



# Wales Act 2014

## 2014 CHAPTER 29

### PART 2

#### FINANCE

#### *Introductory*

#### **6 Taxation: introductory**

- (1) GOWA 2006 is amended as follows.
- (2) After Part 4 insert—

#### “PART 4A

#### TAXATION

#### CHAPTER 1

#### INTRODUCTORY

#### **116A Overview of Part 4A**

- (1) In this Part Chapters 3 and 4 specify particular taxes as devolved taxes about which the Assembly may make provision in the exercise of the power conferred by section 107(1).
- (2) The power to make provision about a devolved tax is subject to the restrictions imposed by—
  - (a) subsection (3), and
  - (b) the other provisions of this Part.

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(3) A devolved tax may not be imposed where to do so would be incompatible with any international obligations.

(4) In this Act “devolved tax” means a tax specified in this Part as a devolved tax.

### **116B Status of officials of body that collects and manages devolved taxes**

(1) This section applies where an Act of the Assembly establishes a body that is to be responsible for the collection and management of devolved taxes (whether or not the body is also to be responsible for local government finance or any other matter).

(2) In this section “relevant official” means an officer or member of staff of the body mentioned in subsection (1) who has no functions other than functions relating to—

- (a) the collection or management of devolved taxes, or
- (b) local government finance.

(3) If an Act of the Assembly provides that service as a relevant official is service in the civil service of the State, that provision is treated as falling within section 108(4) or (5) (legislative competence).

(4) In subsections (5) to (7), “relevant civil servant” means a relevant official whose service is service in the civil service of the State by virtue of provision of the kind mentioned in subsection (3).

(5) The Welsh Ministers must pay the salaries and expenses of relevant civil servants.

(6) The Welsh Ministers must make payments to the Minister for the Civil Service, at such times as the Minister for the Civil Service may determine, of such amounts as may be so determined in respect of—

- (a) the provision of pensions, allowances or gratuities by virtue of section 1 of the Superannuation Act 1972 or section 1 of the Public Service Pensions Act 2013 to or in respect of persons who are or have been relevant civil servants, and
- (b) the expenses incurred in administering those pensions, allowances and gratuities.

(7) The Welsh Ministers may make payments towards the provision of pensions, allowances or gratuities to or in respect of any person who is or has been a relevant civil servant.

### **116C Power to add new devolved taxes**

(1) Her Majesty may by Order in Council amend this Part so as to—

- (a) specify, as an additional devolved tax, a tax of any description, or
- (b) make any other modifications of the provisions relating to devolved taxes which She considers appropriate.

(2) An Order in Council under this section may make such modifications of—

- (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or

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- (b) any other instrument or document,  
as Her Majesty considers appropriate in connection with the provision made by the Order.
- (3) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (4) The amendment of this Part by an Order in Council under this section does not affect—
  - (a) the validity of an Act of the Assembly passed before the amendment comes into force, or
  - (b) the previous or continuing operation of such an Act of the Assembly.”
- (3) In section 108 (legislative competence of the Assembly)—
  - (a) in subsection (4)(a), after “Schedule 7 and” insert “ , subject to subsection (4A), ”;
  - (b) after subsection (4) insert—

“(4A) Provision relating to a devolved tax (as listed under the heading “Taxation” in Part 1 of Schedule 7) is not outside the Assembly’s legislative competence by reason only of the fact that it falls within an exception specified under another heading in that Part of that Schedule.”
- (4) In section 111 (proceedings on Bills), in subsection (8), for “and 116(3)” substitute “ , 116(3) and 116C (4) ”.
- (5) In section 158(2) (references to enactments), after “109(2)” insert “ , 116C (2) ”.
- (6) In section 159 (index of defined expressions), at the appropriate place insert—

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|               |                  |
|---------------|------------------|
| “devolved tax | section 116A(4)” |
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- (7) Part 1 of Schedule 7 (legislative competence to make Acts of the Assembly) is amended as follows.
- (8) In paragraph 4 (economic development), in the first exception, after “Fiscal, economic and monetary policy” insert “ (except so far as relating to devolved taxes) ”.
- (9) After paragraph 16 insert—

**16A “Taxation**

Devolved taxes (as defined in section 116A(4)).”

**7 Amendments relating to the Commissioners for Revenue and Customs**

- (1) In section 1(1) of the Customs and Excise Management Act 1979 (interpretation), in the definition of “assigned matter”, after “the Scotland Act 1998” insert “ or the Government of Wales Act 2006 ”.
- (2) The Commissioners for Revenue and Customs Act 2005 is amended in accordance with subsections (3) to (13).

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- (3) In section 15 (agency), after subsection (2) insert—
- “(3) For the purposes of section 83 of the Government of Wales Act 2006 (agency arrangements)—
- (a) the Commissioners are to be treated as a relevant authority, and
- (b) the officers of Revenue and Customs are to be treated as a relevant authority.”
- (4) Accordingly, the heading to that section becomes “ Agency: Scotland, Northern Ireland and Wales ”.
- (5) In section 17(5) (use of information), in paragraph (a), after “Act,” insert—
- “(aa) an Act of the National Assembly for Wales or an instrument made under such an Act.”.
- (6) Section 18 (confidentiality) is amended in accordance with subsections (7) to (9).
- (7) In subsection (2)—
- (a) omit “or” at the end of paragraph (h);
- (b) after paragraph (i) insert “, or
- (j) which is made to the Welsh Ministers in connection with the collection and management of a devolved tax within the meaning of the Government of Wales Act 2006.”
- (8) In subsection (2A), after “subsection (2)(i)” insert “ or (j) ”.
- (9) In subsection (4)(e), in sub-paragraph (i), after “Act,” insert—
- “(ia) an Act of the National Assembly for Wales or an instrument made under such an Act.”.
- (10) In section 40(11) (confidentiality), in paragraph (a), after “Act,” insert—
- “(aa) an Act of the National Assembly for Wales or an instrument made under such an Act.”.
- (11) Section 51 (interpretation) is amended in accordance with subsections (12) and (13).
- (12) In subsection (1), in the definition of “enactment”, after paragraph (b) insert—
- “(ba) an Act of the National Assembly for Wales,
- (bb) an instrument made under an Act of the National Assembly for Wales,”.
- (13) After subsection (2A) insert—
- “(2B) Nor does such a reference include a function which—
- (a) is conferred on the Commissioners or on officers of Revenue and Customs by or by virtue of an Act of the National Assembly for Wales or an instrument made under such an Act, and
- (b) relates to a devolved tax within the meaning of the Government of Wales Act 2006.”
- (14) In Schedule 7 to GOWA 2006 (legislative competence to make Acts of the Assembly)
- (a) in Part 2 (general restrictions), after paragraph 4, insert—

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“4A

A provision of an Act of the Assembly cannot—

- (a) remove or modify, or confer power by subordinate legislation, to remove or modify, any function of Her Majesty's Revenue and Customs, or
  - (b) confer or impose, or confer power by subordinate legislation to confer or impose, any function on Her Majesty's Revenue and Customs.”;
- (b) in Part 3 (exceptions from Part 2), after paragraph 7, insert—

7A **“Her Majesty's Revenue and Customs**

(1) Part 2 does not prevent a provision of an Act of the Assembly—

- (a) removing or modifying, or conferring power by subordinate legislation to remove or modify, any function of Her Majesty's Revenue and Customs, or
- (b) conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on Her Majesty's Revenue and Customs,

if the following conditions are met.

(2) The conditions are—

- (a) that the function relates to a devolved tax, and
- (b) that the Treasury consent to the provision.”

*Welsh rates of income tax*

VALID FROM 24/07/2018

## **8 Welsh rates of income tax**

(1) Part 4A of GOWA 2006 (as inserted by section 6) is amended as follows.

(2) In section 116A(1) (overview), after “Part” insert “—

- (a) Chapter 2 confers on the Assembly power to set rates of income tax to be paid by Welsh taxpayers, and
- (b)”.

(3) After Chapter 1 insert—

### **“CHAPTER 2**

#### **INCOME TAX**

#### **116D Power to set Welsh rates for Welsh taxpayers**

(1) The Assembly may by resolution (a “Welsh rate resolution”) set one or more of the following—

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- (a) a Welsh rate for the purpose of calculating the Welsh basic rate;
  - (b) a Welsh rate for the purpose of calculating the Welsh higher rate;
  - (c) a Welsh rate for the purpose of calculating the Welsh additional rate.
- (2) See section 6B of the Income Tax Act 2007 for provision about the calculation of the Welsh basic, higher and additional rates and section 11B of that Act for provision about the income of Welsh taxpayers charged at those rates.
- (3) A Welsh rate resolution applies—
- (a) for only one tax year, and
  - (b) for the whole of that year.
- (4) Any Welsh rate specified must be a whole number or half a whole number.
- (5) A Welsh rate resolution—
- (a) must specify the tax year for which it applies,
  - (b) must be made before the start of that tax year, and
  - (c) must not be made more than 12 months before the start of that year.
- (6) If a Welsh rate resolution is cancelled before the start of the tax year for which it is to apply—
- (a) the Income Tax Acts have effect for that year as if the resolution had never been made, and
  - (b) the resolution may be replaced by another Welsh rate resolution.
- (7) The standing orders must provide that only the First Minister or a Welsh Minister appointed under section 48 may move a motion for a Welsh rate resolution.

#### **116E Welsh taxpayers**

- (1) For any tax year, a Welsh taxpayer is an individual (T)—
- (a) who is resident in the UK for income tax purposes for that year (see Schedule 45 to the Finance Act 2013), and
  - (b) who, for that year, meets condition A, B or C.
- (2) T meets condition A if T has a close connection with Wales (see section 116G).
- (3) T meets condition B if—
- (a) T does not have a close connection with England, Scotland or Northern Ireland (see section 116G), and
  - (b) T spends more days of that year in Wales than in any other part of the UK (see section 116H).
- (4) T meets condition C if, for the whole or any part of the year, T is—
- (a) a member of Parliament for a constituency in Wales,
  - (b) a member of the European Parliament for Wales, or
  - (c) an Assembly member.
- (5) Subsection (1) does not apply if T is a Scottish parliamentarian for the whole or any part of the year (see section 116F).

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(6) For the purposes of subsection (5) and section 116F, T is a Scottish parliamentarian if T is a member as described in any of paragraphs (a) to (c) of section 80D(4) of the Scotland Act 1998 (definition of a Scottish taxpayer).

(7) In this Chapter “the UK” means the United Kingdom.

#### **116F Welsh taxpayers: Scottish parliamentarians**

(1) An individual (T) who is a Scottish parliamentarian for the whole or any part of a tax year is a Welsh taxpayer for that tax year if—

- (a) T is resident in the UK for income tax purposes for that year (see Schedule 45 to the Finance Act 2013),
- (b) T meets condition C in section 116E for that year, and
- (c) T meets either of the following conditions for that year.

(2) T meets the first condition if—

- (a) the number of days in that year on which T is a member as described in any of paragraphs (a) to (c) of section 116E(4), exceeds
- (b) the number of days in that year on which T is a Scottish parliamentarian.

(3) T meets the second condition if—

- (a) the number of days in that year mentioned in paragraphs (a) and (b) of subsection (2) are the same, and
- (b) T meets condition A or B in section 116E for that year.

#### **116G Close connection with Wales or another part of the UK**

(1) To find whether, for any year, T has a close connection with any part of the UK see—

- (a) subsection (2) (where T has only one place of residence in the UK), or
- (b) subsection (3) (where T has 2 or more places of residence in the UK).

(2) T has a close connection with a part of the UK if in that year—

- (a) T has only one place of residence in the UK,
- (b) that place of residence is in that part of the UK, and
- (c) for at least part of the year, T lives at that place.

(3) T has a close connection with a part of the UK if in that year—

- (a) T has 2 or more places of residence in the UK,
- (b) for at least part of the year, T's main place of residence in the UK is in that part of the UK,
- (c) the times in the year when T's main place of residence is in that part of the UK comprise (in aggregate) more of the year than the times when T's main place of residence is in each other part of the UK (considered separately), and
- (d) for at least part of the year, T lives at a place of residence in that part of the UK.

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- (4) In this section “place” includes a place on board a vessel or other means of transport.

#### **116H Days spent in Wales or another part of the UK**

- (1) T spends more days of a year in Wales than in any other part of the UK if (and only if) the number of days in the year on which T is in Wales at the end of the day exceeds each of the following—
- (a) the number of days in the year on which T is in England at the end of the day;
  - (b) the number of days in the year on which T is in Scotland at the end of the day;
  - (c) the number of days in the year on which T is in Northern Ireland at the end of the day.
- (2) T is treated as not being in the UK at the end of a day if—
- (a) on that day T arrives in the UK as a passenger,
  - (b) T departs from the UK on the next day, and
  - (c) during the time between arrival and departure T does not engage in activities which are to a substantial extent unrelated to T's passage through the UK.

#### **116I Supplemental powers to modify enactments**

- (1) The Treasury may by order modify section 11B of the Income Tax Act 2007 (income charged at the Welsh basic, higher and additional rates) for the purpose of altering—
- (a) the definition of the income which is charged to income tax at the rates provided for under the section, or
  - (b) the application of the section in relation to a particular class of income which is so charged.
- (2) The Treasury may by order modify any enactment not contained in Chapter 2 of Part 2 of the Income Tax Act 2007 (rates at which income tax is charged) so that it makes provision, in relation to a Welsh taxpayer, by reference to the Welsh basic rate, the Welsh higher rate or the Welsh additional rate, instead of the basic rate, the higher rate or the additional rate.
- (3) If the Treasury consider it necessary or expedient to do so, they may by order provide that—
- (a) a Welsh rate set by the Assembly for a tax year for the purpose of calculating the Welsh basic rate, Welsh higher rate or Welsh additional rate, or
  - (b) the fact that a Welsh rate has not been set by the Assembly for a tax year for any one or more of those purposes,
- does not require any change in the amounts repayable or deductible under PAYE regulations between the beginning of that year and such later date as may be specified in the order.



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- (4) The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of or in connection with an order under subsection (1), (2) or (3).
- (5) An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which the order is made.
- (6) No order is to be made under subsection (1), (2) or (4) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (7) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of the House of Commons.
- (8) The power under subsection (1) does not include power to provide that any income which is—
  - (a) savings income, or
  - (b) dividend income which would otherwise be charged to income tax at a rate provided for under section 13 of the Income Tax Act 2007,is income which is charged to income tax at a rate provided for under section 11B of that Act.

#### **116J Reimbursement of expenses**

The Welsh Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Chapter at any time after the passing of the Wales Act 2014 by the Minister or department.

#### **116K Report by the Comptroller and Auditor General**

- (1) The Comptroller and Auditor General must for each financial year prepare a report on the matters set out in subsection (2).
- (2) Those matters are—
  - (a) the adequacy of any of HMRC's rules and procedures put in place, in consequence of the Welsh rate provisions, for the purpose of ensuring the proper assessment and collection of income tax charged at rates determined under those provisions,
  - (b) whether the rules and procedures described in paragraph (a) are being complied with,
  - (c) the correctness of the sums brought to account by HMRC which relate to income tax which is attributable to a Welsh rate resolution, and
  - (d) the accuracy and fairness of the amounts which are reimbursed to HMRC under section 116J (having been identified by it as administrative expenses incurred as a result of the charging of income tax as mentioned in paragraph (a)).
- (3) “The Welsh rate provisions” are—
  - (a) any provision made by or under this Chapter, and

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- (b) any provision made by or under the Income Tax Acts relating to the Welsh basic rate, the Welsh higher rate or the Welsh additional rate.
- (4) A report under this section may also include an assessment of the economy, efficiency and effectiveness with which HMRC has used its resources in carrying out relevant functions.
- (5) “Relevant functions” are functions of HMRC in the performance of which HMRC incurs administrative expenses which are reimbursed to HMRC under section 116J (having been identified by it as administrative expenses incurred as a result of the charging of income tax as mentioned in subsection (2)(a)).
- (6) HMRC must give the Comptroller and Auditor General such information as the Comptroller and Auditor General may reasonably require for the purposes of preparing a report under this section.
- (7) A report prepared under this section must be laid before the Assembly not later than 31 January of the financial year following that to which the report relates.
- (8) In this section “HMRC” means Her Majesty's Revenue and Customs.”

#### Commencement Information

- II** S. 8 in force at 24.7.2018 by S.I. 2018/892, **art. 3** (with **arts. 5, 6, 8**)

VALID FROM 24/07/2018

## 9 Welsh basic, higher and additional rates of income tax

- (1) The Income Tax Act 2007 is amended in accordance with subsections (2) to (11).
- (2) In section 6 (the basic rate, higher rate and additional rate), in subsection (3), before paragraph (a) insert—  
“**(zb)** section 6B (Welsh basic, higher and additional rates),”.
- (3) Before section 7 insert—

### “6B The Welsh basic, higher and additional rates

- (1) The Welsh basic rate, the Welsh higher rate and the Welsh additional rate for a tax year are calculated as follows.  
*Step 1* Take the basic rate, higher rate or additional rate.  
*Step 2* Deduct 10 percentage points.  
*Step 3* Add the Welsh rate (if any) set by the National Assembly for Wales for that year for the purpose of calculating the Welsh basic rate, the Welsh higher rate or the Welsh additional rate (as the case may be).
- (2) For provision about the setting of the Welsh rates, see Chapter 2 of Part 4A of the Government of Wales Act 2006.”

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- (4) In section 10 (income charged at the basic, higher and additional rates: individuals), in subsection (4), at the appropriate place, insert—

“section 11B (income charged at the Welsh basic, higher and additional rates),”.

- (5) Before section 12 insert—

**“11B Income charged at the Welsh basic, higher and additional rates**

- (1) Income tax is charged at the Welsh basic rate on the income of a Welsh taxpayer which—

- (a) is non-savings income, and
- (b) would otherwise be charged at the basic rate.

- (2) Income tax is charged at the Welsh higher rate on the income of a Welsh taxpayer which—

- (a) is non-savings income, and
- (b) would otherwise be charged at the higher rate.

- (3) Income tax is charged at the Welsh additional rate on the income of a Welsh taxpayer which—

- (a) is non-savings income, and
- (b) would otherwise be charged at the additional rate.

- (4) For the purposes of this section, “non-savings income” means income which is not savings income.

- (5) This section is subject to—

section 13 (income charged at the dividend ordinary, upper and additional rates: individuals), and  
any provisions of the Income Tax Acts (apart from section 10) which provide for income of an individual to be charged at different rates of income tax in some circumstances.

- (6) Section 16 has effect for determining the extent to which the non-savings income of a Welsh taxpayer would otherwise be charged at the basic, higher or additional rate.”

- (6) In section 13 (income charged at the dividend ordinary, upper and additional rates)—

- (a) in subsection (1)(b), before “and” insert “ or the Welsh basic rate, ”,
- (b) in subsection (2)(b), before “and” insert “ or the Welsh higher rate, ”,
- (c) in subsection (2A)(b), before “and” insert “ or the Welsh additional rate, ”,
- (d) in subsection (3), at the end of the words in parentheses, insert “ or 11B ”, and
- (e) in subsection (4), at the end insert “ or the Welsh basic, higher or additional rate ”.

- (7) In section 16 (savings and dividend income to be treated as highest part of total income), in subsection (1), after paragraph (za) insert—

“(zb) the rate at which income tax would be charged on the non-savings income of a Welsh taxpayer apart from section 11B,”.

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(8) In section 809H (charge on nominated income of long-term UK resident), after subsection (3A) insert—

“(3B) If the individual is a Welsh taxpayer for the relevant tax year, the individual is to be treated for the purpose of calculating income tax charged by virtue of subsection (2) as if the individual were not a Welsh taxpayer for that year.”

(9) In section 828B (conditions to be met for exemption where individual resident but not domiciled in the UK), in subsection (5), before “or the starting rate” insert “ , the Welsh basic rate ”.

(10) In section 989 (definitions for the purposes of the Income Tax Acts), at the appropriate place, insert—

““Welsh additional rate” means the rate of income tax of that name calculated in accordance with section 6B,”

““Welsh basic rate” means the rate of income tax of that name calculated in accordance with section 6B,”

““Welsh higher rate” means the rate of income tax of that name calculated in accordance with section 6B,”

““Welsh taxpayer” has the same meaning as in Chapter 2 of Part 4A of the Government of Wales Act 2006”.

(11) In Schedule 4 (index of defined expressions), at the appropriate place, insert—

|                        |   |
|------------------------|---|
| “Welsh additional rate | section 6B (as applied by section 989)” |
| “Welsh basic rate      | section 6B (as applied by section 989)” |
| “Welsh higher rate     | section 6B (as applied by section 989)” |
| “Welsh taxpayer        | section 989”                            |

(12) In section 7 of the Taxes Management Act 1970 (notice of liability to income tax and capital gains tax), in subsection (6), before “the dividend ordinary rate” insert “ the Welsh basic rate, ”.

(13) The Taxation of Chargeable Gains Act 1992 is amended in accordance with subsections (14) and (15).

(14) In section 4 (rates of capital gains tax), in subsections (4) and (5), before “or the dividend” insert “ , the Welsh higher rate ”.

(15) In section 4A (section 4: special cases), in subsection (5), before “or the dividend” insert “ , the Welsh higher rate ”.

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PROSPECTIVE

## 10 Welsh taxpayers for social security or child support purposes

After section 155 of GOWA 2006 insert—

### “155A Welsh taxpayers for social security or child support purposes

- (1) The Secretary of State may by order provide for individuals of any specified description to be treated as if they were, or were not, Welsh taxpayers for all or specified purposes of—
  - (a) social security, or
  - (b) child support.
- (2) The Secretary of State may by order provide in relation to any year of assessment that the Welsh basic rate, Welsh higher rate or Welsh additional rate in relation to the income of Welsh taxpayers is to be treated as being a specified rate for all or specified purposes of—
  - (a) social security, or
  - (b) child support.
- (3) An order under subsection (1) or (2) may apply in respect of any individuals whether or not they have a close connection with Wales.
- (4) An order under subsection (1) or (2) may make such modifications of any enactment, or any other instrument or document, as the Secretary of State considers appropriate in connection with the provision made by the order.
- (5) No order is to be made under subsection (1) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) No order under subsection (2) which contains a provision making modifications of an enactment contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (7) A statutory instrument containing an order under subsection (2) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
  - “specified” means specified in the order;
  - “Welsh basic rate”, “Welsh higher rate” and “Welsh additional rate” have the same meaning as in the Income Tax Acts;
  - “Welsh taxpayer” has the same meaning as in Chapter 2 of Part 4A of this Act.”

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## 11 Amendments to the definition of a Scottish taxpayer

- (1) Chapter 2 of Part 4A of the Scotland Act 1998 (Scottish rate of income tax) is amended as follows.
- (2) Section 80D (Scottish taxpayers) is amended in accordance with subsections (3) to (5).
- (3) In subsection (1)—
  - (a) for “In” substitute “ For ”;
  - (b) in paragraph (a), after “purposes” insert “ for that year (see Schedule 45 to the Finance Act 2013) ”.
- (4) In subsection (3)(a), for “any part of the UK other than Scotland” substitute “ England, Wales or Northern Ireland ”.
- (5) After subsection (4), insert—
 

“(4A) Subsection (1) does not apply if T is a Welsh parliamentarian for the whole or any part of the year (see section 80DA).

(4B) For the purposes of subsection (4A) and section 80DA, T is a Welsh parliamentarian if T is a member as described in any of paragraphs (a) to (c) of section 116E(4) of the Government of Wales Act 2006 (definition of a Welsh taxpayer).”
- (6) After section 80D insert—

### “80DA Scottish taxpayers: Welsh parliamentarians

- (1) An individual (T) who is a Welsh parliamentarian for the whole or any part of a tax year is a Scottish taxpayer for that tax year if—
  - (a) T is resident in the UK for income tax purposes for that year (see Schedule 45 to the Finance Act 2013),
  - (b) T meets condition C in section 80D for that year, and
  - (c) T meets either of the following conditions for that year.
- (2) T meets the first condition if—
  - (a) the number of days in that year on which T is a member as described in any of paragraphs (a) to (c) of section 80D(4), exceeds
  - (b) the number of days in that year on which T is a Welsh parliamentarian.
- (3) T meets the second condition if—
  - (a) the number of days in that year mentioned in paragraphs (a) and (b) of subsection (2) are the same, and
  - (b) T meets condition A or B in section 80D for that year.”
- (7) In section 80E (close connection with Scotland or another part of the UK), in subsection (3)(c)—
  - (a) for “at least as much of the year as” substitute “ more of the year than ”;
  - (b) for “any one other part of the UK” substitute “ each other part of the UK (considered separately) ”.
- (8) In section 80F (days spent in Scotland or another part of the UK)—

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- (a) in subsection (1), for the words from “if)—” to the end substitute “if) the number of days in the year on which T is in Scotland at the end of the day exceeds each of the following—
  - (a) the number of days in the year on which T is in England at the end of the day;
  - (b) the number of days in the year on which T is in Wales at the end of the day;
  - (c) the number of days in the year on which T is in Northern Ireland at the end of the day.”;
- (b) in subsection (2), for “But T is not to be treated as” substitute “ T is treated as not ”.

#### **Commencement Information**

- I2** S. 11 partly in force; s. 11 not in force at Royal Assent; s. 11(1)-(4)(7)(b)(8)(b) in force 17.2.2015, see s. 29(2)(b)(4)

### *Referendum on income tax provisions*

## **12 Referendum about commencement of income tax provisions**

- (1) Her Majesty may by Order in Council cause a referendum to be held throughout Wales about whether the income tax provisions should come into force.
- (2) If the majority of the voters in a referendum held by virtue of subsection (1) vote in favour of the income tax provisions coming into force, those provisions are to come into force in accordance with section 14.
- (3) But if they do not, that does not prevent the making of a subsequent Order under subsection (1).
- (4) No recommendation is to be made to Her Majesty to make an Order under subsection (1) unless a draft of the statutory instrument containing the Order has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (5) But subsection (4) is not satisfied unless the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
- (6) A draft of a statutory instrument containing an Order under subsection (1) may not be laid before either House of Parliament, or the Assembly, until the Secretary of State has undertaken such consultation as the Secretary of State considers appropriate.
- (7) For further provision about a referendum held by virtue of subsection (1), see Schedule 1.
- (8) In this section “the income tax provisions” means sections 8 and 9.

## **13 Proposal for referendum by Assembly**

- (1) This section applies if—

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- (a) the First Minister or a Welsh Minister appointed under section 48 of GOWA 2006 moves a resolution in the Assembly that, in the Assembly's opinion, a recommendation should be made to Her Majesty to make an Order under section 12(1), and
  - (b) the Assembly passes the resolution on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
- (2) A resolution moved under subsection (1)(a) must state whether the voting age at the proposed referendum is to be 16 or 18.
- (3) The First Minister must, as soon as practicable after the resolution is passed, ensure that notice in writing of the resolution is given to the Secretary of State.
- (4) Within the period of 180 days beginning immediately after the day on which notice under subsection (3) is received by the Secretary of State—
- (a) the Secretary of State or the <sup>[F1]</sup>Minister for the Cabinet Office] must lay a draft of a statutory instrument containing an Order under section 12(1) before each House of Parliament, or
  - (b) the Secretary of State must give notice in writing to the First Minister of the refusal to lay a draft under paragraph (a) and the reasons for that refusal.
- (5) As soon as practicable after the First Minister receives notice under subsection (4) (b)—
- (a) the First Minister must lay a copy of the notice before the Assembly, and
  - (b) the Assembly must ensure that the notice is published.

#### Textual Amendments

- F1** Words in s. 13(4)(a) substituted (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), art. 1(2), **Sch. 2 para. 28(a)** (with art. 12)

#### Modifications etc. (not altering text)

- C1** S. 13 functions transferred (22.6.2015) by [The Chancellor of the Duchy of Lancaster Order 2015 \(S.I. 2015/1376\)](#), arts. 1(2), 3(1), **Sch. 1** (with art. 9)
- C2** S. 13 functions transferred (9.11.2016) by [The Transfer of Functions \(Elections, Referendums, Third Sector and Information\) Order 2016 \(S.I. 2016/997\)](#), arts. 1(2), 3(1), **Sch. 1(u)** (with arts. 3(2), 6, 12)

## 14 Commencement of income tax provisions etc if majority in favour

- (1) This section applies where the majority of the voters in a referendum held by virtue of section 12(1) vote in favour of the income tax provisions coming into force.
- (2) The Treasury may bring sections 8 and 9 into force by order.
- (3) An order under subsection (2)—
- (a) must appoint, in relation to each provision inserted by section 8 or 9, the day on which it comes into force;
  - (b) may provide that a provision inserted by section 8 or 9 has effect in relation to—
    - (i) a tax year appointed by the order and subsequent tax years, or
    - (ii) a financial year so appointed and subsequent financial years.



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- (4) A tax year may be appointed under subsection (3)(b) in relation to a provision inserted by section 8 or 9 only if the tax year begins on or after the day appointed under subsection (3)(a) in relation to that provision.
- (5) An order under subsection (2) that brings into force section 116D of GOWA 2006 (power to set Welsh rates for Welsh taxpayers) must appoint the first tax year in relation to which a Welsh rate resolution may be made.
- (6) The Secretary of State may bring section 10 into force by order.
- (7) The Treasury may bring section 11(5), (6), (7)(a) and (8)(a) into force by order.
- (8) An order under subsection (7)—
  - (a) must appoint a day on which the amendments made by the provisions mentioned in that subsection come into force, and
  - (b) must provide that those amendments have effect in relation to a tax year appointed by the order and subsequent tax years.
- (9) The tax year appointed under subsection (8)(b)—
  - (a) must begin on or after the day appointed under subsection (8)(a), and
  - (b) must not precede the tax year appointed under subsection (5) or under section 25(5) of the Scotland Act 2012 (the first tax year for which Chapter 2 of Part 4A of the Scotland Act 1998 has effect).
- (10) An order under this section may make different provision for different purposes.

*Welsh tax on land transactions*

**15 Welsh tax on transactions involving interests in land**

- (1) In Part 4A of GOWA 2006 (as inserted by section 6), after Chapter 2 (inserted by section 8) insert—

**“CHAPTER 3**

TAX ON TRANSACTIONS INVOLVING INTERESTS IN LAND

**116L Tax on transactions involving interests in land**

- (1) A tax which is charged on a Welsh land transaction and complies with the requirements of this section is a devolved tax.
- (2) In this Chapter a “Welsh land transaction” means an acquisition of—
  - (a) an estate, interest, right or power in or over land in Wales;
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.
- (3) The tax may be chargeable—
  - (a) whether or not there is any instrument effecting the transaction,
  - (b) if there is such an instrument, regardless of where it is executed, and
  - (c) regardless of where any party to the transaction is or is resident.

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(4) The tax may not be imposed on so much of a Welsh land transaction as relates to land below mean low water mark.

(5) The following persons are not to be liable to pay the tax—

*Government*

A Minister of the Crown

The Welsh Ministers, the First Minister and the Counsel General

The Scottish Ministers

A Northern Ireland department

*Parliament etc*

The Corporate Officer of the House of Lords

The Corporate Officer of the House of Commons

The Assembly Commission

The Scottish Parliamentary Corporate Body

The Northern Ireland Assembly Commission.”

(2) A devolved tax specified in section 116L of GOWA 2006 (as inserted by this section) may not be charged under an Act of the Assembly on a land transaction within the meaning of Part 4 of the Finance Act 2003 unless section 16 (disapplication of UK stamp duty land tax) has effect in relation to that transaction.

## **16 Disapplication of UK stamp duty land tax**

(1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.

(2) In section 48 (chargeable interests), in subsection (1)(a), omit “and Wales”.

(3) Schedule 2 to this Act contains further amendments relating to the disapplication of stamp duty land tax in relation to Wales.

(4) The amendments made by this section and Schedule 2 have effect in relation to land transactions with an effective date on or after such date as is appointed by the Treasury by order under this subsection.

(5) But those amendments do not have effect in relation to any transaction—

(a) effected in pursuance of a contract entered into and substantially performed on or before the date on which this Act is passed, or

(b) effected in pursuance of a contract entered into on or before that date and not excluded by subsection (6).

(6) A transaction effected in pursuance of a contract entered into on or before the date on which this Act is passed is excluded if—

(a) there is any variation of the contract, or assignment of rights under the contract, after that date,

(b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or

(c) after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

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- (7) Expressions used in any of subsections (4) to (6) and in Part 4 of the Finance Act 2003 have the same meaning in those subsections as in that Part.

## 17 Information on Welsh land transactions

- (1) In Part 4A of GOWA 2006 (as inserted by section 6), in Chapter 3 (inserted by section 15), after section 116L insert—

### **“116M Duty to disclose information on Welsh land transactions to HMRC**

- (1) A person who is a member of the Welsh Government must provide to HMRC such of the information falling within subsection (2) as HMRC may require.
- (2) Information falls within this subsection if it—
- (a) is relevant information in relation to a Welsh land transaction, and
  - (b) is in the possession or under the control of the person.
- (3) “Relevant information”, in relation to a Welsh land transaction, means information which—
- (a) corresponds to any of the particulars which would be required under Schedule 2 to the Finance Act 1931, but for section 28(3)(c) of that Act, or
  - (b) uniquely identifies, or assists in uniquely identifying, any person who gives consideration for, or is a party to, the transaction.
- (4) Information is to be provided under subsection (1) in such form as HMRC may reasonably specify.
- (5) Information acquired by HMRC under this section is to be treated, for the purposes of the Commissioners for Revenue and Customs Act 2005, as acquired in connection with a function of theirs.
- (6) In this section, “HMRC” means Her Majesty's Revenue and Customs.”
- (2) This section has effect in relation to land transactions in relation to which section 16 has effect.

### *Welsh tax on disposals to landfill*

## 18 Welsh tax on disposals to landfill

- (1) In Part 4A of GOWA 2006 (as inserted by section 6), after Chapter 3 (inserted by section 15) insert—

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## “CHAPTER 4

### TAX ON DISPOSALS TO LANDFILL

#### 116N Tax on disposals to landfill

- (1) A tax charged on disposals to landfill made in Wales is a devolved tax.
- (2) A disposal is a disposal to landfill if—
  - (a) it is a disposal of material as waste, and
  - (b) it is made by way of landfill.”
- (2) A devolved tax specified in section 116N of GOWA 2006 (as inserted by this section) may not be charged under an Act of the Assembly on a disposal if the disposal is made before the date appointed under section 19(3) (disapplication of UK landfill tax).

#### 19 Disapplication of UK landfill tax

- (1) Part 3 of the Finance Act 1996 (landfill tax) is amended as follows.
- (2) In section 40(1) (charge on taxable disposal), omit “and Wales”.
- (3) This section has effect in relation to disposals made on or after such date as is appointed by the Treasury by order under this subsection.

### *Borrowing*

#### 20 Borrowing by the Welsh Ministers

- (1) GOWA 2006 is amended as follows.
- (2) Section 121 (borrowing by Welsh Ministers) is amended in accordance with subsections (3) to (5).
- (3) For subsection (1) substitute—
  - “(1) The Welsh Ministers may borrow from the Secretary of State—
    - (a) any amounts it appears to them are required by them for the purpose of meeting a temporary excess of sums paid out of the Welsh Consolidated Fund over sums paid into that Fund,
    - (b) any amounts it appears to them are required by them for the purpose of providing a working balance in the Welsh Consolidated Fund, and
    - (c) any amounts which in accordance with rules determined by the Treasury are required by the Welsh Ministers to meet current expenditure because of a shortfall in receipts from devolved taxes, or from income tax charged by virtue of a Welsh rate resolution, against forecast receipts.
  - (1A) The Welsh Ministers may, with the approval of the Treasury, borrow by way of loan any amounts it appears to them are required by them for the purpose of meeting capital expenditure.

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- (1B) An amount is required for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 131.”
- (4) In subsection (2), after “section” insert “ from the Secretary of State ”.
- (5) After subsection (3) insert—
- “(4) The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Welsh Ministers may borrow money.
- (5) No order is to be made under subsection (4) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.”
- (6) Section 122 (lending by Secretary of State) is amended in accordance with subsections (7) to (9).
- (7) In subsection (2), for “that section” substitute “ section 121(1) ”.
- (8) In subsection (3), omit “greater”.
- (9) After subsection (3) insert—
- “(3A) An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than £500 million.”
- (10) After section 122 insert—

#### **“122A Lending for capital expenditure**

- (1) The aggregate at any time outstanding in respect of the principal of amounts borrowed under section 121(1A) shall not exceed £500 million.
- (2) The Secretary of State may by order made with the consent of the Treasury substitute for the amount for the time being specified in subsection (1) such amount as may be specified in the order.
- (3) An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than £500 million.
- (4) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (5) A person lending money to a member of the Welsh Government—
- (a) is not bound to enquire whether the member of the Welsh Government has power to borrow the money, and
- (b) is not to be prejudiced by the absence of any such power.
- (6) The Welsh Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 121(1A).

This is subject to section 121(3) (charging of sums on the Welsh Consolidated Fund).

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(7) Security given in breach of subsection (6) is unenforceable.”

#### Commencement Information

**I3** S. 20 in force at 1.1.2017 by S.I. 2016/1264, art. 2

PROSPECTIVE

## 21 Repeal of existing borrowing power

- (1) In Schedule 3 to the Welsh Development Agency Act 1975 (borrowing and guarantees), the following are repealed—
  - (a) paragraph 3 (power for Welsh Ministers to borrow money);
  - (b) paragraph 6 (power for Treasury to guarantee money borrowed under paragraph 3).
- (2) The repeals made by subsection (1) do not affect—
  - (a) the liability of the Welsh Ministers to repay any money borrowed under paragraph 3 of that Schedule before the date when that subsection comes into force, or
  - (b) any guarantee given under paragraph 6 of that Schedule before that date.
- (3) Subsection (4) applies to the aggregate amount (if any) which, immediately before subsection (1) comes into force, is outstanding in respect of the principal of sums borrowed on or after the day on which this Act is passed under paragraph 3 of that Schedule for the purpose of meeting capital expenditure.
- (4) For the purpose of section 122A(1) of GOWA 2006 (limit on capital borrowing), that amount is treated as outstanding in respect of the principal of sums borrowed under section 121(1A) of that Act.
- (5) An amount is borrowed for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 131 of GOWA 2006.

### *Budgetary procedures*

## 22 Budgetary procedures

- (1) Schedule 7 to GOWA 2006 (legislative competence to make Acts of the Assembly) is amended as follows.
- (2) In Part 1, in paragraph 13 (National Assembly for Wales), at the end insert “Budgetary procedures.

Budgetary procedures” are procedures for a financial year relating to—

- (a) the authorisation of the amount of resources which may be used or retained in that year by relevant persons or pursuant to a relevant enactment,

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- (b) the authorisation of the amount which may be paid out of the Welsh Consolidated Fund in that year to relevant persons or for use pursuant to a relevant enactment, or
- (c) the scrutiny of the use of the amounts so authorised under paragraph (a) or (b) or of the exercise of borrowing powers by the Welsh Ministers.

The following are “relevant persons”—

- (a) the Welsh Ministers,
- (b) the First Minister,
- (c) the Counsel General,
- (d) the Assembly Commission,
- (e) the Wales Audit Office, and
- (f) the Public Service Ombudsman for Wales.

A “relevant enactment” is an enactment which provides for payment out of the Welsh Consolidated Fund.

The reference to the use of resources is a reference to their expenditure, consumption or reduction in value.”

- (3) In Part 2, in paragraph 5 (provisions of GOWA 2006 which may not be modified)—
  - (a) in sub-paragraph (2), in paragraph (a), after “78,” insert “ 120(2), 125 to 128,”;
  - (b) in sub-paragraph (2), after paragraph (a) insert—
    - “(aa) section 119 in so far as it relates to estimated payments for a financial year into the Welsh Consolidated Fund or to the Welsh Ministers, the First Minister or the Counsel General;”;
  - (c) after sub-paragraph (4), insert—
    - “(4A) Sub-paragraph (1), so far as it applies in relation to a provision of Part 5 or section 159, does not apply to a provision of an Act of the Assembly if—
      - (a) the provision is incidental to, or consequential on, a provision of an Act of the Assembly relating to budgetary procedures or devolved taxes, and
      - (b) the Secretary of State consents to the provision.
    - (4B) In sub-paragraph (4A), “budgetary procedures” has the same meaning as in paragraph 13 of Part 1 of this Schedule.”

### *Reports*

## **23 Reports on the implementation and operation of this Part**

- (1) The Secretary of State must—
  - (a) make reports on the implementation and operation of this Part (see subsection (7)),
  - (b) lay a copy of each report before each House of Parliament, and
  - (c) send a copy of each report to the Welsh Ministers, who must lay a copy of it before the Assembly.

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- (2) The Welsh Ministers must—
  - (a) make reports on the implementation and operation of this Part (see subsection (7)),
  - (b) lay a copy of each report before the Assembly, and
  - (c) send a copy of each report to the Secretary of State, who must lay a copy of it before each House of Parliament.
- (3) A report must be made under each of subsections (1) and (2)—
  - (a) before the first anniversary of the day on which this Act is passed, and
  - (b) thereafter, before each subsequent anniversary of that day until the final reports are made under subsection (4).
- (4) Final reports must be made on, or as soon as practicable after, the first anniversary of the day on which the last of the provisions of this Part is implemented (as determined under subsections (5) and (6)).
- (5) A provision of this Part is implemented—
  - (a) if it is expressed as applying in relation to events occurring on or after a particular day, on that day;
  - (b) if it is expressed as applying in relation to a tax year or financial year, on the last day of that year;
  - (c) in any other case, on the day on which it comes into force.
- (6) If, in the case of any provision, the application of subsection (5) gives more than one day, the provision is implemented on the last of them.
- (7) A report on the implementation and operation of this Part must include—
  - (a) a statement of the steps that have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards implementation of the provisions of this Part,
  - (b) a statement of the steps that the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the implementation of the provisions of this Part,
  - (c) an assessment of the operation of the provisions of this Part that have been implemented,
  - (d) an assessment of the operation of any other powers to devolve taxes to the Assembly or to change the powers of the Welsh Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part,
  - (e) a statement of the effect of this Part on the amount of any payments made by the Secretary of State under section 118 of GOWA 2006 (payments into the Welsh Consolidated Fund), and
  - (f) any other matters concerning the sources of revenue for the Welsh Government that the maker of the report considers should be brought to the attention of Parliament or the Assembly.
- (8) Until the majority of the voters in a referendum held by virtue of section 12(1) vote in favour of sections 8 and 9 (income tax provisions) coming into force, the statements required by subsection (7)(a) and (b) do not include steps taken, or proposed to be taken, towards the implementation of those provisions.



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- (9) In this section, references to “this Part” do not include—
- (a) section 10 (Welsh taxpayers for social security or child support purposes),
  - (b) section 11 (amendments to the definition of a Scottish taxpayer), or
  - (c) section 22 (budgetary procedures).

**Status:**

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