Regulatory powers to change the Welsh Tax Acts

General Features

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The Welsh Parliament's (the Senedd) Finance Committee held an inquiry into new powers under the Welsh Tax Acts (Power to Modify) Bill to change Welsh devolved taxes through secondary legislation. The CIOT and LITRG have provided joint written and oral evidence to the committee.

The Welsh Tax Acts (Power to Modify) Bill provides Welsh ministers with a power to make changes by regulations to the three Welsh Tax Acts (the Tax Collection and Management (Wales) Act 2016, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and the Landfill Disposals Tax (Wales) Act 2017) in four defined circumstances:

- ensuring that landfill disposals tax or land transaction tax is not imposed where to do so would be incompatible with any international obligations;
- protecting against tax avoidance in relation to landfill disposals tax or land transaction tax;
- responding to a change to a predecessor tax that may affect the amounts paid under the block grant funding mechanism from Westminster; and
- responding to a decision of a court or tribunal that affects the Welsh Tax Acts.

The regulation making powers are not intended to be used to achieve routine policy changes. However, the powers can be used to introduce changes under the four purposes retrospectively. Alongside the Bill, the Welsh government published a draft policy statement setting out how the retrospective power might be exercised and the safeguards put in place.

Examples of situations where the Welsh Ministers may consider making regulations with retrospective effect include:

- where a change is made by the UK government that has immediate effect;
- where avoidance needs to be halted; and
- where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted.

In responding to the committee, our starting point is that tax law should be set out in primary legislation. Secondary legislation should ideally be used only for administrative matters. This is to ensure proper scrutiny of legislation that results in the imposition of some kind of burden (compliance or financial) on taxpayers.

However, we recognise the challenges in introducing primary legislation to implement tax changes via an annual Welsh Finance Bill, as currently the volume of legislative change required is insufficient to justify an annual Finance Bill process in Wales. The case for an annual Welsh Finance Bill will strengthen if devolved taxes provide an increased share of revenues to fund wider policy areas dealt with by the Senedd.

There is a good case for a mechanism to enable amendments to be made in the manner set out in the Bill on the basis that the powers provide a reasonable balance between the competing needs of speed, scrutiny and responsiveness at this point in the development of Welsh devolved taxes. We suggested a legislative sunset clause is considered to ensure they remain appropriate.

There is a clear case for retrospection to correct an obvious anomaly that is harming taxpayers or to correct deficiencies that emerge. We observed that retrospection has also been used at Westminster to reconfirm previously established interpretations of the law that a whole marketplace or section of the population shared, but which the courts had unexpectedly found to be erroneous.

The draft policy statement states that a change taking effect from a date earlier than the date of making is intended to be used in exceptional circumstances only. We agree that retrospective legislation that imposes or increases a tax charge on income earned, gains realised or transactions concluded at a time before the legislation was announced should be used with extreme care and justified in detail. A key point from our perspective is that the Welsh government recognises and gives due weight to taxpayers' legitimate expectations in this context.

The joint CIOT and LITRG evidence is at: www.tax.org.uk/ref905.