

Paper 2

** referencing Barclay recommendations & numbering*

The Group notes that the following recommendations have already been implemented by the Scottish Government and require no further input

5 (a). Expanding Fresh Start relief to benefit town centres. *Legislation laid - begins on 1 April 2018* see <http://www.legislation.gov.uk/ssi/2018/77/contents/made>

Section 2- For Primary Legislation

5(b). New Power for Councils to levy increased rates

The Group notes that the Scottish Government has accepted this recommendation and will implement it by 2020. It was noted that Barclay recommended that no more than 3 schemes should be created across Scotland and that these should be evaluated prior to wider roll out.

This group believes that certain safeguards should be built into the primary legislation.

These safeguards could include one or several of the following

- a) A cap on the level of supplement – to be capped at a set upper supplement (e.g. X pence or less) or linked to the prevailing poundage rate (e.g. x% of the poundage rate or less)
- b) A requirement for Ministerial approval to be given for each scheme
- c) A Requirement for the local council to consult on the scheme
- d) A requirement for local businesses to have a say on how proceeds from the supplement are spent (similar to the BID model)

We also support the Barclay recommendation that this should be formally assessed prior to any wider rollout.

The detail of these safeguards / evaluation could be subject to consultation and a Q could be posed.

Example Consultation Q – From 2020 local Councils will have a new power to increase rates paid by out of town or predominantly online businesses. The proceeds would be used to support businesses in town centres as part of a small pilot in 2 or 3 towns or small areas. What safeguards should be put in place and how could the success of such a policy be evaluated?

16 Penalty for non-provision of information to councils

The Group acknowledge that Scottish Government will create a new power ratepayers must advise their Council of any change in occupier or circumstances. This is important to prevent fraud, but also ensures the correct ratepayer is billed for the correct amount. It is not intended to be a revenue raising exercise but penalties will deter fraud and ensure information is kept up to date.

Discussion points- Should this be a fixed fee fine? Should it be proportionate? i.e. a sliding scale or 1% of rateable value? Can you appeal a fine? Should there be flexibility to allow for extenuating circumstances e.g bereavement? Is this an absolute fine e.g. automatically applied to a bill or a discretionary fine e.g. councils have the option to fine ratepayers?

Example Consultation Q – To ensure fairness and minimise fraud, all ratepayers will be required to inform Councils of a change in circumstances e.g. if occupation changes, the business expands into other properties or the property changes use. How should these penalties operate?

17 Enable quicker debt recovery from ratepayers

From 2020 The Scottish Government will bring debt recovery for both kinds of local taxation into line. This means council's will be able to initiate enforcement action for non-payment of rates earlier in the year to ensure fairness among all tax payers (both domestic and non-domestic) and reduce avoidance.

We support this principle.

Discussion points- how do we raise awareness of this change? Should councils retain any discretion for extenuating circumstances (council tax comparison)?

Example Consultation Q – How should the debt recovery changes be communicated to ratepayers?

20. General anti avoidance rule (GAAR)

We support fairness in the taxation system and agree that action should be taken to tackle those who deliberately avoid payment of taxation.

Discussion point - Should this group commend the Revenue Scotland GAAR (see Annex A) or are there alternatives? Should this be retrospective to discourage tax avoidance now?

Example Consultation Q - When the GAAR is introduced do you have any principles that this should encompass?

21 Close empty property relief loophole

We note that the Scottish Government will change the rules around the eligibility for empty property relief to reduce a known avoidance tactic from 2020. This will increase the period a property must be occupied before a new period of empty property relief may be claimed from 42 days to 6 months.

We support fairness in the taxation system and agree that action should be taken to tackle those who deliberately avoid payment of taxation. We note that Barclay advised that the 6 month period should be discontinuous.

Discussion points - How do we raise awareness of this change? Would there be any unintended consequences of this change? If so how can we mitigate against them?

Example Consultation Q -

25. Relief restricted to properties in active occupation

The group notes that this will primarily impact on empty properties either previously occupied by Charities which receive charity relief (not empty property relief) or empty properties that claim the more generous SBBS instead of empty property relief.

We note that Barclay viewed that the ratepayer must demonstrate that over 51% of the area should be in active use throughout the year. This could still potentially be open to abuse, however the GAAR would potentially mitigate any future avoidance behaviours.

Discussion points - how do we raise awareness of this change? Should we indicate numbers affected (where possible to estimate) in consultation? How do ratepayers demonstrate/ councils check that over 51% of area is in active use throughout the year? Are there any better ways to define "active" use? Would there be any unintended consequences of this change? If so how can we mitigate against them?

Example Consultation Q -

26. Reform empty property relief

The group notes that from 2020 listed property will receive 2 years 100% relief and any type of property empty for over 5 years will pay a 10% surcharge. Some members considered this will have a detrimental impact on development and listed property.

Discussion points - How do we raise awareness of this change?

Example Consultation Q -

27. Sports relief for affordable community facilities

Separate engagement will need to be undertaken with the sector.

Relief recipients will be published so information will be more transparent

Discussion points - [How much input should this group have or should sector lead?]

How should affordable/ community be defined? Should there be a rateable value cut off? Sliding scale of relief? Should relief be sport specific? Limited only to CASC's? Should clubs that exclude on grounds of sex, age or other criteria be excluded?

Section 3 – Information- secondary priority

9. Provision of better information - *ongoing and open ended (continual improvement). Guidance on reliefs will be updated by SG starting this month. Guidance for nursery relief and model application form.*

What would be useful for ratepayers/ how do we provide information?

8. 'Road map' for future rates changes- *part of Recommendation 9?*

Section 4- subgroup work

14. Standardised rates bills across Scotland – *taken forward by billing subgroup*

Software suppliers would need information by when to change 2019-20 bills? Summer 2018?

15. Incentivise online billing - *taken forward by billing subgroup*

19. Reform of the appeals system - *taken forward by appeals subgroup (primary legislation already in place to make reforms)*

Section 5 - Largely internal SG processes- can be completed with minimal group involvement?

17. Councils to make refund payments faster – *letter could be written to Councils DoF in first instance.*

11. Employ rateable value finder product- *public procurement required*

10. Relief recipients to be published – *starts 2018, subject to data protection issues*

23. All relief awards to be checked for errors

Revenue Scotland – more background

<https://www.revenue.scot/legislation/rstpa-legislation-guidance/gaar>

Legislation link (to full Act)

<http://www.legislation.gov.uk/asp/2014/16/part/5/enacted>

Revenue Scotland and Tax Powers Act 2014

62 The general anti-avoidance rule: introductory

(1) This Part has effect for the purpose of counteracting tax advantages arising from tax avoidance arrangements that are artificial.

(2) The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

Artificial tax avoidance arrangements

63 Tax avoidance arrangements

(1) An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.

(2) An “arrangement”—

(a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and

(b) may comprise one or more stages or parts.

64 Meaning of “artificial”

(1) A tax avoidance arrangement is artificial if condition A or B is met.

(2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances, including—

(a) whether the substantive results of the arrangement are consistent with—

(i) any principles on which those provisions are based (whether express or implied), and

(ii) the policy objectives of those provisions,

(b) whether the arrangement is intended to exploit any shortcomings in those provisions.

(3) Condition B is met if the arrangement lacks economic or commercial substance.

(4) Each of the following is an example of something which might indicate that a tax avoidance arrangement lacks economic or commercial substance—

(a) whether the arrangement is carried out by a person in a manner which would not normally be employed in reasonable business conduct,

(b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,

(c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,

(d) whether transactions are circular in nature,

(e) whether the arrangement results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.

(5) The fact that—

- (a) a tax avoidance arrangement accords with established practice, and
- (b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,

is an example of something that might indicate that the arrangement is not artificial.

- (6) The examples given in subsections (4) and (5) are not exhaustive.
- (7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

65 Meaning of “tax advantage”

(1) A “tax advantage” includes in particular—

- (a) relief or increased relief from tax,
- (b) repayment or increased repayment of tax,
- (c) avoidance or reduction of a charge to tax or an assessment to tax,
- (d) avoidance of a possible assessment to tax, and
- (e) deferral of a payment of tax or advancement of a repayment of tax.

(2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

66 Counteracting tax advantages

(1) Revenue Scotland may make such adjustments as it considers just and reasonable to counteract the tax advantages that would (ignoring this Part) arise from a tax avoidance arrangement that is artificial.

(2) The adjustments may be made in respect of the tax in question or any other devolved tax.

(3) The adjustments that may be made include (but are not restricted to) those that impose or increase a liability to tax in any case where (ignoring this Part) there would be no liability or a smaller liability, and tax is to be charged in accordance with any such adjustment.

(4) Any adjustments required to be made under this section (whether by Revenue Scotland or the person to whom the tax advantage would arise) may be made by—

- (a) the amendment of a return (see sections 83, 87 and 93),
- (b) the correction of a return (see section 84),
- (c) the making of a Revenue Scotland determination (see section 95),
- (d) the making of a tax return (see section 97),
- (e) the making of a Revenue Scotland assessment (see section 100),
- (f) the entering into of a contract settlement (see section 118), or
- (g) such other method as Revenue Scotland considers appropriate.

(5) No steps may be taken by Revenue Scotland unless the procedural requirements of sections 68 and 69 have been complied with.

(6) The power to make adjustments by virtue of this section is subject to any time limit imposed by or under Part 6, any other provision of this Act or any other enactment.

67 Proceedings in connection with the general anti-avoidance rule

(1) In proceedings before a court or tribunal in connection with the general anti-avoidance rule, Revenue Scotland must show—

- (a) that there is a tax avoidance arrangement that is artificial, and
- (b) that the adjustments made to counteract the tax advantages arising from the tax avoidance arrangement are just and reasonable.

(2) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal must take into account any guidance published by Revenue Scotland about the general anti-avoidance rule (at the time the tax avoidance arrangement was entered into).

(3) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal may take into account—

(a) guidance, statements or other material (whether by Revenue Scotland or anyone else) that was in the public domain at the time the tax avoidance arrangement was entered into, and

(b) evidence of established practice at that time.

68 Notice to taxpayer of proposed counteraction of tax advantage

(1) If a designated officer considers—

(a) that a tax advantage has arisen to a person (“the taxpayer”) from a tax avoidance arrangement that is artificial, and

(b) that the advantage should be counteracted under section 66,

the officer must give the taxpayer a notice to that effect.

(2) The notice must—

(a) specify the tax avoidance arrangement and the tax advantage,

(b) explain why the officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial,

(c) set out the counteraction that the officer considers should be taken, and

(d) inform the taxpayer of the period under subsection (4) for making representations.

(3) The notice may set out the steps that the taxpayer may take to avoid the proposed counteraction.

(4) If a notice is given to a taxpayer under subsection (1), the taxpayer has 45 days beginning with the day on which the notice is given to send representations to the designated officer in response to the notice.

(5) The designated officer may, on a request made by the taxpayer, extend the period during which representations may be made.

(6) The designated officer must take into account any representations made by the taxpayer.

69 Final notice to taxpayer of counteraction of tax advantage

(1) The designated officer must, after the expiry of the period in which representations may be made under section 68, give the taxpayer a notice setting out whether the tax advantage arising from the tax avoidance arrangement is to be counteracted under the general anti-avoidance rule.

(2) If the notice states that a tax advantage is to be counteracted, the notice must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it and the period within which those steps must be taken.

70 Counteraction of tax advantages: payment of tax charged etc.

(1) This section applies where—

(a) a designated officer gives a taxpayer a notice under section 69, and

(b) the notice sets out the adjustments required to give effect to the counteraction of a tax advantage.

(2) The taxpayer must pay any amount, or additional amount, of tax chargeable or penalty or interest imposed as a result of the adjustments before the end of the period of 30 days beginning with the date on which the notice is issued.

(3) Subsection (2) applies in place of any other provision of this Act or any other enactment which specifies a time limit for the payment of tax, penalty or interest.

71 Assumption of tax advantage

(1) A designated officer may give a notice under section 68 or 69 where the officer considers that a tax advantage might have arisen to the taxpayer.

(2) Accordingly, any notice given by a designated officer under section 68 or 69 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

General anti-avoidance rule: commencement and transitional provision

72 General anti-avoidance rule: commencement and transitional provision

(1)The general anti-avoidance rule has effect in relation to any tax avoidance arrangement entered into on or after the date on which this Part comes into force.

(2)Where the tax avoidance arrangement forms part of any other arrangements entered into before that day, those other arrangements are to be ignored for the purposes of section 64(7), subject to subsection (3).

(3)Account is to be taken of those other arrangements if, as a result, the tax avoidance arrangement would not be artificial.