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Welsh Government

## White Paper – summary of responses

### Collection and management of devolved taxes in Wales

Date of issue: February 2015



## Overview

This document provides a summary of the responses to the White Paper that sought views on proposals for the collection and management of devolved taxes in Wales.

## Action required

None – for information.

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## 1. Introduction

1.1 The Welsh Government published a White Paper on “Collection and management of devolved taxes in Wales” on 23 September 2014. The White Paper followed the introduction of the Wales Bill<sup>1</sup> that proposed new financial powers to the Welsh Government including powers to introduce new taxes to replace the UK Stamp Duty Land Tax and the Landfill Tax in Wales from April 2018.

1.2 The White Paper considered the options and opportunities for the policy and subsequent legislation on the collection and management of future Welsh taxes. Views were invited on the proposals as part of a 12-week consultation period, which ended on 15 December 2014<sup>2</sup>. The Welsh Government held a number of stakeholder engagement events throughout Wales during the consultation period, details of which can be found in Annex A.

1.3 The development of a tax collection and management regime in Wales is closely linked with the development of proposals for two new replacement Welsh taxes – Landfill Disposals Tax (LDT) and Land Transaction Tax (LTT). Some collection and management arrangements are generic to both and some are specific to the individual taxes and indeed dependent on the arrangements of the tax itself.

### Consultation responses

1.4 In total the consultation received 40 responses from a range of stakeholders. The responses came from individuals and various organisations representing different sectors including umbrella organisations representing their associated affiliations and members. All comments have been considered as part of assessing the results of the consultation.

1.5 The differing nature of the respondents provides an important context for considering the issues raised in the responses, and care should be taken in reaching conclusions based purely on the number of responses voicing a similar view.

1.6 Responses came from respondents in Wales, the Wales Branch of UK-wide organisations or UK-wide organisations with experience of operating existing tax arrangements in Wales. Many consultees did not answer all the questions, and a number included comments without indicating whether they agreed or not with the proposals.

1.7 All respondents were invited to request anonymity; eleven respondents decided to utilise this option and therefore their identities have been anonymised throughout this document.

1.8 The table below shows the number of responses by respondent category. Further details of respondents can be found at Annex B and copies of actual responses are published separately.

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<sup>1</sup> The Wales Bill 2014 received Royal Assent on 17 December 2014.

<sup>2</sup> <http://wales.gov.uk/consultations/finance/devolved-taxes/?status=closed&lang=en>

<b>Respondent category</b>	<b>Number</b>	<b>%</b>
Tax Accountants and professional tax bodies	8	20
Businesses	5	12.5
Charities	2	5
Individuals	17	42.5
Legal professional bodies	1	2.5
Public bodies in Wales	6	15
Political Parties	1	2.5
<b>Total</b>	40	100%

**1.9** Of the responses from individuals, twelve indicated that they felt that tax powers should not be devolved to Wales or that specific tax arrangements for Wales were unnecessary. These respondents were of the view that Wales was a small country, and it would end up costing taxpayers more if taxes were to be devolved. The majority of these respondents did not go into any further detail answering the consultation questions. As a result where a negative response has been given to question because the respondent did not agree with tax devolution we have not drawn this out in the summary. If a respondent has responded negatively towards a question for another reason this has been addressed.

**1.10** Similarly, our intention here is to highlight the range of responses and comments that respondents have provided. There are times when a clear number of respondents supported a particular view, and we use numbers to confirm this. However, in other cases, the range of comments is particularly relevant, and in these circumstances, we emphasise the range of points made.

## 2. Welsh Revenue Authority, Taxpayers' Charter & Tax Collection

### Introduction

2.1 Chapter 2 of the White Paper sought views on proposals for powers of tax collection and management to be vested in a new legally-constituted public body, to be known as the Welsh Revenue Authority (WRA). The body would be operationally separate from Ministers, but not fully independent of them. Views were also sought on establishing a Taxpayers' Charter and the approach to tax collection.

**Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?**

2.2 Of the 31 respondents who indicated a response to this question, 19 agreed with the proposal to establish a WRA, 11 were not supportive and one further response, although not specifically commenting upon the establishment of the proposed WRA, did nevertheless endorse the need for a "specialised unit to assess and administer" the devolved taxes.

2.3 The majority of those who were supportive of the establishment of the WRA noted the importance of it being a Non-Ministerial Department. Respondents said it was important that the WRA was independent but also that the Assembly was able to hold the WRA properly to account when necessary.

2.4 Two of the respondents who were in favour of the WRA did question the amount of oversight the Welsh Government would be able to have of a Non-Ministerial body. One respondent suggested that "Wales might be better served by making the WRA a Ministerial department thereby being directly accountable and responsible to a Minister who in turn was directly accountable and responsible to the Assembly".

2.5 One respondent commented that whilst the WRA revenues will be going into the Welsh Consolidated Fund, that it should also be able draw down money from it when necessary. They suggested that this should be overseen by the Wales Audit Office.

**Question 2: What are your views on the proposed core set of duties for the Welsh Revenue Authority?**

2.6 Of the 25 respondents who indicated a response to this question, 17 were in favour of the proposed core set of duties.

**2.7** Five of the respondents who were supportive of the core set of duties suggested that the duties could be strengthened if they were to be more explicit in how the WRA would handle hardship especially in relation to businesses. It was considered that more detail on how the WRA would “exercise discretion in relation to cases of exceptional hardship” may be necessary to avoid any doubt about WRA’s approach.

**2.8** Some of the accountancy and other professional bodies felt it may be appropriate for the WRA to have a broader role in advising the Government. It was suggested that the current set of duties did not allow for the WRA to advise the Government on all tax related policy, rather than just tax administration and collection. As the WRA would be the experts in Wales it was felt that it would be appropriate for them to advise the Government on all tax related issues. More specifically one respondent commented that “the WRA could also play a part in the identifying and monitoring strengths and vulnerabilities in the Welsh tax regime”.

**2.9** Finally, respondents brought up the importance of keeping the core duties under review. They felt that whilst the duties were suitable for the amount of responsibility the WRA would have initially, the position may change in the future with further devolution. As a result they suggested that a review process should be put in place to ensure that duties were kept up to date.

**Question 3: Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?**

**2.10** Of the 22 respondents who indicated a response to this question, the majority were supportive of the proposed leadership and governance arrangements.

**2.11** Four of the accountancy and other professional bodies and one business who responded to this question (and who were supportive of the proposed leadership and governance arrangements) suggested that the WRA board should have sufficient/adequate tax expertise, either from tax administration or the wider tax profession. It was considered that such expertise would be vital to properly oversee the running of the WRA.

**2.12** Six of the respondents (from a wide range of categories) commented directly on the accountability arrangements. They were supportive of them as they felt that being directly accountable to the National Assembly for Wales was the most appropriate way to ensure that the WRA was properly scrutinised. Three of these respondents suggested that “the Finance Committee would be the appropriate Committee to scrutinise the WRA”.

**2.13** Five respondents, both supportive and unsupportive of the proposed leadership and governance arrangements, commented on the cost involved. It was their view that the number of board members, and therefore the cost, must be kept proportional to the scale of work to be undertaken. At the same time, one of these respondents

recognised that “whatever is established needs to be suitable for the potential devolution of further taxes”.

**Question 4: What are your views on proposals to establish a Taxpayers’ Charter? What action is essential in keeping a charter relevant and effective in supporting a constructive relationship between the Welsh Revenue Authority and taxpayers?**

**2.14** Of the 25 respondents who indicated a response to this question, the majority were broadly supportive of the Taxpayers’ Charter. However, many raised questions about how the Charter would operate.

**2.15** A recurring theme through all the responses, both supportive and unsupportive, was how effective a Taxpayers’ Charter could be. Questions were asked about how a Charter would operate, and further clarification was thought necessary for the taxpayer to understand it. Two respondents suggested that the Taxpayers’ Charter should be the subject of a specific consultation to ensure that stakeholders were given the opportunity to comment on the finer details of the Charter.

**2.16** Both those who were supportive of the Charter, and those who were less so, noted the importance of keeping the Charter up to date. Respondents were aware that as the devolution picture continued to develop it was possible that the WRA would take on more responsibilities. It was suggested that arrangements should be put in place to review the Charter to ensure it was updated as the WRA’s responsibilities changed.

**2.17** Finally, two respondents commented on the importance of the Charter having legislative backing. They commented that the Charter’s legal status was not set out in the consultation, but that they felt it should be written into legislation to ensure that it was properly enforced.

**Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not include, which you consider to be important**

**2.18** 20 respondents addressed this issue, and almost all of them drew out the challenges in minimising costs whilst also providing a good coherent level of service for the taxpayer, exemplified by this response:

“From the perspective of taxpayers, the most important factor is balancing efficiencies of the low cost of collection, without having low levels of performance



(e.g. insufficient staff to respond to telephone enquiries promptly) and the perception of the Authority being distant, remote or unthinkingly “heavy-handed”.

**2.19** Other issues raised by more than one respondent were:

- There was support for a specifically Welsh approach to respond to Welsh needs; and,
- the need to ensure that individual’s needs (including those without the skills and confidence to use online systems) are met.

**2.20** Attention was drawn to the benefits of continuity with the existing service approach, and, in particular, the need to maintain standards of taxpayer confidentiality. It was considered that efficiency and simplicity would both be served by the use of a single organisation. Overall, respondents were mainly in favour of responsibility for management and collection lying with national rather than local bodies, therefore WRA or HMRC, or in the case of Landfill Disposals Tax, Natural Resources Wales, and ideally with a single body having overall responsibility.

**Question 6: In light of your response to question 5, which organisation do you consider should collect and manage devolved Welsh taxes, and why?**

**2.21** A number of respondents highlighted the potential role of different organisations in different aspects of the tax collection and management system, for example “in favour of overall responsibility for management and collection lying with WRA or HMRC, or in the case of Landfill Disposals Tax, Natural Resources Wales.” Another response emphasised that service standards should be an integral part of the selection process, implying that a final decision should be informed by some detail on contracting requirements.

**2.22** Overall (noting that many respondents expressed support for more than one organisation), respondents supported HMRC having a possible ongoing role as it could be an appropriate response to the need for institutional expertise and economies of scale. A smaller number of respondents noted that WRA could also take this role, as a single organisation. A small number of respondents recognised that it would be possible to delegate responsibility to LAs for the collection of all taxes as they already have expertise and operate efficient processes. Three responses suggested that NRW could have a role in relation to Landfill Disposals Tax, though NRW themselves expressed a preference for exploring options in relation to compliance and enforcement for a Landfill Disposals Tax.

**2.23** Other comments highlighted that the Welsh Government may wish to revisit this issue over the longer-term, as the following suggests:

“Consideration should also be given to the longer term expectations of the Welsh tax regime, such that any solutions adopted now can be scaled to, or revised in light of, subsequent changes in the scope of devolved taxation. An independently-

resourced WRA may be more suitable where substantial devolution of powers is envisaged in the future.”

### **3. Powers and Duties**

#### **Introduction**

**3.1** The White Paper set out the Welsh Government’s approach to powers and functions stating that where there was no policy reason to diverge from UK tax administration legislation (for example on the grounds of effectiveness or efficiency or a focus on Welsh needs) the arrangements in Wales will replicate the current UK operational processes and principles.

**3.2** This consultation provided as much detail as possible on powers and duties and gave examples of how they might operate. The forthcoming bill on tax collection and management will provide a platform for administering Welsh taxes, with the specific arrangements being considered in the tax specific consultations for LDT and LTT.

**Question 7: Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?**

**3.3** Of the 21 respondents who indicated a response to this question, 17 were supportive of the proposed obligations on taxpayers.

**3.4** A number of the respondents, whilst happy with the proposed obligations, did suggest some changes and additions that they believed would improve them. These included providing: more detail around each obligation to ensure taxpayers fully understood what was expected of them; introducing an obligation on taxpayers to notify the WRA if they become aware that a tax return was incorrect; and, ensuring that it was clear that a taxpayer could use an agent to fulfil their obligation if they so wished.

**3.5** Respondents also commented that a balancing set of obligations on the WRA should be set out. This should set out what the taxpayer could expect from the WRA in return for meeting their obligations as taxpayers. One respondent suggested that the WRA obligations could include “for example, duties relating to quality of service, accessibility, timeliness of responses, rapid correction of errors, proper redress when errors are made, clear systems for complaints, communication in other languages and availability of alternative communication media (for example for people with sight or hearing loss)”.

**Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns, and be able to carry out investigations, levy penalties and collect debt? What additional safeguards might we consider beyond those already identified?**

**3.6** Of the 22 respondents who indicated a response to this question, 17 agreed with the proposed approach to invest the powers in the WRA to enable it to collect taxpayers' information and documentation, inspect premises, correct tax returns and be able to carry out investigations, levy penalties and collect debt.

**3.7** Respondents, both supportive and non-supportive of the proposals noted the importance of the powers being kept to the minimum. They noted that most taxpayers aimed to pay the correct amount of tax on time and therefore the main focus of the WRA should be to help them be able to do that, rather than undertake investigations and enforce penalties.

**3.8** The majority of respondents suggested that, whilst it was important for the WRA to have the powers proposed, they should stay as close to the HMRC powers as possible. The recurring reason for this view was to avoid confusion. Some taxpayers would have to deal with an additional tax authority as a result of devolution, so if the tax rules were the same across HMRC and WRA then taxpayers would find it easier to understand. If the two were not identical, one respondent suggested that a process would need to be put in place for "avoiding and resolving conflict between WRA and HMRC policy".

**3.9** Accountancy and other professional groups said that powers to require information should be constrained by professional privilege, and that the WRA should consider including advice from tax experts. They felt that it was odd that advice by lawyers was protected by professional privilege but tax experts were not, although they may be "far better qualified to give that advice". Two of the respondents cited the court case *Prudential v Special Commissioner of Income Tax* to support this argument.

**3.10** On safeguards, respondents said these must be in place to "protect the most vulnerable taxpayers". They said that Welsh Government should ensure that the safeguards in the Finance Act 2008 were replicated in the WRA as it was felt that these were appropriate for protecting taxpayers.

**Question 9: What are your views on delegation? Are there any specific issues that should be borne in mind when considering which functions might or might not be delegated and the selection of a delegatee?**

**3.11** Of the 17 respondents who indicated a response to this question, 14 were in favour of the WRA having the ability to delegate its tax collection and management powers whilst three were against delegation.

**3.12** Many of the respondents were concerned about taxpayer confidentiality and questioned how this would be handled when delegating the function to another body. Respondents felt it was essential that the delegated authority was aware of the legal framework in which they are expected to operate, and there is constant reporting to the WRA on how they are adhering to standards.

**3.13** Respondents raised concerns about taxpayers having direct contact with the WRA. With any delegation, the WRA would remain the legally responsible body for tax collection and taxpayers should be able to speak to them if they wished. It was suggested that a system was put in place whereby the WRA remained responsible for engagement with taxpayers and the delegated body was only responsible for tax collection.

**3.14** Several of the respondents suggested bodies that they felt would be good candidates for collecting and managing taxes on behalf of the WRA. HMRC, Natural Resources Wales and Local Government were all suggested as they had a proven track record in collecting taxes.

**3.15** Natural Resources Wales did comment in their response that they had concerns about taking on responsibility for collecting taxes. They felt they did “not have the expertise or capacity to deliver this activity at this time”. They did recognise that there would be opportunities to work with the WRA with information-sharing and compliance.

## **4. Encouraging tax compliance**

### **Introduction**

**4.1** The White Paper sets out the Welsh Government’s approach to encouraging tax compliance, stating that the majority of taxpayers pay the required amount in a timely way. Promoting and enabling taxpayer compliance is consistent with the principle of fairness and will be a key priority for WRA and for any organisation that might collect and manage taxes on its behalf.

**4.2** The consultation document sets out as much detail as possible about how the WRA will support taxpayers to pay their taxes in a timely way, and how it will discourage and deter non-compliance including the use of penalties.

**Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?**

4.3 Eighteen respondents suggested other actions that the WRA could undertake to promote and encourage compliance. These actions included:

- a. financial incentives for compliance;
- b. clear and accessible guidance; and,
- c. support mechanisms such as telephone helplines, an online portal, and customer relationship managers.

**Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties and for the conditions for when and how these are used being set out in later consultation and legislation?**

4.4 Of the 24 respondents who indicated a response to this question, 18 agreed that the WRA should be provided with the powers to levy penalties.

4.5 The recurring theme throughout all the responses was that any powers to levy penalties must remain proportional and flexible. Respondents felt that the current UK system was balanced “too far in favour of the HMRC”. The WRA should ensure that its penalties were proportional and the emphasis should be on helping tax payers to get it right the first time rather than punishing them. Respondents suggested that by ensuring that the penalty system was flexible, it would protect those taxpayers that made genuine mistakes or were affected by exceptional circumstances. It is noteworthy that this view was shared by a wide range of respondents, including Accountants, Businesses, Public Bodies and Legal Professions.

4.6 Respondents also agreed that it was appropriate for the Welsh Government to consult on the details of penalties at a later date. A stand-alone penalty system in advance of the taxes seemed too ambitious, and may not catch all aspects of each individual tax the WRA was responsible for. It was suggested that if any changes were made to the penalty system currently in place in the UK, they must be well publicised and explained to ensure taxpayers were aware. It was suggested that a period should be allowed in which penalties would not be levied to allow taxpayers to adjust.

**Question 12: Do you have any comments about the way in which penalties are levied at the moment which might inform the development of our approach to Welsh taxes?**

4.7 Ten respondents indicated that they had views about the way in which penalties were levied at the moment, which could inform the development of the Welsh Government's approach to Welsh taxes.

4.8 Respondents emphasised that the penalties should reflect the intent behind the action. They were concerned that genuine mistakes should not be treated in the same way as those who were deliberately misleading the WRA. Respondents thought that by introducing some flexibility into the penalty system it would help tackle the potential problem.

4.9 The other main point made was the need for simplicity within the penalty system. Respondents felt that the current system was complex, which accounted for non-compliance by taxpayers. It was suggested that the WRA should simplify the system so that taxpayers were more able to comply.

4.10 Respondents also felt that the WRA could increase the use of incentives and support for the majority of taxpayers who did wish to comply with tax regulation. It was considered that incentives and education was a better way of ensuring compliance than penalties.

**Question 13: What views do you have on the proposed approach to criminal enforcement and to public safeguards?**

4.11 15 respondents indicated a response to this question, and the main view expressed was that the current UK system worked well. It was considered that by maintaining the UK system there would be consistency for the taxpayer, and as the current system was proven to work it would be unnecessary to change it.

4.12 Three of the respondents drew specific attention to the need for sufficient resources, knowledge and expertise in relation to the exercise of investigatory powers and that their use should be subject to the same safeguards that existed currently across the UK. It was also suggested that, at least in the short-term, such experience might be acquired through delegation.

## 5. Addressing Tax Avoidance

### Introduction

5.1 Chapter 5 of the White Paper sets out the ways in which the Welsh Revenue Authority intends to deal with tax avoidance. The consultation recognised that the majority of people pay the appropriate amount of tax due in a timely way; however there is a minority of people who use different legal structures and opportunities to reduce their tax bill.

5.2 The consultation sets out the legislation that the Welsh Government plans to put in place to prevent tax avoidance wherever possible, including the use of HMRC's Disclosure of Tax Avoidance Scheme. It also discusses whether the WRA should have a "General Anti-Avoidance Rule" or a "General Anti-Abuse Rule" in place.

**Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?**

5.3 Of the 22 respondents who gave a response to this question, ten were broadly supportive of establishing a tax disclosure regime (at least in principle), but responses were mostly qualified. Ten respondents were not supportive, but of these, six were from individuals who were not supportive of tax devolution. Two further respondents felt that a regime was unnecessary at the present time, but recommended either keeping the issue under review or deferring a decision on the establishment of a regime until after a devolved tax system had been established and, only then, consider it after having undertaken a separate consultation on the matter.

5.4 Other points made included:

- whether a need did exist for a Welsh DOTAS;
- any potential need would possibly diminish/reduce if the Welsh Government developed taxes that were based on firm principles, that were fair and certain and which were clearly drafted in legislation;
- whether a Welsh DOTAS could be justified in cost/benefit terms;
- attention was drawn to the reduction in the annual number of avoidance schemes being disclosed - partly as a result of rules, anti-avoidance legislation and the "pugnacious approach" by courts and HMRC to counter avoidance. In the circumstances, it was questioned whether in practice such a rule would make much difference;
- any judgment made should be done so in the context of any proposed GAAR;
- the same or very similar regulations to those that exist currently should be considered/adopted to avoid any additional administration; and,

- current issues with the existing SDLT DOTAS due to a lack of timely updating for changes to legislation, that would need to be considered if the same regime was being considered for Wales.

**Question 15: What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?**

**5.5** Of the 17 respondents who indicated a response to this question, there was clear support for continuing to use the existing DOTAS regime. However, a number of respondents emphasised the resource needed to support the operation of a disclosure regime, in particular the need to enforce the system:

“If Wales decides to have a DOTAS-style system, we think the key is prompt action on disclosures and action against those who appear to flout the system. The system needs to give clear signals that schemes are being tackled – by appropriate announcements and legislative action. If it becomes apparent that a scheme has not been disclosed, there must be appropriate efforts put into tracing the origins of the scheme and the promoter challenged. All of this is part of ensuring that the compliance culture is promoted and supported.”

**5.6** Respondents also drew attention to the potential burden on businesses. One respondent noted that “any disclosure regime should not deter investment in Wales by needlessly increasing the costs of doing business”.

**Question 16: Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?**

**5.7** There were sixteen responses to this question. Three respondents suggested that close cooperation or good information-sharing would help to identify possible avoidance schemes. Others suggested that a simple and clear tax regime would make it more difficult to avoid tax in the first place, and thus reduce the risk of tax avoidance.

**Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?**

**5.8** There were 20 responses to the question on whether there was a need for a GAAR with the majority view being that there should be one and that, if a GAAR



were adopted, then it should be the narrower UK GAAR. In the majority of cases, this was because a wider anti-avoidance rule might create unwelcome uncertainty for businesses. There were others who suggested that the GAAR should be wider, to ensure that taxes were collected accurately. There was a small set who suggested that any decision about the adoption of a Welsh GAAR might be deferred until such time as the devolved taxes had bedded in and further consultation had been undertaken.

**5.9** The White Paper responses also raised some significant questions concerning GAARs:

- need to draw attention to the fact that neither the UK nor Scottish GAARs were tested,
- queried whether a Welsh GAAR was necessary for just two taxes, and,
- that there are already existing anti-avoidance tools in legislation, some of which seem to have been successful in blocking SDLT avoidance.

**5.10** The benefits of a pre-clearance regime were highlighted by a number of respondents, to reduce the uncertainty for business.

**Question 18: Would you see a Welsh GAAR being a wider ‘avoidance’ provision, or a narrower, ‘abuse’ provision?**

**5.11** Of the eighteen responses to this question, eight suggested that a narrower GAAR would be more appropriate. There were some clear reasons for this, often raised in relation to the previous question also. These in particular included the benefits of minimising uncertainty for businesses, and that a rule of this type should not interfere with established, legitimate, commercial arrangements.

**5.12** It was also suggested that:

- Tax avoidance has become a high risk activity, as a result in particular of the range of tools that HMRC have put in place to address it;
- There are also benefits here of being consistent with a UK approach, for cross-border businesses; and,
- The design and operation of any Welsh GAAR should be subject to a specific consultation.

**Question 19: How important is an independent panel to provide more certainty for businesses in the operation of a GAAR? What are the disadvantages of an independent panel?**

**5.13** Of the 18 responses to this question, the majority expressed support for an independent panel. A small number suggested that it should not be established (for example, because it would be too costly and complicated), and a small number could see both advantages and disadvantages to this.

**5.14** There were a range of points made about the smooth and effective operation of a panel, which included:

- the benefit of an independent panel to enable trust in the system and in any GAAR by overseeing its operation;
- an independent panel would provide commercial expertise to a decision on whether a particular transaction was avoidance/abuse or not; and,
- it might be seen as administratively complex and costly for two devolved taxes, and there may be challenges in recruiting to it.

**5.15** A number of respondents highlighted the wider standards for the system, including credibility and transparency, which did not require a panel but could be carried out by a panel. There was a further suggestion that there definitely needed to be some expert advice on any guidance associated with a GAAR, and that a panel can help to deliver this.

**Question 20: Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?**

**5.16** There were a range of responses and comments to this question, many of which noted the close connection between the current UK GAAR and SDLT. There was general support for considering the issue of a GAAR again in the context of stakeholder discussions on Land Transaction Tax, but others made the point that a GAAR is an integral part of the wider tax system and the Welsh Revenue Authority's culture. A number of responses suggested that further consideration (and in some cases, consultation) on a GAAR would be welcome.

## 6. Resolving Tax Disputes

### Introduction

6.1 The White Paper sets out the Welsh Government's approach for managing and resolving any disputes that may arise between the taxpayer and the WRA during the administration of taxes. The paper states that the WRA's starting point will be to avoid disputes and seek early resolution where possible. The paper also goes into as much detail as possible on what mechanisms are being considered for the WRA to use to resolve disputes. These mechanisms include, but are not limited to, informal discussions, Alternative Dispute Resolution (ADR) and Tribunals.

**Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?**

6.2 Of the 16 respondents who indicated a response to this question, 15 were supportive of the approach to avoiding tax disputes and achieving early resolution. Specifically retaining the right to appeal to the tribunal was noted as important in "ensuring confidence in the tax system".

6.3 Many respondents welcomed the Welsh Government's statement that "one of the key policies will be to try and avoid disputes in the first place". Respondents reiterated the importance of keeping the tax system simple and transparent with clear guidance readily available to taxpayers. It was considered that by doing this there would be less disputes for the WRA to resolve.

**Question 22: Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?**

6.4 Of the 16 respondents who indicated a response to this question, all but one was supportive of the WRA offering an Alternative Dispute Resolution mechanism to help seek the early resolution of tax disputes. Respondents consider ADR a time and cost effective route for settling a dispute compared to litigation.

6.5 Some respondents felt that it was important for the WRA to have an internal review stage prior to the use of ADR. They considered that internal reviews were cheaper to run, and could help resolve issues effectively.

**Question Question 23: Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving tax disputes and why?**

6.6 Of the 11 respondents who indicated a response to this question, there was a mix of views on which ADR mechanisms were most likely to assist in resolving tax disputes.

6.7 The mechanism most favoured by respondents was mediation. Respondents felt it was a low-cost option, which was easy to implement. They also commented that it had proven to be very successful in resolving disputes with the HMRC. Mediation was seen as the fairest option as it allowed “parties to come to a mutually agreeable settlement”.

6.8 Whilst respondents favoured mediation for ADR, they were also supportive of the other mechanisms. It was considered that each mechanism had its own merits and Arbitration or Early Neutral Evaluation may be more suitable for “technically complex matters”. Four of the respondents suggested that all three mechanisms should be available for use.

**Question 24: Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tribunal system, at least as an interim arrangement?**

6.9 Of the 19 respondents who indicated a response to this question, 16 agreed that the WRA should use the existing Ministry of Justice administered two-tiered system, however five thought that this should only be on an interim basis. These five were keen for a Welsh administrative justice system to be put in place.

6.10 Some respondents thought that the use of the Ministry of Justice administered tribunal system should be retained permanently. They considered it to be more cost effective to use the UK system as the number of Welsh cases going to tribunal was likely to be low. Setting up a Welsh administrative justice system would be costly, and unnecessary as the expertise was already in place in the UK system.

**Question 25: What are your views on the value of adopting a “pay-first” principle and its application to specific taxes? Are there any circumstances where its application to the payment of tax and any linked penalties and interest charges should be postponed?**

**6.11** There were 18 responses to this question. Of these, a large number emphasised the need to ensure that provisions should be made for hardship and other challenging circumstances. Only a small number of respondents considered that the rules should be more stringent than those that HMRC currently operate.

**6.12** In terms of informing the Welsh Government approach to this issue, the following responses gave a sense of the wider points made:

- “Hardship (considered objectively) is a key issue that should be considered in terms of denying access to justice because a taxpayer cannot afford to pay or is deprived of funds for a lengthy period. Therefore there should always be the possibility of postponement on grounds of hardship.”
- “Whilst we believe that a ‘pay first’ principle would be unfair to taxpayers in the majority of cases we agree that, as noted in the consultation document, if it is introduced there should be flexibility to set it aside in the interests of fairness, access to justice, and in cases of hardship.”
- “I think that it is fair that, if the tax payer agrees that an amount of tax should be paid but disagrees with the amount, then he should only pay the amount which he doesn't dispute.”

## **7. Other**

### **Introduction**

**7.1** In the final section the White Paper gave respondents the opportunity to comment on any related issues that they felt were not covered in the Paper.

**Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?**

**7.2** Twenty-two respondents indicated a response to this question. These responses varied vastly in content especially about issues specific to the individual or organisation, but there were some themes that emerged.

**7.3** Some of the respondents reiterated the importance of simplicity in the new Welsh Tax system. These respondents made the point that the Welsh Government had the opportunity to start a new tax system and they should learn from the experience of HMRC. They felt that the best way to encourage compliance was to make the system simple and have as much consistency with HMRC as possible.

**7.4** A few respondents commented that they hoped to see more detail on the WRA's complaints procedure. They felt there was not much detail in the consultation on how a complaints procedure would operate and therefore hoped to see it consulted on at a later date. They commented that it could be included in the Taxpayers' Charter.

**7.5** The RSPB commented that the Welsh Government should continue the “good practice of the Landfill Communities Fund” as it had allowed important biodiversity work to take place throughout Wales.

**7.6** The Royal Planning Town Institute (RTPI) suggested that the Welsh Government should seek to devolve the Community Infrastructure Levy (CIL). The RTPI feel that if the CIL was devolved it could be adapted to “complement the overall planning system in Wales”.

## Stakeholder engagement events

Stakeholder engagement events were held throughout Wales during the consultation period, including with the CBI and the Finance Minister's Tax Advisory Group and Tax Forum.

An exhibition of historical tax documents was organised alongside the White Paper consultation with the support of National Library of Wales, Bangor University and the Glamorgan Archive.

Exhibitions were held at Bangor University, the Welsh Government's Llandudno Junction office, the National Library of Wales, Glamorgan Archive and the Senedd.

The exhibitions generated wide public interest and engagement, with a minimum of 500 people visiting them.



### HISTORIC NEW TAX POWERS FOR WALES

The Welsh Government's Taxes in Wales Exhibition is being held between 20th-28th November. It is hosted by our exhibition partners at their premises at:

- The National Library for Wales Aberystwyth
- Bangor University
- The Glamorgan Archives in Cardiff

In addition to providing an insight into historical taxes in Wales the exhibition encourages people and organisations to offer their views and engage with us to help shape the development of a future Welsh tax regime. As such, we hope that you will take the opportunity to consider and comment on the proposals we are consulting on currently regarding tax collection and management arrangements for Wales.

The proposals for tax collection and management will lead to the first Welsh tax legislation in modern times and in developing this we are seeking views on a number of key issues including:

- Who might undertake the collection and management of taxes
- Whether to adopt a "pay first" principle whereby taxes calculated due should be paid first, including when an appeal has been lodged and an outcome is pending
- Addressing tax avoidance. The majority of people pay their taxes that are due and understand that our public services are dependent upon it. Unfortunately there is a minority who seek to avoid paying. We are seeking views on what legislation should be in place to prevent this

Details of the proposals are available on the Welsh Government's website at: [www.wales.gov.uk/consultations/finance/devolved-taxes](http://www.wales.gov.uk/consultations/finance/devolved-taxes) – or use the QR code



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### PWERAU TRETH NEWYDD HANESYDDOL I GYMRU

Cynhelir arddangosfa gan Lywodraeth Cymru rhwng 20 a 28 Tachwedd, sef Arddangosfa Trethi yng Nghymru. Bydd ein partneriaid yn yr arddangosfa yn ein gwahodd i'w hadeiladau yn:

- Llyfrgell Genedlaethol Cymru, Aberystwyth
- Prifysgol Bangor
- Archifau Morgannwg yng Nghaerdydd

Yn ogystal â rhoi cipolwg ar drethi hanesyddol yng Nghymru mae'r arddangosfa'n annog pobl a sefydliadau i fynegi eu barn ac ymgysylltu â ni i helpu i lunio datblygiad y system dreth yng Nghymru yn y dyfodol. Felly, gobeithio y byddwch yn manteisio ar y cyfle i ystyried y cynigion yr ydym yn ymgynghori arnynt ar hyn o bryd o ran y trefniadau casglu a rheoli trethi i Gymru, ac yn rhoi eich sylwadau arnynt.

Bydd y cynigion ar gyfer casglu a rheoli trethi yn arwain at y ddeddfwriaeth drethi gyntaf i'r Gymru fodern. Rydym yn gofyn am sylwadau ar nifer o faterion allweddol, gan gynnwys:

- Pwy fyddai'n ymgymryd â'r gwaith o gasglu a rheoli trethi
- P'un a ddylid mabwysiadu egwyddor o "dalu'n gyntaf" lle bydd trethi a gyfrifir yn ddyledus yn cael eu talu'n gyntaf, gan gynnwys pan fydd apel wedi'i chyflwyno a chanlyniad ar fin cael ei gyhoeddi
- Ymdrin ag osgoi talu treth. Mae'r rhan fwyaf o bobl yn talu eu trethi ac yn deall bod ein gwasanaethau cyhoeddus yn ddibynnol ar hynny. Yn anfodus mae lleiafrif sy'n ceisio osgoi talu treth. Rydym yn ceisio sylwadau ar ba ddeddfwriaeth ddylai fod ar waith i atal hyn

Mae manylion y cynigion ar gael ar wefan Llywodraeth Cymru yn: [www.cymru.gov.uk/consultations/finance/devolved-taxes](http://www.cymru.gov.uk/consultations/finance/devolved-taxes) - neu defnyddiwch y cod MR



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There was good overall interest in the consultation on our web site with some 2,200 visits to the consultation page - 38% of which resulted in the White Paper being downloaded.

## Respondents to the Consultation

All responses came from respondents in Wales, the Wales Branch of UK-wide organisations or discussed their experience of operating in Wales.

Ref.	Name of Respondent	Category
1	Anonymous	Individual
2	Anonymous	Individual
3	Tim Johns	Individual
4	Anonymous	Individual
5	Martyn Vaughan	Individual
6	Margaret Wozencraft	Individual
7	Anonymous	Individual
8	Raymond Greenwood	Individual
9	Anonymous	Individual
10	Barbara Wright	Individual
11	Kenneth MacArthur	Individual
12	Anonymous	Individual
13	Jim Bowen	Individual
14	Anonymous	Individual
15	Anonymous	Individual
16	Anonymous	Individual
17	Low Incomes Tax Reform Group	Accountants and professional bodies
18	Chartered Institute of Taxation	Accountants and professional bodies
19	Anonymous	Individual
20	Welsh Liberal Democrats	Political Parties
21	RSPB (Royal Society for the Protection of Birds)	Charities
22	National Association of Estate Agents	Businesses
23	Institute of Chartered Accountants in England and Wales	Accountants and professional bodies
24	KPMG	Accountants and professional bodies
25	Auditor General for Wales' Office	Public Body
26	Association of Taxation Technicians	Accountants and professional bodies
27	RTPI (Royal Town Planning Institute) Cymru	Accountants and professional bodies
28	FSB Wales	Businesses
29	PricewaterhouseCoopers LLP	Accountants and professional bodies
30	The Law Society	Legal Professional Bodies
31	Natural Resource Wales	Public Body
32	Welsh Council for Voluntary Action	Charities
33	CLA (Country Land Association) Cymru	Businesses
34	WLGA (Welsh Local Government Association)	Public Body
35	City of Cardiff Council	Public Body
36	Public Services Ombudsman for Wales	Public Body
37	Anonymous	Businesses
38	Lord Chief Justice	Public Body
39	CBI Wales	Businesses
40	RICS (Royal Institute of Chartered Surveyors)	Accountants and professional bodies



## Responses by organisation category:

Category	Name of Respondent	No.
Accountants and professional bodies	Low Incomes Tax Reform Group (represents households with incomes lower than £20,000pa)	17
Accountants and professional bodies	Chartered Institute of Taxation (represents over 17,000 members)	18
Accountants and professional bodies	Institute of Chartered Accountants in England and Wales (represents 142,000 members)	23
Accountants and professional bodies	KPMG	24
Accountants and professional bodies	Association of Taxation Technicians (represents 7,000 members)	26
Accountants and professional bodies	RTPI (Royal Town Planning Institute) Cymru (represents over 23,000 members)	27
Accountants and professional bodies	PricewaterhouseCoopers LLP	29
Accountants and professional bodies	RICS (Royal Institute of Chartered Surveyors) (represents 4,000 members)	40
Businesses	National Association of Estate Agents (represents over 6,500 members)	22
Businesses	FSB Wales (represents over 10,000 members)	28
Businesses	CLA (Country Land Association) Cymru (represents 3,500 members in Wales)	33
Businesses	Anonymous	37
Businesses	CBI Wales (represents over 19,000 businesses in the UK)	39
Charities	RSPB (Royal Society for the Protection of Birds) (represents 1.1 million members)	21
Charities	Welsh Council for Voluntary Action (represents over 2,500 third sector organisations in Wales)	32
Individual	Anonymous	1
Individual	Anonymous	2
Individual	Tim Johns	3
Individual	Anonymous	4
Individual	Martyn Vaughan	5
Individual	Margaret Wozencraft	6
Individual	Anonymous	7
Individual	Raymond Greenwood	8
Individual	Anonymous	9
Individual	Barbara Wright	10
Individual	Kenneth MacArthur	11
Individual	Anonymous	12
Individual	Jim Bowen	13
Individual	Anonymous	14
Individual	Anonymous	15
Individual	Anonymous	16
Individual	Anonymous	19

Legal Professional Bodies	The Law Society (represents over 166,000 members)	30
Political Parties	Welsh Liberal Democrats	20
Public Body	Auditor General for Wales' Office	25
Public Body	Natural Resource Wales	31
Public Body	WLGA (Welsh Local Government Association) (represents 22 Local Authorities)	34
Public Body	City of Cardiff Council	35
Public Body	Public Services Ombudsman for Wales	36
Public Body	Lord Chief Justice	38

## Glossary

ADR - Alternative Dispute Resolution

COO - Chief Operating Officer

DOTAS - Disclosure of Tax Avoidance Schemes

GAAR - General Anti-avoidance Rule or General Anti-abuse Rule

HMRC - Her Majesty's Revenue and Customs

LTT - Land Transaction Tax

LDT - Landfill Disposals Tax

MoJ - Ministry of Justice

NDR - Non-domestic rates

NRW – Natural Resource Wales

SDLT – Stamp Duty Land Tax

SEPA - Scottish Environmental Protection Agency

UT - Upper Tribunal

WRA - Welsh Revenue Authority