

Public Services and Government

A Consultation on Tax Management: Analysis of Responses

Linda Nicholson, The Research Shop

The Scotland Act 2012 introduced new financial powers for the Scottish Parliament, including the powers to introduce new taxes to replace the UK Stamp Duty Land Tax and the Landfill Tax in Scotland from 1 April 2015. In his statement to the Scottish Parliament (7 June 2012), the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney MSP, confirmed plans to consult on and bring forward Bills to introduce a Land and Buildings Transition Tax (LBTT) and a Scottish Landfill Tax (SLT). Mr Swinney also announced the Scottish Government's intention to introduce a third Bill on Tax Management. This Bill will focus on the delivery of the devolved taxes and associated arrangements required to ensure their successful implementation. A key aspect of this is the introduction of Revenue Scotland, as the Scottish tax authority, along with clearly defined powers and duties. The Scottish Government published a written consultation paper, "A Consultation on Tax Management" (10 December 2012) to seek views on tax management issues. Twenty eight responses to the consultation were submitted.

Main Findings

- The proposed function of Revenue Scotland, "to ensure the efficient and effective care and management of the devolved taxes and that tax receipts are paid to the Scottish Consolidated Fund", along with the proposed general and specific duties, were well received overall.
- The Scottish Government preferred option for Revenue Scotland's leadership and governance of a Board made up entirely of non-executive members to which the Chief Executive would report, was supported by 8 of the 16 respondents who provided a view. However, the option given most support (by 10 respondents) was for a Board comprising both non-executive and executive members, along with a non-executive Chair.
- Whilst there was much support for a "Digital by default" approach to providing information, on the grounds of wide reach and enabling access, a recurring theme was that this should not inadvertently exclude those without internet access or IT knowledge.
- The proposed framework for tax collection was considered, in general, to be reasonable, with the emphasis on consistency and proportionality particularly welcomed. Of the 14 respondents who expressed a view, 10 were in favour of a Taxpayers' Charter.
- Fifteen of the 17 respondents who provided a view supported the proposal that Revenue Scotland should have discretion to determine the level of sanctions, subject to legislation and guidance.
- There was general agreement that the measures proposed for tackling tax avoidance are appropriate. In particular, there was much support for the promotion of compliance as an approach to tackling tax avoidance.
- The majority (13 of the 18 who provided a view) gave explicit support for a narrowly-targeted Scottish GAAR. There was no support expressed for a more widely-drawn provision. The main attractions of the narrow focus were: greater certainty for businesses; and maintaining Scotland's attractiveness as a location for business and employment.

Background

The Scotland Act 2012 introduces new financial powers for the Scottish Parliament, including powers to introduce new taxes to replace the UK Stamp Duty Land Tax and the Landfill Tax in Scotland from 1 April 2015.

In his statement¹ to the Scottish Parliament (7 June 2012), the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney MSP, confirmed plans to consult on and bring forward Bills to introduce a Land and Buildings Transition Tax (LBTT) and a Scottish Landfill Tax (SLT). Consultations on the LBTT and on the SLT have been completed. The Scottish Government introduced a LBTT Bill to the Scottish Parliament on 30 November 2012, and a SLT Bill on 17 April 2013.

In his statement, Mr Swinney also announced the Scottish Government's intention to introduce a third Bill on Tax Management. This Bill will focus on putting in place a statutory framework for the collection and management of devolved taxes. A key aspect of this is the introduction of Revenue Scotland, as the Scottish tax authority, along with clearly defined powers and duties. It is intended that associated arrangements also to be covered in the Bill will include encouraging tax compliance; tackling tax avoidance; resolving tax disputes; and appropriate handling of taxpayer information.

The Scottish Government's approach to tax was articulated in the statement to the Scottish Parliament on 7 June 2012 as based upon four governing principles:

- proportionate to ability to pay;
- certainty;
- convenience; and
- efficiency.

In addition, it is proposed that the Scottish approach will be tailored to the requirements of Scots law and practice and will be characterised by a strong focus on public engagement with taxpayers and tax professionals.

The Scottish Government published a written consultation paper, "A Consultation on Tax Management" (10 December 2012) to seek views on tax management issues. In view of the importance and complexity of the topics for consideration, the normal consultation period was extended to four months. This also provided time for responses to the previous two related consultations to be received and analysed.² In addition to publishing a consultation document, the Scottish Government held seven stakeholder events across Scotland.

¹ www.scotland.gov.uk/news/speeches/taxation07062012

² The analysis of the LBTT consultation has already been published at: www.scotland.gov.uk/resource/0040/00405010.pdf

The written consultation closed on 12 April 2013. The views contained in the responses will inform the drafting of the proposed Tax Management Bill to be introduced to the Scottish Parliament in the autumn of 2013.

Overview of respondents

Twenty eight written responses to the consultation were submitted. Some of the responses received reflected the balance of views across a wider membership or audience. So although 28 responses were received in total, they reflected the views of many more commentators.

Tax accountants and other professional tax bodies formed the largest category of respondent, accounting for 32% of responses. Other respondents were public bodies, legal professional bodies, local authority bodies, businesses and one individual.

Function and duties of Revenue Scotland

The proposed function of Revenue Scotland, "to ensure the efficient and effective care and management of the devolved taxes and that tax receipts are paid to the Scottish Consolidated Fund", along with the proposed general and specific duties, were well received overall.

One specific duty, "to administer the devolved taxes, collecting the highest net revenue practicable" attracted most comment. The prevalent view was that left unqualified, the duty appeared to be out of step with underpinning legal and social justice aims. Suggestions were made for amendments to reflect fairness, adherence to the law and "correct" or "appropriate" amounts of tax.

In considering the challenges to be faced by Revenue Scotland, respondents emphasised that in delegating administration to the Scottish Environmental Protection Agency (SEPA) and Registers of Scotland (RoS), function and duties will need to be clearly managed to prevent duplication and conflicting services to taxpayers. Clarity over the different roles of Revenue Scotland and HMRC was also requested.

All but one of those who provided a view supported the proposal to establish Revenue Scotland as a Non-Ministerial Department (NMD), part of the Scottish Administration and accountable to the Scottish Parliament. The main attractions of these governance arrangements were seen as: independence from the Scottish Government; retention within the Scottish Administration; accountability to the Scottish Parliament; and the concept of NMDs being already well understood.

Whilst it was generally agreed that the proposal to staff Revenue Scotland with civil servants would offer useful flexibility to transfer staff between Revenue Scotland and core Scottish Government and other NMDs, this proposal also raised concerns amongst a minority of respondents over ensuring expertise amongst staff, stability of staff and retention of expertise.

Leadership and governance

The Scottish Government preferred option for Revenue Scotland's leadership and governance of a Board made up entirely of non-executive members to which the Chief Executive would report, was supported by 8 of the 16 respondents who provided a view. However, the option given most support (by 10 respondents) was for a Board comprising both non-executive and executive members, along with a non-executive Chair.

A common view was that transparency will be essential in making the Chief Executive appointment and appointments to the Board, which should involve members with expertise in tax and administration.

Public engagement and communications

Respondents called for future consultation to be meaningful and genuine; giving sufficient time for full consideration; and be undertaken at an early stage in policy development. A wide range of both formal and informal consultation mechanisms was advocated on topics of technical, operational and administrative developments and changes.

Provision of information

Whilst there was much support for a "Digital by default" approach on the grounds of wide reach and enabling access, a recurring theme was that this should not inadvertently exclude those without internet access or IT knowledge.

The overriding view from tax professionals, public bodies, legal professional bodies and local authorities was that the new tax authority should be supported by a telephone helpline, the operation of which should take on board best practice from elsewhere. There was also a consensus that, subject to appropriate security protocol, emailing should be established as a secure channel for day-to-day communication between Revenue Scotland and taxpayers and their agents.

Tax powers

The proposed framework for tax collection was considered, in general, to be reasonable, with the emphasis on consistency and proportionality particularly welcomed. Of the 14 respondents who expressed a view, 10 were in favour of a Taxpayers' Charter.

Taxpayer obligations

There was cross-sector support for the obligations proposed for taxpayers, although some felt it important to highlight that taxpayers also have rights, and Revenue Scotland has both rights and obligations.

The proposed obligation which attracted most comment was that taxpayers who wish to contest any assessment by Revenue Scotland will still be required to pay within the designated period, and if successful in contesting the assessment, will have any overpayment reimbursed at a set rate of interest. Nine of the 20 respondents who provided a view expressed concern over this proposal, largely on the grounds that this could contribute to hardship for some businesses.

Power to require information and power to inspect

Whilst there was general agreement that the powers proposed are essential, many recommended that they should not be too broadly framed so as to allow their application in a disproportionate manner.

Whilst it was agreed that legal professional privilege should remain, tax professionals called for this to encompass all professional advice on tax.

There were mixed views on whether the power to inspect businesses without giving advance notice (following the obtaining of a warrant from a Sheriff) should be exercised in-house by Revenue Scotland or delegated, with no overall consensus emerging.

Correcting taxpayer's tax returns

Whilst 11 of the 14 respondents who provided a view supported the proposed four year limit for Revenue Scotland to amend tax returns where there is no evidence of fraud, the remaining respondents argued that allowing this period of time will lead to taxpayer uncertainty.

A recurring concern was that the proposal that taxpayers have one year to amend a return introduces inequity between Revenue Scotland and taxpayers, and adds complexity to the system.

Delegation of powers to other public authorities

Prevailing views were that Revenue Scotland should retain ultimate responsibility for any powers it delegates, with the authorities receiving delegated powers having to adhere to the same standards and safeguards as Revenue Scotland.

Promoting compliance

Clarity of legislation, user-friendly guidance material in plain English, and provision of information in a variety of easily accessible formats, including on-line, were identified as important in promoting compliance. Several respondents requested a simple and quick authorisation procedure to register taxpayer agents with Revenue Scotland.

Sanctions

Whilst the list of non-compliant behaviours appeared to be reasonable, some urged that they make greater distinction between tax evasion and legitimate tax planning, and should distinguish between careless mistakes as opposed to deliberate mis-statements and concealment.

Fifteen of the 17 respondents who provided a view supported the proposal that Revenue Scotland should have discretion to determine the level of sanctions, subject to legislation and guidance. The two factors most frequently mentioned by respondents to take into account in exercising discretion, were intent (whether deliberate or a genuine error) and the taxpayer's history of compliance.

Overall the sanctions proposed and their possible uses were viewed as reasonable. A recurring view was that flat-rate penalties should be applied with care in order to prevent disproportionate use.

Collecting unpaid tax

There was broad support for the proposed arrangements for collecting unpaid tax, so long as these are applied fairly and consistently.

Tackling tax avoidance

There was general agreement that the measures proposed for tackling tax avoidance are appropriate. In particular, there was much explicit support for the promotion of compliance as an approach to tackling tax avoidance. The prevailing view was that a clearly drafted and robust legal framework will help to remove opportunity and motivation for tax avoidance.

Notifying tax avoidance

The current UK Disclosure of Tax Avoidance Schemes was referred to repeatedly by respondents who recommended learning lessons from this to apply to the Scottish system. A prevailing theme was the importance of defining clearly what schemes require to be notified, in order to prevent unnecessary work for taxpayers and Revenue Scotland. Another dominant theme was the importance of enforcing any notification system implemented.

General Anti-Avoidance or Anti-Abuse Rule (GAAR)

The majority (13 of the 18 who provided a view) gave explicit support for a narrowly-targeted Scottish GAAR. There was no support expressed for a more widely-drawn provision. The main attractions of the narrow focus were: greater certainty for businesses; and maintaining Scotland's attractiveness as a location for business and employment.

Prior clearance rule

A common view was that a prior clearance rule will be helpful in reducing uncertainty. However, challenges were seen as costs of its operation, maintaining a tight turnaround in decision-making, and possible overuse by practitioners, leading to overburdening the system. Suggestions were made for managing the system, such as providing clear guidance on circumstances in which prior clearance should be sought.

Intimation of policy intent

A recurring theme was that clear, unambiguous legislative drafting will provide the basis for communicating the intentions of those drafting and passing legislation. Other common recommendations for setting out legislative intentions were the publication of explanatory notes and guidance; and publishing policy memorandum along with the Bill.

Tests to determine transactions outwith the intent of legislation

The proposed tests were viewed as reasonable overall, but there were differences of opinion over the fine detail. For example, the difference between "a" main or sole purpose, and "the" main or sole purpose was seen as important to some; likewise the use of the word "normally" as applied to arrangements for bona fide business purposes was queried.

Of the 17 respondents who provided a view, 15 envisaged a role for external, independent experts in assessing tax arrangements to see whether they fall within the ambit of a GAAR.

Resolving tax disputes

The proposals for avoiding disputes were considered to be broadly appropriate. However, a recurring theme was that ultimately, clear, well-drafted tax legislation will be the main factor in setting the context for avoiding disputes. Other influential factors were seen as transparency and openness in decision-making.

Internal review

There was much cross-sectoral support for the proposed arrangements for internal review as a first stage of the process to resolve a dispute. It was generally agreed that some flexibility will be required in setting timeframes for the conclusion of reviews in order to accommodate complex cases, or cases where more information comes to light. Various time periods for review were suggested ranging from 14 days to three months or as otherwise agreed.

Mediation

Fifteen of the 20 respondents who provided a view expressed support for the proposed voluntary use of mediation in dispute resolution. This was seen as a potentially cost-effective, fair and proportionate mechanism for resolving disputes which could reduce the number of cases proceeding to a Tribunal. However, some respondents expressed caution that mediation will not always be appropriate in the context of tax disputes.

Handling appeals pending the inclusion of a tax jurisdiction in the Scottish Tribunal System

The vast majority (16 out of 18 of those who provided a view) was in favour of the UK Tax Tribunal (the First Tier and Upper Tier) being asked to take appeals against devolved taxes for the period until it is appropriate to move the jurisdiction into the Scottish Tribunal System. The most common reason for this view was that this would use existing experience and expertise.

Meeting the costs of mediation or tribunal appeals

The most common view expressed was that each party engaging in mediation should bear its own costs, with Revenue Scotland perhaps bearing any standing charge costs.

There were mixed views on how the costs for tribunals should be met. Some respondents supported the principle of “loser pays costs”, although others disagreed on the grounds that this could deter otherwise legitimate cases, or be difficult to apply where some elements of the case may have been won by one party, and some by another. Various other suggestions were made such as each party bearing their own costs or Revenue Scotland bearing all costs should it lose the case, but with no overall consensus reached.

Applying learning for future decisions

The proposal that Revenue Scotland publishes in its annual report a summary statement covering key statistics and main learning points was broadly welcomed. Other suggestions were made for demonstrating that learning is taking place, including: publication of anonymised details of previous cases and the resulting action taken; implementing audit and performance measures which show a reduction in the number of disputes; and timely updating and amendment of guidance and manuals to reflect court decisions.

Managing complaints

There was broad support across sectors for the proposals on handling complaints, with an acknowledgement that these are in accordance with the established approach for the management of complaints about devolved services in Scotland. An emerging theme was that the complaints procedure should be visible to taxpayers and their agents, with the proposed Taxpayers’ Charter seen as one avenue for publicising the procedure.

Treatment of taxpayer information

The proposed statutory provision forbidding disclosure of information held by Revenue Scotland was given unanimous support from those providing a view. Likewise, all respondents who addressed the issue agreed that Revenue Scotland should be empowered to share information with other public bodies and other tax authorities according to strict protocol and safeguards.

All of the respondents who provided a view agreed that the existing framework for public interest disclosure (“whistle-blowing”) is sufficient for Revenue Scotland.

Of the 18 respondents who addressed the issue, 15 agreed that certain information held by Revenue Scotland and bodies to which it has delegated powers should be exempt from Freedom of Information legislation to prevent disclosure of information that would identify or could be used to identify a taxpayer.

Accelerated tax changes

Whilst it was accepted by all of the respondents who provided a view that an accelerated tax changes regime should be put in place, there were also acknowledgements of the associated risks for taxpayers in terms of possible unintended consequences, lack of certainty, and possibly reduced attractiveness of Scotland as a place for business. A common view was that the proposals were reasonable, but should be used in limited circumstances only, with consultation on tax changes continuing to be the norm.

The proposal that there is no intention that tax changes made under the accelerated tax changes regime would have retrospective effect, received strong support.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 2111.