

Welsh Government Consultation

Views on the Appropriate Mechanisms for Making Changes to the Welsh Tax Acts¹

Response by the Chartered Institute of Taxation and Low Incomes Tax Reform Group

1. Executive Summary

- 1.1. This consultation seeks views on the current arrangements for making changes to the Welsh devolved taxes legislation and invites suggestions for any process that might be more appropriate.
- 1.2. Our starting point is that tax law should be set out in primary legislation. This is to ensure proper scrutiny of legislation that results in the imposition of some kind of burden (compliance or financial) on taxpayers. However, we recognise that currently a secondary regulatory power to address the effect of decisions by the UK government on the block grant reflects a trade-off between the competing needs of speed, scrutiny and responsiveness. We suggest the suitability of the power is kept under review.
- 1.3. The case for an annual Welsh finance bill or an annual tax bill will strengthen if devolved taxes provide an increased share of revenues to fund wider policy areas dealt with by the Senedd either through existing devolved taxes or any other taxes which become devolved in the future.
- 1.4. The consultation considers a 'less frequent tax bill' that is, a bill enabling changes to tax legislation but not directly linked to the budget process in the same way as a finance bill. Frequency and timing (in terms of an expedited process) would depend upon the volume of changes needed and changes to a predecessor tax impacting the block grant. We would support such a process at this stage of the development of the devolved taxes in Wales.

¹ The Welsh Tax Acts is a collective term for three Acts: the Tax Collection and Management (Wales) Act 2016 that provides the administrative framework for collecting and enforcing land transaction tax and landfill disposal tax; Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and Landfill Disposals Tax (Wales) Act 2017.

2. About CIOT

- 2.1. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3. About LITRG

- 3.1. LITRG is an initiative of the CIOT to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those who are least able to pay for professional advice. We also produce free information, primarily via our website www.litr.org.uk, to help make a difference to people's understanding of the tax system.
- 3.2. LITRG works extensively with key stakeholders such as HM Revenue and Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the tax system. LITRG also considers the welfare benefits system, and other related systems, to the extent that they interact with tax.

4. Introduction

- 4.1. This consultation seeks views on the current arrangements for making changes to the Welsh devolved taxes legislation and invites suggestions for any process that might be more appropriate.
- 4.2. The annual finance bill process is the long established mechanism used by the UK government to change tax legislation. Currently there is no annual finance bill process for Wales. The Welsh Tax Acts include regulatory powers to, for example, change rates and bands or amend reliefs and the Welsh Tax Acts etc. (Power to Modify) Act 2022 (the 2022 Act) provides a regulatory power to make changes to the Welsh Tax Acts in relation to devolved taxes (land transaction tax and landfill disposals tax) in four circumstances:
 - To comply with international obligations.
 - To protect against avoidance.
 - To respond to decisions by the UK government that may affect the Welsh block grant adjustment and therefore have a direct effect on Welsh government's spending and resources.
 - To respond to a decision by the court or tribunal.

The 2022 Act includes an obligation on Welsh ministers to i) review its operation and effect and ii) to assess alternative mechanisms for making changes to devolved taxes. The review conclusions must be published by 8 September 2026.

- 4.3. A sunset clause in the 2022 Act means it will cease to have effect in September 2027 subject to a possible extension, if approved by the Senedd, to extend the power up to 30 April 2031.
- 4.4. Drawing on our stated objectives we think the process for making changes to the Welsh devolved taxes should reflect the following:
 - **Adequate Senedd scrutiny and consultation** with stakeholders to ensure that changes reflect policy intentions accurately and effectively, without unintended consequences.
 - The need to protect the revenue that supports the funding of public services in Wales and therefore is **responsive** to potential changes in the block grant.
 - **Certainty**, so businesses and individuals can plan ahead with confidence.
 - **Safeguards** for taxpayers in relation to changes reflecting a fair balance between the powers of the Welsh Revenue Authority and the rights of taxpayers (both represented and unrepresented).
 - Sufficient time between legislation being passed/announced and it coming into force to allow for **system change** and for businesses and taxpayers to prepare for and implement the change.

We recognise these objectives involve competing priorities.

- 4.5. The questions raised in the consultation involve constitutional matters that are largely outside our expertise. Our response is therefore limited to comments and observations in response to questions 6.2, 6.5 and 6.8.

5. *Question 6.2 Do you consider that the current secondary legislation powers should remain available to the Welsh Ministers in the respective Welsh Tax Acts? Please explain your answer.*

- 5.1. As with our response to the Welsh government's consultation in 2020² that preceded the 2022 Act, our starting point is that tax law should be set out in primary legislation particularly in so far as it relates to the exercise of tax powers setting out what is subject to tax and imposing burdens on taxpayers. Secondary legislation should ideally be used only for administrative matters, and also for the setting of rates. This is to ensure proper scrutiny of legislation that results in the imposition of some kind of burden (compliance or financial) on taxpayers. However, we recognise that the regulatory power in the 2022 Act reflects a trade-off between the competing needs of speed, scrutiny and responsiveness, particularly to address the effect of decisions by the UK government on predecessor taxes on the block grant.
- 5.2. The circumstances in which Welsh ministers would consider exercising the regulatory power to make retrospective legislation under the 2022 Act is set out in the '*Statement of policy with respect to the exercise of the power to make retrospective legislation within the Welsh Tax Acts etc. (Power to Modify) Act 2022*' published on 24 October 2022³. This is, we think, a key element of the existing regulatory power: that any use of retrospection needs to be justified properly in the Senedd as retrospection typically undermines the principles of certainty and stability, and is open to human rights challenge insofar as it infringes taxpayers' legitimate expectations.

² <https://www.tax.org.uk/ref694>

³ <https://www.gov.wales/the-welsh-tax-acts-etc-power-to-modify-act-2022-statement-of-policy-html>

- 5.3. We note that the Welsh ministers have not used the power provided by the 2022 Act to date. The Act's passage was robustly debated, somewhat contentious and introduced the need to review it, hence this consultation a few years on. The fact that no changes have been made under the 2022 Act begs the question of whether very few changes are needed or whether this process is fit for purpose.
- 5.4. The ability to make changes to tax legislation very quickly using the 2022 Act is intended to enable the Welsh government to respond to scenarios where it is desirable for the change to have effect immediately or very soon thereafter. We are not convinced that immediate change of this kind is the most appropriate route for three of the categories in the 2022 Act: addressing tax avoidance and evasion, maintaining compliance with international obligations and changes in response to a tribunal decision or court judgment. In the case of avoidance and evasion, the Welsh Revenue Authority (WRA) already have a range of powers available. Any changes or additional powers will benefit from consultation to ensure there are no unintended consequences and that a fair balance is maintained between the WRA's powers and the rights of taxpayers. Changes to international obligations and litigation through the courts usually involve quite lengthy timescales and do not therefore require immediate reactive change. Any change will also usually benefit from consultation.
- 5.5. We recognise that changes to the predecessor taxes that impact on the block grant adjustment can have implications for individuals and businesses and may reduce the Welsh government's budget requiring reactive change to maintain existing resource levels and spending commitments. While the Welsh government needs to respond in this way, effecting immediate change through primary legislation does not appear to align easily with Senedd timetables. We think therefore there are grounds for maintaining a limited regulatory power to respond (only) to decisions by the UK government that may affect the Welsh block grant adjustment and therefore have a direct effect on Welsh government's spending and resources. We suggest the suitability of the power is kept under review (see para 7.1. below).
- 6. Question 6.5 What process do you consider should be used in future to make changes to the Welsh Tax Acts**
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- a. an annual finance bill for Wales,**
 - b. an annual (or less frequent) tax bill for Wales,**
 - c. a new version of the Welsh Tax Acts etc. (Power to Modify) Act 2022,**
 - d. once the Welsh Tax Acts etc. (Power to Modify) Act 2022 has reached its sunset point to rely on the current regulation making powers and primary legislation as and when necessary, or**
 - e. a different approach (please set out what).**
- 6.1. It appears to us that the volume of legislative change is currently insufficient to justify an annual finance bill process in Wales. We also note the challenges for effective scrutiny of a finance bill in the Senedd, as outlined in the consultation because of the uncertain timing of changes introduced by the UK government's budget and finance bill. However, there are good reasons to keep this option under review. The legislative process should reflect the significance of the devolved tax system in raising revenue in Wales. The case for an annual Welsh finance bill or an annual tax bill will strengthen if devolved taxes provide an increased share of revenues to fund wider policy areas dealt with by the Senedd either through existing devolved taxes or any other taxes which become devolved in the future.
- 6.2. The consultation considers an 'annual or less frequent tax bill' that is, a bill enabling changes to tax legislation but not directly linked to the budget process in the same way as a finance bill. Frequency and timing (in terms of an expedited process) would depend upon the volume of changes needed and changes to a predecessor tax

impacting the block grant. We would support such a process at this stage of the development of the devolved taxes in Wales.

- 6.3. We note also that the Welsh government and the WRA have recently issued a separate consultation: *Legislative proposals relating to the Welsh Tax Acts*⁴ seeking views on measures to be included in a first ‘tax maintenance bill’. The technical measures proposed in the latter consultation are a mixture of measures requiring primary legislation and those that could be introduced through existing regulatory powers. We welcome the decision to group these measures in a tax bill because it allows for wider consultation and scrutiny. A tax bill could be used as an appropriate change process, ideally on a regular basis, although we accept it is unlikely to be needed on an annual basis at present.
- 6.4. We are not entirely clear how the proposed tax maintenance bill fits into or aligns with the proposals in this consultation as a tax maintenance bill is not considered. It may be that the intention is to differentiate routine care and maintenance measures from policy changes. We think that in practice it may be difficult to distinguish between the two. Technical changes inevitably involve a policy element. Is the tax maintenance bill intended to perform the same function as the ‘annual (or less frequent) tax bill outlined in this consultation? We suggest that there is limited value in spending time trying to identify whether tax changes are technical maintenance changes or policy changes in order to decide the appropriate mechanism for making changes to the devolved tax legislation.

7. *Question 6.8 Do you consider that the sunset clause for the power to make regulations provided to the Welsh Ministers by the Welsh Tax Acts etc. (Power to Modify) should be extended to 30 April 2031, or an alternative date, in order to provide the next government with sufficient time to develop the approach it chooses?*

- 7.1. Extending the sunset clause for the regulatory power provided by the 2022 Act to 30 April 2031 offers a mechanism to allow the process to be kept under review.

8. Acknowledgement of submission

- 8.1. We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation and Low Incomes Tax Reform Group are included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation and Low Incomes Tax Reform Group

27 November 2025

⁴ <https://www.gov.wales/sites/default/files/consultations/2025-10/consultation-document-legislative-proposals-relating-welsh-tax-acts.pdf>