding tax which give rises to this regularity issue.

Yours,

A handwritten signature in black ink that reads "Shan Morgan". The signature is written in a cursive style and is positioned above a long horizontal line that extends to the right and ends in an arrowhead.

Shan Morgan
Ysgrifennydd Parhaol/ Permanent Secretary
Llywodraeth Cymru/ Welsh Government



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Managing Welsh Public Money - Extract

5.6 Tax

5.6.1 Public sector organisations should not engage in, or conspire at, tax evasion, tax avoidance or tax planning. If a public sector organisation was to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the public sector as a whole would be worse off – thus conflicting with the Accounting Officer's duties (see section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HM Revenue and Customs (HMRC) about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

Managing Public Money - Extract

5.6 Tax

5.6.1 Public sector organisations should not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the Exchequer as a whole would be worse off – thus conflicting with the accounting officer's duties (section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HMRC³ about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

5.6.3 Proposals to create new taxes in order to assign their proceeds to new spending proposals are rarely acceptable. Decisions on tax are for Treasury ministers, who are reluctant to compromise their future fiscal freedom to make decision.



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Our Ref/ Ein Cyf: MA/FM5845/19

Shan Morgan
Permanent Secretary

ps.permanentsecretary@gov.wales

18 December 2019

Dew Shan,

Thank you for your letter of 18 December 2019 setting out your advice as Principal Accounting Officer on the proposed 'Scheme Pays' arrangements to counter staffing issues in the NHS for this winter period.

I am grateful for the scrutiny which you and other officials have given to this matter.

I note the advice that the scheme proposals involve tax planning and, depending upon the approach to implementation, could be deemed by HMRC to constitute tax avoidance. The proposed measure is therefore incompatible with paragraph 5.6.1. of Managing Welsh Public Money, and is a matter of regularity. In these circumstances I am able to bring to bear a wider consideration of the public interest, and you have requested I consider whether to grant a Direction to proceed with the proposals.

NHS Wales report that senior clinical staff are unwilling to take on additional work and sessions due to the potential tax liability which could in some circumstances lead to tax charges in excess of any additional income earned. This has led to some appointments and operations being delayed. In a recent Written Statement, the Minister for Health and Social Services noted that, between April and August 2019, over 2,000 outpatient, diagnostic, inpatient or daycase sessions have been lost affecting over 15,000 patients.

Let me be clear that I have fundamental disagreements with the solution which has been implemented in England. The tax problems should be resolved by the Treasury, not left to the health budget to absorb. Done properly, the HMRC uncertainties which now arise would have been resolved before, not after a solution was implemented. However, given the pressures experienced by the Welsh NHS following a decade of austerity, we cannot allow a position to develop in which our staff are denied access to arrangements available to their counterparts across our border. I very reluctantly see no option therefore but to put in place

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temporary solutions while the UK Government is consulting on NHS pension legislation changes from April 2020.

I have considered your advice carefully in the context of the need to protect patient care over the winter, and the wider reforms to NHS pension arrangements expected from April 2020. I will therefore follow the course of action taken in the Department for Health in England and formally direct you to proceed with the NHS Pension Tax Proposals for 2019/20 so that the same arrangements in England can apply in Wales.

I am copying this letter to Adrian Crompton, Auditor General for Wales and Nick Ramsey AM, Chair of the Public Accounts Committee, Llyr Gruffydd AM, Chair of the Finance Committee and Dai Lloyd AM, Chair of the Health, Social Care and Sports Committee. I also note that your letter and this reply will be published on gov.wales

Best wishes,

Mark.

MARK DRAKEFORD