

**Shan Morgan**  
Ysgrifennydd Parhaol  
Permanent Secretary



Llywodraeth Cymru  
Welsh Government

Mark Drakeford  
First Minister  
[PS.FirstMinister@gov.wales](mailto:PS.FirstMinister@gov.wales)

18 December 2019

Dear First Minister

I am writing to you to formally request a Ministerial Direction.

On 26 November 2019, officials in Health and Social Services Group provided advice to the Minister for Health and Social Services in respect of NHS Pension Tax Proposal 2019/20. The proposal sought to bring NHS Wales in line with NHS England's solution to the tax implications of the pension scheme for clinicians who incur tax charges for undertaking work in 2019/20. This recommendation was subsequently agreed by the Minister for Health and Social Services.

A subsequent review of the mechanism for introducing this solution in England, has enabled us to identify that recommendations in the earlier advice should have drawn attention to the fact that this recommendation raises an issue of regularity due to its contravention of Managing Welsh Public Money (MWPM). MWPM specifically states (para 5.6.1) that "*Public Sector organisations should not engage in or conspire at, tax evasion, tax avoidance or tax planning.*"

The same issue of regularity has already been encountered in England (Managing Public Money and Managing Welsh Public Money are aligned on this issue). Therefore, on 22 November the Secretary of State for Health and Social Care issued a Direction to the Accounting Officer for NHS England to proceed with the NHS Pension Tax Proposal 2019/20.

It is my duty as Principal Accounting Officer to ensure the regularity of expenditure within the Welsh Government but the need has arisen for a Direction because tax planning is considered an issue of irregularity. Whilst Directions are rare, this is the exceptionally unusual position that, as a UK Government Minister has issued a



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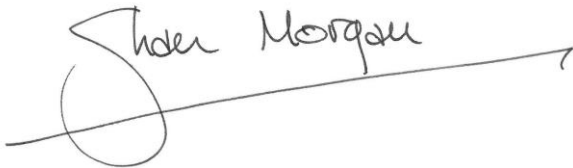
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. Dilynwch y ddolen i gael arweiniad ar sut fyddwn yn trin a defnyddio'ch data, yn unol â'r Rheoliadau Diogelu Data Cyffredinol. <https://gov.wales/about/welsh-government-privacy-notice/?skip=1&lang=cy>

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Direction on this matter in England, I have little alternative but to follow suit and seek one from you for Wales.

Annex A contains the extracts from Managing Welsh Public Money and Managing Public Money regarding tax which give rises to this regularity issue.

Yours,

A handwritten signature in black ink that reads "Shan Morgan". The signature is written in a cursive style and is positioned above a long horizontal line that extends to the right, ending in an arrowhead.

**Shan Morgan**  
Ysgrifennydd Parhaol/ Permanent Secretary  
Llywodraeth Cymru/ Welsh Government



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## Managing Welsh Public Money - Extract

### 5.6 Tax

5.6.1 Public sector organisations should not engage in, or conspire at, tax evasion, tax avoidance or tax planning. If a public sector organisation was to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the public sector as a whole would be worse off – thus conflicting with the Accounting Officer's duties (see section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HM Revenue and Customs (HMRC) about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

## Managing Public Money - Extract

### 5.6 Tax

5.6.1 Public sector organisations should not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the Exchequer as a whole would be worse off – thus conflicting with the accounting officer's duties (section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HMRC<sup>3</sup> about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

5.6.3 Proposals to create new taxes in order to assign their proceeds to new spending proposals are rarely acceptable. Decisions on tax are for Treasury ministers, who are reluctant to compromise their future fiscal freedom to make decision.



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