Senedd Committee's cautious backing for power to change Welsh devolved taxes

General Features

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The cross party Senedd Finance Committee has given a cautious backing to the Welsh Tax Acts (Power to Modify) Bill, which will give a new power to quickly change Welsh devolved taxes. The changes will be made through secondary legislation.

The Welsh Tax Acts (Power to Modify) Bill is intended to allow changes to be made quickly to the Welsh devolved taxes. The changes would be made through secondary, as opposed to primary, legislation.

A reason is that Wales does not yet have a procedure equivalent to the UK Finance Bill for making changes to the Welsh Tax Acts. The Senedd Finance Committee recommends that the Senedd agrees the Bill, subject to the recommendations it makes in a report – some of which reflect warnings that the CIOT gave in a witness session and in written evidence (see www.tax.org.uk/ref905). The report was detailed, but it reached clear conclusions on retrospection and consultation. (Our blog summary is available at tinyurl.com/3cd7du64).

The CIOT voiced concerns about giving Welsh ministers the power to apply tax law retrospectively and the potential for resulting uncertainty. We recognised the need for retrospection to correct an obvious anomaly that is harming taxpayers or to correct deficiencies that emerge.

However, we also noted that the retrospective effect in the Bill is not limited in its effect to the date of a prior announcement, suggesting that when considering legislating with retrospective effect it is necessary to give 'due weight to taxpayers' legitimate expectations' and that the retrospective power should be 'used with extreme care and justified in detail'. The committee agrees with CIOT that 'great

care and a compelling case' is required to legislate retrospectively, and that it is 'crucial' to send a clear warning to taxpayers and tax practitioners that the Welsh government will legislate retrospectively.

The report notes the CIOT's suggestion to publish the nature of any informal consultation after the regulations come into force, for transparency. To aid transparency and comprehensibility of the law, particularly where regulations made under the power in the Bill are very complex or are due to come into force at short notice, the CIOT emphasised that it should be the norm to publish (ideally simultaneously) a consolidated version of the law as amended.

The committee regrets the lack of specific examples provided by the Welsh government relating to how the regulation-making power delegated by this Bill would be used to amend the Welsh Tax Acts in practice.

This led the committee to recommend that, prior to the debate on the general principles of the Bill, the Welsh government provide examples of the specific circumstances in which it envisages the regulation-making power being used to amend each part of the Tax Collection and Management (Wales) Act 2016 (other than Part 2), the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 and the Landfill Disposals Tax (Wales) Act 2017.

The Welsh government's pre-legislative consultation proposed the inclusion of a Senedd 'lock' to restrict Welsh ministers from exercising one of the proposed powers consulted on unless the Senedd agreed to unlock its use.

However, the CIOT's view, that the reintroduction of a lock to restrict the use of the power in the Bill would defeat the object of enabling the Welsh government to react quickly, was mentioned in the report. This led the committee to recommend that the Bill should include a minimum time period for scrutiny by the Senedd of regulations made.

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