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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Tackling Avoidance of Non-Domestic Rates in Wales

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Action required: Responses by 27 June 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

The Welsh Government is seeking views on policy proposals and measures to tackle avoidance of non-domestic rates in Wales.

How to respond

Responses can be emailed or sent direct to:

Local Taxation Policy Branch
Cathays Park
Cardiff
CF10 3NQ
Email: LGF1Consultations@gov.wales

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information, or queries regarding this consultation, please email:

LGF1Consultations@gov.wales
Local Taxation Policy Branch
Cathays Park
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CF10 3NQ

Data protection

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the

address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

Names or addresses we redact might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113
Website: www.ico.gov.uk

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
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Cathays Park
CARDIFF
CF10 3NQ

Email Address:
Data.ProtectionOfficer@gov.wales

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FOREWORD BY THE CABINET SECRETARY FOR FINANCE

In Taking Wales Forward, we set out our intention to foster the conditions needed to ensure our businesses and communities thrive. Local tax revenues form an important element of the funding needed to sustain public services and it is vital that these revenues continue to be collected as effectively and as fairly as possible.

Non-domestic rates in Wales raise more than £1 billion each year to fund local government and police services. All the revenue raised through non-domestic rates is redistributed to help pay for the services – education, social care, waste management, transport, housing, public protection, leisure and environmental amenities and more – on which we all rely. Without this revenue stream, these services would suffer and it is vital that everyone makes their fair contribution.

As with any tax system, there are those that set out to avoid their non-domestic rates liability. The Welsh Government is committed to reducing the opportunities for avoidance behaviour and to helping organisations investigate cases more effectively. While avoidance may involve only a small minority of ratepayers, when they do not contribute their fair share it is to the detriment of local services, the wider community and other ratepayers.

This consultation discusses the range of ideas that have been suggested to me which could help to tackle avoidance of non-domestic rates. We have considered a wide range of evidence including that collated by recent policy reviews elsewhere in the UK, as well as evidence from Welsh local authorities and other organisations. The consultation discusses how we can balance the needs of local authorities and businesses but also work closely with other agencies and the UK Government to bring about improvements. In considering any changes to the current arrangements, we will do so in line with the Welsh Government's Tax Principles of raising revenue as fairly as possible; clarity, stability and simplicity; collaboration and involvement; and contributing to the Well Being of Future Generations Act goal of creating a more equal Wales.

This consultation provides an opportunity for ratepayers, representatives of Welsh businesses, professional organisations, local authorities and other stakeholders to share their views on the wide range of ideas. I am eager to hear everyone's views and I look forward to considering your contributions on this important matter. To be clear, however: while all the ideas in this document are for debate and discussion, the principle underlying theme is fixed. It cannot be right that the efforts of the considerable majority, to abide by the rules and pay their dues, are under cut by a minority intent on exploiting or abusing the system. The outcome of this consultation will be clearly focused on making the system more effective, fairer and less vulnerable to misuse.

1. INTRODUCTION

- 1.1. The Welsh Government is committed to tackling avoidance of non-domestic rates to improve the effectiveness of a vital source of revenue for local services. Reducing avoidance ensures the rates burden is shared fairly among ratepayers. While rates avoidance may involve a small minority of ratepayers, when they do not contribute their fair share it is local services, the wider community and other ratepayers that suffer. Ensuring the correct rates are paid also provides stability and certainty to ratepayers by reducing the risk of large backdated liabilities.
- 1.2. The purpose of this consultation is to seek views from a broad range of stakeholders on a number of ideas commonly suggested to reduce the prevalence of avoidance. Responses to the consultation will help to shape our consideration of future changes to legislation, policy and working practices in particular:
- measures that may improve the provision of information to aid compliance, improve accuracy and transparency;
 - whether any changes could be made to the rates charged on unoccupied properties, including eligibility for exemptions and exploring whether the level of relief fits its intended purpose;
 - exploring the extent to which avoidance activities might be associated with charitable relief and ways to address this;
 - exploring how the Welsh Government can work with others to reduce avoidance that relates to broader policy that is not devolved, for example, the registration of charities and companies, abuse of insolvency law; and
 - measures that may encourage joint working between local authorities and government agencies to improve intelligence and investigative activity.

2. BACKGROUND

Non-domestic rates in Wales

- 2.1. Non-domestic rates (NDR) are a local tax for raising revenue to pay for local government and police services from non-domestic property owners and occupiers. There are approximately 110,000 non-domestic properties in Wales and NDR raises more than £1 billion a year which, once collected, is redistributed in full to local authorities and police and crime commissioners.
- 2.2. NDR bills are calculated using two variables:
- The 'rateable value' of a property. This is set by the Valuation Office Agency and usually revalued every five years (with the most recent being in April 2017); and
 - The 'multiplier'. This is set on an annual basis by the Welsh Government according to primary legislation, and usually increases in line with inflation. The multiplier for 2018-19 is 0.514.
- 2.3. A range of relief schemes provide approximately £210 million of support to specific types of property or occupier, with many other properties being exempt from paying rates. These include small business rates relief, charitable relief, exemptions for unoccupied properties and agricultural holdings and most recently, high street rates relief and transitional relief to help ratepayers following the 2017 revaluation exercise.

Evidence of avoidance

- 2.4. While it is not possible to estimate for certain the amount of local revenue lost to avoidance activity in Wales, the evidence we have collected accords with that described in various reviews undertaken by other administrations. We asked Welsh local authorities to analyse billing systems to identify known and suspected cases, which we believe amount to between 1% and 2% of the total yield, or £10 million to £20 million annually. However, several local authorities highlighted that this did not reflect the full scale of avoidance and was, in their view, the 'tip of the iceberg'.
- 2.5. The most common methods reported were:
- avoidance of empty property rates through repeated periods of artificial or contrived short-term occupation;
 - failure to notify authorities of a change in circumstance that would affect their rates liability (such as a change in ownership, occupation,

use of property, physical changes which increase or decrease the rateable value);

- dormant and false charities owning or leasing premises that are unsuitable for their needs and benefitting from charitable relief;
- disingenuous use of the relief provided when a property next in use will be wholly or mainly used for charitable purposes; and
- 'phoenix trading' using shell or subsidiary companies and the avoidance of rates through the use of insolvency exemptions.

To a lesser extent there were cases reported of:

- disingenuous use of the exemption for fish farming (including snail farming); and
- avoidance of rates by purposely making a property unoccupiable.

2.6. These methods are explained in more detail in further sections of this consultation. Some of these methods display a particular level of sophistication including third-party companies or agents that run national and UK-wide avoidance schemes (often termed 'rates mitigation' schemes) on a commercial scale in exchange for commission or a fee. It is evident that such organisations know the detailed legislation and case law history which is quoted to local authorities when making requests for relief or exemptions from rates. The reduction in rates is a draw on public sector funds intended to support genuine ratepayers and to encourage economic use of commercial property.

3. IMPROVING THE PROVISION OF INFORMATION TO AID COMPLIANCE

- 3.1. This section considers measures that may improve the administration, transparency of and general compliance with non-domestic rates. This is particularly relevant to the awarding of mandatory relief and eligibility for exemptions. Local authorities have highlighted that they do not always have sufficient information or powers to challenge avoidance activity effectively.
- 3.2. There may be good reason to believe a ratepayer has provided misleading or false information or deliberately withheld information. While local authorities can ask ratepayers for relevant evidence, it can be difficult for authorities to determine whether to challenge requests for relief or investigate eligibility for exemptions. Even if requests are made retrospectively, there is no legislative provision enabling authorities to reject a backdated request.
- 3.3. To ensure the system is administered in a fair and transparent way, it is believed local authorities should have sufficient powers to be able to carry out their duties effectively. In November 2015¹ the Welsh Government consulted on how future legislation could help to reduce instances of avoidance. The response was overwhelmingly in favour of the following three proposals. It is intended to develop these proposals in legislation later this year.

i) Placing an obligation on the ratepayer to notify of a change in their circumstances

- 3.4. Currently there is no legal obligation for a ratepayer to inform a local authority of a change in their circumstances that may affect their rates liability, such as a change of owner or occupier, or if the property has undergone a 'change of use'. In the majority of cases, a failure to notify is simply an administrative oversight which is soon rectified. However, due to the lack of legal obligation, there is evidence that a minority of ratepayers knowingly withhold information if they believe this will help them avoid or reduce their tax liability. A common example is where occupiers eligible for Small Business Rates Relief vacate a property but the owner fails to notify the authority of this and so the property continues to benefit from relief.
- 3.5. We believe that placing a legal obligation on ratepayers to notify the local authority of a change in their circumstances will help improve the accuracy of bills, improve transparency and improve the evidence taken into account when considering the provision of reliefs and exemptions. This will provide the local authority with an opportunity to undertake due diligence checks in

¹ Draft Local Government (Wales) Bill, 24 November 2015
<https://consultations.gov.wales/consultations/draft-local-government-wales-bill-and-explanatory-memorandum>

order to reflect the latest circumstances when issuing bills. This would result in more timely changes in liability and reduce instances where claims for relief or exemptions need to be backdated.

- 3.6. At the next available legislative opportunity, the Welsh Government intends to create an obligation on ratepayers to inform the local authority within 21 days² of a change in their circumstances that may affect their liability. Backdating of relief or an exemption could then only apply from the date of the change in circumstance. This could remove a number of cases dealt with by local authorities of retrospective application of a reduction in rates dating back several years.
- 3.7. A duty to notify would align the duties placed on ratepayers with similar duties placed on council tax payers. As similar obligations on council tax payers have existed since 1992, this is not considered to place undue administrative burden on the ratepayer and is not considered to impact upon those ratepayers who pay their rates or claim reliefs legitimately.
- 3.8. A civil penalty³ would be incurred where the ratepayer does not provide information clear that the intention of the penalty is not to raise revenue. Any revenue from penalties collected by local authorities would be paid into the Welsh Consolidated Fund in the same way as all other non-domestic rates receipts⁴. The expectation is that civil penalties would only be issued in a small number of cases where there is evidence to suggest the occupier is withholding information for the purposes of avoiding rates. The penalty would exist to act as a deterrent for withholding information.

Q1: Do you agree that ratepayers should be obliged to provide notification of a change in their circumstances?

Q2: Do you agree that a 21 day period is sufficient time for a ratepayer to notify the local authority about the change of circumstance?

Q3: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where the ratepayer has failed to notify, knowingly withheld information or knowingly provided false information?

² This is equivalent to the timescale allowed for provision of information by council tax payers.

³ At level one on the standard scale of fines for summary offences (currently £200) under the Criminal Justice Act 1982.

⁴ The Welsh Consolidated Fund receives all non-domestic rates receipts collected by local authorities. The revenue is held in a central pool that is redistributed to local authorities (on the basis of adult population size) for spending on local services. The Welsh Consolidated Fund is audited by the Auditor General for Wales in accordance with Section 132 of the Government of Wales Act 2006.

ii) Placing an obligation on ratepayers and third parties to provide information

When completing due diligence checks, local authorities draw upon a number of sources of information which can potentially confirm certain facts about a non-domestic property, for example, to confirm the reported use of the property or to confirm who the owner or occupier is. It is proposed that local authorities should be able to request information from ratepayers and other organisations that may hold facts about a non-domestic property, such as utility companies, rating agents and letting agents. Information could only be requested where an authority believes this would assist in carrying out its billing function. A civil penalty⁵ would be incurred where the required information is not supplied within 21 days or where false information is provided.

3.9. This obligation is not considered to place an unreasonable administrative burden on third party organisations and is considered proportionate given that it is in the public interest for local authorities to confirm facts in cases where avoidance is suspected. Again the purpose of this penalty is to act as a deterrent rather than to raise revenue.

Q4: Do you agree that ratepayers and third parties should be obliged to provide information at the request of a local authority, for the purposes of verifying rates liability?

Q5: Do you agree that a 21 day period is sufficient time for ratepayers and third party organisations to provide information that has been requested by a local authority about a non-domestic property?

Q6: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where an organisation has knowingly withheld information or knowingly provided false information?

⁵ At level one on the standard scale of fines for summary offences (currently £200) under the Criminal Justice Act 1982.

iii) Providing local authorities with the right to inspect a property

3.10. Local authorities are not able to enter and inspect hereditaments where this may help with the administration of the non-domestic rates system. The local authority finds it cannot always confirm facts or challenge claims as it is unable to inspect premises to undertake relevant checks, such as to confirm occupation or use of a property. It is noted that valuation officers are able to carry out inspections for the purposes of valuing non-domestic property.

3.11. It is proposed that a power be provided to a local authority to inspect properties if it believes that an inspection is necessary for the purposes of carrying out its billing functions. Inspections will not be necessary in the vast majority of cases. The legislation will provide for appropriate safeguards, including ensuring that the local authority obtains approval from the First Tier Tribunal and provides the owner or occupier with 24 hours notice. A penalty⁶ would apply to any person that wilfully delays or obstructs an inspection.

Q7: Do you agree that the proposed safeguards (approval by a tribunal and 24 hours notice) are appropriate to the procedure for local authorities to inspect non-domestic properties?

Q8: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where a person wilfully delays or obstructs an inspection?

⁶ At level one on the standard scale of fines for summary offences (currently £200) under the Criminal Justice Act 1982.

iv) Local authorities to publish a list of ratepayers in receipt of mandatory and discretionary reliefs

- 3.12. The transparency, fairness and effectiveness of non-domestic rates is improved if the purpose of the tax is well understood, as well as the purpose of its relief schemes that provide support to particular ratepayers and industries. Currently it is relatively easy for anyone to obtain a reasonable idea about the likely rateable values of certain properties as information about property values can be found on the Valuation Office Agency's website. However, information about properties that benefit from rates relief is not available in the same way.
- 3.13. It has been suggested that publishing a list of those benefitting from mandatory or discretionary reliefs would help to increase public awareness of non-domestic rates and the range of support available, which is sometimes not claimed by those that are eligible. Publishing such information may also act as a deterrent for those ratepayers, whether they are individuals, private businesses or the public sector who seek relief fraudulently or dishonestly. Such a proposal was recommended by the Barclay Review⁷ of non-domestic rates in Scotland.
- 3.14. The disadvantages of such a policy include potentially increasing avoidance by raising awareness of the types of businesses paying lower rates and potentially enabling companies running avoidance schemes to identify and target those not appearing on published lists.

Q9: What are the advantages and disadvantages of local authorities publishing a list of properties that attract mandatory and discretionary reliefs? Would this improve transparency and compliance?

Q10: What types of information should or should not be published?

Q11: What are the data protection issues and how could these be addressed?

⁷ Report of the Barclay Review of Non Domestic Rates, August 2017.
<http://www.gov.scot/Resource/0052/00523643.pdf>

4. RATES AND RELIEF FOR EMPTY PROPERTIES

- 4.1. The evidence we collected from local authorities highlighted that non-payment of rates on empty properties was found to be the most common method of avoidance. This section explores a number of policy ideas that are aimed at reducing the prevalence of avoidance activity that relates to empty property rates and relief. We are grateful for the views of respondents on these ideas, the advantages and drawbacks, the practical implications and effectiveness in reducing avoidance.
- 4.2. The responses to this section will feed into the development of policy and evolving discussions. Some of the ideas suggested would require a primary legislative vehicle, others could be implemented through amendments to secondary legislation.

What is the purpose of empty property rates relief?

- 4.3. Owners of empty properties are not liable to pay rates for the first 3 months of a property becoming empty (6 months for industrial properties). If the property remains empty thereafter, it attracts full rates as a disincentive to keeping the property empty. The intention of the initial rate-free period is to provide owners with a period of reprieve from paying rates while they arrange to market a property, make any adjustments necessary to encourage lettings or make beneficial commercial use of the property themselves.
- 4.4. Following the initial 3 or 6 month rate-free period, if a property is then occupied for 42 days (where full rates are paid by the occupier for 42 days), this acts as a 'reset' and an owner is eligible for another rate free period. The aim of the 42 day reset period is to ensure there is no disincentive to property owners that let to pop-up businesses and genuine short term occupants, i.e. seasonal businesses.
- 4.5. There are additional exemptions from rates for certain types of empty property or for properties under a set rateable value. These include:
- Listed buildings, which are exempt until they become occupied again;
 - Buildings with a rateable value under £2,600, which are exempt until they become occupied again;
 - Properties where the ratepayer is a charity or the trustees of a charity whose next use is likely to be wholly or mainly for charitable purposes;

- Buildings where the ratepayer is a registered club for the purposes of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs) if its next use is likely to be wholly or mainly for the purposes of that club or of two or more clubs including that club;
 - a business whose owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act;
 - A business whose owner is a company in administration within the meaning of paragraph 1 of Schedule B1 to the Insolvency Act 1986 or is subject to an administration order made under the former administration provisions within the meaning of article 3 of the Enterprise Act 2002 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003.
 - A business whose owner is entitled to possession only in his or her capacity as the personal representative of a deceased person.
- 4.6. The current arrangements were put in place in 2008. Prior to this, empty properties attracted 100% relief for an initial period and 50% relief thereafter. The purpose of the reforms in 2008 was to enhance the supply of commercial property available to new and existing businesses thereby helping to reduce rent levels, which placed a burden on the competitiveness of the UK. It was believed the best way to achieve this was to reduce the rate relief available for those properties which has been empty for more than three months.

Avoidance activity

- 4.7. There is evidence to suggest empty property rates relief is not operating in the way it was originally intended. It has been reported by local authorities that the most common method of rates avoidance is regular short term (42 day) occupations that are 'staged' for the benefit of local authority officers so that the ratepayer can claim repeated rate-free periods.
- 4.8. Whether or not a ratepayer is entitled to a rate-free period depends upon whether or not the property is occupied for at least 42 days. Currently there is no statutory definition of what constitutes 'occupation' of a property and there is considerable case law on the matter, and a number of recent cases have found that there was occupation in a number of cases even if the occupation is minimal in those cases⁸. This has led to some owners staging artificial occupations for short periods of time in order to become eligible for repeated rate-free periods. Examples include large warehouses or retail premises

⁸ Sunderland City Council v Stirling Investment Properties LLP and Makro Properties Ltd v Nuneaton and Bedworth Council.

being used to house a small number of storage boxes or bluetooth devices. The Welsh Government considers this as avoidance activity that is against the public interest as it can prevent the property in question being let at a competitive rate to be used for more productive purposes.

- 4.9. There is also evidence that ‘phoenix companies’⁹ are sometimes set up specifically for the purpose of avoiding rates on empty properties. The High Court in Manchester ordered the winding up of PAG Management Services Ltd on 9 October 2015 after it was found to have operated a scheme that relied upon the abuse of insolvency legislation¹⁰.
- 4.10. There are cases which seek to exploit the legislative provision that exempts properties whose next use is likely to be ‘wholly or mainly for charitable purposes’. In these cases it appears a charity has agreed to rent a property on a short term lease in return for a peppercorn rent or a charitable donation from the landlord. The charity claims the property is being used for charitable purposes, and ‘occupied’ for short periods of time for various reasons such as pop up art events. In these cases, ratepayers will argue the property is exempt from empty property rates as the properties next use is likely to be wholly or mainly for charitable purposes. However, there is evidence to suggest these claims are in many cases disingenuous.
- 4.11. Some ratepayers use third-party companies or agents to advise them how to reduce their liability and facilitate arrangements in return for a percentage of the rates saved. Others undertake the activity themselves. In either case, these types of behaviours are regarded as tax avoidance not in the spirit of the law and against the public interest.

Ways to reduce avoidance

- 4.12. Below are a number of ideas that have been suggested to reduce the prevalence of avoidance activity taking place for empty properties. The Welsh Government would welcome views as it considers what package of changes would be most effective at reducing these types of activities.
- 4.13. The primary aim of the options below is to tackle avoidance of empty property rates, however it is acknowledged the proposed options may have policy implications for non-domestic rates more widely. Any views on this aspect would also be welcomed.

⁹ ‘Phoenix companies’ or ‘phoenix trading’ are terms used to describe the practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent.

¹⁰ The Insolvency Service press release ‘Company involved in multi-million pound business rates avoidance closed down’, 14 December 2016. <https://www.gov.uk/government/news/company-involved-in-multi-million-pound-business-rates-avoidance-closed-down>

Option 1: Restrict empty property relief for all classes of property to one three-month (non-industrial) or six-month (industrial) period of relief per year. Full rates would be payable for the remainder of the year regardless of whether the property was occupied or empty. There would be no 42 day reset period and ratepayers would not be allowed to repeatedly claim throughout the year.

- 4.14. The aim of this option would be to reduce the financial incentive to stage repeated cycles of short term occupations to maximise relief. It would still provide some level of relief and retain our current policy of providing longer relief for industrial properties (6 months).
- 4.15. This option may discourage property owners from leasing to genuine pop-up or seasonal businesses. It could be argued that this option stifles the opportunity for innovative use of commercial property. Some businesses are of the view that property owners already favour letting to more stable tenants. However, 91% of new business 'start-ups' in Wales survive more than one year.
- 4.16. Without a 42 day reset period, there is a risk that owners of hard to let properties would have less of an incentive to ensure the property was in a reasonable state of repair. It could also result in an increase in other types of avoidance such as phoenix trading. Phoenix companies that are set up as a vehicle for many types of tax avoidance are more common in city centres, though examples can be found across Wales.

Option 2: Retain the current arrangements for an initial three-month (non-industrial) or six-month (industrial) rates free period. Increase the length of the 'reset' period – where a property is occupied for a short term and can receive further rates-free period – from 42 days occupation to six months occupation.

- 4.17. Similarly to option 1, this option would reduce the maximum amount of relief an empty property could receive each year therefore reducing the financial incentive for ratepayers to undertake avoidance activity. Lengthening the 'reset' period would mean that a property would only attract further relief if the property has been occupied for at least six months. If artificial occupation is being staged, this option would require property owners to prove the property has been occupied for six months (instead of 42 days) creating higher risk for the ratepayer of continuing to engage in avoidance. Some stakeholders believe this would be enough to discourage avoidance. This will also provide local authorities with more time to investigate and obtain evidence where avoidance is suspected.

- 4.18. This option has similar disadvantages to option 1 in relation to property owners that wish to let to genuine short-term tenants and the potential to increase the prevalence of other types of avoidance.

Option 3: Retain the current arrangements for an initial three-month (non-industrial) or six-month (industrial) rates-free period. Increase the length of the ‘reset’ period – where a property is occupied for a short term and can receive further rates-free periods – from 42 days occupation to six-months occupation but reduce the rates liable to 50% with no time limits.

- 4.19. This option would make two main changes. It would increase the re-set period from the current 42 days to six months. Again this would not remove the opportunity to remove avoidance but would limit the amount of empty property rates relief available for those who claim it more than once per year.
- 4.20. In addition to the advantages of option 2 in reducing the financial incentive to stage artificial occupations, this option would also reduce liability for empty property rates to 50% charged (instead of 100% charged) which would reduce the overall burden of empty property rates on property owners who are unable to find a genuine tenant. Reducing empty property rates from 100% to 50% would reduce the financial incentive to engage in tax avoidance. Instead of paying an agent a significant fee for an avoidance scheme, ratepayers might be more likely to pay the reduced rates to the local authority. The disadvantage of this option is that it could be a less effective lever to encourage empty properties back into use.
- 4.21. Different variations of this approach could be considered. The Scottish Government provides owners of empty properties with a 10% reduction in rates, though it is difficult to determine the optimum level of relief that would both discourage avoidance yet encourage better use of empty properties. We welcome your views on different levels of relief provided for different time periods.

Option 4: Introduce a “de minimis” concept for occupation during the 42 day period.

- 4.22. Option 4 is a self-contained option which could be implemented alone or in conjunction with a number of other measures. The idea suggested is to amend the Non Domestic Rating (Unoccupied Property) (Wales) Regulations 2008 to introduce a set of criteria such as, for example, that a property must be wholly or mainly occupied and/or beneficially occupied for the 42 day period. It is suggested this would reduce cases where it is clear that minimal and artificial occupation has been staged for 42 days for the purposes of gaining repeated cycles of relief. Your views on providing for a statutory

definition of occupation are welcomed, in particular, where you think that this may lead to disadvantages or new risks for other parts of the non-domestic rating system and for genuine ratepayers.

- Q12: Which option(s) (1-4) to change empty property rates relief do you believe would be the most effective in reducing avoidance?**
- Q13: What are the key issues which arise from changing the 're-set' period (as outlined in options 1- 3) in respect of empty property rates relief?**
- Q14: Do you have any comments about reducing empty property rates relief to 50% as outlined in Option 3?**
- Q15: In respect of option 4, do you agree that where properties are occupied for a short period, additional criteria about the extent of that occupation should be met in order to qualify for further periods of relief?**

'When next in use' charitable exemption

- 4.23. There is an exemption from non-domestic rates for empty properties where the ratepayer is a charity / trustees of a charity or a registered community amateur sports club that when next in use are likely to be wholly or mainly for charitable purposes or a Community Amateur Sports Club (CASC) respectively. The exemption is believed to be some protection for empty community buildings that would most likely always be used for the same purpose.
- 4.24. However, the number of properties used for charitable purposes has increased significantly over the last decade, with the charity sector diversifying into retail and trade. Concerns have been raised about a number of cases where this exemption is now more often used for long term empty warehouses and retail spaces as a way of avoiding empty property rates.
- 4.25. We believe this exemption may no longer be operating as it was originally intended. We would like to hear views about whether this exemption should remain, be removed, or whether local authorities should be given discretionary powers to grant the exemption. A discretionary element may help to safeguard cases where there is a legitimate continuous use by communities of a building in the spirit by which the policy is intended.

Q16: What are your views on keeping, removing or changing the legislative provisions which exempt empty properties from rates where the ratepayer is a charity or a Community Amateur Sports Club, and when next in use it is likely to be wholly or mainly used for charitable purposes?

Q17: Are there any other options which may reduce this type of avoidance?

5. MANDATORY CHARITABLE RELIEF

- 5.1. Charities are entitled to mandatory rate relief equal to 80% of the rates liability for a property that is wholly or mainly used for charitable purposes. The same rules apply for Community Amateur Sports Clubs (CASC's). The intended purpose of the relief is to reduce financial barriers to charitable organisations undertaking activity which contributes to the social and economic wellbeing of citizens. In April 2013, the Welsh Government consulted on the effectiveness of charitable relief and concluded that this relief should remain in place¹¹.
- 5.2. Through the evidence we have collected about non-domestic rates avoidance it is clear there are some cases where mandatory charitable relief is claimed disingenuously. There is evidence to suggest charities are being approached and encouraged to enter into tenancy agreements that would relieve landlords of the requirement to pay full non-domestic rates, whereby charities lease an empty property from an owner at minimal or nominal rate in return for a charitable donation and agreement to vacate the property at very short notice.
- 5.3. There is case law¹² to date establishing that in order to be entitled to mandatory charitable relief, for a charity to be in occupation of a building means the charity making extensive use of the premises for charitable purposes. We understand that this is not always the case. However, investigating disingenuous claims can lead to significant or disproportionate administrative costs for local authorities.
- 5.4. The Charity Commission is aware of the issue of tax avoidance by bogus charities more widely and has made efforts to ensure charities are aware of the law in this area by highlight the risks they may take in entering into such arrangements as described above¹³.
- 5.5. If a charity is not making sufficient use of a premises for charitable purposes to attract non-domestic rates relief, then it risks becoming liable for the full non-domestic rates liability. In addition, the trustees of the charity risk finding themselves personally liable if they have not considered carefully the proposed future use of the property before entering into an agreement with a landlord and tries to claim relief that is not available.

¹¹ Business Rate Relief for Charities, Social Enterprises and Credit Unions, April 2013.

<https://businesswales.gov.wales/sites/business-wales/files/documents/News%20and%20Events/Consultation%20-%20Business%20rates%20relief%20for%20charities%20%26%20social%20enterprises.pdf>

¹² Public Safety Charitable Trust Limited v's South Cambridgeshire, Milton Keynes and Cheshire West and Chester Councils and **Kenya Aid Programme v Sheffield City Council**

¹³ Press release: The Charity Commission, May 2013.

<https://www.gov.uk/government/news/commission-warns-charities-on-business-rates-relief>

Q18: Are there any additional measures that the Welsh Government and/or local authorities can take to reduce the prevalence of avoidance in relation to mandatory charitable rate relief?

6. GENERAL ANTI-AVOIDANCE RULES

- 6.1. Various pieces of UK wide tax legislation¹⁴ include what is known as a General Anti-Avoidance Rule (GAAR) which gives greater powers to billing authorities and applies to those who actively avoid paying their tax liabilities and those who promote tax avoidance schemes.
- 6.2. A GAAR is already in place for the newly devolved taxes which relate to Land Transaction Tax and Landfill Disposals Tax in Wales from April 2018. This consultation is seeking views on introducing a GAAR for non-domestic rates in Wales.
- 6.3. The revenue raised from non-domestic rates is used to help pay for public services for the benefit of communities in Wales. It is the view of the Welsh Government that avoiding rates liability undermines those services, is unfair and unjust. The establishment of robust arrangements to tackle this issue head-on is a priority for the Welsh Government.
- 6.4. The primary aim of a GAAR for non-domestic rates would be to ensure that all ratepayers pay their fair share and that the system operates within the spirit that is intended by the legislation. The objective would be to deter taxpayers from entering into abusive arrangements and to deter commercial agencies from promoting such arrangements.
- 6.5. The introduction of a GAAR would provide the relevant authorities with the opportunity to counteract the tax advantage of “artificial” avoidance arrangements, on the grounds of the principles of tax avoidance. Effective use of such powers would require resource and expertise within local authorities. Ultimately, the courts would judge whether the test was met.

Q19: Is it appropriate to put in place a General Anti-Avoidance Rule in Wales that would enable authorities to withhold reliefs and exemptions where they can reasonably conclude that the main purpose of a ratepayer’s arrangements is to avoid non-domestic rates?

Q20: What are the key issues that would need to be considered in putting in place a General Anti-Avoidance Rule for non-domestic rates in Wales?

¹⁴ For example, Part 5 of the Finance Act 2013 in relation to income tax, capital gains tax, inheritance tax, corporation tax.

7. NON LEGISLATIVE MEASURES TO IMPROVE COMPLIANCE

Joint working between agencies

- 7.1. The Welsh Government would like to hear views on how local authorities can work together and share expertise but also how we can facilitate more effective working relationships with the UK Government Departments and other organisations. There are a number of current developments that aim to build capability in this area. This consultation would like to hear views on how effective they are and what further steps could be taken to improve compliance with respect to non-domestic rates.
- 7.2. The Enterprise Act 2016 has provided a data-sharing gateway between the Valuation Office Agency and local authorities in relation to the local rating lists, and with the Welsh Government in relation to the central rating list. This improved data-sharing arrangement is beginning to assist authorities in their compliance, enforcement, billing and collection activities.
- 7.3. There is currently a memorandum of understanding between the Charity Commission and a number of local authorities including Oxford City Council, Broxbourne Borough Council and those participating in the Kent Intelligence Network. The agreements focus on helping the local authorities to tackle avoidance where, for example, a landlord might let a commercial property at a peppercorn rent to a charity in order to take advantage of the mandatory 80 per cent reduction in business rates that charities receive.
- 7.4. There are examples whereby local authorities working together have shared resources, expertise, information and costs across boundaries to tackle avoidance. The Kent Intelligent Network and the London Counter Fraud Hub are examples where resources and expertise have been pooled to investigate fraud and avoidance across local authority boundaries. Joint IT solutions have been procured that bring together multiple data sets capable of identifying any discrepancies that may indicate fraud or avoidance is taking place.
- 7.5. There are also examples of other organisations and regulatory bodies that are challenging non-domestic rates avoidance activity through the courts. Following an investigation led by the Insolvency Service, the High Court in Manchester ordered the winding up of a consultancy company after it was found to have operated a tax avoidance scheme that relied on an abuse of insolvency legislation. The order was suspended pending an appeal lodged

by the company, but that appeal was formally dismissed at the company's request¹⁵.

Resources to investigate avoidance

- 7.6. Local authorities have previously raised some concerns about having the necessary officer resource to fully investigate cases of non-domestic rates avoidance. Because all of the non-domestic rates revenue is pooled and redistributed nationally, local government argues there is less financial benefit to committing resource to activity that would improve compliance.
- 7.7. Efforts to reduce avoidance would increase the total yield available to be spent on local services in all communities. However, the Welsh Government recognises the mechanism for redistribution may dampen the degree of benefit seen by authorities that have committed resource to costly investigations. There are a number of ways in which support could be provided in the future.
- 7.8. The Welsh Government is open to exploring a share-gain approach: where the positive actions of local government (such as through tackling avoidance and improving collection rates) lead to additional revenue collected, options for sharing this revenue between the national arrangements and the local authority responsible for the positive action could be explored.
- 7.9. Another option could be to explore similar arrangements to those that exist in England where authorities are able to share legal costs with the UK Government of novel cases brought to the courts.
- 7.10. The Welsh Government also has an Invest to Save Fund which can provide loan finance to the public sector where projects require up front funding and will generate savings or additional income in future. The fund has an available budget of several million per annum. The Welsh Government would be open to considering any bids for funding that would help to reduce the prevalence of avoidance. The loans are interest free and repayments are set on a case by case basis with reference to the estimated savings or income profiles of the project. The fund holds an annual bidding round but proposals can be submitted to the team for assessment at any time during the year for consideration. Anyone interested in using this fund can email the team at: I2Sinvestmentfund@gov.wales

¹⁵ The Insolvency Service press release, December 2016
<https://www.gov.uk/government/news/company-involved-in-multi-million-pound-business-rates-avoidance-closed-down>

7.11. The relevant web pages containing guidance notes and the Expression of Interest can be found at: <http://gov.wales/topics/improvingservices/invest-to-save/?lang=en>

Q21: The Welsh Government would like to hear views about how local authorities and other organisations could be supported to take forward investigations and reduce avoidance behaviour.

8. WELSH LANGUAGE

8.1. Comments are invited about the effects (whether positive or adverse) which these proposals for tackling avoidance would have on opportunities for persons to use the Welsh language and on treating the Welsh language no less favourably than the English language.

8.2. In addition, we invite comments on whether the proposals could be formulated or revised to have positive effects or decreased adverse effects, on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language.

Q22: The Welsh Government would like to know your views on the effects these proposals would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh; and**
- ii) on treating the Welsh language no less favourably than English.**

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q23: Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and**
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

9. CONCLUSION

- 9.1. The Welsh Government is reviewing the local government finance framework to ensure it meets future needs as local services evolve. Our priorities in reforming the finance system are greater resilience for local authorities, fairness for citizens and businesses, and sustainable funding for vital local services.
- 9.2. As part of these wider changes, the intention is to bring forward a number of legislative changes and policy proposals to tackle avoidance of non-domestic rates. The proposals will seek to address issues of accuracy, consistency and transparency while minimising the administrative burden on businesses and local authority officers.

10. NEXT STEPS

- 10.1. The consultation is open for a 12-week period. During this time, further stakeholder engagement will be undertaken to explore fully the practical implications of the ideas suggested in this document, particularly financial, administrative and legislative considerations.
- 10.2. Once the consultation has closed, all responses will be analysed and will be used to inform our consideration of the effectiveness of the different ideas. Aside from the legislative changes that are planned for inclusion in the Local Government Bill, we will announce any other policy changes in the autumn. In seeking to implement any policy changes, we will provide sufficient notice for ratepayers to undertake financial planning and allow time for local authorities and their software providers to incorporate the any changes into their billing processes.

CONSULTATION RESPONSE FORM

Your name:

Organisation (if applicable):

Email / Telephone number:

Your address:

The Welsh Government is interested in comments you may have on legislative changes and policy proposals to tackle non-domestic rate avoidance activities. We would be particularly interested in the technical and administrative complexities which may arise following implementation.

Q1: Do you agree that ratepayers should be obliged to provide notification of a change in their circumstances?

Q2: Do you agree that a 21 day period is sufficient time for a ratepayer to notify the local authority about the change of circumstance?

Q3: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where the ratepayer has failed to notify, knowingly withheld information or knowingly provided false information?

Q4: Do you agree that ratepayers and third parties should be obliged to provide information at the request of a local authority, for the purposes of verifying rates liability?

Q5: Do you agree that a 21 day period is sufficient time for ratepayers and third party organisations to provide information that has been requested by a local authority about a non-domestic property?

Q6: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where an organisation has knowingly withheld information or knowingly provided false information?

Q7: Do you agree that the proposed safeguards (approval by a tribunal and 24 hours notice) are appropriate to the procedure for local authorities to inspect non-domestic properties?

Q8: Do you agree that a civil penalty at level 1 on the standard scale (currently £200) is reasonable and proportionate in cases where a person wilfully delays or obstructs an inspection?

Q9: What are the advantages and disadvantages of local authorities publishing a list of properties that attract mandatory and discretionary reliefs? Would this improve transparency and compliance?

Q10: What types of information should or should not be published?

Q11: What are the data protection issues and how could these be addressed?

Q12: Which option(s) (1-4) to change empty property rates relief do you believe would be the most effective in reducing avoidance?

Q13: What are the key issues which arise from changing the 're-set' period (as outlined in options 1- 3) in respect of empty property rates relief?

Q14: Do you have any comments about reducing empty property rates relief to 50% as outlined in Option 3?

Q15: In respect of option 4, do you agree that where properties are occupied for a short period, additional criteria about the extent of that occupation should be met in order to qualify for further periods of relief?

Q16: What are your views on keeping, removing or changing the legislative provisions which exempt empty properties from rates where the ratepayer is a charity or a Community Amateur Sports Club, and when next in use it is likely to be wholly or mainly used for charitable purposes?

Q17: Are there any other options which may reduce this type of avoidance?

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Q21: The Welsh Government would like to hear views about how local authorities and other organisations could be supported to take forward investigations and reduce avoidance behaviour.

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- i) opportunities for people to use Welsh; and**
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What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q23: Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and**
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

Responses to consultations are likely to be made public on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: