Towards a TMA for Welsh taxes

Technical

01 February 2015

The Wales Bill received royal assent on 17 December 2014. The Wales Act 2014 includes provision for:

- the National Assembly to develop Welsh taxes to replace UK SDLT and UK landfill tax;
- the establishment of a mechanism to create new Welsh taxes on a case-by case basis; and
- the Assembly to be able to call a referendum on the introduction of a Welsh rate of income tax.

In September 2014, in anticipation of these powers, the Welsh government published a consultation, Collection and Management of Devolved Taxes in Wales. Responses will be considered in the design of the tax administration bill which the Welsh government will present to the assembly in the summer. The Welsh government will consult separately in the spring on the key options for Welsh taxes to replace SDLT and landfill tax.

The CIOT, ATT and LITRG each responded and have been involved in discussions with representatives of the Welsh government. The CIOT and ATT also conducted a joint membership survey on the consultation issues which provided an insight that was incorporated into our responses.

The CIOT response opened with appreciation of the wide-ranging consultation to date and a recognition of the opportunity that the design of new legislation provided. At the same time, it emphasised the importance of considering any changes in the context of cross-border activity and the need to synchronise with the UK regime.

LITRG's response noted that its own main focus was on income tax rather than either of the first two devolved taxes. Its comments were intended to assist the

development of a system that would be fit for use if further taxes were devolved. It called for the Welsh Revenue Authority (WRA) to draw up a taxpayer's charter with a statutory basis that set out the rights and obligations of taxpayers and the government.

It also emphasised the importance of understanding the needs of unrepresented taxpayers who want to be tax-compliant but find the tax system complicated.

While the CIOT and LITRG prepared their responses as free-form documents, the ATT used the response form which the Welsh government had issued alongside the consultation document. As an aside, we commend the thoughtful and clear design as a model that HMRC and other UK government departments might wish to adopt. In its general comments, the ATT endorsed the CIOT response and noted both the importance of designing the Welsh collection and management functions to make them appropriate and responsive to the nation's circumstances and the need to avoid the temptation to build in design differences unless they would deliver clear benefits to the people of Wales.

The consultation comprised 25 specific topics. A recurring theme in all three responses was the plea to 'keep it simple and easy'. The detailed comments by the three bodies included the following:

CIOT:

- the need for clarity on the WRA's role in the tax policymaking process;
- the importance of hardship situations being identified on objective criteria;
- the dependence of a compliance culture on good communications;
- the merit of the WRA board, including representation from the tax profession with significant experience gained in private practice, of how tax affects business;
- the importance of a taxpayer being able to fulfil their obligations through use of an agent;
- the significance of proportionality, particularly in respect of the powers to collect debt and levy penalties;
- the case for extending professional privilege to advice provided by expert tax advisers;
- the need for monitoring of any delegated functions, including debt collection;

- the benefit of engaging with agents and providing a facility for submitting queries, clearance applications or simply observations on areas of difficulty; and
- the importance of tempering any ‘pay-first’ rule to accommodate hardship.

ATT:

- the benefit of the WRA’s corporate plan incorporating both short-term and medium-term objectives and proposals;
- the possible merit of the annual report on the charter being prepared by an independent review committee with a response by the WRA (the reverse of the arrangement for the UK charter);
- the critical importance of any body with responsibility for the collection and management of Welsh taxes being able to guarantee a face-to-face meeting facility;
- the need for a process to avoid and resolve any conflict between WRA and HMRC policy in relation to common powers;
- the importance in relation to any penalty regime of encouraging compliance rather than punishing non-compliance and the particular role within this of suspended penalties;
- the need to identify how the ‘informal discussion’ route to dispute resolution referred to in the white paper might in practice be achieved;
- the possibility that the proposals concerning the shared funding of alternative dispute resolution were based on a misunderstanding of the HMRC basis in relation to disputes involving SMEs and individuals; and
- the risk of creating resentment if there was a divergence between Welsh and UK taxes in relation to whether payment of the tax had to be made before an appeal could be heard.

LITRG:

- the merit of having an independent regulatory body within the Welsh government to scrutinise the success of the WRA in achieving its core duties and following the taxpayer’s charter;
- the critical importance in relation to the collection of taxes of recognising concerns about hardship and fairness;
- the importance of easily understandable information and guidance from the WRA being available through various channels (such as print in both English

and Welsh), including versions accessible to people who are digitally excluded and those with disabilities;
- the potential benefit of dedicated 0300 helplines in relation to the devolved taxes;
- the possible need to consider initially delaying penalties for late filing and basic errors while taxpayers became familiar with the new collection and management systems;
- the need to avoid the possibility of a taxpayer having to deal with parallel enquiries on the same matter by both the WRA and HMRC;
- the importance of balancing the WRA's right to mandate the format of returns with individuals' human rights;
- the need for taxpayer obligations to make allowance for reasonable excuse, exceptional circumstances and vulnerable taxpayers;
- the importance of involving voluntary and charity organisations in consultations;
- the merit of the WRA having the flexibility not to penalise where there was no intention to reduce tax;
- the merit of including a transparent internal review procedure as part of the dispute resolution process; and
- the importance of a properly structured complaints procedure.

The CIOT response also included specific comments (supported by LITRG and ATT) in relation to the GAAR and DOTAS.

The Welsh government white paper can be found at www.tinyurl.com/nnluokp

The CIOT response can be found at www.tinyurl.com/qzykf2k

The ATT response can be found at www.tinyurl.com/omqc52b

The LITRG response can be found at www.tinyurl.com/qhse6ud