



# TAXREP 62/14 (ICAEW REPRESENTATION 164/14)

## Collection and management of devolved taxes in Wales

ICAEW welcomes the opportunity to comment on the consultation paper [\*Collection and management of devolved taxes In Wales\*](#) published by the Welsh Government on 23 September 2014.

This response of 12 December 2014 has been prepared on behalf of ICAEW jointly by the Tax Faculty and the ICAEW's Director for Wales, supported by input from a working party of members based in Wales.

The Tax Faculty is a leading authority on taxation and internationally recognised as a source of expertise. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## MAJOR POINTS

### Introduction

1. We welcome the opportunity to comment on the proposals in the Welsh Government's consultation document of 23 September 2014.
2. In principle we support the overall approach adopted by the Welsh Government in the paper.
3. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

### General comments

#### Appropriate powers for Wales

4. The devolution of tax raising powers to Wales follows on from the earlier Holtham and later Silk Commission reports. It is important that these powers work well for Wales but in the context of a UK environment.
5. ICAEW welcomes the opportunity to support the Welsh Government in establishing an appropriate tax system for Wales and a professional and effective Welsh Revenue Authority (WRA).
6. The initial taxes to be devolved are stamp duty land tax (SDLT) and landfill tax. As a general principle, we believe that Welsh taxes should where possible be broadly consistent with the rest of the UK rules unless there are specific circumstances that require a different approach. Where a different approach is adopted, consideration needs to be given not just to the behavioural effect of any change but also how it might impact throughout the wider UK.
7. The Autumn Statement on 3 December 2014 has illustrated the difficulty in planning for devolved taxes when they are potentially subject to wide ranging changes at Westminster. While we had advocated the UK Government to change the SDLT slab system, the fact that the Chancellor has now done so is likely to force the Welsh Government to adopt a similar approach to its proposed tax on transactions involving land.
8. However, the changes in the Autumn Statement are only in relation to residential property: commercial property will remain on a slab system and we understand that there is no immediate intention to change it. In principle, therefore, the Chancellor's decision on residential property has resulted in adding further complexity and inconsistency to SDLT, and the Welsh Government might now wish to consider whether it should continue with a slab system for commercial property or adopt a progressive system for all property transactions in Wales.

#### Who should operate the devolved taxes?

9. A key question to be addressed at an early stage is who should actually operate taxes in Wales?
10. Currently the national tax authority, HM Revenue & Customs (HMRC), operates and administers the taxes that are to be devolved. The devolved tax transactions are usually administered and managed by solicitors (representing property purchasers) and landfill operators. In addition, there is a well-established business rates tax collection function spread amongst the local authorities. There is therefore potential to utilise the combined skills of all of these to build a viable administration system for both a property based transaction tax and a landfill tax.
11. As to which approach the Welsh Government wishes to adopt, much will depend upon how radical the Welsh Government wishes to be on tax. As a general principle, the more that any Welsh tax system diverges from the equivalent UK system, the more likely this would be operationally difficult for HMRC to administer and the more likely it would be that the Welsh

Government might wish to entrust its operation to another party that could provide a better service to the people of Wales.

12. It will be essential to balance the relative cost of collection with the actual tax take. It will need to be as cost effective as practical and we think this will be difficult to achieve particularly given that tax revenues are likely (as they now appear to be with both SDLT and landfill tax) to go down.
13. Systems need to be designed to be as flexible as possible with the capability to be scaled up as needed and integrated with any future devolved taxes. The Welsh Government might also wish to adopt a short term and a longer term approach, for example it might initially contract with HMRC to provide the necessary tax administration but at a later date the operation might be taken over by the WRA.
14. In our response to the detailed questions, we have supported the establishment of a number of independent bodies, for example a Charter Committee. However, we recognise that the establishment of these bodies needs to be considered in the light of available resources and the need for Welsh tax collection to be cost efficient. It may therefore be necessary to combine some of their roles and activities.

#### **The principles of good taxation**

15. We support the principles of tax policy set out by the Minister for Finance and Government Business, Jane Hutt AM, in her foreword to the consultation document. These principles are consistent with the ICAEW's ten principles that should underlie a good tax system. These are set out in the attached Appendix.
16. ICAEW's tax principles were also extensively referenced by the Treasury Committee in its report *Principles of Tax Policy* published on 15 March 2011 (HC 753, published on 15 March 2011). The Committee identified six principles of tax policy, that it should:
  - **be fair.**
  - **support growth and encourage competition.**
  - **provide certainty.** It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs
    - **legal clarity:** Tax legislation should be in statute and subject to proper democratic scrutiny by Parliament
    - **Simplicity:** The tax rules should be simple, understandable and clear in their objectives
    - **Targeting:** It should be clear to taxpayers whether or not they are liable
  - **provide stability** - changes to the underlying rules should be kept to a minimum and policy shocks should both be avoided.
  - tax policy should be **practicable** and a person's tax liability should be easy to calculate and straightforward and cheap to collect.
  - The tax system as a whole must be **coherent**.
17. We believe these are a sound and principled basis upon which to design tax policy.
18. The UK tax system is far too complicated and this increases costs for taxpayers and the revenue authority. Given that resources will inevitably be limited there is a good case for Wales to keep its taxes simple and resist the temptation to make them unnecessarily complicated.

#### **The need for balanced and proportionate powers**

19. ICAEW supports reasonable and proportionate powers to ensure that taxes are collected efficiently and effectively. Any powers granted to Wales powers need to be balanced against the rights of taxpayers. There is now considerable concern that across the UK the balance may have shifted too far in favour of the revenue authority. This is, therefore, an opportunity for

the Welsh Government to ensure its powers are appropriate and proportionate. There is a case for only taking those powers that are currently needed to ensure the introduction of the two devolved taxes. Further powers could be added later as further taxes are devolved or further powers are found to be needed.

### **Taxpayers' Charter**

20. In principle we support the Welsh Government's proposal to have a Taxpayers' Charter that's sets out the rights and responsibilities of both taxpayers and the WRA. However, we are not convinced that the current HMRC *Your charter* is necessarily the right model, not least because it does not really hold HMRC sufficiently to account.
21. We believe that a Charter should do more than merely reflect aspirations about how HMRC should behave and what service standards taxpayers might expect. We believe that good tax compliance is encouraged by an efficient and effective tax administration service and the Charter should reflect this commitment. It needs to have some practical value and reasonable set of service standards and behaviours that taxpayers can use and rely on in their dealings with the WRA.
22. We therefore suggest that, in addition to HMRC's model, the Welsh Government should examine the approaches and charters used in other jurisdictions. We have close contacts with professional bodies in other countries that have Charters and we would be happy to assist the Welsh Government explore further the approaches adopted elsewhere.
23. We have set out some more detailed comments on a Charter in our answers to Q4, see paragraphs 34 to 39 below.

### **Service standards**

24. In order for the WRA to succeed, it needs to oversee the introduction of effective and efficient devolved taxes. One of the major problems our members have experienced since the merger of the Inland Revenue and HM Customs & Excise has been poor service standards. Since the merger HMRC's budgets have been cut and staff numbers reduced. HMRC has changed its business model from one based on a local presence to a remote organisation that relies upon call centres and post to interact with taxpayers.
25. While the development of digital services may solve some of these problems in the future, our members experience considerable frustration: it is often difficult to contact HMRC, too many processing mistakes are made and it is then difficult to get them put right.
26. It is essential that WRA puts customer service and efficient delivery at the heart of its process designs and implementation. The Welsh Government might wish to consider, for example, whether it would be appropriate to be seen to have a more local presence that taxpayers could access when they had problems.
27. We believe it is important that whatever approach is adopted and whoever provides the actual management and operation of the taxes (whether by WRA or a subcontractor), there should be a clear level of agreed service standards. If any operations are subcontracted such standards should be built in to any agreement.

## **RESPONSES TO CONSULTATION QUESTIONS**

28. We set out below our detailed responses to the questions set out in the consultation document.

### **Chapter 2: Establishing a tax administration function, the Welsh Revenue Authority/Awdurdod Cyllid Cymru**

- Q1 **Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?**

- 29.** Ultimately the Welsh Government needs to decide what approach would work best for Wales, but we believe it is vital that the WRA is properly accountable and responsible to Government Ministers and the Assembly. The decision to make the WRA a non-ministerial department appears to be based on the fact that HMRC is a non-Ministerial department. But is that the best approach and will it provide the level of accountability and responsibility needed?
- 30.** We wonder whether Wales might be better served by making the WRA a ministerial department, thereby directly accountable and responsible to a Minister who in turn is directly accountable and responsible to the Assembly. Appropriate safeguards would be needed to ensure taxpayer confidentiality and for the Minister not to be able to access or influence individual taxpayers' affairs.
- 31.** If the WRA is made a non-Ministerial department then we think its accountability and responsibility to the Assembly needs to be set out clearly. Further, the Assembly needs to ensure that it can hold the WRA properly to account.
- Q2**     **What are your views on the proposed core set of duties for the Welsh Revenue Authority?**
- 32.** The set of core duties set out in paragraph 2.13 look reasonable. It will be important to ensure that its duties are clearly specified and that board members are assigned direct responsibilities that ensure that all aspects of the duties of the WRA are covered.
- Q3**     **Do you have any further views regarding the proposed leadership and governance arrangements for establishing the Welsh Revenue Authority?**
- 33.** The Board should have sufficient skills to achieve appropriate scrutiny including tax policymaking and the efficient operation of a tax system.
- 34.** There should also be appropriate scrutiny by a number of non-executive directors.
- 35.** We believe that WRA should also adopt the approach of HMRC and ensure that it has a board member responsible for tax assurance.
- Q4**     **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?**
- 36.** In principle we support the introduction of a Taxpayers' Charter that sets out the rights and responsibilities of both taxpayers and the WRA.
- 37.** The Welsh Government should examine the approaches adopted in other jurisdictions and not just by the *Your Charter* published by HMRC. In this regard, we understand that in 2015 the Scottish Government will be consulting on a proposed Charter, so the results from this consultation should be taken into account in framing a Charter for Wales.
- 38.** HMRC is bound not only by *Your Charter* but also the Civil Service code of conduct (which contains principles similar to the five fundamental principles which bind our members and, via the pan-professional guidance *Professional Conduct in Relation to Taxation*, members of other participating professional bodies involved in tax), and HMRC's document *Purpose, Vision and Way*. These should also be taken into account when drafting a Charter.
- 39.** We believe a Charter needs to be more than just a statement of aspirations. The Welsh Government would need to ensure that it is a practical document and can directly support taxpayers in their dealings with the WRA.

40. In order to promote the confidence of Welsh taxpayers in the WRA, the adoption of a Charter should be reinforced with a publicity campaign that also sets out how taxpayers can obtain redress when things go wrong.

41. The Charter needs to be kept under regular review by an independent body and the body should report on compliance with the code at least annually. Currently, there is a review underway of HMRC's *Your Charter* by the advisory committee, which is chaired by ICAEW staff member Ian Young. We recommend that the Welsh Government take account of its recommendations when drawing up its approach to a Charter.

**Q5** What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important)

42. Tax policies need to be designed so that taxes can be effectively and efficiently managed by the WRA.

43. As for the specific points identified in para 2.37:

i) a single organisation rather than a number of organisations engaged in collection;

44. In principle this looks reasonable although consideration needs to be given to how much face to face contact might be needed, for example to vulnerable taxpayers.

ii) a consistent national approach to devolved tax collection and management rather than a variable local approach;

45. We support a consistent national approach across Wales.

iii) a simple standard approach to taxes rather than one with variables (tax reliefs) determined by different circumstances

46. In principle tax systems should be designed to be broadly based with low (and perhaps progressive) rates and a minimum of reliefs. A simple system should help to allow citizens to understand the taxes they pay and ensure the scope for different interpretations is limited, thereby reducing the potential for avoidance or abuse. If a tax is to be progressive then the increased rates should apply in a transparent way to any amount above the particular threshold, (i.e. not the type of 'slab system' that we saw in stamp duty land tax until the 3 December 2014 announcements).

iv) adopting the existing UK tax structure rather than developing a Welsh response to priorities;

47. It is important for the integrity of the UK and public support for the tax system that distortions between the various tax systems are kept to a minimum, not least because distortions may lead to unexpected behavioural consequences that may be damaging to Wales and the rest of the UK. That said, there is a need to do the right thing for Wales and we question whether it is right that Wales should adopt a tax code that is considered to be one of the longest and most complicated in the world.

v) 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 system.

**48.** In principle we agree but experience of digital services in the UK suggests that the WRA should be careful in assuming that a digital future is a panacea. It will be essential to ensure that digital services are developed in consultation with users. The systems should be designed to be so easy to use that they become the natural choice for both taxpayers and their agents.

**Q6** In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

**49.** As noted in our general comments, the answer to this question will depend upon how far the Welsh tax system will deviate from the UK tax system.

**50.** The further any system departs from the UK system, the greater will be the incentive to use an organisation other than HMRC to administer and operate any tax.

**51.** We would suggest that the Government invites tenders for running any tax system, which should provide a benchmark for the likely operational costs. It is also important that service standards are an integral part of any selection process. The Welsh Government might decide to adopt a different approach to the operation of landfill tax to that adopted for the property transaction tax. The Government might also wish to look to a different approach over the longer term, for example contracting initially with HMRC but deciding to adopt a different provider at some stage in the future.

### **Chapter 3: Powers and duties**

**Q7** Are the proposed obligations on taxpayers appropriate? If not, what changes need to be taken into account?

**52.** The obligations set out in para 3.7 appear reasonable.

**Q8** 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 additional safeguards might we consider beyond those already identified?

**53.** Broadly the proposed approach appears reasonable. However, the Welsh Government will need to consider whether it wishes to continue with the current approach to legal professional privilege (LPP). LPP is the common law principle that documents created between a legally qualified adviser such as a solicitor and his or her client do not need to be disclosed to a third party such as HMRC unless specifically overridden by law or the taxpayer has given his permission.

**54.** In respect of 3.17 ii), we assume that the WRA would look to apply any measures for the direct recovery of debts in a way that is consistent with the revised approach outlined by the UK Government following the completion of the recent consultation exercise.

**Q9** 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 delegatee?

**55.** WRA will need to have the power to delegate functions, not least given as it is likely to need to enter into a contract with HMRC to provide tax administration services even if only on an interim basis. Delegation needs to be used with considerable care. As the ultimate responsibility will rest with the WRA, it is essential that any delegatee operates within the legal powers the WRA, in particular confidentiality and the potentially criminal sanctions against HMRC staff for the unauthorised disclosure of data. HMRC is used to operating under such rules but other providers are unlikely to be under such obligations.

**56.** In addition, the WRA will need to establish its reputation as an effective and efficient organisation. If the WRA decides to delegate the tax administration powers, it will need to ensure that it has in place an appropriate service level agreement. The Assembly needs to have procedures in place so that it holds the WRA to account.

#### **Chapter 4: Encouraging tax compliance**

**Q10** What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

**57.** We support the approach set out in paragraphs 4.2 to 4.7.

**58.** WRA should promote and encourage tax compliance by setting an example as an efficient and effective organisation that operates fairly and proportionately. It will need to balance the need to help and support taxpayers against the need to ensure that taxes are paid in a timely manner and tax avoidance and evasion are minimised.

**Q11** Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties (see paragraph 4.14) and for the conditions for when and how these are used being set out in later consultation and legislation?

**59.** WRA should be provided with the power to levy penalties and we support the proposal for there to be further consultation on them in due course.

**60.** The imposition of penalties is a sensitive and potentially controversial area. WRA needs to adopt a balanced approach that is reasonable and proportionate. As mentioned earlier, in respect of the current UK position we are concerned that the balance is being shifted too far in favour of HMRC.

**61.** WRA also needs to recognise that most taxpayers will be trying to get it right but sometimes they will make mistakes. As a general approach, we would favour WRA looking to support taxpayers and help them get it right rather than adopt a penalty based culture. We are concerned that the current approach might sometimes appear to taxpayers as 'shoot first and ask questions later'.

**Q12** 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?

**62.** Penalties are needed to deter non-compliance but there is a danger that they may discourage those who want to put their affairs in order from coming forward. Recent experience from the application of automatic penalties (for example late PAYE returns) suggests that they can mount up quickly and damage trust in the system. There is also a danger that a draconian penalty regime is used inappropriately, for example against vulnerable taxpayers who actually need help.

**63.** Again, a balance needs to be struck but the majority of taxpayers will wish to be compliant and the system should aim to support compliance among the majority. WRA should consider the use of incentives and support for that majority of taxpayers, with penalties usually reserved for the minority that, for whatever reason, have a poor compliance record.

**64.** A good penalty system should take account of a taxpayer's previous compliance records and recognise that most taxpayers will try and get it right but they will not do so all the time. Consideration could be given to mitigating penalties for taxpayers who are usually compliant but who might occasionally miss filing and payment deadlines. For example, taxpayers with a good compliance record might first receive a written warning about missing a deadline rather than an automatic penalty notice. Another approach would be to have a reduced penalty for a

first time breach. This might help to build support and confidence among the majority of compliant taxpayers that WRA is on their side but that it will come down harder on those who do not try and comply.

**Q13 What views do you have on the proposed approach to criminal enforcement and to public safeguards?**

**65.** The proposed approach set out in the document appears reasonable. Given that criminal enforcement is through the criminal justice system and, as far as we are aware, this is not to be devolved we think it is right that there should be a consistent approach throughout the UK. Tax fraud is wrong and there should be a clear and consistent approach adopted throughout the UK that it will not be tolerated. Taxpayers should not be able to exploit any differences in approach to tax fraud in different parts of the UK.

**Chapter 5: Addressing tax avoidance**

**Q14 Should Wales establish a specific tax disclosure regime for devolved taxes?**

**66.** In principle we think it should. Our understanding is that the DOTAS rules have been reasonably successful in bringing schemes to the attention of HMRC and we think it is reasonable that WRA should have a DOTAS rule in its anti-avoidance toolkit. We note in passing that Ireland, which has had a GAAR since the late 1980s but not a DOTAS rule, has in recent years also decided to introduce a DOTAS rule.

**67.** That said, our understanding is that in recent years the number of SDLT avoidance schemes that have been disclosed, and SDLT avoidance generally, have been much reduced. This reduction has come about partly as a result of the DOTAS rules and specific anti avoidance legislation introduced as a result, but partly no doubt due to other factors such as HMRC and the courts adopting a more pugnacious approach to countering avoidance. We therefore question whether in practice such a rule would make much difference.

**Q15 What are your views on the key issues in establishing a tax disclosure regime? What are the benefits and risks and how might these be prioritised?**

**68.** The key issues include:

- the need to build on existing practice and measures that have proved to work;
- the need to ensure that any measure is properly targeted at identifying tax avoidance arrangements;
- the need to have a clear action plan for addressing all arrangements that are disclosed;
- the need for action to be taken in a timely manner;
- the need to ensure that such activity is properly resourced in accordance with the perceived risk levels;
- ensuring that compliance burdens and costs on ordinary taxpayers are minimised;
- the need to ensure that ordinary planning arrangements are not affected;
- the extent to which LPP may be claimed (see our answer to Q8); and
- how any arrangements apply to those who are outside of the jurisdiction.

**69.** The benefits of having a disclosure scheme are to provide early intelligence about such schemes. But the onus will then be on WRA to do something about the information it has received through the disclosure. The risk is that such information obtained is not used quickly and effectively in any follow up action.

**Q16** Are there any options, other than a tax disclosure regime, that might be considered to help alert the Welsh Revenue Authority of possible tax avoidance schemes?

**70.** The DOTAS system has now been in place for ten years and, while it has changed in that time, the underlying principles are now established and it must make sense to build on that.

**71.** The Finance Act 2014 contains rules to try and counter the activities of ‘high risk promoters’ of tax avoidance schemes – these might be a further useful tool against those who continue to promote aggressive tax avoidance schemes.

**Q17** Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

**72.** Given that SDLT has been the focus for avoidance in the past, we can understand the desire to adopt some sort of GAAR provision. However, we understand that recent SDLT avoidance measures, for example in relation to sub-sale relief, appear to have succeeded in blocking most SDLT avoidance. Therefore, at this stage in the devolution process, not adopting a GAAR might be a low risk decision. If it was decided not to adopt a GAAR (of whatever form), the position should be kept under regular review and certainly reconsidered if further taxes were devolved.

**Q18** Would you see a Welsh GAAR being a wider, ‘avoidance’ provision, or a narrower, ‘abuse’ provision?

**73.** This is a difficult question to answer given the UK has adopted an ‘abuse’ provision and Scotland has adopted a wider ‘avoidance’ provision and neither of them has yet been used in practice to counter tax avoidance schemes. We supported the introduction of the UK GAAR but have not commented specifically on the advantages and disadvantages of the proposed Scottish GAAR.

**74.** The UK Government has introduced a range of measures to combat tax avoidance and continues to do so, for example with the new diverted profits tax, There is some evidence that these measures are stemming the tide of aggressive tax avoidance schemes but the Government must remain vigilant.

**75.** Tax avoidance is now a high risk area for both taxpayers and their advisers. The rules in this area are highly complicated and specialist advice will usually be needed as there are now a considerable number of pitfalls. This is because, in addition to any GAAR and disclosure rules:

- the UK has numerous specific anti avoidance measures built into existing legislation (some of these also have a clearance mechanisms for bona fide transactions);
- there is a growing number of targeted anti avoidance rules;
- HMRC is investing resources into identifying and pursuing tax avoidance through litigation
- as a general rule the courts have little sympathy for tax avoidance schemes and HMRC currently wins about 85% of decided cases;
- schemes with a high degree of artificiality are often struck down in the courts because they fail on basic tax principles (for example, was there actually a trade or was the expenditure actually incurred?);
- even where the basic principles are met, there is a considerable body of jurisprudence on the principles set out in *Ramsay* and *Furness v Dawson* and amplified in later court decisions which mean that schemes that have artificial elements or lack economic substance will usually (but not necessarily always) fail;
- the introduction of the Finance Act 2014 measures on accelerated payments, follower notices and high risk promoters have fundamentally changed the risks and rewards of entering into tax avoidance schemes.

**76.** Given all of these other factors, tax avoidance has become extremely high risk and we question whether in most cases the differences in approach between the UK and Scotland will lead to different results.

**77.** On balance we believe it would be better to have one consistent UK wide approach rather than a patch work of different rules, so suggest that Wales should adopt the wider abuse rule and keep it under review. If it proves to be a problem it could always adopt a narrower avoidance rule at a later date.

**Q19** 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?

**78.** In all our member feedback, the one thing businesses want above all is certainty. Given this overriding need, we supported the recommendation of Graham Aaronson (in his report on whether a GAAR should be introduced) that there should be an independent panel. The UK GAAR interim panel performed an important service to taxpayers by publishing comprehensive guidance on how the GAAR would work. The guidance included numerous examples of what the GAAR would and would not catch and its inclusion was well received by business and their advisers. However, other than this no cases have been brought before the independent panel.

**79.** The panel provides a level of independent oversight but, arguably, this is also the function of the independent Tribunal. One disadvantage is that the panel could be seen as merely adding another layer of costs and potentially further delays to the resolution of cases that are likely to end up in the Tribunal in any event. It is possible that over time this aspect of the panel's work could be subsumed more broadly within the appeals system, but we believe that the panel should be retained to oversee the operation of the GAAR and to publish updated guidance.

**80.** If the WRA adopted this approach and did not wish to establish its own panel, we believe it would be reasonable to ask that a suitably qualified person with experience of the devolved taxes in Wales be appointed to the panel or was co-opted to it for cases involving Welsh taxes.

**Q20** Given its clear links to a Tax on Transactions involving interests in Land, should the issue of a GAAR be considered further in relation to the consultation and legislation on this tax?

**81.** Given the reduction in SDLT avoidance cases we are not convinced that a GAAR will now add much more clarity and it may merely increase uncertainty and compliance costs. That said, we would expect the matter to be considered as part of any future consultation on this tax.

### **Resolving tax disputes**

**Q21** Do you agree with our approach to avoiding tax disputes and achieving early resolution?

**82.** Yes. The key principles should be to settle disputes fairly, quickly and efficiently at the minimum possible cost to the parties.

**Q22** Do you think Alternative Dispute Resolution mechanism(s) should be offered to help seek the early resolution of tax disputes?

**83.** In principle yes, but as it may not always be an appropriate approach we think it should be by agreement.

**Q23 Which Alternative Dispute Resolution mechanism(s) are most likely to assist in resolving disputes and why?**

**84.** Of the three methods listed in paragraph 6.7, a formal arbitration process might not sit comfortably with an extensive pre-existing tax code. The mediation process would therefore appear to be a better approach. The early neutral evaluation method might also have a valuable role to play. Given the comments we made above about the GAAR, if there is to be a GAAR panel this method might be a suitable approach for the panel to adopt.

**Q24 Do you agree with our proposed approach to use the existing Ministry of Justice administered two-tier tax tribunal system, at least as an interim arrangement?**

**85.** It must make sense to use the existing tribunal system, although we are concerned about lengthy delays now occurring before cases reach a tribunal hearing. We also remain unconvinced that the current system is an improvement over the previous appeal system that used lay General Commissioners to handle lower level cases with the more difficult cases reserved for legally trained Special Commissioners.

**86.** Consideration should be given to ensuring that tribunals are accessible to taxpayers and as far as possible proceedings are kept informal. Taxpayers should have a right to be represented by a person of their choice.

**Q25 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?**

**87.** While a pay first principle is always likely to be attractive from a revenue authority perspective, again we believe there needs to be a balance. It also needs to be remembered that taxes are levied and, unless and until the tax is due, the money should belong to the taxpayer. We accept that there may be cases where this presumption may be rebutted, for example in tax avoidance schemes or where the taxpayer pursues a case that has little technical merit, but the answer is for WRA to take a case to the tribunal quickly and potentially have costs awarded against the taxpayer if the judge held the taxpayer’s case was unreasonable.

**88.** In cases where there is a genuine dispute, we think it is wrong to force the taxpayer to have to pay the full amount. This could be used to apply undue pressure on the taxpayer and also provided little incentive for the revenue authority to then pursue the case through the tribunal. An alternative, more reasonable proposal might be to require a part payment to secure an appeal. The amount must not be prohibitive to the taxpayer, say a percentage of the tax with a modest upper maximum. A further refinement would be to pay the money into an escrow account.

**Q26 Do you have any related issues which we have not specifically addressed or other comments that you would like to make?**

**89.** Not at this stage, but as noted above we would be delighted to help the Welsh Government develop its proposals. We would be happy to meet and discuss our submission and suggestions in more detail, should the Welsh Government wish to do so.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )