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## Local Government Finance (Wales) Bill

### Evidence from the Chartered Institute of Taxation to the Local Government and Housing Committee

#### 1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 Fundamentally, in our view, the legislative process should reflect the significance of business rates and council tax in raising revenue in Wales and the impact on those affected by it, and therefore the importance of the Senedd's scrutiny to work through the legislation and understand the full consequences. Our starting point is tax laws should be set out in primary legislation particularly in so far as they relate to the exercise of tax powers setting out what is subject to tax and imposing obligations, including financial penalties, on taxpayers. We are concerned that the extensive use of wide regulatory powers in this Bill undermines the essential work of the Senedd, and other interested parties, in scrutinising the government and its legislative proposals with the potential for unintended consequences and a lack of certainty and instability for businesses in Wales.

#### 2 About us

- 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 Introduction

3.1 The Local Government Finance (Wales) Bill (the Bill) has been referred to the Local Government and Housing Committee for Stage 1 scrutiny of the general principles of the Bill. The Bill amends the Local Government Finance Act 1988 (LGFA 1988) for changes to business rates and council tax in Wales. Our comments are limited to the business rates changes<sup>1</sup> in the Bill.

3.2 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

3.3 The Welsh government's core tax principles are:

Welsh taxes should:

- raise revenue to fund public services as fairly as possible.
- deliver Welsh Government policy objectives.
- be clear, stable and simple.
- be developed through collaboration and involvement.
- contribute directly to the Well-Being of Future Generations Act 2015 goal of creating a more equal Wales.

### 4 The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation.

4.1 Our starting point is tax laws should be set out in primary legislation particularly in so far as they relate to the exercise of tax powers setting out what is subject to tax and imposing obligations on taxpayers. We recognise the challenges in introducing primary legislation in terms of finding parliamentary time in the Senedd timetable and the length of time taken to bring new legislation into force. We also recognise the advantages of flexibility

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<sup>1</sup> CIOT response to Reforming non-domestic rates in Wales: <https://www.tax.org.uk/ref1030>

and the ability to respond to economic conditions in using secondary instead of primary legislation to effect change<sup>2</sup>. In relation to the Welsh Tax Acts etc. (Power to Modify) Act 2022 we considered the mechanisms to enable amendments to be made in the limited circumstances set out in the Act provided a reasonable balance between the competing needs of speed, scrutiny and responsiveness at this point in the development of Welsh devolved taxes. However, we suggest extensive use of regulatory powers to amend the Welsh devolved taxes is a strong indicator of the need to consider the feasibility and appropriateness of a future annual Welsh Finance Bill procedure<sup>3</sup>.

Fundamentally, in our view, the legislative process should reflect the significance of business rates and council tax in raising revenue in Wales and therefore the importance of the Senedd's scrutiny to work through the legislation and understand the full consequences.

- 4.2 We are concerned that the extensive use of wide regulatory powers in this Bill undermines the essential work of the Senedd, and other interested parties, in scrutinising the government and its legislative proposals. It appears that the Senedd is being asked to make laws without knowing how the powers conferred may be exercised by Welsh Ministers and therefore without knowing what impact the legislation may have on Welsh taxpayers affected by them.
- 4.3 In our view secondary legislation should generally be reserved for administrative matters, and for the setting of rates. For business rates, regulations have been typically and usefully used to update relief thresholds, particularly where these are referenced to the level of rateable value. That is a good example of effective administrative use of regulatory powers.
- 4.4 We note that the Welsh Government will consult on the content of the subordinate legislation 'where it is considered appropriate to do so'<sup>4</sup>. This statement does not indicate what consultation processes will be followed, or in what circumstances it will be 'appropriate' to consult. This is unsatisfactory, and more clarity is required around the framework in which consultation will be undertaken, and an obligation to explain why consultation has not been undertaken if that has been the case.
- 4.5 We note also that it is proposed that the regulations that give rise to our concern (see para 4.6 below) will be made under the draft affirmative procedure. We understand that generally regulations once laid in draft cannot be amended. Therefore, any changes arising from consultation or scrutiny, however modest, could mean the regulations are rejected and the process re-started adding administrative costs and delay. The scrutiny process for subordinate legislation is also difficult for the non-expert taxpayer to understand. There is a helpful summary on the Senedd website<sup>5</sup>. However, the process is complex, and the procedural language can seem confusing and obscure for example, regulations are 'made' and 'laid', 'negative' or 'affirmative'.
- 4.6 The following powers to make subordinate legislation (as set out in Part 1 Chapter 5 of the Explanatory Memorandum) give rise to concerns:

#### *Business rates*

- Section 5 Powers to confer, vary or withdraw reliefs.

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<sup>2</sup>Paragraphs 3.16-3.17 Explanatory Memorandum

<sup>3</sup> See paragraph 11 of the Explanatory Memorandum to the Welsh Tax Acts etc.

(Power To Modify) Bill <https://www.gov.wales/the-welsh-tax-acts-etc-power-to-modify-act-2022-explanatory-notes-html>

<sup>4</sup> Paragraph 5.2 Explanatory Memorandum

<sup>5</sup> <https://senedd.wales/senedd-business/legislation/subordinate-legislation/>

We are concerned by a wider power in relation to reliefs or exemptions because reliefs/exemptions provided to one sector of ratepayers may indirectly place tax liabilities on other sectors through increased business rates bills. We welcome the Welsh government's commitment to undertaking a review of all business rates relief to ensure they are fit for purpose, but we consider that substantive changes to reliefs should be in primary legislation to provide appropriate scrutiny and effective development of policy through consultation to avoid unintended consequences and scrutinise significant policy decisions. For example, the regulatory power would allow withdrawal of longstanding reliefs for business such as small business rate relief.

- Section 9 Powers to confer, vary and withdraw exemption amending Schedule 5 of LGFA 1988.

Our concern is the same as for section 5. Schedule 5 provides for exemptions, including exemptions for agricultural premises and places of religious worship. These are structural elements of the business rates that have been in place for many years and changes would affect the Welsh economy and cultural life. It is our view that any policy changes in this area should be subject to full consultation with stakeholders and subsequent scrutiny by the Senedd.

- Section 13 Artificial non-domestic rating avoidance arrangements

This section provides for a regulatory power to specify the type of avoidance arrangements for business rates that will be treated as artificial (or not) so that advantages arising from such an arrangement can be counteracted.

In addition, section 13 provides for a power to specify a civil penalty and to amend the stated maximum penalty of £500 plus 3% of the rateable value.

The basis on which the artificial anti-avoidance rule for business rates is to be applied is set out in the Bill together with safeguards including a right to request a review and the right to appeal to the valuation tribunal. However, we consider that the accompanying civil penalty regime should also be fully set out in primary legislation including collection and enforcement. It is essential that proper scrutiny ensures financial penalties are proportionate and safeguards for taxpayers in relation to penalties are appropriate.

Our further comments on the anti-avoidance provision for business rates are at paragraph 7 below.

## **5 Section 10 power to set different multipliers**

- 5.1 We are concerned that powers to set differential multipliers risks creating uncertainty and adds complexity. Currently the rateable value valuation reflects different rental value while reliefs allow for direct economic policy, socio-economic policy and nudging behaviour. Adding multiplier variations into this mix would make the system very complex and may result in undesired ratepayer responses or distortions. The introduction of Uniform Business Rates from 1990 was in part aimed at removing the regional distortions that arose from councils having their own poundage setting power. At the time, there was evidence of some industry relocating from high rated areas such as Liverpool and Sheffield to lower rated areas.

## **6 Section 12 Provision of information**

- 6.1 The new information requirements represent a significant step-change away from the long-standing informal basis of business rates where there has never been a duty on the ratepayer to notify the billing authority of changes that affect liability. It should be borne in mind that rights over commercial property and its physical state changes frequently, often in complex ways, and much of the background information is not digitised.
- 6.2 The information obligations will apply to ratepayers who pay no business rates as a result of a relief. The new obligations will therefore impose requirements on those businesses who have had little engagement with the business rates systems to date, in particular, for small businesses eligible for 100% small business rate relief.
- 6.3 We are pleased to see that the requirements for reporting, and the sanctions for failure to comply, together with the safeguards are set out in primary legislation. We suggest the legislation should be supplemented by easily accessible and understandable guidance (as proposed) and an extensive communications campaign in Wales.
- 6.4 The proposed compliance framework appears to us to strike the right balance particularly for a wholly new system that will apply to ratepayers who have not previously engaged with the VOA as a result of eligibility for 100% rates relief. We think it will be important to keep the framework under review to ensure it meets its aim of supporting three-yearly valuations.

## **7 Section 13 introducing sections 63F – 63M: Artificial non-domestic rating avoidance arrangements**

- 7.1 The Explanatory Memorandum (paragraph 3.69) indicates that the development of a regulation to address a specific avoidance behaviour will be subject to consultation. No further detail of the consultation process is given. The process is important because the Explanatory Memorandum suggests that it will be the mechanism by which stakeholders not only have an opportunity to comment but also ‘can reasonably be expected know that a specified behaviour has been identified and is likely to be counteracted in future, before regulations are made’. We would urge Ministers to publish details of the proposed consultation process that will be used in the development of regulations as soon as possible. This will give stakeholders the opportunity to comment on the overall design and structure of the process.
- 7.2 Section 63H defines an ‘artificial’ arrangement. The regulatory power to specify a type of arrangement is subject to a reasonableness test that requires Welsh Ministers to have regard to (any) principles on which the business rates provisions are based and the policy objectives of these provisions, whether arrangements are intended to exploit shortcomings in the provisions and whether the arrangements lack economic or commercial substance (other than obtaining an advantage in relation to business rates). We observe that the purpose/policy intent of a relief is sometimes difficult to discern, especially in relation to long-established reliefs. It is currently unclear how Welsh Ministers will decide whether arrangements are artificial and who they will consult in reaching their decision. As noted above, the structure of the proposed consultation process should be published as soon as possible. The review of reliefs will be helpful in establishing and recording the policy intent. As we note above a relief may have elements of both structural and social or economic objectives and therefore evaluation of ‘misuse’ should be considered from both perspectives.
- 7.3 A person who receives a notice under section 63K (liability to non-domestic rating) can request a review. It is not clear from the Bill who will conduct that review; we suggest that person(s) should be independent of the person who makes the decision to give the notice in order to help ensure the review is an effective safeguard.

7.4 Clarity of scope is important in relation to the application of any general anti-avoidance rule. The development of different statutory tests for counteracting avoidance in the devolved administrations and the UK in relation to direct and indirect taxes<sup>6</sup> and business rates<sup>7</sup> add complexity to the tax system and potential uncertainty for investors and business. The need for clear and consistent guidance particularly on the scope and purpose of reliefs across all local authorities in Wales is essential to help provide certainty.

## **8 The future of Welsh law: classification, consolidation, codification**

8.1 In 2019 the Welsh government consulted<sup>8</sup> on the initial stages of a longer-term project to consolidate and codify Welsh law. The current Bill amends the UK statute, Local Government Finance Act 1988, in relation to Wales instead of consolidating Welsh law on non-domestic rates into a single Act. We recognise this decision was a pragmatic one in order to achieve changes to local government taxation in Wales. However, the process of amendment to an existing UK Act creates layers of legislation that are difficult for affected citizens and businesses to navigate and places even greater emphasis on the need to make the changes accessible.

## **9 Acknowledgement of submission**

9.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the list of respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

11 January 2024

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<sup>6</sup> Tax Collection and Management (Wales) Act 2016 Part 3A: General Anti-Avoidance Rule (Land Transaction Tax and Landfill Disposals Tax)

Revenue Scotland and Tax Powers Act 2014 Part 5 The General Anti-Avoidance Rule  
Finance Act 2013 Part 5 General anti-abuse rule

<sup>7</sup> Non-Domestic Rates (Scotland) Act 2020 Part 4 Anti-avoidance regulations

<sup>8</sup> <https://www.gov.wales/the-future-of-welsh-law-classification-consolidation-and-codification>