

WALES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 2: Finance

Section 8: Welsh rates of income tax

59. *Section 8* deals with the Welsh rates of income tax. *Subsection (3)* inserts Chapter 2 into the new Part 4A of GOWA 2006, consisting of sections 116D to 116K. *Subsection (2)* inserts a reference to Chapter 2 into the introductory Chapter 1 of new Part 4A. The amendments made by section 8 will come into force in accordance with section 14.
60. New section 116D confers on the Assembly a power to set, by resolution, a Welsh basic, higher and additional rate of income tax, for Welsh taxpayers.
61. Section 116D(2) provides a signpost to the reader that the overall rates of tax paid by Welsh taxpayers are to be calculated under section 6B of the Income Tax Act 2007 (“ITA 2007”) and that the income charged at those rates is determined by section 11B of ITA 2007. Sections 6B and 11B are inserted by section 9.
62. Section 116D(3) to (5) provide that a Welsh rate resolution applies for only one tax year and must be a rate (either a half or whole number) which applies for the whole of that year. The resolution must specify the tax year to which it applies and must be made before the start of that tax year (but no more than 12 months before the start of that year).
63. Section 116D(6) provides that if a Welsh rate resolution is cancelled before the start of the tax year for which it is to apply the Income Tax Acts have effect for that year as if the resolution had never been passed. (This is particularly relevant in relation to the calculation of tax rates at section 6B of ITA 2007.) The Interpretation Act 1978 defines the “Income Tax Acts” as meaning all enactments relating to income tax. If a resolution is cancelled it may be replaced by another Welsh rate resolution, provided that that replacement resolution is passed before the start of the tax year for which it is to apply.
64. Section 116D(7) requires that the standing orders of the Assembly ensure only the First Minister or a Welsh Minister may move a motion for a Welsh rate resolution.
65. New section 116E defines a “Welsh taxpayer” for the purposes of Part 4A of GOWA 2006.
66. Section 116E(1) states that a Welsh taxpayer is an individual (and not, for example, a company or a trust) who is resident in the UK for income tax purposes and meets at least one of the three conditions specified in the section. The legislation includes a signpost to Schedule 45 to the Finance Act 2013 (references in these Notes to “FA” and a year are to the Finance Act for that year) which introduced a new statutory residence test to determine whether individuals are resident in the UK for tax purposes.
67. Section 116E(2) sets out condition A, and provides that an individual will meet condition A if they have a close connection with Wales.

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68. Section 116E(3) sets out condition B, and provides that an individual will meet condition B if they do not have a close connection with England, Scotland or Northern Ireland and spend more days of that year in Wales than in any other part of the UK.
69. Section 116E(4) sets out condition C. An individual will meet condition C if, for a whole or part of a year, that individual is a member of Parliament for a constituency in Wales, a member of the European Parliament for Wales or an AM.
70. Section 116E(5) sets out that section 116E(1) will not apply if the individual is a Scottish parliamentarian for the whole (or any part of) the tax year – further explanation is set out in section 116F.
71. Section 116E(6) defines a Scottish parliamentarian as an individual, who in respect of section 116E(5) and section 116F, is a member of the UK Parliament with a constituency in Scotland, a member of the Scottish Parliament or a member of the European Parliament for Scotland during a tax year.
72. New section 116F sets out the circumstances in which a Scottish parliamentarian can be a Welsh taxpayer.
73. Section 116F(1) sets out that if an individual has been a Scottish parliamentarian in a tax year, they will be a Welsh taxpayer if they are UK resident for the tax year, have also been a Welsh parliamentarian in that tax year and can meet one of the two conditions set out in the section. Taken with section 116E(5) this means that, if an individual is a Scottish parliamentarian for part of the year, but not a Welsh parliamentarian in that tax year, they will be a Scottish (rather than Welsh) taxpayer, even if, for example, they also have a close connection with Wales.
74. Section 116F(2) provides that whether an individual will be a Welsh taxpayer if they are both a Welsh and Scottish parliamentarian in the same tax year will be determined by comparing the amounts of time for which they have been a Scottish and Welsh parliamentarian. If they have been a Welsh parliamentarian for the longer period, they will be a Welsh taxpayer.
75. Section 116F(3) addresses the situation of an individual being a Welsh and Scottish parliamentarian for the same amount of time in a tax year. If this occurs, the individual would need to consider conditions A and B in section 116E and would be a Welsh taxpayer for the year if they met one of those conditions.
76. New section 116G defines what is meant by a close connection with Wales or any other part of the UK (that is, England, Scotland or Northern Ireland) for the purposes of sections 116E(2) and 116E(3)(a).
77. Section 116G(2) applies where an individual has only one place of residence in the UK in which they live for at least part of the year. It provides that such an individual will have a close connection with the part of the UK in which that place of residence is located. If that place is in Wales the individual will be a Welsh taxpayer. If that place is in another part of the UK, the individual will not be a Welsh taxpayer (unless the special rules for Welsh parliamentarians apply).
78. Section 116G(3) applies where an individual has two or more places of residence in the UK. It provides that such an individual will have a close connection with the part of the UK in which their main place of residence is located, provided they live in that residence for at least part of the year and the times when their main place of residence is in that place comprise, in aggregate, more of the year than the times when their main place of residence is in any one other part of the UK. The individual will be a Welsh taxpayer if the times when their main place of residence is in Wales comprise in aggregate more of the year than the times when their main place of residence is in any one other part of the UK. For example, an individual who has their main place of residence in England for the first 120 days of the tax year, then moves to Wales for the remainder of the year would be a Welsh taxpayer, as their main place of residence would have been in Wales

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for a longer period. An individual who has their main place of residence in Wales for 165 days, in England for 100 days and in Scotland for 100 days would also be a Welsh taxpayer.

79. Section 116G(4) provides that, for the purposes of applying the definition of a Welsh taxpayer, a “place” includes a vessel and other means of transport.
80. Section 116H provides the means of determining the number of days which an individual spends in Wales or in another part of the UK. This would only apply to individuals who have not already had their Welsh taxpayer status determined by meeting conditions A or C.
81. Section 116H(1) provides that an individual spends more days in Wales than in any other part of the UK if (and only if) the number of days in the year in which they are in Wales exceeds the number of days in the year in which they are in any one other part of the UK. An individual’s whereabouts on a particular day is determined by where they are at the end of a day.
82. Section 116H(2) provides an exception from the rule in section 116G(1) where an individual arrives in the UK as a passenger and, on the next day, departs from the UK without engaging in activities which are to a substantial extent unrelated to their passage through the UK. Days meeting this exception need not be counted for the purposes of determining whether an individual meets condition B.
83. New section 116I provides supplemental powers to modify enactments.
84. Section 116I(1) provides that an order by HM Treasury may alter the definition of income which is charged to income tax at the Welsh rates under new section 11B of ITA 2007 or the application of that section to a particular class of income which is so charged. For administrative ease, it may be beneficial for individuals if some types of non-savings income remain chargeable at the main rates, rather than at the Welsh rates. The power will allow for such changes to be made via secondary legislation. Section 116I(8) makes clear that the power can only be used to remove types of non-savings income from the charge to tax under section 11B – it cannot be used to include savings or dividend income as being chargeable at the Welsh rate.
85. Section 116I(2) allows for references to the basic rate, higher rate and additional rate to be amended in relation to Welsh taxpayers. (The order making power is limited so that amendments cannot be made to Chapter 2 of Part 2 of ITA 2007, which determines the rates at which income tax is charged on income.) Several tax reliefs are calculated by reference to gross income before deduction of income tax. The introduction of a Welsh rate raises a number of questions about which rate should be used in the calculation of reliefs and of income from which tax is deducted at source.
86. The Government wishes to discuss these issues with relevant stakeholders before coming to a final view on the treatment of such reliefs and income types and, where appropriate, to deal with such matters by secondary legislation once those discussions have taken place. It is anticipated that the approach taken in these areas would follow the proposals in Scotland set out in the HMRC Technical Note¹ published in May 2012.
87. Section 116I(3) provides that an order may be made to postpone temporarily the effect of a resolution in relation to the operation of PAYE. A fundamental part of the PAYE system is the use of tax tables by employers to calculate how much is to be deducted from their employees. If for any reason the Assembly did not pass a resolution until shortly before the start of the tax year, replaced one resolution with another shortly before the start of the tax year or did not pass a resolution at all, there may be practical difficulties for HMRC, payroll providers and others in making the necessary changes required to properly operate the PAYE system before the start of the tax year. Similar problems may arise if the UK Government were not to make a decision in relation to

¹ <http://webarchive.nationalarchives.gov.uk/20120530212748/http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>

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the main rates of income tax, or to any relevant allowances, until shortly before the start of the tax year. Where such a problem arises in relation to the main rates of income tax the relevant Finance Act normally contains a provision to deal with the impact on the PAYE system (see, for example, sections 2(3) and 4(3) of FA 2008). The power provided by section 116I(3) would allow similar provision to be made in relation to a Welsh rate.

88. Section 116I(4) gives HM Treasury a power to make an order modifying any enactment to address any further changes that are needed in consequence of or in connection with an order under subsections (1)-(3).
89. Section 116I(5) provides that an order under section 116I may, to the extent that HM Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which it is made. It is not uncommon for a Finance Act to receive Royal Assent after the start of the tax year to which it applies and for provisions made under such an Act to be given retrospective effect from the start of that tax year. This power would allow HM Treasury to make any necessary consequential amendments required as a result of such a provision.
90. Section 116I(6) and (7) provide that an order made under this section would be subject to the affirmative resolution procedure in the House of Commons, unless it is an order under section 116I(3), in which case the negative resolution procedure would be used.
91. New section 116J provides that the Welsh Ministers may reimburse any Minister of the Crown or any government department for administrative expenses incurred by virtue of new Chapter 2. This would include, for example, reimbursing HMRC's additional costs incurred in both implementing and administering the new Welsh rate.
92. New section 116K requires the Comptroller and Auditor General ("C&AG") to make a report for each financial year (i.e. each year to 31 March) to the Assembly on HMRC's administration of the Welsh rate of income tax.
93. Section 116K(2) sets out the scope of the report. The C&AG will report on the adequacy of the rules (which is intended to cover the same matters as "regulations" in section 2(1) of the Exchequer and Audit Departments Act 1921) and procedures which HMRC have put in place to administer and collect the Welsh rate. The C&AG will also report on HMRC's calculation of the amount of Welsh rate income tax to be paid over to the Welsh Government, and on the accuracy and fairness of costs reimbursed to HMRC by the Welsh Government for the administration of the Welsh rate.
94. Section 116K(3) explains that "the Welsh rate provisions" are those set out in this Chapter (including orders made using the powers in section 116I) and other legislation relating to the Welsh basic, higher and additional rates (for example, the provisions inserted into ITA 2007 by section 9).
95. Section 116K(4) and (5) provide that the C&AG has the discretion to include in the report an analysis of whether HMRC is using its resources in administering the Welsh rate in an effective, efficient and economic manner.
96. Section 116K(6) requires that HMRC provides the C&AG with information necessary to complete the annual report.
97. Section 116K(7) requires that the report must be laid before the Assembly no later than 31 January of the financial year following that to which the report relates.