

Devolved taxes: a policy framework

March 2019

Overview

The Scottish Government is consulting on a new approach to the planning, management and implementation of the fully devolved taxes in Scotland.

Why We Are Consulting

The Scottish Government is committed to being more open and accessible to Scotland's people than ever before; to give the public information about the decisions it makes, to support people to understand and influence those decisions, and to value and encourage accountability.

The Programme for Government 2018-19 made a commitment to establishing a more strategic and structured process to engagement, legislation and delivery around the fully devolved taxes¹.

The Scottish Government considers this to be an appropriate time to consult on a Devolved Taxes Policy Framework to establish the process by which changes to the fully devolved taxes will be proposed, consulted on and assessed.

We welcome responses from organisations and individuals on these issues, drawing on their experience in domestic and international taxation.

Responding to this Consultation

We are inviting responses to this consultation by 6 June 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). You can access and respond to this consultation online at <https://consult.gov.scot/financial-strategy/devolved-taxes-policy-framework/>. You can save and return to your responses while the consultation is still open.

Please ensure that consultation responses are submitted before the closing date of 6 June 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form at the end of the document and send it to:

Fully Devolved Taxes Policy Unit
Scottish Government
Area 3D North
Victoria Quay
Edinburgh
EH6 6QQ

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<https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539973-pdf/00539973-pdf/govscot%3Adocument> (p. 61)

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence. Responses will be published where we have been given permission to do so. An analysis report will also be made available in late summer.

An announcement on the new process will then be made as part of the 2020-21 Scottish Budget in late 2019.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to DevolvedTaxes.Consultations@gov.scot.

Events

The Scottish Government will be holding three events to run alongside the consultation.

The sessions will provide stakeholders with the opportunity to find out more information on the consultation from officials, participate in group discussions and provide feedback in advance of official responses to the consultation.

For more information on venues, dates and times, and to book a place at one of the events, please click on the links below:

- Glasgow – 16 April 2019:

<https://www.eventbrite.co.uk/e/a-new-approach-to-the-fully-devolved-taxes-glasgow-consultation-event-tickets-55018705429>

- Aberdeen – 18 April 2019:

<https://www.eventbrite.co.uk/e/a-new-approach-to-the-fully-devolved-taxes-aberdeen-consultation-event-tickets-55018733513>

- Edinburgh – 23 April 2019

<https://www.eventbrite.co.uk/e/a-new-approach-to-the-fully-devolved-taxes-edinburgh-consultation-event-tickets-55018649261>

Ministerial foreword



I am delighted to be launching this consultation on a new approach to the policy making process for the fully devolved taxes.

The first two fully devolved taxes, Land and Buildings Transaction Tax and Scottish Landfill Tax, have been operational for almost four years now in Scotland. The devolution of two further taxes - Aggregates Levy and Air Departure Tax – is also on the horizon. This presents us with the opportunity to draw on our experiences since 2015 and think about how we can do things differently, both in terms of our policies and how we engage with our people, communities and businesses.

I believe that the proposals set out in this paper will not only help us to better manage our existing taxes, but will lay important foundations for a clearer approach to tax policy-making that can also apply to further tax powers in the years to come.

We want to make Scotland an attractive place to do business, and we recognise the important message that a modern, competitive, stable and transparent tax system sends both domestically and overseas.

That is why a cornerstone of the Scottish Approach to Taxation is **certainty**. In the present context this means that individuals and businesses should have confidence in the Government and the tax system when making financial decisions.

Through our tax policies we have demonstrated our ability to take informed decisions in a responsible way and have chosen a distinctive, progressive approach to tax policy-making in Scotland.

Taxes are key to funding the high quality public services we all enjoy. Taxes also support our aim of having a strong economy; an economy that is built on growing, competitive and innovative business; that is environmentally sustainable and inclusive; and that provides jobs, incomes and quality of life for all of our people and communities.

Scotland benefits from an informed and knowledgeable civic society. We believe that more and better engagement means better outcomes for people, families and communities; a more robust, inclusive and sustainable economy; and leads to a greater trust and understanding of government.

Our strong track record of **engaging with individuals, businesses and professional bodies** has been central to ensuring that our taxes are fit for purpose and that their impacts are understood. This consultation builds on the open and consultative approach we have taken on the development of tax policy and legislation to date.

Another important part of this overall process is consideration of whether the existing legislative process for devolved taxes legislation remains suitable. In its report into Scotland's Budget process, the Budget Process Review Group recommended that further work be undertaken to explore options for an alternative legislative process for devolved taxes legislation, including consideration of whether there is the need for a Finance Bill.

This marks another important milestone for tax in Scotland. I am pleased that a working group has been established by the Scottish Government, the Scottish Parliament and others to take this work forward. I look forward to updating you on this later this year.

I believe everyone should have an interest in tax. This consultation provides you with the opportunity to help shape the way the Scottish Government takes decisions on its fully devolved taxes, and I very much look forward to receiving a wide range of views.

I would like to thank you in advance for taking the time to respond to this consultation.

Kate Forbes
Minister for Public Finance and Digital Economy

1. Policy context

1.1 Fully devolved taxes

The Scotland Act 2012 (“2012 Act”) fully devolved the power to the Scottish Parliament to introduce taxes on land transactions and on waste disposal to landfill in Scotland. On 1 April 2015, Stamp Duty Land Tax (“SDLT”) and Landfill Tax ceased to apply in Scotland and were replaced by the Scottish Government with the two present fully devolved taxes, which are:

- Land and Buildings Transaction Tax (“LBTT”); and
- Scottish Landfill Tax (“SLfT”).

The Scottish Government established in statute an independent Scottish tax administration body, Revenue Scotland, as the tax authority responsible for the collection and management of the fully devolved taxes². Recognising an important and internationally recognised principle, the Revenue Scotland and Tax Powers Act 2014 constituted Revenue Scotland as a non-ministerial department that would operate independently of Ministers. In order to further safeguard Revenue Scotland’s independence, the Scottish Government retained responsibility for all aspects of devolved tax policy development and future legislation.

The 2012 Act also provided powers for new taxes to be created in Scotland and for additional taxes to be devolved, paving the way for the devolution of the power to introduce taxes on the carriage of passengers by air and on the commercial exploitation of aggregate through the Scotland Act 2016. These taxes are yet to be introduced due to State Aid related issues, therefore Air Passenger Duty and Aggregates Levy, while still payable in Scotland, remain reserved taxes.

The fully devolved taxes have been operational in Scotland for almost four years now. These taxes operate in a dynamic landscape; regular consideration must be given to potential changes, as well as to general care and maintenance, and there are interlinkages with corresponding UK taxes and the potential for new taxes. In this respect, changes to the fully devolved taxes can be driven by a number of factors:

- new policy development to support a particular industry, to encourage economic growth or to change behaviours;
- care and maintenance, including technical changes;
- decisions made by Revenue Scotland or a Tribunal;
- representations from stakeholders; and
- in response to measures announced by the UK Government, sometimes at short notice.

Since 2015, a number of changes have been made to both LBTT and SLfT. For example:

² www.revenue.scot

- The **Additional Dwelling Supplement** - an additional amount of LBTT payable by those acquiring additional residential properties (such as buy-to-let properties and second homes) - was introduced in 2016 to support first-time buyers and ensure that the opportunities for them to enter the housing market in Scotland would remain as strong as possible.
- To further support first-time buyers, a **first-time buyer relief** was introduced on 30 June 2018 meaning that 90% of first-time buyers pay no tax on the acquisition of their first home.
- In 2016, the Scottish Government consulted on and legislated for a **statutory testing regime for SLfT** to ensure that fine residual waste material was taxed at the correct rate, and to minimise the scope for tax evasion.

Other than the Scottish Budget, there is no formal process or structure in place to guide the consideration, analysis and implementation of legislative change for the devolved taxes. The Scottish Government has received representations from stakeholders on the current process and considers this to be an appropriate time to establish a framework to bring greater certainty, transparency and efficiency to the tax policy making process.

The primary focus of this consultation is, therefore, to establish a greater structure to the process by which changes to the fully devolved taxes are made. Whilst this consultation sets out proposals and options for a new process, the Scottish Government remains open to alternative views and is keen to learn from the experience and expertise of individuals and organisations. In this respect, any proposals will be developed and guided by responses to this consultation.

1.2 Budget Process Review Group

The [Budget Process Review Group](#) was established by the Finance and Constitution Committee of the Scottish Parliament and the Scottish Government in 2016 to carry out a fundamental review of the Scottish Parliament's budget process. Its report, published on 30 June 2017, made a number of recommendations, two of which are directly relevant to the fully devolved taxes³:

- **Recommendation 50:** The Group recommends that further work is undertaken by the Finance and Constitution Committee in consultation with the Scottish Government, Revenue Scotland and others to explore options for alternative legislative processes for devolved taxes legislation, particularly where tax measures need to be introduced quickly or where minor amendments are needed to existing primary legislation.
- **Recommendation 51:** The Group recommends that the Scottish Government in consultation with the Finance and Constitution Committee examines the need for a Finance Bill and brings forward any recommendations by the end of the current Parliament.

Alongside this consultation, a Working Group made up of officials from the Scottish Government, Scottish Parliament, Revenue Scotland, and others will be established

³ [https://www.parliament.scot/S5_Finance/Reports/BPRG - Final_Report_30.06.17.pdf](https://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf)

to build on the recommendations and consider the legislative process for the fully devolved taxes. A further update on this work will be provided later this year.

1.3 Other Scottish taxes

While the scope of this consultation is limited to the fully devolved taxes, it is important to understand the wider context in which these taxes operate. Therefore set out below is a brief overview of the others taxation powers available to the Scottish Government.

Scottish Income Tax

The Scotland Act 2016 provided the Scottish Parliament with the power to set the rates and band thresholds that apply to all non-savings non-dividend income tax paid by Scottish taxpayers⁴. While the Scottish Parliament has the power to set the Scottish Income Tax rates and bands, HM Revenue and Customs (“HMRC”) continue to be responsible for its collection and management. As such, Scottish Income Tax remains part of the existing UK income tax system and is not a fully devolved tax.

Assigned VAT Revenues

The Scotland Act 2016 also allows for receipts from the first 10p of the standard rate of VAT and the first 2.5p of the reduced rate of VAT in Scotland to be assigned to the Scottish Government⁵. The power to set the VAT rates and determine the tax base will remain reserved to the UK Government so VAT is not a fully devolved tax.

Local Government Taxes

Council Tax and non-domestic rates, also known as business rates are two other forms of taxation in Scotland⁶. The Scottish Government is responsible for the policy and legislative framework for these taxes, however individual local authorities administer and collect them.

The 2019-20 Scottish Budget delivered additional powers to local authorities to introduce taxes on workplace car parking spaces and tourism. These proposals will be developed through close consultation with the public, industry and local authority partners. It will then be for each local authority to decide whether to introduce these powers.

⁴ www.gov.scot/policies/taxes/income-tax/

⁵ www.gov.scot/policies/taxes/vat/

⁶ www.gov.scot/policies/local-government/

2. Scottish Approach to Taxation

The Scottish Government's overarching approach to taxation, whilst designed to be fit for the 21st century, is embedded in Adam Smith's four key principles. These are:

- **Proportionality to ability to pay** – the tax system should be progressive, with those who are able to pay more tax contributing a greater share;
- **Certainty for the taxpayer** – individuals and businesses should have confidence in the tax system when making financial decisions;
- **Convenience** – the tax system should be as simple as possible and easy to understand and comply with; and
- **Efficiency** – tax policy should be designed to ensure that it is cost-effective to administer.

In addition to Adam Smith's founding principles, the Scottish Government takes the toughest possible approach to **tackling tax avoidance** in relation to the fully devolved taxes. The Scottish General Anti-Avoidance Rule allows Revenue Scotland to take counteraction against arrangements which it considers to be artificial, even if the arrangements operate within the letter of the law⁷. In this respect, the Scottish GAAR is significantly wider than the corresponding UK General Anti-Abuse Rule which is based on a narrower test of 'abuse' rather than 'artificiality'.

Another cornerstone of the Scottish Approach to Taxation is **engagement** with people, communities and businesses. Taxes do not just support public services, they also allow the Government to support business and encourage growth through economic development, skills investment and major infrastructure. So everyone is a stakeholder.



⁷ www.revenue.scot/legislation/rstpa-legislation-guidance/gaar

3. Devolved Taxes Policy Framework

A Devolved Taxes Policy Framework will be published to govern how changes to the fully devolved taxes will be proposed, consulted on, assessed and evaluated. The Scottish Government will take a collaborative approach to developing this Framework, through this consultation and the planned events, and in its continued engagement with Revenue Scotland, the Scottish Fiscal Commission and professional bodies.

The Devolved Taxes Policy Framework will set out a policy and legislative cycle through which changes to devolved taxes legislation will follow⁸. In establishing this cycle, the Scottish Government aims to ensure that:

- its strategy and priorities in relation to tax are clear;
- there is early and continuous consultation throughout the policy cycle;
- stakeholders are encouraged to participate in the formulation of tax policy and given clarity around when and how they can make representations;
- tax changes are announced sufficiently in advance of when they will take effect, providing taxpayers and practitioners with certainty; and
- legislation is reviewed post-implementation.

3.1 Domestic and international comparison

To help inform the work to develop the Framework, the Scottish Government has considered examples of tax policy in other English speaking jurisdictions, particularly those with similar parliamentary systems to Scotland. In this respect, the Scottish Government has worked with the UK, Welsh, Irish and New Zealand Governments to learn from their experiences and build on the key features of their successes.

⁸ See section 6. for exceptions.

New Zealand

New Zealand's General Tax Policy Process ("GTPP") is often considered by tax commentators and academics as one of the most effective tax policy making frameworks in the world. A cornerstone of the GTPP is the open and collaborative relationship officials enjoy with taxpayers, businesses and the tax profession. As a result, the New Zealand public are generally well-informed on tax matters, including the process through which changes are made.

Key features:

- Participation of public and private-sector tax professionals in policy development.
- Good collaboration between Treasury and Inland Revenue.

UK

The UK Government has followed a new approach to tax policy making since 2010. This approach has introduced an improved cyclical structure to the tax policy making process. It also commits the UK Government to publishing more detailed information on policy changes. For example, Tax Information and Impact Notes are now published to provide a more thorough explanation of the policy objectives.

Key features:

- Tax policy cycle means changes are announced at least 16 months before they come into effect.
- Supporting material provides clear information on impacts and objectives.

Wales

The Welsh Government have a similar devolution settlement to Scotland in relation to taxation. Their Tax Policy Framework sets out the Welsh Government's general approach to taxation, their strategic objectives and key challenges. The framework also summarises the policy process for taxation in Wales, including the approach to engagement and consultation.

Key feature:

- Future priorities in relation to tax are clear.

Republic of Ireland

Each year the Department of Finance hold a Tax Policy Conference to bring together senior policy makers, stakeholders and academics from Ireland and abroad, to discuss the challenges in key areas of tax policy. The Pre-Budget Submissions Process also allows special interest groups and members of the public to influence and inform tax policy. Indeed several measures that have been introduced via the budget process have come from members of the public through submissions as part of this consultation process.

Key features:

- Annual tax conference.
- Opportunity for stakeholders to influence and inform tax policy.

4. Legislative and policy cycle

4.1 Phase 1: Inform and engage

Scotland benefits from an informed and knowledgeable civic society. More and better engagement means better outcomes for people, families and communities; a more robust, inclusive and sustainable economy; and leads to a greater trust and understanding of government.

The Scottish Government is committed to a more strategic approach to engagement around the fully devolved taxes, building on its reputation for good and effective communications with stakeholders. The long-term objective is to use wider-ranging engagement with a broad range of stakeholders to lead and inform the public understanding of tax in Scotland, ensuring that taxpayers understand the landscape in which they pay their taxes and the vital role they play in funding public services in Scotland.

This phase of the cycle will establish identifiable points throughout the year when the Scottish Government will undertake specific engagements on the fully devolved taxes. In turn, it will create opportunities for stakeholders to make representations to the Scottish Government, providing clarity on when representations should be made so that there is appropriate time for them to be considered and assessed.

This phase also allows the Scottish Government to begin to communicate and inform its broad priorities for the fully devolved taxes over the coming year(s).

Devolved Tax Collaborative

In 2013, the Scottish Government established the Devolved Tax Collaborative (“DTC”) as a means of bringing together the tax advisory community and others with an interest in tax. These events continued for around two years and were warmly welcomed by stakeholders.

Since the implementation of the devolved taxes in April 2015, the DTC has been replaced by Revenue Scotland’s LBTT & SLfT Fora. Revenue Scotland have used these events to provide updates on their performance, the performance of the taxes, and to discuss technical and practical issues. For its part, the Scottish Government also conducts ongoing engagement with stakeholders, including ministerial engagement in advance of annual Budgets.

The move from the DTC to tax specific forums means there has been less opportunity for wider discussion on tax policy issues. The Scottish Government will therefore propose to reconvene annual meetings of the Devolved Tax Collaborative (“DTC”).

These events will allow the Scottish Government to set out future tax policy priorities and provide updates on emerging tax proposals. It will also allow the Scottish Government to listen to feedback from a broad range of businesses, interest groups and individuals before progressing these proposals. Attendees will be encouraged

to contribute to discussions on the effectiveness of the tax system, as well as to comment and make proposals on emerging policy priorities.

Question 1: Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?

Question 2: Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?

4.2 Phase 2: Consultation and developing policy

The second phase of the cycle brings together the policy development, legislative design and drafting. It is characterised by continuous engagement with individuals, businesses, practitioners and professional bodies. This collaborative approach will ensure that policies and legislation are fit for purpose and their likely impacts are understood.

Tax consultations

The Scottish Government has taken a collaborative and open approach to tax policy development in order to ensure tax policy is informed by a diverse range of views and to help taxpayers and the wider public to better understand why changes are being made. For example in 2017, the Scottish Government published a discussion paper on the future of income tax, followed by a number of roundtable events in advance of the Scottish Budget, which was warmly welcomed by stakeholders⁹.

With this in mind, open and extensive consultation and engagement throughout the policy and legislative cycle is a cornerstone of the Devolved Taxes Policy Framework.

The Scottish Government will publish a tax consultation on an annual or biennial basis (depending on the frequency of the cycle – see question at the end of section 4.5). Where possible, the consultation will seek views on a range of issues under consideration, rather than consulting on each on an individual basis. It will set out:

- the range of tax measures the Scottish Government are exploring;
- the policy objectives of those measures;
- on what areas views are sought; and
- an assessment of the likely impacts.

Different types of consultation and engagement will work better for different types of changes. In some instances, for example, in wider-reform of the tax system, the Scottish Government will hold events to encourage participation in the consultation and to provide further information. In other instances, it may be appropriate to consult informally with subject-matter experts or professional bodies, particularly if the changes are minor or technical in nature.

⁹ www.gov.scot/publications/role-income-tax-scotlands-budget/pages/1/

The Scottish Government will also, where possible, consult on draft legislation. If it is not possible to do so at the time of the tax consultation, there may be a second, shorter period of consultation specifically on the draft legislation.

Question 3: Do you support the Scottish Government's proposed approach to tax consultations, in particular consulting on issues collectively rather than on an individual basis?

Accessibility

The [Consultation Hub](#)¹⁰ contains information on all open Scottish Government consultations. It explains how responses can be submitted (usually online or in writing), when responses must be made by (the Scottish Government aims to consult for a minimum of 12 weeks), and provides the name and contact details of the official leading on the consultation.

The Consultation Hub also lists consultations which have closed, providing information on the types of respondent, a summary of the responses and any actions taken as a result. If the respondent has provided their consent, their response to the consultation will also be published.

Assessing and evaluating policy

The Scottish Government understands the impact that changes to taxation can have on individuals, public services and the economy and will always take decisions in a careful, considered and responsible way. Any changes to a fully devolved tax will be carefully assessed to ensure that they are informed and evidence based.

In assessing tax policies, the Scottish Government will ensure that proposals are consistent with the Scottish Approach to Taxation. In addition, the Scottish Government will explore changes and initiatives that best support Scottish Government's wider economic, social and environmental policy objectives.

In certain instances, there will be conflict between the objectives, including the four maxims which underpin the Scottish Approach to Taxation, and this may present challenges in meeting each of them to the same extent. Where this happens, the Scottish Government will balance the objectives, along with any other relevant considerations, to achieve the best possible policy and legislation.

4.3 Phase 3: Parliamentary process

All fully devolved tax legislation will be subject to scrutiny from the Finance and Constitution Committee and the Scottish Parliament. Ministers and the Finance and Constitution Committee have asked the Scottish Government and Scottish Parliament to establish a Working Group to explore options for an alternative legislative process for devolved taxes legislation, including whether there is the need for a Finance Bill. This builds on the recommendations made by the Budget Process Review Group in its report on 30 June 2017¹¹.

¹⁰ <https://consult.gov.scot/>

¹¹ [https://www.parliament.scot/S5_Finance/Reports/BPRG - Final Report 30.06.17.pdf](https://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf) (recommendations 50 and 51).

The membership of the Working Group will be extended to representatives from Revenue Scotland, the Scottish Fiscal Commission and the Office of Tax Simplification. The Law Society of Scotland, the Institute of Chartered Accountants of Scotland, the Chartered Institute of Taxation and the Chartered Institute for Public Finance and Accountancy will also be involved in the Working Group.

The Working Group will report to the Cabinet Secretary for Finance, Economy and Fair Work and the Finance and Constitution Committee later in the year to set out its views on the merits of the differing options. Once agreed, the Cabinet Secretary for Finance, Economy and Fair Work and the Finance and Constitution Committee will then present these recommendations to the Scottish Parliament seeking approval for the proposals alongside the Scottish Budget 2020-21 later this year.

4.4 Phase 4: Post-implementation

It is important that policies are reviewed after they have been implemented and properly embedded, and the final part of the policy and legislative cycle is a commitment to undertaking more systematic reviews of tax changes.

There will always be challenges in establishing the parameters for reviewing the impact of policies and legislation so it will be important to identify from the outset the baseline data that is needed to do so.

The post-implementation review will seek to evaluate:

- if the policy is operating as intended;
- if the resultant revenues and/or the benefits to wider-policy objectives were as expected; and
- whether the consequences were anticipated.

In undertaking such reviews, the Scottish Government will also ensure that the changes remain consistent with the existing legislative provisions, and more generally that the devolved taxes are kept up-to-date with wider legislative reform.

4.5 Indicative timeline of cycle

Phase 1 (*May – December*)

Devolved Tax Collaborative (*May – June*)

The annual tax forum will bring together representative bodies, networks, individuals and organisations with an interest in the tax system.

Research, analysis and evaluation (*June – November*)

The Scottish Government will research and analyse any tax changes, before evaluating their effectiveness.

Budget announcement on tax priorities (*December*)

The Cabinet Secretary for Finance, Economy and Fair Work will announce the tax measures the Scottish Government will look to develop in the year ahead as part of the Budget.

Phase 2 (*January – December*)

Consultation (*January*)

Following the Budget announcement on tax priorities, a consultation will be launched on the proposed measures.

Policy and legislative development (*May – November*)

At this stage, the Scottish Government will more fully develop policy and legislation. During this time it may be appropriate to carry out further consultation on draft legislation.

Announcement on new legislation (*December*)

An announcement will be made when the legislation has been drafted and Ministers are content to proceed.

Phase 3 (*January – April*)

Parliamentary process (*January – March*)

The draft legislation will be subject to scrutiny from the Finance and Constitution Committee and the Scottish Parliament.

Legislation takes effect (*April*)

Subject to approval by Parliament and Royal Assent, the legislation will take effect on 1 April.

Phase 4

Post-implementation review

A review of the policy, including how it was developed and implemented, as well as whether it is achieving its aims, will be conducted.



Question 4: What are your views on the proposed policy and legislative cycle?

Question 5: What are your views on how frequent the cycle should occur - annually or every two years?

5. Accompanying documents

As part of the existing legislative process in Scotland, the Scottish Parliament's Standing Orders usually requires a policy memorandum, financial memorandum and explanatory note to be published alongside any new primary legislation (only a policy note is required for secondary legislation). These documents are intended to be read in tandem and together they offer more detailed commentary on the individual provisions and their objectives.

A key feature of providing taxpayers with certainty, resolving disputes and tackling avoidance is to make clear the policy intentions behind the relevant legislation. In drafting the accompanying documents, the Scottish Government's aim is to set out clearly and in appropriate detail the intention of the policy and how the legislation is expected to work in practice. The objective of this approach is, amongst other things, to prevent tax avoidance from the outset through drafting clear legal provisions, supported by explanatory material setting out the intention behind the legislation, to ensure that tax is paid in the way that the Scottish Parliament had intended.

The Scottish Government also undertake various assessments as part of the policy making process. For example:

- **Equality Impact Assessments** look at how policies impact on peoples, in particular, the process identifies the impact of policy on people who share certain 'protected characteristics': age, disability, sex, gender reassignment, sexual orientation, race and religion or belief.
- **Business and Regulatory Impact Assessments** are used to analyse the cost and benefits to businesses and the third sector of any proposed legislation or regulation, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.
- **Data protection impact assessments** must be completed for all policies or projects involving personal data and privacy. They help to identify and mitigate risks to privacy, and identify the ways the Scottish Government can effectively comply with data protection laws.

All of these documents are published on the Scottish Parliament website alongside any other documents considered during the passage of legislation. To improve accessibility, the Scottish Government will also publish links to the documents on the tax pages of its website. This will bring together in one place all information related to the fully devolved taxes and will ensure that the documents are readily available to taxpayers and Revenue Scotland, and also so that those overseeing disputes and appeals are able to easily refer to the information and to use it when making their decisions.

As noted earlier, the UK Government now publish Tax Information and Impact Notes alongside any legislation to provide a clear explanation of the policy objective, together with details of the tax impact on the exchequer, the economy, individuals, businesses, civil society organisations, as well as any equality or other specific

impacts. In this respect, these notes provide a similar level of detail to the accompanying documents already published by the Scottish Government.

Question 6: Do you consider the existing documents that are published, and the Scottish Government's approach to drafting them, as a sufficient means of clarifying the intention and impacts of a policy?

6. Exceptions

In every tax jurisdiction situations arise where changes may need to be made without advance consultation. For example, to tackle tax avoidance, to correct an anomaly or to respond quickly to changes in the economy. This often means that legislation is introduced with immediate effect, and in certain circumstances, it needs to be given retroactive effect.

Due to the operation of the Fiscal Framework¹² and the interaction of the UK and Scottish Budget timetables, tax changes announced as part of the UK Autumn Budget can present challenges for the Scottish Government, particularly if the Scottish Government is required to legislate at short notice to protect revenues or prevent distortions in markets.

Changes may also need to be made without advance consultation where the effect of providing advance notice would pose a significant risk to revenues and markets, known as forestalling. This is particularly relevant for transactional taxes, such as LBTT, where taxpayers have more flexibility around bringing transactions forward, or as the case may be, delaying them until after a tax change has taken effect. As forestalling usually occurs to the benefit of the taxpayer, there will always be a loss in revenue. The Office of Budget Responsibility published the paper [Forestalling ahead of property tax changes](#) which provides a detailed analysis on the effects of forestalling, including case studies relevant to LBTT¹³.

The Scottish Government will aim to make most changes to the devolved taxes through the policy and legislative cycle. However, in light of the above, it will be important to maintain provision for changes to be made immediately or following a shorter timescale and without substantial consultation.

The Scottish Government will consider the appropriate approach to consultation and pre-announcing tax changes on a case-by-case basis, carefully balancing the need for transparency and certainty with the risks associated with forestalling. In doing so, legislation will only be introduced at short notice if there are clear and justifiable reasons, and in such cases those reasons and rationale will be set out in the accompanying documents.

Question 7: Do you agree with the Scottish Government's approach to the circumstances set out in this section?

¹² www.gov.scot/publications/fiscal-framework-factsheet/

¹³ https://obr.uk/docs/dlm_uploads/Working-paper-No.10-1.pdf

7. Collaboration with Revenue Scotland

Revenue Scotland are the tax authority responsible for the collection and management of the devolved taxes. To ensure that the administration of tax is independent and impartial, Revenue Scotland is directly accountable to the Scottish Parliament, rather than to the Scottish Government.

While the Scottish Government is responsible for all aspects of policy and future legislation for the fully devolved taxes, the Scottish Government and Revenue Scotland have consistently worked together on the development of tax policy. This collaborative approach ensures that tax policy is evidence based, that changes can be delivered on a practical level and that legislation is informed by Revenue Scotland's operational and technical experience, whilst safeguarding Revenue Scotland's independence.

A recent example of this collaboration was during the implementation of the first-time buyer relief for LBTT, where officials from Revenue Scotland provided technical and operational assistance to the Scottish Government, leading to improved and refined legislation. In turn, Revenue Scotland's early involvement in the process enabled them to prepare extensive guidance and worked examples in advance of the relief coming into force, as well as publish an updated calculator to allow prospective first-time buyers to work out how much LBTT they would now pay.

The terms which underpin this working relationship are set out in an [*Agreement between the Scottish Government and Revenue Scotland*](#)¹⁴. The relationship has, however, evolved and matured since the agreement was made in 2015 and this work will provide an opportunity to revisit the terms. We will return to stakeholders with an update in due course as this work progresses.

¹⁴ www.revenue.scot/sites/default/files/Revenue%20Scotland%20-%20%20Framework%20Document.pdf

8. The role of the Scottish Fiscal Commission

The Scottish Fiscal Commission Act 2016 established the Scottish Fiscal Commission (“SFC”) as a statutory body to produce official fiscal and economic forecasts for the Government to use in its budget and financial planning¹⁵.

Similar to Revenue Scotland, the SFC is constituted as a non-ministerial office; it operates independently of the Scottish Government and is directly accountable to the Scottish Parliament for the delivery of its functions.

Since April 2017, the SFC has been responsible for preparing the forecasts which underpin the Scottish Budget and its functions form an important part of Scotland’s fiscal framework. When the Scottish Government publishes its proposed Budget, the SFC also publish forecasts of the tax revenue along with how much the proposed policies are likely to raise and cost. This allows the Scottish Parliament to properly scrutinise the Budget's policy and financial implications ahead of the new financial year.

The SFC also produce forecasts outside of the Scottish Budget when primary or secondary legislation is published in the Scottish Parliament which affects revenue raised from a fully devolved tax. The Scottish Government works closely with the SFC to aid the development of their costings.

The [*Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government*](#) underpins the engagement relating to the forecasting and assessment process¹⁶.

¹⁵ <http://www.fiscalcommission.scot/>

¹⁶ <http://www.fiscalcommission.scot/media/1231/march-2018-protocol-for-engagement-between-the-scottish-fiscal-commission-and-the-scottish-government.pdf>



Devolved taxes: a policy framework

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes No

LIST OF CONSULTATION QUESTIONS

Question 1: Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?

- Yes
- No

Please explain your answer

Question 2: Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?

- Yes
- No

Please explain your answer

Question 3: Do you support the Scottish Government's proposed approach to tax consultations, in particular consulting on issues collectively rather than on an individual basis?

- Yes
- No

Please explain your answer

Question 4: What are your views on the proposed policy and legislative cycle?

Question 5: What are your views on how frequent the cycle should occur - annually or every two years?

Question 6: Do you consider the existing documents that are published, and the Scottish Government's approach to drafting them, as a sufficient means of clarifying the intention and impacts of a policy?

- Yes
- No

Please explain your answer

Question 7: Do you agree with the Scottish Government's approach to the circumstances set out in this section?

- Yes
- No

Please explain your answer



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-659-6 (web only)

Published by The Scottish Government, March 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS548386 (03/19)

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