Llywodraeth Cymru
Welsh Government

POLICY AND STRATEGY

# Memorandum of Understanding between HM Revenue and Customs (HMRC) and Welsh Government for the implementation of the Welsh Rate of Income Tax

This agreement sets out arrangements between HMRC and Welsh Government for the Welsh rate of income tax.

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# Introduction

The Welsh rate of income tax (WRIT) will be set, each year, through a Resolution passed by the National Assembly for Wales (the Assembly) on the

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basis of a proposal made by Welsh Ministers. Welsh Ministers will be responsible for setting the rates and the concomitant impact on revenues. Rate-setting powers are to be devolved from April 2019 but WRIT is not a devolved tax. It will form part of the UK income tax system and will be administered along with the rest of the income tax system by Her Majesty's Revenue and Customs (HMRC).

Interaction with those taxpayers who are liable to pay WRIT, including the provision of information, notices of coding, collection, compliance and pursuit of tax due, will be matters for HMRC. Any issues of dispute about the tax will be matters between Welsh taxpayers and HMRC. Welsh Ministers will be responsible for setting the tax rates but not for any other element of the tax nor for its administration. However the Welsh Government's (WG's) budget will bear the agreed costs of setting up and operating WRIT and will benefit from revenue collected so there is a clear line of interest between Welsh Ministers and the efficacy of the tax collection and management system as well as income tax data to help inform their rate setting decisions.

This Memorandum of Understanding sets out arrangements between HMRC and WG for setting up and operating WRIT. The MoU is not a contract nor is it legally binding; it sets out the processes and procedures agreed between the organisations.

## 1.1 Welsh rate of income tax

The Wales Act 2014 ("the 2014 Act") gives the Assembly for Wales (Assembly) the power to set a Welsh basic, higher and additional rate of income tax to be charged on Welsh taxpayers as defined in section 116E of the Government of Wales Act 2006 ("the 2006 Act"). WRIT will commence from a date to be set by the UK government. This is expected to be April 2019. It will be administered by HMRC as part of the UK-wide income tax system and applied to non-savings income. The Assembly will be able to set Welsh rates from zero to any number of pence or half-pence in the pound. These rates will be added to each of the main UK rate bands after ten pence in the pound has been deducted from each rate.

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## 1.2 Purpose of this document

This document has been agreed by the Welsh and UK governments. It sets out HMRC's and WG's respective responsibilities in relation to establishing and operating WRIT efficiently and effectively. The document provides the framework for inter-government work at ministerial and official level to oversee the establishment and operation of WRIT. It has no formal legal force. Nevertheless both governments expect its terms to be followed. Arrangements for dealing with disputes are set out in the document.

## 1.3 Accounting Officer and responsible officers

HMRC has appointed an additional accounting officer with overall responsibility for WRIT who is accountable for the performance of HMRC in establishing and operating WRIT. The responsibilities of this post are set out at Appendix A of this document. The senior officials with responsibility for the matters covered by this document are the Director, Welsh Treasury Responsibility for the Welsh Government and the Deputy Director, Devolution for HMRC. In addition, a Joint Exchequer Committee (Wales) (Officials) will oversee the planning and implementation of the financial provisions of the 2014 Act, including WRIT. This non-ministerial committee will be jointly chaired by the Director, Welsh Treasury for Welsh Government (WG) and the Director, Public Services, HM Treasury (HMT) with senior official representation from HMT, WG, Wales Office, and HMRC. The Joint Exchequer Committee (Wales) ('JEC (Wales)') provides ministerial oversight of the programme of work.

## 1.4 Context

This document reflects:

- The agreement between the Welsh Government and the UK government on the Welsh Government's fiscal framework
- The Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Welsh Ministers, the Scottish

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Ministers, and the Northern Ireland Executive Committee, and
- Cabinet Office devolution guidance notes.

The document sets out how the broad approach in these documents will be applied to setting up and operating WRIT.

The principle of openness also underlies this document. Information in relation to the matters within the scope of this MoU will be shared freely between WG and HMRC, subject to relevant legal or contractual conditions including the Data Protection Acts and the Freedom of Information Acts. Information covered by HMRC's obligations to protect taxpayer confidentiality will continue to be so covered.

## 1.5 Dates and timing

This document came into effect on the date of signature below. This document has no expiry date, but it will cease to have effect if WRIT is repealed. The document may be brought to an end by agreement between WG and HMRC. It will be reviewed at the request of either party. Any changes to its content arising from such a review, or from material changes in the documents listed in 1.4, will be marked by the issue of a new, dated, version number, and agreed by HMRC and Welsh Government.

The WRIT provisions came into force on 17 December 2014. HMRC will liaise with WG about:

- the commencement provisions in Part 4, section 29 to the 2014 Act (as amended), and
- the timing and making of the Treasury Order under section 14 of the 2014 Act to appoint the first tax year to which a Welsh rate resolution can apply.

## 1.6 Roles and responsibilities of WG and HMRC

WG and HMRC will each set up governance arrangements for the development of WRIT. The JEC (Wales) (O) (referred to at 1.3 above) has been set up to

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assure the successful implementation of the financial provisions of the 2014 Act: it will take an inter-governmental approach to quality assurance of the implementation process and agree and review how progress towards implementation milestones should be driven and measured.

HMRC will develop and test the IT and non-IT systems for the administration of WRIT, in consultation with WG, as set out in paragraph 2 below.

Following successful conclusion of testing, HMRC will administer WRIT, as set out in paragraph 3 below, as part of the UK tax system.

HMRC will invoice WG for agreed items of expenditure relating to both development and operation of WRIT within the terms set out in paragraph 4 below.

WG will make payment to HMRC for amounts invoiced for agreed items of expenditure, as set out in paragraph 4 below.

WG will prepare a Welsh rate resolution as described in section 116D of the 2006 Act, and ensure this is placed before the Assembly (see also paragraph 5 below).

HMRC will pay WRIT receipts into the UK Consolidated Fund in the same way as for other tax receipts. The arrangements for funding WG in relation to WRIT receipts, and for reconciliation between forecast and actual WRIT receipts, are matters between HMT and WG. For information, these are described separately at paragraph 6 below.

WG and HMRC responsibilities in relation to the exchange of information are set out in paragraph 7 below.

The annual cycle of activities in relation to WRIT (including WG and HMRC actions) is summarised at Appendix B.

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## 2.1 Development of IT and administrative systems for WRIT

HMRC will develop and test the IT and administrative systems for WRIT within the overall Wales Act programme managed by the Programme Board on which WG is represented, with senior oversight provided by the jointly-chaired JEC (O). HMRC will keep WG informed of, and will consult WG on, plans, timetables, estimated costs and progress. Where there are options for developing such systems, HMRC will discuss these, together with cost, risk, efficiency, effectiveness or customer impact factors, with WG before an option is selected.

Subject to the overall programme agreed between HMRC and WG as part of the inter-governmental oversight process referred to above, the delivery of IT components will be timed to fit with wider IT system schedules, and to ensure that the correct functionality is available to support timely introduction of WRIT. HMRC will remain responsible for delivering a working WRIT system that, by the date appointed by HMT under section 14 of the 2014 Act, is able to collect the correct amount of tax from Welsh taxpayers as defined in section 116E of the 2006 Act and provides appropriate control and accounting information, to support audit and production of HMRC annual accounts and to enable transparent accounting and reporting of WRIT receipts paid into the UK Consolidated Fund in accordance with the Command Paper accompanying the Wales Act 2014.

## 2.2 IT systems

HMRC will develop and test the IT systems through its contracted IT suppliers and in accordance with its normal IT development practice. The cost and functionality of each part of the IT systems will be notified to WG in advance and in detail, subject to any confidentiality rules in prevailing HMRC IT contracts. WG and HMRC will scrutinise the cost of each item with a view to assessing value for money. Where any concerns remain about the cost of a particular item, WG – or HMRC on behalf of WG and after discussion with them – may request an independent assessment of the estimated costs at additional cost. This assessment will provide a breakdown of activity required to deliver the

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functionality necessary and the associated costs, and will provide an opinion on whether the cost estimate appears to be reasonable in the circumstances and offers the best value for money for both Governments.

HMRC will review with WG plans for testing the IT systems, and WG will have the opportunity through the Programme Board to review testing material and the results of the tests. To provide maximum assurance, WG may ask for additional audit work to be undertaken on systems testing and testing results. Where evidence arises that suggests that further assurance is needed about the accurate and reliable operation of the system, the necessary additional testing and related work will be carried out by HMRC and its IT contractor.

### Administrative (non-IT) systems

HMRC will develop and test the administrative processes for WRIT in accordance with its normal practice. A breakdown of the expected costs and activities will be shared with WG before such costs are incurred. WG and HMRC will scrutinise the cost of each item with a view to keeping this as low as possible.

## 3.1 Continuing operations

After IT changes have been made to deliver WRIT, HMRC will maintain its IT and administrative systems from year to year so that WRIT continues to operate effectively.

## 3.2 Welsh taxpayers

HMRC will identify Welsh taxpayers, as defined in section 116E of the 2006 Act, from information on its systems and by

interaction with the taxpayers themselves. This will be recorded on HMRC systems by a Welsh taxpayer identifier for each individual.

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HMRC will maintain an accurate record of Welsh taxpayers by updating the identifier as addresses are changed and by interaction with the taxpayers themselves.

Before the start of the first tax year that WRIT will apply (expected to be 2019 - 20) HMRC will issue Welsh ‘C’ tax codes to all Welsh taxpayers within Pay as you Earn (PAYE) and their employers. In subsequent years, HMRC will send revised coding notices as appropriate, either in-year or as part of the annual coding exercise that normally starts at the beginning of each calendar year.

HMRC may, subject to its obligations about taxpayer confidentiality, inform appropriate third parties, such as pension providers, whether a person is a Welsh taxpayer.

The Self Assessment (SA) system will be adapted so that Welsh taxpayers within SA will declare their status as part of their annual return.

## 3.3 Service Standards

WG and HMRC will work together to agree a set of standards (Service Level Agreement) for the operation of WRIT including levels of service to Welsh taxpayers in relation to WRIT.

## 3.4 Compliance

HMRC will conduct risk analysis and assessment, and compliance and anti-avoidance activity, on Welsh taxpayers in accordance with its normal targeting priorities in relation to income tax. HMRC’s risk approach will be discussed with WG and will take into account Welsh Ministers’ decisions on the Welsh rate, which will affect the distribution of risk, and will make no distinction, pound for pound, between income tax levied by the UK Parliament and that levied by the Assembly.

HMRC will also conduct risk analysis and assessment, and compliance and anti-avoidance activity, on individuals in relation to Welsh taxpayer status, and on

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employers to ensure that PAYE systems are being operated properly in accounting for WRIT.

Where WG proposes that further activity should be carried out in respect of WRIT and it is agreed that this is feasible and would reduce revenue risk and improve compliance, HMRC will carry out such activity. This would be charged for on the basis set out at 4.2 below.

## 4.1 Funding

Where HMRC charges for its services, it does so (following HM Treasury policy) at the full economic cost of providing the service, seeking to make clear the breakdown of the calculation. Full economic cost is based on the average salary cost for the relevant grade plus per capita overheads such as superannuation, HR, accommodation and finance costs which include costs associated with administering the invoicing process and monitoring and tracking related payments to HMRC from the Welsh Government. Where costs are incurred under contract by third parties including HMRC's IT supplier, these will be charged at cost. These costs may be subject to external review and assessment as described in paragraph 2.2 above.

Following consideration of the best value for money option, costs will be borne by WG and HMRC as set out at paras 4.2 and 4.3 below.

## 4.2 Costs borne by WG

Subject to the arrangements set out in paragraphs 2 and 3 above, including value for money considerations, the Programme Board will approve Project and Programme costs for which HMRC will invoice WG including:

- Capital costs of IT changes to identify Welsh taxpayers, and calculate and account for WRIT
- Cost of any independent assessment of IT costs requested by, or after consultation with, WG
- Maintenance costs of IT systems, where specific provision is needed for

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WRIT
- Cost of the WRIT element of improvements and upgrades to systems, where specific provision is needed for WRIT
- Non-IT capital costs relating specifically to WRIT
- Project costs of preparation for the introduction of WRIT
- Resource cost of activities specifically relating to the administration of WRIT
- Resource costs relating to compliance and assurance of the Welsh taxpayer base
- Resource costs of employer compliance where specifically related to the administration of WRIT, and
- Resource costs of any additional compliance requested by WG.

## 4.3 Costs borne by HMRC

HMRC will not charge WG for:

- Cost of changes to IT systems where no specific provision needs to be made for WRIT (even if the systems are involved in accounting for WRIT or identifying Welsh taxpayers)
- Cost of changes to IT systems where the aspects relating to WRIT cannot reasonably be costed separately
- Cost of changes to IT systems arising from UK government policy initiatives, even where specific provision is needed for WRIT
- Cost of compliance cases relating to Welsh taxpayers where Welsh taxpayer status is not the main factor
- Cost of compliance cases relating to other UK taxpayers where Welsh taxpayer status is considered, but is not the main factor in the case, and
- Cost of general employer compliance on Welsh employers or relating to Welsh taxpayers.

## 4.4 Invoicing

HMRC will invoice WG for costs incurred no more frequently than monthly and no less frequently than quarterly. WG will make payment to HMRC within 30 days of the invoice date, or within 30 days of receipt of the invoice if there is a

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delay of more than 5 days between invoice date and date of receipt.

## 4.5 Financial management guidance

UK government policy about financial management is set out in the HM Treasury documents "**Consolidated Budgeting Guidance**" and "**Managing Public Money**", which are available on the Treasury website.

## 4.6 Dispute resolution

where a dispute arises over a payment in relation to the matters set out in this section, or about other aspects of the implementation of WRIT, it will be discussed at the Programme Board on which WG is represented. If agreement is not reached between HMRC and WG at the programme board, the matter will be passed to the JEC (Wales) (O) for resolution. If, exceptionally, the matter cannot be resolved there, it will be brought to the Joint Exchequer Committee for discussion and agreement by Ministers, whose joint decision will be final.

## 5.1 Setting the rate

Section 116D of the 2006 Act requires that, for the Welsh rate to be set, the Assembly must pass a Resolution before the start of the tax year to which it relates, that is by 5 April in any year. The Welsh Government and the Assembly will make arrangements for including in the annual budget cycle the setting of the rate by Resolution. This is a matter for the Welsh Government and the Assembly. As far as administration is concerned, HMRC will make orderly preparations for the next tax year, including providing all UK taxpayers (including Welsh taxpayers) and employers with correct coding information in a timely way.

The Welsh Government and HMRC will work together to ensure that, in preparation for 2019-20 and beyond, these administrative steps are planned and carried out efficiently and in a timely way (taking into account the Budget cycles of both governments) to minimise costs, including costs to employers. This will include agreeing an assumption to be used in the main issue of tax codes, if the

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rate has not been determined by the end of November.

## 5.2 Notification of rate

Welsh rate resolutions passed by the Assembly will be a matter of public record.

## 6.1 Forecasting and payment of tax receipts

Arrangements for forecasting of WRIT receipts which will be incorporated into the calculation of WG's total budget for each year, and the mechanism for making funds available to WG, are matters for agreement between WG and HMT, and will be set out in a separate document. The Welsh Government may use forecasts produced for the UK government by the Office for Budget Responsibility or may put in place alternative independent forecasting arrangements. To enable quality forecasts (comparable with those produced by the Office for Budget Responsibility) and to support the Welsh Ministers in robust policy development, HMRC and WG will explore and make proposals which enable the sharing of timely and quality data with the Welsh Government.

## 6.2 Accounting, audit and assurance

Expenditure and receipts relating to WRIT will be identified separately in HMRC annual accounts, which are audited by the National Audit Office (NAO).

Following audit of the HMRC accounts, the AAO (see para 1.3 above) will provide an extract, covering all matters relating to WRIT, to the National Assembly for Wales. He will be available to give evidence to the Assembly Committees when required.

In addition, section 23 of the 2014 Act lays a duty on the Secretary of State for Wales to make a report each year at the earliest before the anniversary of the day on which the Wales Act 2014 is passed – which will include a report on the implementation and operation of WRIT – and to send a copy of the report to Welsh Ministers who are in turn to lay a copy before the Assembly. Welsh

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Ministers must make and lay a similar report each year. These reports must include a report on progress with implementing and subsequently operating the financial provisions in the 2014 Act.

## 6.3 In-year reporting to Welsh Ministers

Once WRIT becomes operational, HMRC will provide information to WG in a form and at a frequency to be agreed throughout the tax year reporting on actual tax receipts and on any issues arising relating to compliance or other matters that are relevant to the collection of WRIT.

## 7.1 Information sharing

HMRC must provide information to WG that will enable Welsh Ministers and officials to discharge their duties in respect of Parliamentary accountability, scrutiny, rate setting and forecasting in relation to WRIT. This includes information in relation to the reporting requirements of section 23 of the 2014 Act. Where the provision of information would involve significant analysis time, HMRC will notify WG of the likely cost and time period involved. If WG authorises the work and agrees to pay, HMRC will undertake this work.

## 7.2 Limitations

As mentioned at para 1.4 above, HMRC operates within legal constraints about taxpayer confidentiality. The Commissioners for Revenue & Customs Act 2005 (CRCA) prohibits the disclosure of information held by HMRC, but in the list of exceptions to this, section 18(2)(a) allows HMRC to disclose information for the purpose of a function of HMRC (which income tax is). HMRC cannot though provide any analysis that identifies individual taxpayers, or that would allow amounts of tax relating to individual taxpayers to be inferred.

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## 8.1 Review of the Memorandum of Understanding

This Memorandum of Understanding will be reviewed on a regular basis, to ensure that it reflects any agreed changes in ways of working or wider governance and management arrangements.

Signed on behalf of their relevant organisations:

Director, Welsh Treasury
for Welsh Government

Sarah Walker
Deputy Director, Devolution
for HM Revenue & Customs

# Appendix A: HMRC additional accounting officer responsibilities

The legal basis for Accounting Officers is found in:

- Government Resources and Accounts Act (GRAA) 2000
- Government Trading Funds Act (GFTA) 1973, (as amended in the Government Trading Act 1990 and the Finance Acts 1991 and 1993)

The administration of WRIT is a function of HMRC and so lies within the overall responsibility of HMRC's Principal Accounting Officer, its Chief Executive, Jon Thompson.

The Command Paper, "**Powers For A Purpose: Towards A Lasting Devolution Settlement For Wales**", announced that an Additional Accounting Officer (AAO) will be appointed who will be specifically accountable for the collection of WRIT, including the associated assets, liabilities and cash flows. This appointment will not detract from the Principal Accounting Officer's overall responsibility for HMRC's departmental accounts.

The AAO will have responsibility for all matters of governance, decision making

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and financial management in relation to WRIT. This includes promoting and safeguarding regularity, propriety, affordability, sustainability, risk, and value for money for WRIT; and accounting accurately, and transparently for all matters relating to it. The AAO will provide a WRIT extract from the audited HMRC accounts to the National Assembly for Wales (see para 6.2).
National Assembly for Wales Committees will be able to request HMRC Accounting Officers to give evidence. The Accounting Officers will be available to give evidence when required.

Full details of the responsibilities of Accounting Officers are shown at Chapter 3 of the **HM Treasury document, Managing Public Money**.

# Appendix B: Operation of WRIT

Annual Cycle of Activities (non WRIT specific items in this appendix reflect the general timetable for income tax).

| Timing | Activities |
|---|---|
| By 30 November before tax year | Welsh Government provides information to HMRC about the proposed Welsh rate for the coming tax year [see related comments on para 5] |
| January before tax year | HMRC issues PAYE coding notices to Welsh taxpayers based on Welsh Taxpayer (WT) indicator |
| Before tax year | WG lodges Welsh rate motion before the National Assembly for Wales in time for Welsh rate resolution to be passed by 5 April. |
| During the tax year | Employers make PAYE returns and payments in respect of Welsh taxpayers |
| | HMRC updates systems with data from employers |

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| Timing | Activities |
| --- | --- |
| | Welsh block is based on OBR forecast of Welsh income tax; WG draws down funding from Block Grant |
| | HMRC employer compliance |
| | HMRC updates WT indicator as appropriate |
| At the end of the tax year | HMRC issues Self Assessment (SA) returns |
| 31 October after tax year | Taxpayer deadline for manual SA returns |
| 31 January after tax year | Taxpayer deadline for online SA returns |
| February onwards after tax year | HMRC taxpayer compliance |
| Till 12 months after tax year | Reconciliation of WRIT element in Welsh block by reference to actual income tax liability declared |

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