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Non-Domestic Rates Policy Branch
Welsh Government

Via email: CTandNDR.Consultations@gov.uk

Consultation on the measures to address avoidance of non-domestic rates

Introduction

The Welsh government is seeking views on regulations¹ (to take effect from April 2026) that:

- Define a range of specific avoidance arrangements that are to be treated as artificial and therefore the advantage gained (the reduction in business rates) is required to be counteracted by the billing authority under the anti-avoidance framework in Local Government Finance Act 1988 sections 63F- 63M.
- Create a ratepayer duty to report certain changes of circumstances to billing authorities.

The specific consultation questions are primarily for local authorities and rating agents. However we have set out below our response to two aspects of the consultation.

Evaluation of tax loss from business rates avoidance and costs of implementation

In 2018 the Welsh government estimated the scale of business rates avoidance in Wales as between £10 -20 million or 1 to 2% of total business rates revenue in Wales at that time. No more recent or detailed assessment appears to be available.

We suggest that the efficacy of the draft regulations can only be evaluated fully against an up to date estimate of the scale and nature of business rates avoidance. Without data on the business rates tax gap in Wales and its nature, it is difficult to judge whether the regulations as drafted are likely to be effective. There is also no assessment of the

¹ <https://www.gov.wales/consultation-measures-address-avoidance-non-domestic-rates-html>

expected impact of the draft regulations or the costs for billing authorities. Effective use of the regulatory powers including enforcement and penalties will require resource and expertise within local authorities.²

We suggest it may be worth exploring a mechanism for one of the larger local authorities to act as a central reporting unit for to coordinate and monitor the level and nature of business rates avoidance and to apply the regulations, to the extent these arrangements are not already in place. The Welsh government's consultation in 2018 explored ways in which local authorities and other organisations could be supported to take forward investigations and reduce avoidance behaviour. As recognised in the consultation, coordination between billing authorities offers advantages in terms of

- sharing knowledge and best practice in the application of the tests in the regulations to ensure consistency in the way billing authorities approach avoidance arrangements;
- pooling resources to share information and data across local authority boundaries;
- sharing limited and constrained resources.

A further issue raised in the 2018 consultation was that as all of the non-domestic rates revenue is pooled and redistributed nationally, there is less financial benefit to committing resource to activity that would improve compliance. Although reducing avoidance overall would increase the total yield available in all communities there may be reluctance to commit resources to costly investigations at a local level. This consequence of the redistribution mechanism may be addressed in part by a central resource.

The draft regulations – definitional issues

The draft regulations define a range of artificial avoidance arrangements within four types:

- type 1: the occupation is not on a commercial basis
- type 2: the ratepayer has been wound up voluntarily
- type 3: the owner or occupier exhibits particular characteristics or behaviours
- type 4: the occupation has certain characteristics

We note the following potential issues with the drafting of the regulation that may lead to uncertainty and therefore require clarification:

- Under Type 1 test (a) is that P, the occupier, is not required to make 'payment' in consideration for their occupation. 'Payment' is not defined so it is not clear whether payment includes non-monetary consideration such as services or other payments in kind and how rent free periods are treated. We suggest 'payment' needs defining in the regulation for certainty of application.
- Under Type 1 test (b) is where the payment is 'significantly below the level which could reasonably have been obtained on the open market at the time the arrangement was entered into..'. Will this test give rise to questions in practice for local rating officers to assess what constitutes market value where the arrangement may be short term or include incentives to occupy.'? It will be important that the test is consistently and objectively applied across billing authorities. As suggested above, some form of central coordination and centrally managed guidance would be helpful.
- Under Type 4 the tests to be met are where

² In this context we also note the Digitising Business Rates consultation in England in 2022 aimed at joining up English local authorities business rates data with HMRC data and, more recently, the announcement of the merger of the Valuation Office and HMRC. It is not clear how, and to what extent, these developments might contribute to countering avoidance in Wales.

- a) the occupation is beneficial **primarily** (our bold type) because it contributes to the carrying on of a non-domestic rates mitigation business' or/and
- b) 'the benefit of the occupation **wholly or mainly** (our bold type) arises from a Wi-Fi or Bluetooth transmitter...used for localised electronic marketing or advertising.'

Determining whether occupation is beneficial 'primarily' or 'wholly or mainly' due to one factor as opposed to one of several factors (that are difficult to rank in importance) may not always be straightforward in practice. The test also envisages the application of both limbs (and as well as or) which does not seem possible because both limbs require a different benefit of occupation to be the main or primary one.

Yours faithfully

Ritchie Tout
Chair, Welsh Technical Committee

The Chartered Institute of Taxation

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- 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.

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