

**Collection and management of devolved taxes in Wales  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Introduction**

- 1.1 We welcome this opportunity to respond to the Welsh Government's White Paper on the collection and management of devolved taxes. We agree that it is important to decide the fundamental principles on how tax should be collected and managed even though decisions on the taxes devolved to Wales only so far include Stamp Duty Land Tax and Landfill Tax.
- 1.2 Although LITRG primarily focus on income tax and that is currently not being devolved to Wales, we understand that the framework for the collection and management of devolved tax may include income tax if this is devolved in the future. Therefore our comments in this response focus on developing a tax system which will be fit for use if further taxes are devolved.
- 1.3 LITRG is an initiative of the CIOT; we support the CIOT's separate submission. Our response focuses on points of concern that have direct relevance for the low-income taxpayer.

**2 Executive Summary**

- 2.1 Proposals for an overarching tax system are laudable, as are the aims of ensuring that devolved taxes are fair to businesses and individuals; are simple with clear rules which seek to minimise compliance and administrative costs and provide stability and certainty to taxpayers.
- 2.2 We call on the Welsh Revenue Authority (WRA) to draw up a Taxpayers' Charter that has a statutory basis. This should set out the rights and obligations of taxpayers and WRA.

- 2.3 Most taxpayers want to be compliant but many who are unrepresented find the tax system complicated; providing information in plain language, in a variety of formats and through different channels will help to educate taxpayers which in turn will lead to greater compliance.

### **3 About Us**

- 3.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 3.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 3.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

### **4 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?**

- 4.1 We agree with the proposal to establish WRA as a Non-Ministerial Department. It is important that the body responsible for the collection and management of Welsh Taxes is seen as separate and independent from the makers of legislation.
- 4.2 The development of a separate public body would enable this organisation to grow in the future, if further taxes are devolved to the Welsh Government.
- 4.3 We consider it appropriate that an independent body should report regularly to the Welsh Government on its performance so it is accountable to the Welsh people via the Welsh Assembly. We also think there is merit in having an independent regulatory body within the Welsh Government to scrutinise the success of the WRA in achieving its core duties and following the Taxpayers' Charter.

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

5.1 We welcome the development and publication of the proposed core set of duties of the WRA. We comment below on some of the proposed core duties; on the others we have no comment to make.

**5.2 *Collect all net tax revenue due, while exercising necessary caution in cases of exceptional hardship.***

5.2.1 LITRG have experience with taxpayers who suffer from tax debt problems; we welcome the recognition in the proposed core set of duties, that there may be occasions when collecting unpaid tax could cause significant hardship to both the taxpayer and their dependants. However, we have concerns that using the phrase 'collect all net tax' may not give sufficient discretion to collect less tax in cases of financial hardship. We would suggest that the duty should be to 'collect the highest net revenue practicable, while exercising necessary caution in cases of hardship' or 'to assess the correct amount due according to law and then collect the highest net revenue practicable, taking hardship and efficiency into account'. This would enable more discretion and flexibility when collecting tax revenue. We would expect WRA to also take fairness into account: a doctrine has developed through tax case law that there may be circumstances in which to collect the tax strictly due would constitute conspicuous unfairness amounting to an abuse of power<sup>1</sup>. For example, where the taxpayer relies on a clear, unambiguous and unqualified statement by WRA that they will accept a particular method of computation, or tacit acquiescence in a course of action effectively precludes WRA from departing from it without proper warning.

5.2.2 We would expect WRA to ensure that any third party body acting on its behalf worked to a similar and consistent standard of duty and care. Regard should also be given to efficiency, as sometimes the cost of collection will outweigh the benefit.

**5.3 *Provide information, guidance and support to assist taxpayers to be compliant.***

5.3.1 Taxpayers, especially those who are on low incomes and so cannot afford to be represented by tax agents, will need guidance especially with the introduction of devolved taxes, no matter how seamless the transition WRA strives to achieve. The information and guidance needs to be clear, accessible and well-publicised. It is important that WRA gives careful consideration as to how it will provide this information, guidance and support as taxpayers will have different needs and all must be provided for on a fair basis. We would stress the importance that information and guidance is available via various channels (such as print in

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<sup>1</sup> See, for example, *R v Inland Revenue Commissioners, ex parte Unilever plc and Anor* [1996] STC 681.

both English and Welsh), including ones accessible to the digitally excluded<sup>1</sup> and those with disabilities.

- 5.3.2 The information, guidance and support must be written with the unrepresented taxpayer in mind as its audience. The guidance must be written in plain language so it is easy to understand, however it must not simplify tax law to such an extent that it is misleading or incorrect. It must also be updated on a timely basis, so taxpayers can be confident that they are acting in good faith.
- 5.3.3 WRA should also consider providing helplines to enable taxpayers to discuss any questions regarding the new Stamp Duty Land Tax (Welsh Tax on Transactions Involving Interests in Land (WTTIL)) and Landfill Tax. We refer to further comments on telephone helplines at 13.3.
- 5.3.4 Some taxpayers may take time to become familiar with a new tax collection and management system: WRA should recognise this and consider initially delaying penalties for late filing and basic errors. This approach has been used by HMRC with the introduction of Real Time Information.
- 5.4 ***Consult/engage widely with stakeholders in advance of proposed changes to taxes.***
  - 5.4.1 For the consultation process to be most effective we recommend that sufficient notice and time to respond is given to all interested stakeholders.
- 5.5 ***Seek to avoid disputes, but where they occur to resolve them quickly through consensus or other means.***
  - 5.5.1 It is important that WRA has a robust but flexible system so that it can approach and deal with any disputes as they arise. This duty is important as there will not be an annual Finance Act for the Welsh Government to use to amend any misrepresented tax legislation.
  - 5.5.2 It is important that taxpayers are not subject to the same dispute with different tax authorities. In this situation, the two tax authorities should liaise as it would be unfair on the taxpayer (and costly for the tax authorities) if they undergo an enquiry by WRA and then a further enquiry by HMRC.
- 5.6 ***Provide information and advice to the Welsh Government and/or the Assembly on tax administration and collection matters.***
  - 5.6.1 WRA will be best placed to provide information to the Welsh Government and the Welsh Assembly on tax collection and administration. However, other stakeholders should also be invited to provide information and advice about WRA's performance from their own

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<sup>1</sup> We refer you to our report on digital exclusion, in particular pp16-24 on understanding digital exclusion [http://www.litr.org.uk/Resources/LITRG/Documents/2012/05/digital\\_exclusion\\_-\\_litr\\_report.pdf](http://www.litr.org.uk/Resources/LITRG/Documents/2012/05/digital_exclusion_-_litr_report.pdf)

experience in assisting taxpayers; for example the CIOT and the voluntary charitable sector. This may become more relevant if income tax is devolved in the future.

**5.7 *Establish and maintain high professional standards.***

- 5.7.1 These standards must be agreed and adhered to by any external body who WRA delegate its collection and management of taxes powers to.

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

- 6.1 Our preference would be for the board to be made up of both non-executive and executive directors. The board should include people who have experience of tax administration and the wider tax profession. It is important for the board and Chief Executive to take responsibility, as well as for there to be transparency. We welcome the proposal that WRA will be directly responsible to the Welsh Government.
- 6.2 WRA needs to maintain an element of flexibility regarding the number of its staff because it is unknown if any other taxes will be devolved to the Welsh Government in the future.

**7 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?**

- 7.1 We fully support the proposal to establish a Taxpayers' Charter. We consider a Charter essential to set out what the WRA expects from itself and the taxpayer. The Charter should have legislative backing and should contain both rights and responsibilities for WRA and taxpayers, giving equal recognition to taxpayers' rights and obligations and setting them out clearly and with precision. A Taxpayers' Charter can be a useful tool, especially for unrepresented taxpayers – it is not only a safeguard for the taxpayer, but it is a simple means of communicating the obligations of taxpayers and WRA.
- 7.2 We would expect a Taxpayers' Charter to be comprehensive, fair to both taxpayer and WRA and available in a variety of formats to include people with disabilities and those who are digitally excluded.
- 7.3 It is important that both WRA staff and taxpayers are aware of the Taxpayers' Charter; it should be promoted before the devolution of WTTIIL and Landfill Tax. The Charter can only be effective if people know about it and use it.
- 7.4 In order to keep a Charter relevant and effective it is imperative that if WRA decides to delegate any of its responsibilities for the collection and management of taxes to an external body then that body must also adopt and advocate the Charter and follow it.

7.5 We welcome the opportunity to be part of the consultation on the WRA's Taxpayers' Charter as LITRG's Chairman has experience of being on the HMRC's Charter Advisory Committee. We consider that we would be able to offer constructive feedback to enable WRA to produce a Charter which would support a constructive relationship between WRA and taxpayers.

7.6 For a Charter to work effectively and remain relevant it is important that it is reviewed regularly especially if more taxes are devolved to the Welsh Government. The Charter should be monitored, for example, by a Welsh equivalent of the Charter Advisory Committee. We support the proposal that legislation will require WRA to report on the effectiveness of the Taxpayers' Charter, as part its annual report.

**8 Question 5. What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why?**

8.1 We note that the Welsh Minister for Finance and Government Business states that the 'taxes we develop will: be fair to businesses and individuals who pay them; be simple, with clear rules which seek to minimise compliance and administrative costs' and 'provide stability and certainty for tax payers'. We agree with these key principles as a starting point in determining the approach to the collection and management of taxes.

8.2 The approach should be fair to taxpayers, regardless of their location in Wales. As currently only Stamp Duty Land Tax and Landfill Tax are being devolved, the taxpayer would benefit from a single consistent approach to the collection and management of taxes, rather than various different approaches which may be the case, if this responsibility is undertaken, for example, by local authorities.

8.3 Wherever possible, a simple, easy to understand approach should be used, but it is important to understand that a one-size fits all approach will not be workable. For example, the report states at 2.37 'the type of system adopted for tax payment and processing- on-line processing and payment can, after an initial investment, generally be cheaper to administer than a paper-based and/or a cash-based systems'. While we agree that there are many efficiencies in using on-line processing and payment, there must also be a system in place for taxpayers who do not have access to the internet or do not have the necessary skills or confidence to use on-line facilities for this type of transaction. This will become even more relevant if other taxes are devolved in the future. LITRG were involved in the *LH Bishop & Others v HMRC* [2013] UKFTT 522 (TC) <sup>1</sup> case which established that while HMRC have a right to mandate the format of returns, in doing so they have to have regard to individuals' human rights and similar principles.

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<sup>1</sup> The case of *LH Bishop Electrical Ltd and Others v HMRC Commissioners* [2013] UKFTT 522 (TC): <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html#7>

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

- 9.1 Any organisation providing a service to Welsh taxpayers must adhere to the duties drawn up by WRA. The WRA has ultimate responsibility for the collection and management of devolved taxes, and part of this responsibility is to ensure that third party organisations exercise compliance and operational duties effectively. We suggest that WRA should have a process of performance review and third party organisations fully comply with the requirements of the Taxpayers' Charter and WRA's duties. We would expect that upon request, a memorandum agreement of delegation between WRA and the third party organisation will be provided.
- 9.2 There should only be delegation to organisations with proper safeguards in place. There also needs to be appropriate training of staff.
- 9.3 We do not support any 'payments by results' to third parties with respect to debt collection. We understand and agree that WRA will want to collect outstanding tax which is due to the Welsh Government, however we are concerned that an external organisation which is profit-driven may have less regard to WRA's proposed core duty of 'exercising necessary caution in cases of exceptional hardship'.

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

- 10.1 The five key obligations seem appropriate to be included in the legislation. We have listed additional comments on the obligations below. We would anticipate that these obligations and the taxpayer rights (see 10.8) will be part of the Taxpayers' Charter.
- 10.2 ***i) Be required to notify WRA (or delegated body working on behalf of WRA) if they have a liability to pay a devolved tax*** – the legislation or guidelines should provide a clear deadline for the period of notification so taxpayers fully understand their obligations. There should also be an amount of flexibility exercised by WRA or the delegated body, for example, if the taxpayer has a 'reasonable excuse' as to why they have not fulfilled their reporting obligations. When considering what is 'reasonable', consideration must be given to each individual taxpayer's particular circumstances and abilities. Ultimately, WRA wants to encourage taxpayers to comply with their responsibilities and not be put off engaging with WRA if something goes wrong.
- 10.3 ***ii) self-assess their tax*** – there must be clear guidance and help provided for low-income taxpayers who cannot afford a tax adviser. Self assessment may be appropriate for WTTIIL and Landfill tax, however if income tax is devolved in the future then self assessment may not be an appropriate obligation for all taxpayers. For example, in the UK most income tax payers do not fall within the self assessment system.

- 10.4 ***iii) pay any taxes due within any specified time period*** – again, there should be agreed guidelines to assist taxpayers who may have missed payment deadlines due to exceptional circumstances, for example, a family bereavement.
- 10.5 ***iv) have tax records that contain sufficient detail to enable an accurate tax return and allow WRA to check accuracy, where appropriate*** – safeguards must also be put in place to protect taxpayers who may not have tax records not for reasons of negligence but because of exceptional circumstances such as loss of records due to a fire or flood.
- 10.6 ***v) retain tax related records in an accessible form for a specified minimum period of time*** – We would refer to point 10.5 above that there must be safeguards in place to protect taxpayers who are unable to fulfil this obligation due to unforeseen exceptional circumstances.
- 10.7 We would expect these proposed obligations to imply the taxpayer's ability to use an agent or voluntary organisation to fulfil these responsibilities on their behalf.
- 10.8 We note that only taxpayer obligations are listed, this should be balanced by a list of suggested taxpayer rights. At a minimum, we would suggest the following taxpayer rights – to be treated with respect; to be treated as honest; to be treated fairly; for WRA to act professionally and with integrity; taxpayer information to be protected; to be represented; to receive help and support to get things right; to be told in full about tax exemptions and allowances, taxpayer rights and safeguards and limitations on WRA powers granted or imposed by law.
- 11 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 safeguards might we consider beyond those already identified?**
- 11.1 We agree that it is important for WRA to have reasonable powers that they apply proportionately. We would suggest that as a minimum, there should be a limit on WRA's powers that are equivalent to those contained in Finance Act 2008, Schedule 36, Part 4.
- 11.2 It is important that there are safeguards in place to protect the taxpayer from conflicts of policy between HMRC policy and the devolved taxes. We consider that this could be an increasing area of concern in the future if income tax is devolved.
- 11.3 We agree that WRA need to have appropriate powers to collect information to determine what tax is due and then collect outstanding debts. However, as most taxpayers will try to calculate the correct amount of tax and pay it by the due date, it is appropriate that powers are not too onerous on the tax compliant majority. We welcome the recognition in the White Paper that the power to inspect does not equate to a power of search. Inspection powers should not extend to domestic premises even where it is necessary to enter them to



reach the business premises. It is important that taxpayers are made aware of these and other safeguards.

- 11.4 We welcome the proposal that in the event a taxpayer is willing to pay any outstanding tax but is unable to pay that 'WRA has the discretion to be able to respond to assist payment being made, for example, through the establishment of a repayment schedule'. In times of economic difficulty taxpayers, especially the self-employed, may struggle to pay their tax on time and for example, faced with the difficult choice of paying rent or their tax bill, will often defer paying tax. It is important that there is an opportunity for taxpayers to repay their tax debts over time and feel that they can be compliant in the tax system again.
- 11.5 We understand that WRA also need powers to ensure that all taxpayers are compliant and pay their outstanding tax debts including late payment interest and penalties. However, we note that 'The Welsh Government proposes adopting similar powers to those currently in place for HMRC'. We request that further consideration is made regarding the proposed power to enable HMRC to effectively by-pass the current legal system and take outstanding tax debts directly from taxpayers bank accounts (subject to a *de minimis* threshold). We have grave concerns about this proposal<sup>1</sup> and do not think WRA should adopt this policy, however following HMRC's response to the consultation dated 21 November 2014 we give a cautious welcome to these proposed new safeguards<sup>2</sup>
- 11.6 There must be appropriate use of powers by individuals who have received appropriate training, either as WRA staff or an external organisation. If powers are delegated, there needs to be extremely accurate information to ensure the correct people are pursued.
- 11.7 We recommend there are safeguards in place to protect the most vulnerable taxpayers. Good information and communication links between WRA and the delegated organisations are vital to safeguard these taxpayers. Examples of appropriate safeguards include discretion to amend or cancel penalties in exceptional circumstances and the flexibility to enable the voluntary and charity organisations to assist on behalf of a taxpayer without formal paperwork (the equivalent of Form 64/8) in place. There should also be good communication and publicity of safeguards to taxpayers generally.

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<sup>1</sup> The LITRG response to the Direct recovery of debts consultation is detailed at <http://www.litr.org.uk/Resources/LITRG/Documents/2014/07/140729-litr-response-direct-recovery-of-debt.pdf>

<sup>2</sup> The LITRG response to the revised proposals to the Direct recovery of debts [http://www.litr.org.uk/News/2014/PR\\_LITRG\\_offer\\_guarded\\_welcome\\_to\\_revised\\_proposals\\_drd\\_21\\_Nov](http://www.litr.org.uk/News/2014/PR_LITRG_offer_guarded_welcome_to_revised_proposals_drd_21_Nov)

**12 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 in the selection of a delegate?**

- 12.1 As it is not yet known what future taxes may be devolved it is difficult to envisage all the functions a delegated body may be expected to fulfil. We strongly agree that WRA should have ultimate responsibility over the collection and management of devolved taxes and we support the proposal that WRA will be able to revoke the delegation of any powers as this enables flexibility for WRA to develop depending on any future changes to the devolved taxes.
- 12.2 There may be some confusion amongst taxpayers about who is responsible for particular functions regarding the collection and management of tax. For example, taxpayers in Wales currently deal with HMRC, but after April 2018 these taxpayers may be dealing with HMRC, WRA and the delegated bodies. This will be a significant change; so there must be clear communication explaining to the taxpayer which body is responsible for which tax. For example, consideration should be given for genuine mistakes such as if a taxpayer mistakenly returns documentation to HMRC instead of the WRA or delegated body – will a late filing penalty be imposed?
- 12.3 WRA must ensure that delegated bodies exercise their duties effectively and there should be a process of review for WRA to confirm this. It is imperative that any delegated body fully understands the Charter and all staff are adequately and appropriately trained and understand the WRA's objectives and taxpayers' rights and obligations. We would expect the delegated bodies to be subject to the same safeguards and quality control as WRA will implement. We also reiterate our concerns mentioned at 9.3 regarding the delegation of debt collection powers to external organisations.
- 12.4 There should be a process where by taxpayers can complain directly to WRA if they are unhappy with how the delegated body has treated them.

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

- 13.1 Most taxpayers want to be compliant, but for many tax is a subject perceived as too complicated and onerous, which can discourage them from sorting out their tax affairs. WRA can assist taxpayers by offering help, especially to unrepresented low-income taxpayers who are often vulnerable perhaps because of disability, old age or struggling to understand English or Welsh.
- 13.2 We approve of your suggestion in point 4.3 that 'support will be available to taxpayers and their agents through a variety of channels, formats and in Welsh and English, so as to ensure it is accessible to all'. Communication is essential to promote and encourage tax compliance. Use of on-line guidance is helpful but it is important that it is well-structured, and that the

connected search facility works well. We would refer you to point 5.3 for further detailed comments on communication.

- 13.3 Telephone helplines can provide additional support to taxpayers who are not able or do not feel confident using online guidance. Telephones must be answered by appropriately trained staff so they can assist the taxpayer effectively. We recommend that there is a statutory requirement that telephone helpline conversations are recorded so that in the event of a dispute there is clear evidence of what was actually said. It would also be useful to clarify the status of the guidance or advice provided by staff over the telephone, for example, whether the taxpayer can rely on it when completing a return. We would recommend that telephone helplines use 0300 telephone numbers as this reduces the cost to the taxpayer, and should encourage more calls for assistance at an earlier stage. We would recommend that helplines are sufficiently staffed at traditionally peak times in the tax year so calls can be answered promptly.
- 13.4 Paper and telephone filing and payment processes may be required by some taxpayers. WRA should consider how people with disabilities will be able to comply with their tax obligations.<sup>1</sup> We suggest that various formats, such as Braille, large print, textphone and text relay should be available, and interpretation services are available for those whose first language is not English or Welsh.
- 13.5 Educating taxpayers to understand their tax obligations is key to WRA's success in the collection and management of tax, especially if there are changes from the current HMRC system. However, we consider an education strategy is more successful if it takes a balanced-approach of using 'nudges' and encourages tax compliance rather than employing scare tactics as this can put taxpayers off engaging with the tax authorities. Information of deadlines and reminders of filing and payment obligations should be given to all taxpayers, in a format that suits them.
- 13.6 We support the suggestion of early consultation by WRA as taxation must be by consent, therefore it is imperative to get 'buy-in' from stakeholders. We consider it important to include stakeholders such as the voluntary and charity organisations, as well as taxpayers and their agents, as it is these organisations who often deal with vulnerable unrepresented taxpayers who may need additional support regarding future policy and administrative changes. We recommend that WRA works with tax charities such as LITRG, TaxAid and Tax Help for Older People as many unrepresented taxpayers tend to turn to these organisations for information and advice in preference to HMRC. LITRG would be willing to engage with WRA to ensure that the unrepresented taxpayer is treated fairly and in accordance with the WRA's Taxpayers' Charter.

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<sup>1</sup> The case of *LH Bishop Electrical Ltd and Others v HMRC* is detailed at Commissioners: <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html#7>

**14 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?**

- 14.1 This response does not comment on penalties specifically to WTTIIL and Landfill Tax, however we make comments which relate to a penalty system being developed that may potentially in the future include income tax.
- 14.2 We would expect the framework and principles for penalties to be contained within primary legislation. We agree that there is a need to consider non-compliance measures for each new tax separately, as a one size fits all approach will not be applicable. It should be made clear what is expected from taxpayers and the potential penalties which may be levied if they do not apply. This information should be available in different formats and not just as a link to a website page.
- 14.3 We agree that there should be consultation on proposed penalties in due course. Any changes to the current penalty position must be notified to taxpayers when they use the new system so they are aware of the new rules.

**15 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?**

- 15.1 If there are significant changes in the charge and administration of Stamp Duty Land Tax and Landfill Tax, WRA may wish to consider a period during the changeover where penalties are not issued. For example, following the introduction of Real Time Information HMRC have taken the approach of not issuing penalties for small businesses for a specific time period.
- 15.2 The purpose of a system of penalties is to deter. Logically, how is it possible to deter ignorance, fear and the human tendency to make genuine mistakes while taking every reasonable care? The only way to tackle these is through educational initiatives. Penalties should arguably be restricted to behaviours which WRA wants to deter.
- 15.3 We consider that penalties levied should reflect the intent behind the action. We think that WRA should not penalise taxpayers who almost comply (and wish to comply) in the same manner or to the same extent as taxpayers who fail to comply by a long margin. We agree with the UK distinctions drawn between a) mistakes made despite taking care, b) careless mistakes and c) deliberate mis-statements or concealment. Penalties need to be proportionate to the failure, amount of tax at stake, and non-compliance involved. In too many cases, penalties are given for simple genuine misunderstandings which lead to an incorrect return being filed. We recommend that where there was no intention to reduce tax, WRA should have the flexibility not to penalise.
- 15.4 Care should be taken when considering the use of fixed amounts for penalties, rather than percentages of the tax due or maximum amounts that may be mitigated, as absolute

amounts can be disproportionate. When applying late payment penalties, we recommend that the financial position of the taxpayer and any potential hardship is taken into account.

- 15.5 There needs to be a fair, proportionate, even-handed, predictable and transparent use of penalties. Reasons for discretion in reducing and cancelling penalties should also be included in primary legislation. There should also be an appeal process in place or an opportunity for mediation in case taxpayers consider they have been unfairly penalised.
- 15.6 Training should be in place for staff so they are able to take into account factors such as a taxpayer's disability or mental state of health when they are considering penalties and possible mitigation.

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

- 16.1 We support the proposal for WRA to adopt a consistent approach to criminal enforcement with existing UK arrangements and that new criminal laws follow current UK legislation; whether this is carried out directly by WRA or delegated to another body which has expertise in this area.
- 16.2 We agree that appropriate safeguarding measures must be put in place at the same time as the legislation. We welcome the Welsh Government putting in place arrangements that currently exist in the UK, which includes using the Independent Police Complaints Commission in the case of appeals made by taxpayers in relation to serious complaints against WRA. These arrangements should also be in place not just for WRA but any other bodies to whom the WRA delegate responsibility of the collection and management of taxes.

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

- 17.1 We consider that one of the best ways of tackling avoidance is to remove the opportunity and motivation for it, by ensuring that the tax system is as simple and as fair as possible. We would recommend that the intention of the legislation be set out within tax law rather than the proposed Explanatory notes and WRA guidance and examples.
- 17.2 We support the comments made by CIOT in their submission.

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

- 18.1 We support the comments made by CIOT in their submission.

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

19.1 We support the comments made by the CIOT in their submission.

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

20.1 Whether a Welsh General Anti-Abuse rule or a Welsh General Anti-Avoidance Rule is used, we would recommend that dynamic guidance is provided, as guidance which is added to over time and is kept-up-date will assist taxpayers and their advisers.

20.2 We support the comments made by the CIOT in their submission.

**21 Question 18. Would you see a Welsh GAAR being a wider, 'avoidance' provision, or a narrower, 'abuse' provision?**

21.1 We support the comments made by the CIOT in their submission.

**22 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?**

22.1 We support the comments made by the CIOT in their submission.

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

23.1 We have no comments on this question.

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

24.1 There needs to be efficient, effective and clear processes. Communication channels must be accessible and provide speedy communication with a view to achieving early resolution wherever possible.

- 24.2 A simple tax system will assist this, as it will minimise scope for misunderstandings. There should be transparency about how decisions are reached and how liabilities are calculated.
- 24.3 Information must be published clearly, and should include, for example, deadlines, responsibilities of the taxpayer, how to submit returns and pay tax. WRA or any delegated body must ensure that they send information to the correct taxpayer and address. Warnings and alerts should be sent to registered taxpayers.
- 24.4 We would recommend a system of Internal Review; which is modelled on the system of internal review used for direct tax rather than the mandatory model operated by the Department for Work and Pensions. This system of internal review is optional, impartial and time-limited, which allows the taxpayer to opt for a cost-free internal review as an alternative to going to the Tribunal. It also allows the taxpayer to still go to the Tribunal if they wish to appeal against the outcome of the review. Although the internal review would not be independent from WRA it would be impartial as the review teams are removed, both geographically and in terms of line management, from the original decision maker; and the review teams must observe a time limit or ask the taxpayer for more time to reach their decision.
- 24.5 By using a system of internal review, early resolution may be possible if officials are willing to listen and try to comprehend the perspective of the taxpayer and their level of understanding of the tax system. Officials should not assume a taxpayer has the same level of knowledge as a tax official or a tax adviser. This is particularly important when dealing with unrepresented taxpayers. There is often a perception by taxpayers that internal review is not objective and fair because it is not independent, therefore it is important to make the process transparent and provide a detailed explanation of the outcome.

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

- 25.1 Early experience of the Alternative Dispute Resolution (ADR) mechanism in the UK suggests that an independent, impartial and properly trained HMRC officer can have a useful function in gaining the trust of the taxpayer who has reached deadlock with an inspector during an enquiry.<sup>1</sup>

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

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<sup>1</sup> See report on the Project Evaluation summary for the Alternative Dispute Resolution Mechanism <http://webarchive.nationalarchives.gov.uk/20130605115351/http://www.hmrc.gov.uk/news/adr-public-eval-report.pdf>

- 26.1 We consider that voluntary mediation is most likely to assist low income unrepresented taxpayers, as this mechanism of Alternative Dispute Resolution offers an opportunity to seek to resolve a dispute where there is personal deadlock between the taxpayer and an officer, or where an enquiry is dragging on without resolution and escalating costs for both the taxpayer and the tax department (HMRC or WRA). It is important that there is clarity so the process does not seem to the taxpayer to be 'all or nothing', 'black and white', or 'winner and loser'.

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

- 27.1 It would make most sense for appeals to be dealt with by the UK Chambers of the UK Tribunal (i.e. First Tier and Upper Tier). This would benefit cases as the existing expertise could be used. There is only a small pool of judges in Wales, and if the tribunals had to use only Welsh judges for devolved tax appeals, then there would be a significant loss of expertise. There could also be issues of capacity, meaning a delay in cases being heard. An option would be a core team of Welsh judges supplemented by existing tribunal judges and members.

**28 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?**

- 28.1 We have concerns that adopting a "pay-first" principle could cause severe financial hardship in some cases. We would recommend it is possible to apply for postponement if making an appeal. Interest would be due if postponement is granted but then the appeal is dismissed, this should encourage the swift resolution of disputes by WRA.
- 28.2 However, if WRA proceed with no application for postponement of payment of disputed taxes then it might be reasonable for the taxpayer to expect a stronger remedy than repayment interest from WRA.
- 28.3 We support comments made by the CIOT in their submission in relation to the DOTAS and GAAR.

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

- 29.1 We would have expected the White Paper to address how complaints would be handled. This should be included in the Taxpayers' Charter and complaints should originally go to the delegated body to investigate and then to WRA if they are not successfully dealt with. We



would expect that the handling of complaints would form part of a publically available annual summary.

- 29.2 Taxpayer information should be kept confidential and not be disclosed to other public bodies and tax authorities unless in appropriate circumstances.
- 29.3 We would expect there to be an Equalities Impact Assessment, as this would be an opportunity to consider how the tax framework can be used to eliminate discrimination and provide equality of opportunity.
- 29.4 Finally, if income tax is to be devolved in the future, then thought should be given to the interaction between this tax and means-tested benefits.

LITRG  
10 December 2014