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A Consultation on Tax Management Analysis of Responses



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A CONSULTATION ON TAX MANAGEMENT ANALYSIS OF RESPONSES

Linda Nicholson, The Research Shop

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1. EXECUTIVE SUMMARY

1.1 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.

1.2 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).

1.3 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 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.

1.4 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.

1.5 Twenty eight responses to the consultation were submitted. The largest category of respondent was tax accountants and professional tax bodies, comprising 32% of all respondents. Other respondents were public bodies, legal professional bodies, local authority bodies, businesses and one individual.

1.6 A summary of views contained in the consultation responses follows.

Function and duties of Revenue Scotland

1.7 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.

1.8 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.

1.9 In considering the challenges to be faced by Revenue Scotland, respondents emphasised that in delegating administration to the Scottish Environmental

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

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.

1.10 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.

1.11 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

1.12 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 view². 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.

1.13 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

1.14 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

1.15 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.

² Respondents were able to support more than one option.

1.16 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

1.17 The proposed framework for tax collection was considered, in general, to be reasonable, with the emphasis on consistency and proportionality particularly welcomed.

1.18 Of the 14 respondents who expressed a view, 10 were in favour of a Taxpayers' Charter.

Taxpayer obligations

1.19 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.

1.20 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

1.21 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.

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

1.23 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 taxpayers' tax returns

1.24 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.

1.25 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

1.26 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

1.27 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.

1.28 Several respondents requested a simple and quick authorisation procedure to register taxpayer agents with Revenue Scotland.

Sanctions

1.29 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.

1.30 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.

1.31 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

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

Tackling tax avoidance

1.33 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

1.34 The current UK Disclosure of Tax Avoidance Schemes (DOTAS) was referred to repeatedly by respondents who recommended learning lessons from this to apply to the Scottish system.

1.35 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)

1.36 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

1.37 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

1.38 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 intention of legislation

1.39 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.

1.40 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

1.41 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

1.42 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.

1.43 A common view was that although Revenue Scotland should be required to conduct an internal review if requested by the taxpayer, the latter should not have to follow this route if they feel their case justifies progression straight to a higher rung in the dispute resolution ladder.

Mediation

1.44 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

1.45 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

1.46 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.

1.47 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 the learning for future decisions

1.48 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

1.49 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.

1.50 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

1.51 The proposed statutory provision forbidding disclosure of information held by Revenue Scotland was given unanimous support from those providing a view.

1.52 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.

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

1.54 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

1.55 Whilst it was accepted by all of the respondents who provided a view that an accelerated tax changes regime will be required to 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.

1.56 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.

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

Other general comments

1.58 Three key themes emerged: Revenue Scotland will require appropriate resourcing to fulfil its proposed duties; the importance of maintaining compatibility with HMRC including common standards and models of working; and maintaining local democratic responsibility for taxation as a key feature of the new tax management environment for Scotland.

2. INTRODUCTION

2.1 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.

2.2 In his statement³ 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.

2.3 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.

2.4 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.

2.5 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.

2.6 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.⁴ In addition to publishing a consultation document, the Scottish Government held seven stakeholder events across Scotland.

³ www.scotland.gov.uk/news/speeches/taxation07062012

⁴ The analysis of the LBTT consultation has already been published at www.scotland.gov.uk/resource/0040/00405010.pdf

2.7 The written consultation closed on 12 April 2013. This report presents the analysis of views contained in the responses. These responses have been made publicly available on the Scottish Government website⁵ unless the respondent has specifically requested otherwise. 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.

Consultation responses

2.8 Twenty eight written responses to the consultation were submitted. It should be noted that 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 reflect the views of many more commentators.

2.9 Table 1 shows the numbers of responses by category of respondent. Tax accountants and other professional tax bodies formed the largest category of respondent, accounting for 32% of responses. All but one of the responses were submitted by organisations. The full list of respondents is in Annex 3.

Table 1: Number of responses by category of respondent

Category	No.	%
Tax accountants and professional tax bodies	9	32
Public bodies	6	21
Legal professional bodies	5	18
Local authority bodies	4	14
Business	3	11
Individual	1	4
Total	28	100

2.10 An electronic database was used to collate the responses to assist analysis. In view of the relatively small number of responses and the open nature of most of the questions, the analysis of views was largely qualitative. Respondents did not address every question but selected the topics of most interest to them. An indication of which respondents provided views is given for each question.

Report of findings

2.11 The following eight chapters document the substance of the analysis. **Chapter 3** examines views on the proposed new tax authority, Revenue Scotland. **Chapter 4** presents comments on the proposed framework for tax collection powers and on taxpayers' obligations. **Chapter 5** summarises ideas for how to help taxpayers comply with their obligations, and discusses views on

⁵ The consultation non-confidential responses can be viewed at www.scotland.gov.uk/publications/2013/05/2816

the appropriateness of sanctions for non-compliance. **Chapter 6** looks at the issue of tackling tax avoidance and documents comments on measures to address this. In **Chapter 7**, views on proposals for resolving tax disputes, including the voluntary use of mediation, are examined. **Chapter 8** focuses on the topic of disclosure and sharing of taxpayer information, including the purposes for which information should be shared and the form of any information sharing agreement. Views on proposals for an accelerated tax change regime are collated in **Chapter 9**. **Chapter 10** presents more general views which some respondents chose to submit on topics over and above those highlighted in the formal consultation document.

2.12 Respondent categories have been abbreviated in the report as follows:

Tax accountants and professional tax bodies	Tax
Public bodies	PB
Legal professional bodies	Leg
Local authority bodies	LA
Business	Bus

3. REVENUE SCOTLAND

Purpose, function and duties

3.1 The purpose of establishing Revenue Scotland is to ensure that the revenue from Scotland's devolved taxes will be collected and made available to fund public services in Scotland. Revenue Scotland will be expected to carry out this purpose efficiently and effectively and in accordance with high standards of propriety, integrity and transparency. The Scottish Government proposes that the **principal function** for Revenue Scotland is:

“to ensure the efficient and effective care and management of the devolved taxes and that tax receipts are paid to the Scottish Consolidated Fund.”

3.2 It is expected that the **generic duties** that apply to all public bodies in Scotland will apply to Revenue Scotland, including adhering to Equalities law and to the rules set out in the Scottish Public Finance Manual. In addition, the following **specific duties** are proposed:

- to administer the devolved taxes, collecting the highest net revenue practicable, while exercising appropriate discretion over cases of exceptional hardship or where further pursuit of unpaid tax would not be in the public interest;
- to provide information and guidance to taxpayers and their appointed agents about the Scottish approach to tax, about taxpayers' obligations, and about the processes to be followed;
- to work with taxpayers to resolve disputes about tax as efficiently as possible;
- to identify cases of potential fraud or other criminal activity and, working as appropriate with other public bodies, to ensure that these are reported to the Crown Office and Procurator Fiscal Service in relevant cases;
- to provide information and advice, including policy advice, about the administration of tax to the Scottish Government and the Scottish Parliament, including providing forecasts of tax receipts and information on achieving targets;
- to have regard to relevant guidance issued by Scottish Ministers and, from time to time, to agree with Ministers a corporate plan setting the strategy for Revenue Scotland; and
- to fulfil all relevant EU and international obligations; liaising with other revenue authorities, in particular, HMRC, on behalf of the Scottish Government.

3.3 The consultation asked:

Question 1: What are your views on the proposed function and duties of Revenue Scotland?

3.4 Twenty one respondents (75% of all respondents) addressed this question.

Table 2: Respondents to Question 1

Category	No.	%
Tax accountants and professional tax bodies	9	43
Public bodies	3	14
Legal professional bodies	2	10
Local authority bodies	4	19
Business	3	14
Total	21	100

General comments

3.5 Overall, the proposed function and duties of Revenue Scotland were well received. Three respondents (LA, LA, Tax) commented that they were appropriate both for the short term and for the future when further taxes may be administered by Revenue Scotland. One tax professional remarked that the function and duties proposed were in line with best practice for tax authorities in other tax regimes and dovetailed well with the existing functions and duties of HMRC.

3.6 One respondent argued, however, that terms like “appropriate discretion” and “exceptional hardship” were subjective, and that the function and duties of Revenue Scotland should be presented more objectively, in “simple, unqualified terminology” (Scottish Committee of the Administrative Justice and Tribunals Council (SCAJT)).

Views on proposed function of Revenue Scotland

3.7 The proposed function received broad support. Only two substantive comments were received:

- may be appropriate for the function to be supported by accompanying benchmark performance measures such as processing times (Bus, LA)
- replace “care” with “collection” (Leg).

Views on the proposed duties of Revenue Scotland

3.8 The **first duty** proposed attracted most response, and in particular the wording: “....collecting the highest net revenue practicable”. In total, 12 respondents (including all nine tax professionals) opposed the wording of this duty. The prevalent view was that left unqualified, the duty appeared out of step with underpinning legal and social justice aims. One remarked:

“Such an approach would be entirely out of keeping with any notion of fairness, which should certainly be expected from a tax authority” (Law Society of Scotland).

3.9 Suggestions were made for improving the draft:

- inserting wording to make explicit that Revenue Scotland will act *in accordance with the law*

- making it clear that Revenue Scotland will collect the “*correct*” or “*appropriate*” amount of tax.

3.10 One tax professional proposed a staged approach to the duty, suggesting that firstly, an assessment should be made of the correct amount of tax due according to the law, and secondly, the highest net revenue practicable should be collected, taking into account hardship.

3.11 One further comment (Tax) was that for the avoidance of doubt, the duty to exercise discretion should specify hardship for businesses as well as for individuals.

3.12 Four respondents commented on the **second duty** proposed. Three (Tax, Leg, Leg) emphasised that information and guidance should be readily accessible and comprehensible, perhaps with examples of how tax applies to particular situations. One public body suggested that the duty be extended to include information and guidance on the rights of review, appeal and complaints.

3.13 Only one respondent commented specifically on the **third duty** proposed. They suggested changing the wording to:
 “to work with taxpayers to resolve disputes about tax as *fairly* and efficiently as possible” (SCAJT).

3.14 One respondent (Tax) remarked in relation to the proposed **fifth duty** that it may be appropriate for Revenue Scotland to have a broader role in advising the Scottish Government on policy issues over and above the administration of tax, e.g. the efficacy and fairness of tax policies. They also considered that Revenue Scotland may be well-placed to assist in ensuring that as far as possible, legislation is written clearly and simply and makes Parliamentary intention as clear as possible.

Additional duties

3.15 Suggestions were made for additional duties:

- to consult on new tax law unless this falls within the rules set out in the Scottish Public Finance Manual (SPFM)/Equalities law (Tax)
- to ensure guidance material covers legislative interpretation, including the relevance of UK case law precedents, with areas of difference between UK and Scottish legislation highlighted (Tax)
- to ensure a duty of care in relation to taxpayers’ information with responsibility to ensure taxpayers’ confidentiality (Bus)
- to provide easily accessible and comprehensible guidance about how the taxes apply to transactions in which taxpayers are involved (Bus)
- to ensure duties are carried out to high standards (Bus).

Challenges

3.16 In considering the appropriateness of the proposed function and duties of Revenue Scotland, five respondents identified challenges:

- In delegating administration to SEPA and RoS, function and duties need to be clearly managed to prevent duplication and conflicting services to taxpayers (LA, LA, PB).
- Care should be taken to ensure clarity over the difference between HMRC and Revenue Scotland. It was recommended that consideration be given to the branding of Revenue Scotland to assist with clarifying the distinction (Tax).
- It may be challenging for HMRC to separate data for Revenue Scotland's purposes (LA).

Accountability and legal status

3.17 The consultation asked:

Question 2: What are your views on the proposal to establish Revenue Scotland as a Non-Ministerial Department (NMD), part of the Scottish Administration and accountable to the Scottish Parliament?

3.18 Twenty one respondents (75% of all respondents) addressed this question.

Table 3: Respondents to Question 2

Category	No.	%
Tax accountants and professional tax bodies	9	43
Public bodies	3	14
Legal professional bodies	2	10
Local authority bodies	4	19
Business	3	14
Total	21	100

3.19 All but one of the respondents who addressed this question considered the proposal to be reasonable, one referring to it as a “pragmatic proposal” (Scottish Property Federation). The remaining respondent (PB) agreed that the new tax authority should operate independently of Ministers but requested more information on the relative merits of a NMD over a Non-Departmental Public Body (NDPB).

3.20 A few respondents set out their reasons for supporting the proposal. The main attractions were:

- independence from the Scottish Government
- retention within the Scottish Administration
- accountability to the Scottish Parliament
- concept of NMDs already well understood.

3.21 Two respondents (Tax, Bus) sought further clarification on how Revenue Scotland's accountability to the Scottish Parliament would be achieved in practice, particularly in the context of constraints over confidentiality of taxpayer information.

3.22 Three tax professionals emphasised that lines of responsibility will need to be very clearly drawn due to the proposal that the new tax authority works in partnership with SEPA and the RoS in administering tax.

Views on the proposed staffing of Revenue Scotland

3.23 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 five respondents (four tax and one local authority) over ensuring expertise amongst staff, stability of staff and retention of expertise. One respondent remarked:

“Whilst we understand the potential flexibility available to enabling staff to transfer between Revenue Scotland and the core Scottish Government and other non-Ministerial Departments, the staff at Revenue Scotland will need to build up and retain a core level of expertise. It needs to develop and retain its staff to meet these challenges and should not be seen as a mere “staging post” on the civil service career path” (Institute of Chartered Accountants in England and Wales (ICAEW)).

Leadership and governance

3.24 Options for the leadership, oversight and governance of Revenue Scotland include:

- a) An entirely executive Board comprising the Chief Executive and at least 2 members of the senior management team (with no non-executive members). The whole executive board would be held accountable for the performance of Revenue Scotland.
- b) A single non-executive Chair for the organisation to whom the Chief Executive would report. The non-executive Chair would be held accountable for the performance of Revenue Scotland.
- c) A Board with a non-executive Chair comprising both non-executive and executive members. The Chief Executive could be a full member of such a Board. The Board with the Chair in the lead, would be held accountable for the performance of Revenue Scotland.
- d) A Board made up entirely of non-executive members to which the Chief Executive would report. The Board, with the Chair in the lead, would be held accountable for the performance of Revenue Scotland.

3.25 The Scottish Government proposes that the non-executive oversight of Revenue Scotland will be essential in ensuring transparency and robustness of

challenge. It also considers it to be important that the oversight mechanism should provide clear accountability, a framework in which management can operate effectively, and responsiveness to Ministers, the Parliament and the people of Scotland. Option d) is believed to best meet these criteria since it gives a strong role to non-executives and it is considered that a small non-executive Board is likely to be most effective.

3.26 It is proposed that there is transparency in the process of selecting and appointing those responsible for Revenue Scotland. Its staff, being civil servants will be appointed through fair and open competition regulated by the Civil Service Commission. It is proposed that any non-executive Board members will be appointed in line with the Nolan principles.

3.27 It is expected that the Chief Executive will be the Accountable Officer for Revenue Scotland and views are sought on a distinctive title for this post, such as Comptroller-General or Chief Collector.

3.28 The consultation asked:

Question 3: What are your views on the governance options for Revenue Scotland, and on how people should be selected for appointment to the Board and to the post of Chief Executive?

3.29 Seventeen respondents (61% of all respondents) addressed this question.

Preferred governance options

3.30 Sixteen respondents expressed a preference for one or more of the governance options as follows:

Table 4: Views on the governance options for Revenue Scotland

	Options					Total
	a)	b)	c)	d)	c) or d)	
Tax accountants and professional tax bodies			5	1		6
Public bodies					1	1
Legal professional bodies			2			2
Local authority bodies	1			3		4
Business				1	2	3
Total	1		7	5	3	16

3.31 The option given most support by respondents was option c), a Board with a non-executive Chair comprising both non-executive and executive members. This option was supported by 10 of the 16 respondents providing a view. Option d), the preferred approach of the Scottish Government, comprising a Board made

up entirely of non-executive members to which the Chief Executive would report attracted support from eight respondents.

3.32 A summary of views on each option is below.

Option	For	Against
a)	Operates in New Zealand and Australia (LA) Suitable given compactness of Scotland and Revenue Scotland's accountability to the Scottish Parliament which will take a keen interest in its performance (LA).	Lacks diversity of membership required for proper level of internal scrutiny and performance management over a public body (PB).
b)		Lacks diversity of membership required for proper level of internal scrutiny and performance management over a public body (PB).
c)	Provides for good accountability whilst making the CE post tenable (Tax). Provides for external perspective and challenge (Bus). Non executives will ensure commercial view brought to the Board (Bus).	
d)	Well understood and effective for public sector bodies in Scotland (LA, Bus). Provides for external perspective and challenge (Bus). Non executives will ensure commercial view brought to the Board (Bus).	Gives adversarial position where the CE in particular would be isolated from the Board (Tax)

Views on the title for the Chief Executive

3.33 It is proposed that the Chief Executive of Revenue Scotland will be the Accountable Officer for Revenue Scotland. Five respondents provided their view on an appropriate title for this post. The suggested titles of "Comptroller-General" or "Chief Collector" were considered to be dated (Tax, Leg), or implying responsibility for just one part of the organisation (Tax). Two tax professionals argued for "Chief Executive" as indicating clearly who is in charge. One suggested that should an alternative be sought, then "Head of Revenue Scotland" may be suitable. One local authority proposed the title, "Commissioner of Taxation"; a legal professional body suggested, "Controller".

Views on the appointment of Chief Executive and Board members

3.34 Eleven respondents commented on either the process of appointments, or the composition of the Board.

3.35 The overriding view was that transparency will be essential in making appointments. Respondents also recommended that the Board should reflect expertise in tax and administration, and a range of different perspectives. One summed this up:

“Selection of the Board and the appointment of the Chief Executive must be wholly transparent and bring the correct blend of knowledge and experience from both public and private sector with the right balance of knowledge from different sectors and organisations that will support the effective operation of Revenue Scotland” (British Bankers’ Association).

3.36 One local authority recommended that the Board should reflect Scottish society and suggested it comprise representatives from a broad range of organisations, as is the case for the Scottish Government’s Tax Consultative Forum. Another requested local government representation on the Board.

3.37 Three respondents (LA, LA, Bus) explicitly supported non-executive Board member appointments being made in line with the Nolan principles.

Public engagement and communications

3.38 The list of duties proposed for Revenue Scotland places emphasis on public engagement and the provision of information for taxpayers and their appointed agents. Engaging regularly and appropriately with taxpayers, their agents and the community of tax professionals will be a key requirement for Revenue Scotland

3.39 The consultation asked:

Question 4: When, how and on what subjects should Revenue Scotland engage with taxpayers, their agents and tax professionals?
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3.40 Eighteen respondents (64% of all respondents) addressed this question.

Table 5: Respondents to Question 4

Category	No.	%
Tax accountants and professional tax bodies	8	44
Public bodies	2	11
Legal professional bodies	2	11
Local authority bodies	3	17
Business	3	17
Total	18	100

Consultation

3.41 A series of **principles of consultation** with taxpayers, their agents and tax professionals emerged from responses and are summarised below:

- consultation should be meaningful and genuinely capable of leading to change
- sufficient time should be allowed – periods of between two months to longer than three months were suggested depending on the issue
- consultation should take place at an early stage in policy development
- both formal and informal consultation is useful
- the outcomes from consultation should be published
- consultation should have a wide reach
- consultation should be proportionate – not burdensome
- regular consultation is to be encouraged
- consultation should be fit for purpose and tailored, so that some technical or operational topics may justify a formal, public approach, whilst other issues may warrant informal discussions only.

3.42 Respondents suggested a wide range of **forms of consultation** for consideration. These were:

- surveys undertaken through member organisations or others with an interest in tax
- standing user consultative groups which meet regularly
- conferences with Revenue Scotland in attendance
- regular group forums with agents and service users
- face-to-face meetings
- workplace meetings (once more taxes come under Revenue Scotland's remit)
- written consultation documents (but taking care to ensure no one is digitally excluded)
- workshops with invited groups
- discussion meetings and seminars
- a “large employer” consulting group
- regular events hosted by Revenue Scotland in which policy development can be described and comments invited
- a secure, virtual space on the Revenue Scotland website where interaction can take place.

3.43 A recurring theme was that **topics for consultation** should include technical, operational and administrative developments and changes. One respondent commented:

“Revenue Scotland should consult on developments of a technical and administrative nature. With technical changes this would mean that their practical interpretation and application can be considered to ensure they meet the intended policy objectives; with administrative proposals, consideration can be given to their effectiveness and impact on both taxpayers and agents” (The Institute of Chartered Accountants of Scotland (ICAS)).

3.44 One respondent (Tax) suggested that Revenue Scotland should consult on its performance.

3.45 At a strategic level, the Tax Consultation Forum received cross-sector support although one respondent (Leg) considered it would benefit from having a greater degree of tax practitioner involvement.

3.46 The Devolved Tax Collaborative was welcomed by two legal professional bodies, although one expressed concern that it was in danger of becoming unworkable due to the number and diversity of constituent members. It was suggested that smaller, more targeted working groups could be created within the Collaborative’s overall framework.

Views on appropriate information channels

3.47 Two tax professionals recommended ways in which Revenue Scotland can impart information to taxpayers and their agents. These were:

- through the media
- education system
- advice centres
- workplaces
- using something akin to the current HMRC advice manuals which set out areas of concern and HMRC’s view on how legislation is working.

Views on key topics for promoting to stakeholders

3.48 Four respondents identified the type of information they considered Revenue Scotland should impart to stakeholders:

- changes to policy (Tax, Tax, LA)
- changes to rates and tax banding (LA)
- changes to administrative procedures (LA)
- data on what tax revenues are actually generated in Scotland and from where (Bus).

Provision of information

3.49 It is proposed that Revenue Scotland will consult prior to the publication of tax guidance and that, in line with the Digital First approach, information about how tax decisions are made, will be placed on-line. Revenue Scotland intends to use its website to provide up-to-date information in a way which is responsive to the needs of taxpayers and their agents.

3.50 The consultation asked:

Question 5: How and in what forms should Revenue Scotland provide information to, and communicate with, taxpayers and their agents?

3.51 Eighteen respondents (64% of all respondents) addressed this question.

Table 6: Respondents to Question 5

Category	No.	%
Tax accountants and professional tax bodies	8	44
Public bodies	2	11
Legal professional bodies	2	11
Local authority bodies	3	17
Business	3	17
Total	18	100

3.52 The prevailing theme was one size does not fit all. Two respondents (Tax, Bus) argued for the development of a communication strategy to help to ensure a tailored approach is established to address the distinct requirements of different stakeholders. It was generally felt that communication should be provided via a range of channels both digital and otherwise. Three respondents (Tax, Tax, Bus) highlighted the need to cater also for taxpayers with visual impairments and those for whom English is not their first language. One suggestion (Tax) was for information to be provided at two different levels: basic, explanatory; and more detailed and technical.

3.53 Three issues dominated responses:

- Digital First approach

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 (e.g. taxpayers without access to computer; broadband; IT knowledge).

Comments included:

“...it is important that ‘digital first’ does not reduce transparency and engagement in taxation decisions” (South Lanarkshire Council)

“...do not support a policy of ‘online everything’” (ICAS)

Some legal and tax professionals urged that to maximise the effectiveness of a digital approach, it will be important to ensure information updates are made timeously, out-of-date guidance remains accessible by being archived chronologically (perhaps date-stamped), and information is readily searchable. One suggestion (Tax) was for e-learning modules to be developed to assist taxpayers and their agents.

- Telephone helpline

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. A key theme was quality of service, which respondents felt could be achieved by appropriate resourcing, staff training and named/dedicated operators. One respondent (Tax) called for minimum standards to be set. One public body considered that a single point of telephone contact for businesses, especially companies with multiple sites, would help with consistency. One respondent expressed their view:
“Telephone help lines with appropriately trained personnel should be available, including dedicated help lines for agents. Many HMRC help lines use non-specialist staff working to a script, and we believe this has been a false economy” (Brodies LLP).

- Email communication

Whilst many respondents acknowledged that there are security issues associated with communication via email, the consensus was that it is worthwhile addressing these to establish emailing as a secure channel for day-to-day communication between Revenue Scotland and taxpayers/agents. Suggestions were that until such a time, emails could be used by taxpayers and their agents to contact Revenue Scotland with queries, or for the new tax authority to issue standard notices, reminders and acknowledgements.

3.54 Other forms of communication suggested by respondents were:

- social media (although security risks should be dealt with first) (8 mentions)
- texting (7 mentions)
- regular newsletters (2 mentions)
- post for people without email or internet access (2 mentions)
- textphone (1 mention)
- text relay service (1 mention)
- home visits where enhanced support is required (1 mention)

4. POWERS AND OBLIGATIONS

Tax powers and design principles

4.1 The Scottish Government proposes a framework for tax collection powers that is:

- **As far as possible, clear and consistent across all taxes administered by Revenue Scotland.** This will avoid having to set out powers for each devolved tax and should make the tax system simpler and easier to understand. In turn, this will help reduce costs for both Revenue Scotland and compliant taxpayers.
- **Effective in tackling non-compliance.** The framework of powers will be generic, applying to all relevant taxes, but must also be effective in ensuring tax compliance.
- **Proportionate and subject to clear rules and limits on the use of the more intrusive powers.** The Scottish Government expects Revenue Scotland to need to use the more intrusive powers relatively rarely such as to demand entry to business premises without prior notice or search a property. There must be appropriate prior checking and approval of use by Revenue Scotland of such powers, and it must be clear when such powers could be used, and who is responsible both for granting approval and for using the powers.
- **Clear in the obligations it places on taxpayers.** For a tax system to work, some obligations have to be laid on taxpayers. These obligations need to be set out clearly, to help provide certainty to taxpayers. Clarity and certainty benefit both Revenue Scotland and taxpayers by avoiding uncertainties and disputes, so reducing costs.

4.2 The consultation asked:

Question 6: What are your views on the proposed framework for tax collection powers? We would be especially interested to know whether you see merit in the creation of a “Taxpayers’ Charter”.

4.3 Twenty respondents (71% of all respondents) addressed this question.

Table 7: Respondents to Question 6

Category	No.	%
Tax accountants and professional tax bodies	9	45
Public bodies	2	10
Legal professional bodies	3	15
Local authority bodies	3	15
Business	3	15
Total	20	100

4.4 The prevailing view was that the proposed framework for tax collection was reasonable. The concept of an overarching framework was explicitly welcomed by one respondent, in terms of the “simplicity, clarity and efficiency it offers” (Low Incomes Tax Reform Group (LITRG)). Others appreciated the emphasis on consistency (Leg, Tax); proportionality (Leg, Tax); and tackling non-compliance (Tax).

4.5 Additional tax collection powers were suggested:

- for SEPA to carry out the administration of the Scottish Landfill Tax (PB - SEPA)
- to encourage fair and efficient resolution of disputes (LA)
- to encourage simplicity and fairness (Bus, LA).

4.6 One respondent (ICAEW) proposed that “10 Tax Tenets” for a better tax system should be adopted, envisaging a system that is: statutory; certain; simple; easy to collect and calculate; properly targeted; constant; subject to proper consultation; regularly reviewed; fair and reasonable; and competitive. This respondent stressed their view that it is important that Scotland retains its competitiveness against the rest of the UK and internationally, by ensuring that any enforcement powers do not exceed those applying elsewhere, thereby reducing the attractions of Scotland as a location for business, investment and employment.

4.7 Two respondents (Bus, Tax) recommended that there should be independent oversight over the operation and exercise of the powers set out. One business respondent considered that the responsibility for granting approval for application of certain powers in individual cases should lie with an independent third party, or with personnel in Revenue Scotland at a senior level.

4.8 Some respondents supported the framework, but remarked that the challenge will be in how this will translate into practice. Three tax professionals stated that they could not give a more informed view until more detail is known on how the powers will be applied.

4.9 One legal professional body expressed concern over the proposal that Revenue Scotland’s powers must be broad enough to enable it to manage the taxes efficiently and effectively, and stressed their view that it is vital that the

rights and obligations of Revenue Scotland and those of taxpayers are fairly balanced.

4.10 One respondent (Tax) questioned whether the term “framework of tax collection powers” limits the scope of the principles, rather than applying these to the full range of tax management powers.

Views on the creation of a “Taxpayers’ Charter”

4.11 Fourteen respondents provided views on the proposed creation of a “Taxpayers’ Charter”. Of these, 10 welcomed the proposal, whilst four expressed caution.

4.12 The reasons documented in favour of the Taxpayers’ Charter were:

- will provide clarity over rights and responsibilities of the taxpayer and Revenue Scotland (Tax)
- will affirm the identify of Revenue Scotland and its philosophy (LA)
- simple means to communicate obligations (Tax)
- to provide safeguard for taxpayers who are not represented by professional agents or advisors (Tax)
- could provide guidance to an independent complaints adjudicator or panel (Tax).

4.13 Some respondents attached conditions to their support:

- the Charter must be supported by statutory provisions (3 mentions)
- must be consultation on its detail (3 mentions)
- principles in the Charter must be capable of practical application (2 mentions)
- will need to be relatively specific in detail to be useful (1 mention)
- to be effective, there must be a high level of awareness of the Charter (1 mention)
- must be clarity over its purpose in order to avoid misunderstandings as to the protections it offers (1 mention).

4.14 A few respondents suggested content for the Charter. Four highlighted their view of the importance of setting out rights and obligations of both taxpayer and Revenue Scotland (Tax, Tax, LA, PB). One tax professional recommended that service standards for Revenue Scotland and its delegated bodies be included. A legal professional body suggested that access to information, taxpayer confidentiality and the treatment of information and deadlines could be considered for inclusion. One respondent (Leg) recommended waiting to see what standards and principles are embodied within the forthcoming European Taxpayers’ Code before developing the Taxpayers’ Charter, in order to promote consistency between them.

4.15 The four respondents (Bus, Bus, Tax, Leg) expressing a note of caution regarding the proposal for a Taxpayers’ Charter were basing their reservations

largely on what they considered to be the relative disuse of the equivalent Charter established by HMRC. One (Leg) commented that the HMRC version had limited practical application; another informed that HMRC had moved away from an emphasis on a Charter to promoting a broader service commitment which promotes taxpayers' understanding of the service, without setting expectations regarding the potential for legal redress.

Taxpayer obligations

4.16 The Scottish Government is committed to a tax system which balances the rights and obligations of taxpayers. Whilst inviting views on what taxpayer obligations should encompass, there are some obligations which it views as unavoidable:

- a) A taxpayer should be required to notify Revenue Scotland or a delegated public body if they have or expect to have a liability to pay a devolved tax.
- b) A taxpayer should be required to self-assess their tax.
- c) A taxpayer should pay the tax due within the time period set for the particular tax / transaction. Taxpayers who wish to contest any assessment by Revenue Scotland will also be required to pay within the designated period, consistent with the approach in place for Non-Domestic Rates in Scotland. Where the taxpayer is successful in contesting the assessment, Revenue Scotland will reimburse any overpayment at a set rate of interest.
- d) A taxpayer should retain tax-related records in an accessible form for a required period of time. We propose that this be five years for business records, in line with the Scottish Statute of Limitations, and two years for personal records.
- e) A taxpayers' records must contain sufficient detail to enable the taxpayer to submit an accurate tax return and to allow Revenue Scotland to check its accuracy if required. This is already a requirement for UK taxes.

4.17 The consultation asked:

Question 7: What are your views on the proposed obligations on taxpayers? Are there any other obligations on taxpayers which should be included?

4.18 Twenty respondents (71% of all respondents) addressed this question.

Table 8: Respondents to Question 7

Category	No.	%
Tax accountants and professional tax bodies	9	45
Public bodies	2	10
Legal professional bodies	3	15
Local authority bodies	3	15
Business	3	15
Total	20	100

4.19 Thirteen respondents representing all five sectors reported that overall the proposed obligations appeared to be reasonable. Two (LA, Bus) remarked that they were in-line with existing practice; one (Tax) stated they seemed similar to those established by HMRC. Two respondents (Tax, Bus) emphasised that consistency with HMRC is important as many taxpayers will be paying taxes under both Scottish and UK systems.

4.20 One respondent considered, that as an overriding principle, the following question should be asked of obligations intended to be imposed on the taxpayer:
“Is it actually necessary to impose this obligation; and if it is necessary, can we impose it in the narrowest possible way, both as regards the number of taxpayers affected and the number of occasions on which it applies?” (Law Society of Scotland).

4.21 Two respondents (Tax, LA) argued for the obligations to be well publicised before being implemented, one remarking that taxpayers who have tax collected by PAYE may not understand them.

4.22 Four respondents (Tax, Tax, Tax, Bus) felt it important to highlight that taxpayers also have rights, and Revenue Scotland also has obligations.

Notification of liability

4.23 Three respondents provided specific views on this proposed obligation. All considered this disproportionate for all cases:

- not workable if just the mere expectation of having a tax liability must be notified (Leg)
- should relate to actual rather than anticipated liabilities (Leg)
- presumably do not need to notify if already filing returns (Tax).

4.24 One respondent (Tax) suggested that there should be an additional obligation placed on taxpayers to notify Revenue Scotland if they become aware of a return being incorrect.

Self-assessment

4.25 Two respondents (Tax, Tax) queried whether this proposed obligation will apply to all taxpayers in the future, for example, in relation to the Scottish Rate of Income Tax.

Paying tax within the time period set

4.26 One aspect of this proposal attracted much criticism: that taxpayers who wish to contest any assessment by Revenue Scotland will also be required to pay within the designated period, and where the taxpayer is successful in contesting the assessment, Revenue Scotland will reimburse any overpayment at a set rate of interest.

4.27 Nine respondents expressed concern about taxpayers being required to pay tax during the contested period on grounds that:

- there should remain a provision to argue “hardship” and postpone payment of tax until its legitimacy is established (Tax, Tax, Leg)
- some taxpayers may struggle to pay tax which they believe is not due (Tax, Tax)
- it could threaten the solvency of some businesses (Tax, Bus)
- the obligation is more onerous than the current treatment of direct taxes in the UK (Tax, Leg)
- it is disproportionate (Tax, Tax)
- this obligation does not, in principle, fit with the self-assessment system (Tax)
- the obligation may not be appropriate for future devolved taxes (Bus)
- it may cause personal stress (Tax).

4.28 Three tax professionals argued for taxpayers to be permitted to apply for a full or partial deferment of payment until the dispute is resolved, following which, if assessed as liable, they could pay late payment interest.

4.29 Three respondents (Tax, Tax, Leg) envisaged taxpayers incurring additional costs such as overdraft charges if required to pay disputed tax, which they argued should be reimbursed, in addition to interest on the overpayment, should their case be upheld. One (Tax) recommended that the same rates of interest should apply to both late payment and re-payment.

Retention of tax-related records

4.30 Three respondents (Leg, Leg, PB) queried the accuracy of the reference to the “Scottish Statute of Limitations” suggesting that instead, the reference should be to the Prescription and Limitation (Scotland) Act 1973. Whilst one respondent (Leg) agreed with the five year retention stipulated for business records, others (Tax, PB) questioned the practicalities of setting different retention periods for business and personal records. One respondent (Tax) recommended that any retention periods set should harmonise with those of HMRC. Another (Leg) urged that retention periods for personal records ought to take account of the time limit for assessments by Revenue Scotland, e.g. ordinary time limit of four years pursuant to s.34 of the Taxes Management Act 1970.

Power to require information and power to inspect

4.31 Where Revenue Scotland is carrying out compliance activity, it will need the power to require information, and where necessary remove or take copies of documents (including electronic records), to allow it to check the accuracy of taxpayers' returns. After considering what is done in other jurisdictions, the Scottish Government proposes that Revenue Scotland should have powers relating to:

- asking the taxpayer for information
- asking a third party for information about a known taxpayer
- asking a third party to reveal the identity of an individual
- seeking information from businesses about clients who meet certain criteria.

4.32 The power to inspect can range from the minimal power of inspecting accounting records (physical or electronic) up to inspecting premises and goods or materials. The Scottish Government believes that in all but the most complex cases, validation of the amount of tax due should be concluded as quickly as possible so as to deliver certainty to the taxpayer and minimise delay and administrative cost to both the taxpayer and Revenue Scotland. To achieve this objective the Scottish Government proposes that Revenue Scotland has broad powers of inspection related to:

- inspection of records
- inspection of premises
- inspection of goods or materials (and taking samples)
- investigatory activity.

4.33 The consultation asked:

Question 8: What are your views on the specific powers for requesting information, for inspecting and sampling and for investigating? Are there any safeguards that might need to apply to them or any other powers you think Revenue Scotland may need?

4.34 Nineteen respondents (68% of all respondents) addressed this question.

Table 9: Respondents to Question 8

Category	No.	%
Tax accountants and professional tax bodies	9	47
Public bodies	2	11
Legal professional bodies	3	16
Local authority bodies	3	16
Business	2	10
Total	19	100

General comments

4.35 There was general agreement that such powers are essential, but should not be too broadly framed so as to permit application in a disproportionate manner. One respondent remarked:

“Powers will require to be proportionate but sufficiently robust to give the organisation ‘teeth’” (East Ayrshire Council).

4.36 Clarity was sought on the alignment of the proposed powers with those in other parts of the UK. It was recommended (LA, Bus) that the new powers be widely publicised, in particular to make sure other parts of the UK are aware of Revenue Scotland’s rights in relation to asking for information from third parties.

4.37 SEPA emphasised that the powers highlighted in the consultation do not cover the powers required to investigate tax avoidance associated with illegal waste deposits, which may be included in the Landfill Tax (Scotland) Bill.

Views on the proposals for power to require information

Ask the taxpayer for information

4.38 Twelve respondents addressed this aspect of the proposed powers. Their comments are summarised below:

- It was agreed that legal professional privilege should remain (Leg, Leg), but should apply to all professional advice on tax, rather than be restricted to the legal profession (7 tax professionals).
- There should be safeguards to avoid unnecessary intrusion and demands on taxpayers. The term “reasonably believes” was seen as too subjective in this respect, and open to inequitable application (7 mentions).
- The timescale for providing the information should be reasonable (Leg, Tax).

Asking a third party for information about a known taxpayer

4.39 Ten respondents addressed this aspect of the proposed powers. Their comments are summarised below:

- Care needs to be taken to ensure third parties do not infringe taxpayers’ rights (Tax, Leg, PB).
- Provision should be made for asking banks to disclose required information. The respondent recommending this commented: “This power is already available to HMRC and would help ensure that taxpayers do not attempt to operate in a manner outwith the spirit of the tax system” (Scottish Council for Development and Industry).
- There should be a right for third parties to appeal (Tax).
- The right to appeal should not be on the third party, but on Revenue Scotland to go to an independent tribunal to obtain an order in its favour (Tax).
- Agree that the reasons for requesting information from a third party should be put in writing and minimum standards should apply (Tax).

- This power should be deferred until a specific need for its use has been identified so as to prevent diverting effort to an activity with potentially only marginal benefit (Tax).

Asking a third party to reveal the identity of an individual

4.40 Six respondents addressed this aspect of the proposed powers. The overriding recommendations were for the power should be used sparingly, with robust safeguards in place to prevent what some termed, “fishing expeditions” by Revenue Scotland. One respondent commented:

“Such power must only be used in exceptional cases where it has been demonstrated that all other options to confirm or reveal the identity has been exhausted” (Brodies LLP).

4.41 Two respondents (Leg, Tax) urged that protocol is put in place on who can approve a request from Revenue Scotland for using this power.

Seeking information from businesses about clients who meet certain criteria

4.42 Four respondents addressed this aspect of the proposed powers. They cautioned against inappropriate use of the power which they recommended should be used only in limited circumstances and supported by:

- a right to appeal (Tax, Leg)
- approval by an independent person (e.g. Sheriff) (Tax).

Views on the proposals for power to inspect

Inspection of premises

4.43 Six respondents addressed this aspect of the proposed powers.

4.44 One (Tax) considered that the drafting should be tightened to provide greater clarity on why the power is necessary. Another (Leg) suggested legislative provision should indicate whether inspections can be video recorded.

4.45 There was general agreement that the powers should not extend to permitting Revenue Scotland to inspect domestic premises (5 mentions).

Investigatory powers

4.46 Ten respondents addressed this aspect of the proposed powers.

4.47 Several commented on the proposal that Revenue Scotland be given the power to obtain a search warrant from a Sheriff to inspect businesses without giving advance notice. It was felt that authorisation for actioning this power should be at the highest level (Bus, Tax, PB, Leg) with regular audit and scrutiny of requests (Bus). Such inspections were seen as requiring high level supervision (Leg); and should be made only in exceptional circumstances (Bus). It was commented, that in the main, arrangements for inspection of business records could be made between the taxpayer and Revenue Scotland without having to go down this route (Tax).

4.48 There was debate on who should exercise the powers on behalf of Revenue Scotland. Some considered it beneficial for in-house staff to develop the expertise to exercise the powers, at least for the more straightforward cases (Leg, Tax, Tax, Bus). One respondent commented:

“It does not appear that sub-contracting Revenue Scotland’s investigative activities would be optimal in terms of control of information, competence and conduct of officials acting on behalf of Revenue Scotland and in building up the body of expertise within Revenue Scotland” (British Bankers’ Association).

4.49 Others recommended outsourcing the powers for larger and more serious cases (Leg) or due to the relatively small expected size of Revenue Scotland (LA). One commented:

“If outside assistance is required in serious and larger cases, it will be essential for Revenue Scotland to involve persons with a good grasp of all the relevant tax law and knowledge and experience of criminal investigations” (Faculty of Advocates).

Indeed the theme of appropriate training for those actioning the powers, whether in-house or sub-contracted, was prominent in several responses. Two respondents (Leg, Tax) emphasised their view that if other parties carry out inspections on behalf of Revenue Scotland, then the tax authority should oversee these and retain ultimate responsibility.

Correcting taxpayers’ tax returns

4.50 The powers to require information, to carry out inspections and to investigate are aimed at getting a clear picture of a taxpayer’s affairs in order to ensure that the right amount of tax is paid at the right time. In many cases, the use of these powers will lead Revenue Scotland to conclude that the tax return is accurate, but there will be situations where a tax return will have to be amended by Revenue Scotland. There will also be situations where a taxpayer will volunteer new information and seek to amend a tax return that they have already submitted. It is important that there is clarity on the processes and time limits that will apply in these situations.

4.51 Key proposals are:

- Giving the Scottish equivalent of HMRC’s “assessments”, the title “Revenue Scotland assessments”.
- Renaming taxpayer current “voluntary disclosures”, “amended returns” under the Scottish system.
- Introducing a system, similar to that used in New Zealand, which allows both Revenue Scotland and taxpayers specific periods of time to amend a tax return. It is proposed that a four-year period be set for Revenue Scotland in cases where there is no evidence of fraudulent tax evasion.

However, the tax authority would require to amend the tax return by issuing an assessment within one year of having sufficient information to do so.

- In cases of fraud, it is proposed that Revenue Scotland is permitted to issue tax assessments to cover a period of up to 20 years.
- Permitting taxpayers one year to amend any return.

4.52 The consultation asked:

Question 9: What are your views on the proposals set out for the amendment of tax returns by Revenue Scotland or taxpayers? Please comment on the terminology, the time limits proposed and anything else you consider relevant to the amendment of tax returns.

4.53 Twenty respondents (71% of all respondents) addressed this question.

Table 10: Respondents to Question 9

Category	No.	%
Tax accountants and professional tax bodies	9	45
Public bodies	2	10
Legal professional bodies	3	15
Local authority bodies	3	15
Business	3	15
Total	20	100

General comments

4.54 One respondent (Tax) emphasised that any time limits set need to take account of the periods permitted for key aspects of the system such as safeguards, challenges, errors by Revenue Scotland, and so on.

4.55 Two respondents (Tax, Bus) highlighted the need for wide publicity of time limits. Another (Tax) suggested that the starting point for time periods should be clarified, that is, whether from the deadline for filing, or the actual date filed.

4.56 One omission to the proposals was seen to be the arrangements for handling returns filed incorrectly as a result of carelessness or negligence (Tax).

Views on the proposed changes to terminology

“Revenue Scotland assessments”

4.57 Five respondents provided comments. Three (Leg, Tax, Bus) considered this proposal to be helpful with potential to reduce confusion with HMRC assessments. One local authority considered the proposed terminology could cause confusion in the early days, and suggested that inserting the words, “devolved tax” could aid clarity. One public body remarked that the term could create confusion on the grounds that assessments may come from agencies

other than Revenue Scotland. They considered a useful alternative to be, “Scottish Tax Assessments”.

“Amended returns”

4.58 Six respondents provided comments. Three (Bus, Tax, Leg) supported the proposed terminology as being fair and relevant. One (Leg) suggested changing it to, “Amended Revenue Scotland returns” to distinguish it from the HMRC system. Another suggested term was, “Taxpayer amended returns” to make clear that the amendments had arisen with the taxpayer (PB). One tax professional expressed uncertainty over the proposal, commenting that not all voluntary disclosures lead to amended returns, and vice versa.

Views on the proposed time limits

Four year limit for Revenue Scotland to amend tax returns where no evidence of fraud

4.59 Fourteen respondents addressed this proposal. Of these, 11 supported the change; the remaining three tax professionals argued that what is proposed will lead to taxpayer uncertainty. The main reasons given in support were that the taxpayer will be provided with certainty and closure within a reasonable period. One legal professional body commented that in specific circumstances, for example, associated with the LBTT where the amount of overage payable may not be known for a considerable length of time, a longer time limit may be required. Another respondent (Leg) suggested that it should be made clearer that if Revenue Scotland fails to issue an assessment within one year of having sufficient information to do so, then any subsequent action becomes invalid.

Twenty year limit for Revenue Scotland to issue tax assessments in cases of fraud

4.60 Two respondents (Tax, Tax), explicitly supported this proposal.

One year limit for taxpayers to amend a return

4.61 Fifteen respondents addressed this proposal. A recurring concern (10 mentions) was that the proposal introduces inequity between Revenue Scotland and taxpayers, with the different respective time limits being unfair and adding complexity to the system. Two respondents (Leg, Leg) recommended a three-year limit for both taxpayers and Revenue Scotland. Only two business respondents expressed their support for the one year limit for taxpayers along with the four-year limit for Revenue Scotland. One public body suggested that the limit for taxpayers should be one and a half years, in order to accommodate businesses with accounting periods straddling two financial tax years.

4.62 One view (Tax) was that where a taxpayer needs to amend their return following the conclusion of an enquiry, then additional time should be granted over the one-year limit. Two respondents (Tax, Leg) recommended that taxpayers be permitted up to four years to amend their returns in cases where they have made a mistake and wish to increase the amount of tax due.

Delegation of powers to other public authorities

4.63 It is intended that Revenue Scotland will delegate to RoS and SEPA responsibility for the collection of LBTT and SLT respectively. It is also considered appropriate for Revenue Scotland to delegate some responsibility for ensuring compliance with those taxes to RoS and SEPA. The Scottish Government is also minded that Revenue Scotland should be able to delegate to other Scottish public sector authorities as it deems appropriate.

4.64 The consultation asked:

Question 10: Are there any powers that Revenue Scotland should not delegate and, if so, what are they and why?

4.65 Seventeen respondents (61% of all respondents) addressed this question.

Table 11: Respondents to Question 10

Category	No.	%
Tax accountants and professional tax bodies	7	41
Public bodies	2	12
Legal professional bodies	3	18
Local authority bodies	2	12
Business	3	18
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

4.66 Only a few respondents identified powers which they considered Revenue Scotland should not delegate:

- Enforcement duties should be subject to more consideration and debate before powers are delegated (Bus, Tax, Leg). The Law Society of Scotland suggested a mechanism whereby Revenue Scotland “warrants” appropriate individuals as tax representatives of Revenue Scotland to enable them to act on the tax authority’s behalf.
- Local tax, national non-domestic rates and council tax should remain under the administration of local authorities (LA).
- Revenue Scotland should not delegate the assessment and collection of personal income tax liability (PB).
- Engagement with taxpayers and their agents over technical points (including clearances) should remain with Revenue Scotland (Tax).

4.67 One respondent (Leg) argued that to minimise confusion, the powers delegated to RoS and SEPA should be limited to collection of tax only.

General comments

4.68 Prevailing views were that Revenue Scotland should retain ultimate responsibility for any powers it delegates; that the authorities receiving delegated

powers should adhere to the same standards and safeguards as Revenue Scotland regarding, for example, confidentiality; and any person undertaking delegated duties on behalf of Revenue Scotland should have received the necessary training.

4.69 Concerns were expressed that:

- Delegating powers could threaten consistency in delivery, application of rules and training of staff (Tax).
- Delegation could undermine the accountability of Revenue Scotland to the Scottish Parliament (Tax).
- There may be increased litigation if taxpayers challenge the validity of actions of delegated bodies (Leg).
- There will be cost implications for authorities taking on delegated powers (Bus).

5. ENSURING COMPLIANCE

Promoting compliance

5.1 To provide a tax environment that makes it as easy as possible to comply and to help compliant taxpayers to continue to pay the right tax on time, it is proposed that tax legislation should be as easy as possible to understand, and that ease of use is “designed in”. The Scottish Government also intends to consult on proposals for new or changed tax legislation in future.

5.2 It is proposed that Revenue Scotland will provide taxpayers and their agents with plain-English guidance material before the relevant tax provisions come into effect. Revenue Scotland will consult widely on its guidance before it is published. In addition to paper-based communications, Revenue Scotland will operate a responsive, accessible website providing information on issues that taxpayers or their agents identify as helpful or important. The website will include Frequently Asked Questions and these would be updated and augmented regularly. Where taxpayers raised specific queries, Revenue Scotland and the bodies to which it delegates its tax collection powers will respond as quickly and expertly as possible.

5.3 The electronic systems used to collect tax on-line will be as responsive and easy to use as possible, and will alert taxpayers and their agents to problems with information they are providing or to key dates within which further action should be taken. Provision will also be made for those who have difficulties accessing on-line processes.

5.4 The consultation asked:

Question 11: What else might be done to make it as easy as possible for taxpayers to comply with their obligations, and to ensure that those who wish to comply are supported to do so?

5.5 Nineteen respondents (68% of all respondents) addressed this question.

Table 12: Respondents to Question 11

Category	No.	%
Tax accountants and professional tax bodies	9	47
Public bodies	2	11
Legal professional bodies	3	16
Local authority bodies	3	16
Business	2	11
Total	19	100

NB Percentages may not total 100% exactly due to rounding.

General comments

5.6 Three respondents (Leg, Leg, Bus) agreed that clarity of legislation is a key route to promoting compliance. Two respondents (Tax, Tax) suggested that proactivity by Revenue Scotland, for example, engaging with schools through programmes of citizenship education, and direct interaction with taxpayers, will provide valuable enhancement to more passive support such as the provision of guidance material.

5.7 Three tax professionals suggested incentivising actions such as early filing, or putting affairs in order if earlier reporting errors have been made.

Views on guidance material

5.8 Aspects of the proposed arrangements were welcomed by several respondents, notably:

- proposal to produce guidance material in plain English following tests for readability
- public consultation on draft guidance
- inclusion of Frequently Asked Questions
- proposal to ensure guidance is kept up-to-date.

5.9 Many respondents considered the proposed website to be essential, with demands for:

- helpful structure
- efficient and effective search facility
- the facility to submit a query
- compatibility with a variety of devices and different speeds of access
- comprehensive testing before going live.

Views on accessing information in a variety of formats

5.10 Respondents agreed that provision should be made for guidance material offline, in a variety of different formats, to cater for different needs, including those of people who are digitally excluded and/or disabled.

5.11 Six respondents recommended the establishment of dedicated telephone helplines, staffed by properly trained staff. Two respondents (Tax, Tax) urged that consideration be given to making helplines free. Another tax professional cautioned that Revenue Scotland should not underestimate the number of dedicated, expert personnel required to staff such helplines. One public body highlighted the importance of a single point of contact for some taxpayers, such as Landfill Site Operators.

5.12 Two respondents (Bus, Tax) requested more information on the mechanisms by which taxpayers' and agents' queries will be dealt with by Revenue Scotland, one expressing concern that addressing these could prove to be burdensome and costly for the tax authority. One respondent (Tax) considered that interpretation facilities may need to be on hand.

5.13 Another respondent (Leg) recommended that hyperlinks should be set up to take those filing returns on-line to relevant guidance, where needed.

5.14 The suggestion was made (Tax) that arrangements should be in place for face-to-face home visits or meetings in town centres, where enhanced support is needed.

Views on methods of making payments

5.15 There was general agreement across several respondent sectors that taxpayers should be offered a variety of payment methods:

- online
- cheque by post
- by phone
- BACS.

5.16 Two respondents (LA, Bus) requested that payments should be permitted in instalments.

5.17 One view (Tax) was that any new software established for tax payments should not place unnecessary burdens on micro or small businesses.

5.18 The consultation asked:

Question 12: What particular features should Revenue Scotland's systems include to help agents to operate most effectively on taxpayers' behalf?

5.19 Eighteen respondents (64% of all respondents) addressed this question.

Table 13: Respondents to Question 12

Category	No.	%
Tax accountants and professional tax bodies	9	50
Public bodies	1	6
Legal professional bodies	3	17
Local authority bodies	3	17
Business	2	11
Total	18	100

NB Percentages may not total 100% exactly due to rounding.

5.20 One key feature raised by seven respondents was for a simple and quick authorisation procedure to register agents who have been asked by their clients to deal with Revenue Scotland on their behalf. One view (Tax) was that this should ideally be consistent with that for registering agents for UK taxes. Another respondent suggested that it might be worth considering making it a requirement for agents to be regulated by an approved body such as ICAEW. They continued:

“This does not necessarily mean that all agents would be perfect, but at least they would be subject to the rules and regulations of their professional bodies and it would help prevent some unsuitable people from acting as agents” (ICAEW).

5.21 One respondent (Tax) emphasised their view that “agents” should include in-house tax staff who can operate on behalf of a group of companies. Another (Tax) argued for those in the voluntary sector who are acting on behalf of taxpayers to be given direct access to tax systems e.g. Tax Help, Taxaid.

5.22 In general, it was agreed that agents, once appropriately registered, should have access to taxpayers’ accounts online, subject to suitable IT security and functionality. One respondent (Tax) encouraged Revenue Scotland to adopt a system similar to the HMRC online portal, to enable agents to have real time access to their clients’ accounts.

5.23 A few respondents (Tax, Tax, PB) highlighted that some taxpayers deploy different agents for different taxes, or more than one agent for one tax. They requested that the system be developed to accommodate appropriate levels of multi-agent access. One respondent (Tax) urged that Revenue Scotland consider the appropriateness of a collaborative model for larger taxpayers and transactions, an approach which they explained had been adopted by HMRC in appointing a Customer Relationship Manager.

5.24 In terms of communication between Revenue Scotland and agents, the three main routes identified by respondents were:

- agents being copied into taxpayer correspondence automatically
- agent-dedicated phone lines staffed by appropriately trained staff
- email.

Sanctions where justified

5.25 To encourage non-compliant taxpayers to become compliant, Revenue Scotland will seek to identify a high proportion of non-compliant activity by operating systems such as risk-based and random assessments. Non-compliant behaviour would include:

- not declaring or not paying tax due, or not doing so in a timely way
- declaring or paying less tax than is due
- seeking to conceal the true amount of tax due
- refusing to provide information reasonably sought by Revenue Scotland
- not keeping adequate records to enable Revenue Scotland to check whether a tax return is correct
- concealing or destroying records or other information sought by Revenue Scotland
- any other deliberate or dishonest actions designed to enable a taxpayer to avoid paying some or all of a tax charge due.

5.25 It is proposed that in cases of non-compliant behaviour, Revenue Scotland should be empowered but not obliged to apply civil penalties. The circumstances in which penalties may be applied, and maximum penalties, will be set out in legislation. It is intended to give Revenue Scotland power to reduce or suspend civil penalties where the taxpayer has co-operated with Revenue Scotland, for example, in identifying and calculating the right amount of tax. It is believed that a proportionate regime will be achieved by giving Revenue Scotland discretion to decide whether to apply a penalty, with the amount of that penalty subject to maxima set in legislation. Maxima might be absolute amounts or percentages of the amount of tax due.

5.26 The consultation asked:

Question 13: What are your views on the list of non-compliant behaviours (paragraph 5.25 above) – for example, are there other situations in which civil penalties should be available?

5.27 Seventeen respondents (61% of all respondents) addressed this question.

Table 14: Respondents to Question 13

Category	No.	%
Tax accountants and professional tax bodies	8	47
Public bodies	1	6
Legal professional bodies	3	18
Local authority bodies	3	18
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

General comments

5.28 Five respondents (LA, LA, PB, Bus, Tax) stated simply that the list of non-compliant behaviours appeared to be reasonable. Another (LA) remarked that the list should not attempt to be exhaustive, but simply set out examples.

5.29 One respondent (Tax) expressed disappointment at the absence of a dedicated consultation on a sanctions' and penalties' regime, emphasising that in their view this is vital before draft legislation is placed before Parliament.

5.30 Three respondents (Leg, Leg, Tax) cautioned that the list did not seem to them to distinguish between tax evasion and legitimate tax planning. Another (Tax) suggested a distinction should be made between:

- a) mistakes made despite taking care
- b) careless mistakes
- c) deliberate mis-statements and concealment.

This respondent urged that the system recognises that some errors occur despite the taxpayer being honest.

Specific comments

First bullet

5.31 It was remarked that taxpayers who do not pay in a timely way may have no criminal intent (Leg, Bus), and that late payment should not be treated in the same category as seeking to conceal tax due (Leg). Two respondents (Tax, Tax) recommended that account should be taken of hardship and the financial position of the taxpayer in cases of late payment.

Fourth bullet

5.32 According to one respondent (Tax), the interpretation of “reasonably sought” may be different between Revenue Scotland and taxpayers, and it is therefore vital that taxpayers have a right of appeal.

Fifth bullet

5.33 “Adequate records” was viewed as a subjective term by two respondents (Tax, Leg) which required clarification in order to minimise uncertainty and inconsistency in interpretation.

Seventh bullet

5.34 One respondent (Leg) expressed concern that some steps taken to avoid tax could include for example, investing in Enterprise Investment Schemes, which has been encouraged, however such action has been classed alongside dishonest actions, which are clearly criminal. This respondent remarked:

“It is unhelpful to muddy the distinction between legal avoidance and criminal evasion” (Law Society of Scotland).

Suggestions for additional non-compliant behaviours

5.35 Four suggestions were made by tax professionals:

- failure to notify liability (2 mentions)
- failure to submit an appropriate return (1 mention)
- filing a tax return late (1 mention)
- providing incorrect information to Revenue Scotland (1 mention).

5.36 The consultation asked:

Question 14: What are your views on the proposal that Revenue Scotland should have discretion, subject to maximum penalties set out in legislation and subject also to published guidance, to determine the level of sanctions? What factors might be taken into account by Revenue Scotland in deciding what level of sanction to apply?

5.37 Seventeen respondents (61% of all respondents) addressed this question.

Table 15: Respondents to Question 14

Category	No.	%
Tax accountants and professional tax bodies	8	47
Public bodies	1	6
Legal professional bodies	3	18
Local authority bodies	3	18
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

5.38 Overall, 15 of the 17 respondents who provided a view expressed clearly their support for the proposal that Revenue Scotland should have discretion to determine the level of sanctions, subject to legislation and guidance.

5.39 It was suggested that such discretion would encourage taxpayers to comply who otherwise might have simply awaited detection (Bus, Leg). One respondent (Leg) argued that a blanket approach would fail to take account of individual circumstances of taxpayers.

5.40 Caution was expressed by three respondents:

- Discretion should be limited in order not to undermine legislative intent or deterrent effect (Tax).
- The application of discretion may make one taxpayer feel more harshly treated than another as a result of the officer who had dealt with them (Tax).
- Discretion may introduce inconsistent decisions, raising the potential of a significant level of appeals and complaints (LA).

5.41 Two respondents (Tax, Tax) emphasised their view that the levels of penalties, and the range of mitigating factors, should be determined by statute rather than established in guidance.

5.42 Two respondents (Leg, Leg) argued that discretion should extend to the ability to reduce any penalty otherwise due, to zero. Another view (Tax, Tax) was that suspension of penalty should only be applied where the taxpayer is trying to comply, and not in cases of deliberate non-compliance, or worse. One prominent view was:

“The main concern comes down to ensuring taxpayers do not become subject to significant automatic penalties for behaviour that is largely a case of taking the eye off the tax ball while coping with the main game of keeping the business going” (Chartered Institute of Taxation and Association of Taxation Technicians).

Views on factors to take into account in determining level of sanction

5.43 The following factors were identified by respondents, and are listed in order of most mentions to fewest mentions:

- intent – whether deliberate or genuine error (7 mentions)
- whether first offence/previous compliance record (7 mentions)
- amount due (6 mentions)
- willingness to co-operate/improve systems/resolve the matter (5 mentions)
- length of time overdue (4 mentions)
- ability to pay (4 mentions)
- “reasonable excuse” (4 mentions)
- whether voluntary disclosure of error (4 mentions)
- whether acting in “good faith” (2 mentions)
- size of organisation/taxpayer (1 mention)
- whether caused by agent or taxpayer (1 mention)
- illness (1 mention)
- age (1 mention).

Types of sanction

5.44 It is proposed that the type of sanction that Revenue Scotland and the Crown Office and Procurator Fiscal Service might use to deal with tax non-compliance will comprise:

- warning letter
- flat-rate penalty
- daily penalty
- percentage-based penalty
- criminal prosecution.

5.45 The consultation asked:

Question 15: What are your views on the types of sanction proposed and their possible uses?

5.46 Nineteen respondents (68% of all respondents) addressed this question.

Table 16: Respondents to Question 15

Category	No.	%
Tax accountants and professional tax bodies	8	42
Public bodies	1	5
Legal professional bodies	3	16
Local authority bodies	4	21
Business	3	16
Total	19	100

5.47 Overall, the sanctions proposed and their possible uses were viewed as reasonable, with some attracting more detailed comment than others (see below). It was recommended (Tax) that taxpayers and their agents should be fully informed about the sanctions and their application. One respondent (LA) asked for clarification that the sanctions will not necessarily be mutually exclusive.

Views on use of the warning letter

5.48 Five respondents expressed their support for warning letters as an effective, low level sanction. It was considered that a warning letter, if used on a timely basis (Tax), could help facilitate behaviour change (Bus) before progressing to other sanctions. One respondent (Leg) suggested that the letter could contain information on options for payment arrangements. Another (Tax) proposed the introduction of warning letters of progressively different strengths.

Views on use of flat-rate penalties

5.49 Six respondents commented specifically on the proposed use of flat-rate penalties. A recurring view was that such penalties should be applied with care in order to prevent disproportionate use. A suggestion was made to introduce limits, for example, by capping the penalty at a fixed proportion of the tax at stake (Tax).

5.50 One view (Leg) was that a flat-rate penalty is not appropriate in cases where no tax is payable.

5.51 Other concerns were expressed:

- small flat-rate penalties are not cost effective to appeal (Leg)
- as a deterrent this sanction has very limited impact (LA)
- can be expensive to pursue (LA).

Views on use of daily penalties

5.52 As with flat-rate penalties, two tax professionals argued for careful application in order to maintain proportionality, and the introduction of some form of limitation, for example, relating the amount of penalty to a proportion of the tax at stake.

Views on percentage-based penalties

5.53 Three respondents (all tax) presented similar views. They argued that there is a significant difference between “careless” and “fraudulent” dealings with Revenue Scotland, with the former warranting perhaps only a warning letter and the opportunity to correct an error, but the latter more deserving of a percentage-based penalty.

Views on criminal prosecution

5.54 Three respondents (Tax, Tax, Leg) all recommended careful consideration of the circumstances whereby an agent will be subject to such sanction,

particularly as the threat of criminal prosecution could deter agents from assisting some clients, to the detriment of the public interest.

Other sanctions

5.55 A few respondents identified further sanctions which they proposed could usefully be included amongst those listed in the consultation:

- It was suggested that interest on late payments, although perhaps implicit in the list of sanctions, is viewed by some taxpayers as a penalty in its own right (Tax).
- Suspended penalties are used by HMRC and according to one respondent (Tax) could be applied effectively by Revenue Scotland in cases of careless behaviour.
- Three respondents (Tax, Tax, Bus) highlighted emails and text prompts as effective low level compliance mechanisms commonly used in other industries.

Collecting unpaid tax

5.56 Currently HMRC has the power, where a Scottish taxpayer has not paid the tax due, to seek a summary warrant from the sheriff court. A sheriff must issue such a warrant if HMRC demonstrates to the court that appropriate processes have been followed and the tax due has still not been paid. The warrant enables HMRC to enforce the outstanding tax together with related costs and proceed to diligence. It is proposed that Revenue Scotland has a similar power. It could not, however, exercise this power where it has agreed with a taxpayer a time-to-pay schedule on which the taxpayer has not defaulted.

5.57 The consultation asked:

Question 16: What are your views on the proposed arrangements for collecting unpaid tax set out above?

5.58 Eighteen respondents (64% of all respondents) addressed this question.

Table 17: Respondents to Question 16

Category	No.	%
Tax accountants and professional tax bodies	6	33
Public bodies	1	6
Legal professional bodies	5	28
Local authority bodies	3	17
Business	3	17
Total	18	100

NB Percentages may not total 100% exactly due to rounding.

5.59 There was broad support for the proposals, so long as the arrangements are applied fairly and consistently. It was considered that they were consistent

with those available to HMRC (Tax, Bus); and that the arrangements provided an opportunity for future incorporation of wider taxes such as council tax (LA). One respondent emphasised that different approaches should not develop for devolved and non-devolved taxes (Tax).

5.60 One respondent in particular welcomed the retention of the summary warrant system on the basis that it provides:

“an expedient and cost effective method for recovery of taxes due and payable” (Society of Messengers at Arms and Sheriff Officers).

5.61 It was recommended (Tax) that the measures taken by Revenue Scotland be usefully benchmarked against those applied by HMRC and other revenue bodies in Europe.

5.62 A few respondents highlighted their view on the merits of in-house or outsourcing debt collection. Their views were:

- Debt collection cannot be outsourced, not least due to the potential for complexity where Revenue Scotland has a duty of confidentiality which prevents its disclosure of relevant facts to the appointed outsourced agents (Tax).
- HMRC uses debt collection agencies. If Revenue Scotland has similar plans, they must be supervised properly and operate to Revenue Scotland principles and guidelines (Tax).
- Most Scottish local authorities use professional firms of Sheriff Officers to enforce debt and Revenue Scotland should follow suit. Very effective and efficient working practices have evolved over the years. Revenue Scotland should forward the summary warrant to a Sheriff Officer firm who will engage initially with the debtor to demand payment, and if no co-operation, will proceed to enforcement, using the statutory powers set. A recommended 10% penalty of the sum at stake (which has been applied historically) should be imposed with the proceeds used to pay for the cost of enforcement, thus making the process “entirely self funding” (Walter Love, Messengers-At Arms and Sheriff Officers).

Views on the proposed time-to-pay arrangement

5.63 The proposed time-to-pay arrangement was addressed specifically by four respondents. Three (Tax, Tax, Leg) recommended that the criteria for being given time-to-pay be publicised, but its discretionary basis made clear. One respondent stated:

“...guidance should be published on the circumstances in which Revenue Scotland will consider entering into such an arrangement and the factors that it will take into account, as well as on the taxpayer’s obligations that will arise as a result of entering such an arrangement, which will be different to the ordinary taxpayer obligations” (Faculty of Advocates).

5.64 Two respondents (Tax, Tax) suggested that the key to effective time-to-pay arrangements is to make them flexible enough to tailor to the taxpayer's individual circumstances. One respondent (Tax) welcomed the proposal as helping some businesses to remain solvent by permitting slower payment of tax.

6. TACKLING TAX AVOIDANCE

Background

6.1 Tax avoidance takes place where an individual or corporate taxpayer seeks to reduce, delay or avoid their liability for tax by taking action which they believe is legal, but which the tax authorities regard as not in keeping with the spirit of or the intention behind the relevant tax legislation. Tax avoidance often involves highly artificial mechanisms for which the sole or main reason, or one of the main reasons, is to reduce tax due. The Scottish Government believes it is in the public interest to tackle tax avoidance because:

- it reduces public revenue, and so will lead either to lower spending on vital public services or to an increase in tax rates generally to recoup tax avoided;
- there is a risk to the tax base if other taxpayers behave in a similar way;
- there may be perceived unfairness to compliant taxpayers who continue to meet their liabilities as intended by the law; and
- it can undermine public confidence in the tax system and lead to reduced rates of compliance.

6.2 Tax avoidance is by definition legal. It is different from tax evasion, which involves fraud, misrepresentation or concealment and can give rise to criminal charges. Tax evasion is generally addressed by tax authorities through risk assessment, intelligence, investigation and, where necessary, criminal prosecution.

6.3 Tax planning takes place when a taxpayer seeks to minimise the tax they are liable to pay by acting within the spirit of the relevant legislation – for example, by using reliefs or allowances provided by Parliament for the purposes intended.

Tackling tax avoidance

6.4 Across tax jurisdictions, the actions to tackle avoidance generally fall into three groups:

- **Promote compliance** – creating an environment where tax avoidance is difficult, and/or providing disincentives for avoiding tax.
- **Notification** – identifying as quickly as possible any avoidance schemes through a notification system, together with recognising any weaknesses in the tax legislation that might allow taxpayers to use avoidance schemes. The UK Government's Disclosure of Tax-Avoidance Schemes (DOTAS) legislation is aimed at identifying such schemes.
- **Counteract** – this includes taking action against known or suspected avoidance schemes so as to stop these schemes working.

6.5 The consultation asked:

Question 17: What are your views on the measures proposed for tackling tax avoidance? What other methods might be employed?

6.6 Eighteen respondents (64% of all respondents) addressed this question.

Table 18: Respondents to Question 17

Category	No.	%
Tax accountants and professional tax bodies	8	44
Public bodies	1	6
Legal professional bodies	3	17
Local authority bodies	3	17
Business	3	17
Total	18	100

NB Percentages may not total 100% exactly due to rounding.

General comments

6.7 There was general agreement that the measures proposed for tackling tax avoidance are appropriate. These were perceived to be consistent with other agencies (LA). One view (Tax) was that as the measures proposed apply to devolved taxes only, measures for tackling tax avoidance should align with those of the rest of the UK to maintain consistency.

6.8 A few respondents (Tax, Tax) expressed concerns over whether Revenue Scotland will have the required skills and resources necessary to tackle tax avoidance successfully. One respondent (Tax) urged that greater distinction is made between tax evasion, which is illegal, and tax avoidance/planning which is not.

Views on promoting compliance

6.9 Eleven respondents gave explicit support to 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. A typical comment was:

“Of the options outlined, the clearest measure appears to relate to establishing a legislative framework that is not open to misinterpretation or abuse” (Scottish Property Federation).

6.10 Four respondents (Bus, Tax, Tax, Tax) considered that transparency in legislative intention will also be crucial, arguing for Policy Memorandum to accompany new legislation.

Views on notification

6.11 Two respondents (Tax, Tax) recommended a disclosure system similar to DOTAS. One view (Leg) was that an effectively targeted GAAR with proportionate DOTAS provisions, should be sufficient to tackle tax avoidance.

Views on counteract

6.12 Three respondents (Tax, Tax, Bus) cautioned that any anti-avoidance measures should not interfere with legitimate, routine and well established tax planning strategies. Another favoured purposive legislation over Targeted anti-avoidance schemes (TAARs), stating that:

“The reason is that extensive, detailed anti-avoidance legislation risks being opaque, uncertain and still leaving gaps: indeed it in many ways promotes the idea that there may be gaps to be found” (Chartered Institute of Taxation and Association of Taxation Technicians).

6.13 One legal professional body advocated deferring the introduction of specific GAAR provisions pending a review of the UK Government’s experience. Others agreed that any GAAR should be considered at a later stage (Tax), and following consultation on its wording (Tax).

Views on other methods to be employed

6.14 One respondent (Bus) expressed support for activity which focuses on embedding a cultural change within business and society more generally, in regards to attitudes to tax avoidance.

Notifying tax avoidance

6.15 The Scottish Government supports identifying actual or potential tax-avoidance schemes, including through notification. Early notification and identification will help to reduce costs and uncertainty for both taxpayers and the tax authority. Therefore, as with some other tax jurisdictions, the Scottish Government proposes to introduce an obligation for tax-avoidance schemes to be notified. This would require anyone devising, selling or using such schemes to notify Revenue Scotland and to provide details within a set period of first offering them to a client.

6.16 The consultation asked:

Question 18: If obligatory notification arrangements were included in the proposed Tax Management Bill, what do you think should be the main features? Are there any features of other similar schemes that you think should be avoided?

6.17 Fifteen respondents (54% of all respondents) addressed this question.

Table 19: Respondents to Question 18

Category	No.	%
Tax accountants and professional tax bodies	8	53
Legal professional bodies	3	20
Local authority bodies	1	7
Business	3	20
Total	15	100

6.18 The current UK DOTAS system was referred to by eight respondents who recommended learning lessons from this to apply to the Scottish system. Aligning notification arrangements with the UK regime was advocated to avoid confusion (Tax, Tax). One respondent (Tax) considered that it could be useful in developing a notification system to share knowledge between Revenue Scotland and HMRC.

6.19 A prevailing theme (6 mentions) was the **importance of defining clearly** what schemes require to be notified, in order to prevent unnecessary work for taxpayers and Revenue Scotland. Two respondents (Tax, Leg) suggested that “white lists” of transactions not considered abusive should be available to assist taxpayers and their agents. Two tax professionals called for defined “listed” schemes along with publication of “hallmarks” of such schemes, as happens in relation to Value Added Tax in the DOTAS rules. According to a business respondent:

“...care should be exercised in how wide the net is cast in order to avoid placing an unnecessary burden on compliant taxpayers and in creating uncertainty in terms of reporting obligations” (British Bankers’ Association).

6.20 Another dominant theme was the **importance of enforcing** any notification system. It was agreed that notification within a set time period was workable but required policing and action taken against those who flout the system (Tax, Tax). Two tax professionals emphasised their view that if it becomes apparent that a scheme has not been notified then efforts must go into tracing the origins of the scheme and the promoter challenged. One legal professional representative advocated suitable, proportionate penalties for failing to disclose in order to ensure compliance.

6.21 One respondent (Tax) recommended less onerous time limits than exist in the UK arrangements in order to facilitate compliance.

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

6.22 The UK Government intends to introduce a UK GAAR in the Finance Bill 2013. As this will not apply to devolved taxes, the Scottish Government needs to consider making a provision for a GAAR in the Tax Management Bill. A key issue is whether to draw a GAAR broadly, to include a wide range of

arrangements that could be regarded as reducing or avoiding tax liability, or more narrowly to target schemes that are highly artificial and contrived and consequently are sometimes referred to as “abusive”. The proposed UK GAAR is more narrowly focused.

6.23 The consultation asked:

Question 19: Of the two broad approaches – a GAAR targeted at highly artificial and contrived abuse of tax legislation, or a more widely drawn provision, which do you believe is likely to be more effective, and why?

6.24 Eighteen respondents (64% of all respondents) addressed this question.

Table 20: Respondents to Question 19

Category	No.	%
Tax accountants and professional tax bodies	9	50
Public bodies	1	6
Legal professional bodies	3	17
Local authority bodies	3	17
Business	2	11
Total	18	100

NB Percentages may not total 100% exactly due to rounding.

6.25 Amongst respondents, three local authorities provided very general welcome and support for the proposal to develop a Scottish GAAR. One remarked:

“Whatever approach is taken it must be easily communicated, understood and pass the test of public acceptance” (East Ayrshire Council).

6.26 The imminence of implementation of the UK GAAR was acknowledged in many responses, with a recurring view that consistency with this approach would be beneficial, particularly in avoiding confusion. It was felt that lessons could be learned by observing the impact and effectiveness of the UK GAAR, before finalising the Scottish approach. A typical view was:

“Adopting the same approach as the UK will ensure that a transaction which involves both a devolved tax and a UK tax should not have the potential for being subject to two different GAARs” (ICAEW).

6.27 One respondent considered that further consultation on a Scottish GAAR would be unnecessary:

“...as far as possible ...build on the detailed work already undertaken – rather than invent the wheel which has been through a considerable consultation process already undertaken and where a repeat exercise may be considered a waste of time and effort” (ICAS).

6.28 Another suggested that with sufficiently accurate and clear legislation, a Scottish GAAR may be unnecessary (Tax).

6.29 Three respondents (Leg, Leg, Bus) called for any GAAR to be supported by clear legislation and an advance clearance system, in order to maximise its effectiveness.

Views on a narrowly targeted GAAR

6.30 In total, 13 respondents provided explicit support for a narrowly-targeted Scottish GAAR. There was no support expressed for a more widely drawn provision. The merits of a narrowly targeted GAAR were documented as:

- contributes to certainty, with businesses knowing the tax consequences of their actions (9 mentions)
- a more widely drawn provision could reduce Scotland's attractiveness as a location for business and employment (6 mentions)
- fairer if it is consistent with the rest of the UK (2 mentions)
- easier to understand if consistent with the rest of the UK (2 mentions)
- will improve economic stability as it will not interfere with legitimate and well established tax planning strategies (1 mention)
- acts as a deterrent (1 mention)
- robust (1 mention)
- a wider GAAR could encourage imprecise or even incomplete drafting of legislative measures (1 mention)
- provides a balance of the twin objectives of protecting the tax base and limiting uncertainty (1 mention).

Prior clearance rule

6.31 Some jurisdictions require a taxpayer to seek and obtain prior clearance for unconventional arrangements designed to achieve a tax result, or accept the risk that the tax authority will find that these unconventional arrangements are unacceptable and can be set aside for the purposes of working out tax due. It can be argued that prior clearance is helpful in reducing uncertainty. However, it would probably be necessary to put in place appeals procedures, which might take time and reintroduce uncertainty. This could lead to significant administrative costs.

6.32 The consultation asked:

Question 20: What advantages might a prior clearance rule offer? How might it be designed to provide maximum certainty at least cost?

6.33 Seventeen respondents (61% of all respondents) addressed this question (see Table 21).

Table 21: Respondents to Question 20

Category	No.	%
Tax accountants and professional tax bodies	8	47
Public bodies	1	6
Legal professional bodies	3	18
Local authority bodies	3	18
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

Views on the advantages of a prior clearance rule

6.34 A common view was that a prior clearance rule will be helpful in reducing uncertainty (13 mentions). Other advantages highlighted were:

- provides clarity
- will give Scotland a competitive edge
- contributes to consistency of outcome.

Views on challenges of a prior clearance rule

6.35 Three main challenges were identified by respondents:

- costs of operation
- speed of operation
- volume of prior clearances sought.

6.36 Several respondents expressed concern over likely **costs** relating to the administration of the system and any appeals process. Four respondents (Tax, Tax, Leg, Leg) recommended charging a fee for clearance applications, possibly at a “modest” level, to offset the costs incurred. However, two respondents (Tax, Tax) cautioned that the size of fee should not result in discrimination against small businesses and ordinary taxpayers.

6.37 One suggestion to address costs was to operate the clearance system for a limited period only, perhaps four years, whilst new legislation bedded in (Tax).

6.38 Six respondents emphasised that any prior clearance system needs to operate to a **tight transaction timetable**, with quick turnarounds in decision-making. Two (Tax, Tax) expressed doubts as to whether Revenue Scotland or HMRC will be able to deliver clearance systems within the commercial timescales required.

6.39 There was concern that practitioners, for risk management purposes, may **overuse** the prior clearance system, in order to provide reassurance to their clients. Suggestions were made on ways to contain the number of applications made:

- stipulate that the rule applies only where a minimum level of tax is at stake (2 mentions)
- publish examples of general clearances for information (2 mentions)

- establish a narrowly drawn GAAR (1 mention)
- provide clear guidance on the circumstances in which prior clearance should be sought (1 mention)
- charge a fee for each application (1 mention).

6.40 One comment was that businesses may become reluctant to enter into certain transactions if these become compulsory or ‘preferred’ candidates for seeking prior clearance (Tax).

Views on an associated appeals procedure

6.41 Two respondents (PB, LA) expressed clear support for introducing an appeals procedure to support the prior clearance rule. However, a different view from a legal professional body was that there was no absolute need for an appeals procedure, as disputes could be addressed through routine channels, or an internal review mechanism could be implemented within Revenue Scotland to deal with challenges to clearance decisions.

Intimation of policy intent

6.42 A key feature of tackling avoidance is to make clear the policy intentions behind the relevant legislation, to make this information available in a way that is accessible to taxpayers and the tax authority, and also so that those adjudicating on disputes and appeals are able to refer to the information and to use it in forming conclusions.

6.43 The consultation asked:

Question 21: How can the intentions of those drafting and passing the relevant legislation best be set out in a way that is useful to taxpayers, Revenue Scotland and those adjudicating on disputes and appeals?

6.44 Sixteen respondents (57% of all respondents) addressed this question.

Table 22: Respondents to Question 21

Category	No.	%
Tax accountants and professional tax bodies	8	50
Public bodies	1	6
Legal professional bodies	3	19
Local authority bodies	2	12
Business	2	12
Total	16	100

NB Percentages may not total 100% exactly due to rounding.

6.45 A recurring theme was that clear, unambiguous legislative drafting will provide the basis for communicating the intentions of those drafting and passing legislation. A typical view was:

“Legislation should, as far as possible, be self-contained and fully comprehensible” (Faculty of Advocates).

6.46 Other recommendations made by respondents for setting out intentions were:

- explanatory notes and guidance accompanying new legislation (10 mentions)
- policy memorandum accompanying the Bill (8 mentions – it was remarked that this had been very helpful in relation to the LBTT Bill)
- notes of Parliamentary debates (5 mentions – the rule established by *Pepper v Hart* (1993) AC 593 was referenced in this regard)
- engaging stakeholders in the key stages of design of the policy objectives and legislative drafting (3 mentions)
- guidance on the Revenue Scotland website (1 mention).

Tests to determine transactions outwith the intention of legislation

6.47 An important element in the design of a GAAR is the nature of the test to be applied in deciding whether a transaction or series of transactions (an “arrangement”) is “caught” by the provision. The Scottish Government takes the view that an arrangement that has as a main or sole purpose, the achievement of a reduction in tax due should entitle Revenue Scotland to set aside such arrangements for the purpose of deciding the tax due and therefore apply the relevant tax legislation to the circumstances as though the arrangements had not been made.

6.48 The consultation asked:

Question 22: What tests do you think should be used to decide whether an arrangement is wholly or mainly intended to achieve a reduction in tax due?

6.49 Thirteen respondents (46% of all respondents) addressed this question.

Table 23: Respondents to Question 22

Category	No.	%
Tax accountants and professional tax bodies	8	62
Legal professional bodies	3	23
Business	2	15
Total	13	100

6.50 The proposal that an arrangement that has as a main or sole purpose the achievement of a reduction in tax due was viewed as a reasonable criterion by several respondents. However, the semantics of the criterion were key to a few, who identified the difference between “a main or sole purpose” and “the main or sole purpose” as crucial in determining whether or not arrangements should be

caught by the provision. One respondent (Tax) pointed out that most business planning will involve a consideration of tax consequences, so it will be almost inevitable that tax advantages will be one of the main purposes.

6.51 One respondent (Tax) considered that the criterion may be appropriate in business contexts, but may not be appropriate if the scope of a GAAR is wider, personal and family company situations.

6.51 Alternative wording was suggested along the following lines:

“...whether an arrangement, when looked at in the round, is wholly or mainly intended to achieve an artificial reduction in tax due which is beyond the intended scope of the underlying legislation” (ICAEW).

6.52 The first test proposed by the Scottish Government that any arrangement such as would not normally be employed for *bona fide* business purposes was queried on account of word, “normally”:

“...this suggests arrangements which do not follow market practice could fall foul of the GAAR despite there being a genuine commercial rationale for pursuing a certain route. In the current financial climate many transactions are being carried out in a way which would not have been “normal” even a few years ago” (Brodies LLP).

6.53 The second test proposed of assessing whether the arrangement or part of it lacks commercial substance, for example, does it have elements which cancel each other out, attracted some support. It was suggested that checks could be done to see whether the taxpayer had suffered real, economic consequences of their actions, such as having spent money and acquired plant and machinery, suggesting that they should indeed have a valid claim to plant and machinery allowances (Tax, Tax).

6.54 One respondent (Tax) commented that whatever tests are used will be determined by the form of any GAAR to be adopted in Scotland. It was argued that if the GAAR is targeted at highly artificial and contrived abuse of tax legislation, then it should be relatively straightforward to identify cases that fail (Tax).

6.55 The consultation asked:

Question 23: Do you see a role for external expertise in assessing tax arrangements to see whether they are “caught” by a GAAR, and if so what might that role be? What arrangements do you think should be put into place for appeals?

6.56 Seventeen respondents (57% of all respondents) addressed this question.

Table 24: Respondents to Question 23

Category	No.	%
Tax accountants and professional tax bodies	8	47
Public bodies	1	6
Legal professional bodies	3	18
Local authority bodies	3	18
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

Views on role for external expertise

6.57 Of the 17 respondents who provided a view, 15 envisaged a role for external experts in assessing tax arrangements to see whether they fall within the ambit of a GAAR. Indeed, a few considered this to be “essential”. It was clear from responses that it was generally accepted that any external expertise will be independent of Revenue Scotland, although two respondents (Tax, Leg) emphasised the need to ensure this was case. One local authority outlined the rationale behind their support:

- will ensure transparency in the tax system
- will aid public confidence in fairness and impartiality of the system
- assures the public that the system is not driven entirely by revenue maximisation.

6.58 Another respondent (Tax) added that external expertise will provide an appropriate balance to any lack of expertise within the tax authority which could lead to overly aggressive approaches by the authority.

6.59 Two tax professionals identified the ideal candidates for providing such expertise as people with commercial and professional experience.

6.60 The Advisory Panel being set up to assist with the running of the UK GAAR was referred to by five respondents who recommended a similar arrangement for Scotland.

Concerns regarding the proposal for a role for external expertise

6.61 One respondent (Leg) argued against the proposal on the grounds that:

- This will create difficulties for any tribunal or court in determining what weight to attach to the view of any “external expertise” especially where there is a dissenting voice.
- A tribunal or court should not be bound by what such “external experts” consider should or should not be caught within the GAAR, since that would give judicial weight to the opinion of those who are not judges.
- The role of external expertise is “controversial and plays a political, rather than a legal or juristic role” (Faculty of Advocates).

6.62 Another respondent (Bus) considered it difficult to comment on the proposal until the UK GAAR system is up and running.

Views on what arrangements should be put in place for appeals

6.63 Four tax professionals commented all with the same view, that appeals should be dealt with no differently to the process for any other appeals.

7. RESOLVING TAX DISPUTES

Background

7.1 Tax disputes arise when a tax authority and a taxpayer have differing views on how much tax should be paid, when it should be paid and/or whether the taxpayer should be liable to pay a penalty and/or interest and potentially also with who Revenue Scotland has reached its decision.

7.2 It is proposed that the management of tax disputes should be based on:

- avoiding disputes
- early resolution; and
- applying the learning for future decisions.

Avoiding disputes

7.3 To help avoid tax disputes, Revenue Scotland must ensure that the process of tax collection is efficient, effective and as clear to the taxpayer as possible. The focus must be on “getting it right first time” with accurate calculations and quick, consistent and high-quality decisions at every stage.

7.4 It is intended that Revenue Scotland publishes accessible, plain-English guidance about the way the tax rules work and its processes and methodology; it should also make direct references to the letter of the law.

7.5 It is also intended that where Revenue Scotland disputes the view of the taxpayer that it should set out clearly in correspondence its reasons for doing so. This will help the taxpayer to understand the position of Revenue Scotland and inform his/her subsequent approach.

7.6 The consultation asked:

Question 24: What are your views on the proposals for avoiding disputes? What else could Revenue Scotland do to avoid disputes arising in the first place?

7.7 Twenty one respondents (75% of all respondents) addressed this question (see Table 25).

Table 25: Respondents to Question 24

Category	No.	%
Tax accountants and professional tax bodies	9	43
Public bodies	3	14
Legal professional bodies	3	14
Local authority bodies	3	14
Business	3	14
Total	21	100

NB Percentages may not total 100% exactly due to rounding.

7.8 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.

7.9 The proposed focus on “**getting it right first time**” received much support. Respondents identified pre-requisites to achieving this focus:

- training of Revenue Scotland staff to ensure they have a high level of tax knowledge and understanding (Tax, Tax, Leg, Bus)
- mechanisms for audit and quality review of Revenue Scotland’s performance (Tax, Bus)
- tighter control and accountability of Revenue Scotland’s officers in the management of enquiries (Bus)
- frontline staff empowered with the authority to resolve problems quickly (PB)
- accessible communication channels with queries answered within a prompt timeframe (Tax).

7.10 Four respondents (Tax, Tax, Tax, Leg) highlighted specifically their support for the proposal to publish **accessible, plain-English guidance**. One respondent (PB) considered that the use of plain English in communication helps the taxpayer to feel that they have been listened to.

7.11 Two respondents (LA, Tax) called for the production of memorandum explaining tax changes as a way of contributing towards avoiding disputes.

7.12 When a taxpayer consults Revenue Scotland, it was recommended that a clear, **written record of the advice** given should be sent by Revenue Scotland, preferably by email, to avoid any future misunderstanding (Tax). One respondent (Tax) considered that dedicated case managers should be allocated for face-to-face meetings (Tax).

7.13 In addition to the proposed approaches to avoiding disputes, set out in the consultation document (7.3 – 7.5 above), three respondents (Tax, LA, PB) recommended a culture of consumer focus and trust between Revenue Scotland

and taxpayers as a way to avoid disputes in the first place. One provided their view thus:

“This (culture of consumer focus) can be established by a management who are not frightened of complaints and disputes but genuinely see them as a learning tool” (Scottish Public Services Ombudsman (SPSO)).

7.14 A further recommendation was for the nurturing of a proactive, collaborative approach to addressing disputes between Revenue Scotland and taxpayers, in which a joint solution is worked towards rather than resorting to dispute resolution mechanisms (Tax).

Internal review

7.15 It is proposed that the first stage of the process to resolve a dispute should be for the taxpayer to notify Revenue Scotland, which would then have to conduct an internal review. It is suggested that the internal review should be a mandatory step for Revenue Scotland where taxpayers wish to challenge a decision.

7.16 Such a review would be conducted by a member of Revenue Scotland staff who had no involvement in the original assessment or other matter giving rise to the dispute, and who will conduct the review on an objective and fair basis. In line with the requirement to make the tax administration process as clear as possible to taxpayers, we propose that Revenue Scotland should publish the guidance which reviewers will follow, and the time limits which will apply for requesting and conducting internal reviews. At the end of the review process, the taxpayer will receive a letter from the reviewer outlining their decision and the reasons for this.

7.17 The consultation asked:

Question 25: What are your views on the proposed arrangements for reviews and/or the appropriate duration for the period within which the review must be concluded?

7.18 Eighteen respondents (64% of all respondents) addressed this question.

Table 26: Respondents to Question 25

Category	No.	%
Tax accountants and professional tax bodies	8	44
Public bodies	3	17
Legal professional bodies	3	17
Local authority bodies	2	11
Business	2	11
Total	18	100

7.19 There was much cross-sectoral support for the proposed arrangements for reviews. Reasons given in support included:

- has the potential to minimise the time spent in dispute (Tax)
- gives the tax authority a chance to reconsider its position (Tax)
- relatively cheap for the taxpayer in terms of reducing the need to recourse to tribunals and courts (Tax, Tax)
- can filter out cases to be resolved pragmatically, thus reducing pressure on tribunal and court systems (Tax)
- mirrors the approach taken by the SPSO in handling standard complaints (PB).
- supports learning and development in the organisation (LA).

7.20 General principles were suggested:

- the reviewer should be independent of the original assessment (Tax, Tax)
- the review arrangements should be proportionate to the amount under dispute (LA)
- the reviewer should be of sufficient seniority (Tax)
- Revenue Scotland should follow the approach of HMRC who have set up an internal review system (Tax)
- publishing statistics on the proportion of disputes resolved in this way will be helpful in promoting faith in the system (Tax).

7.21 It was considered important to one respondent (Tax) that the letter from the reviewer to the taxpayer at the end of the review should provide a detailed explanation of the outcome, rather than be “formulaic” in content. Another respondent (Bus) recommended that the letter should indicate alternative sources of action open if the taxpayer disagrees with the review decision. One view (Bus) was that anonymised outcomes should be published.

Views on time periods for the review to be concluded

7.22 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. One suggestion was that a target time period could be agreed between the two parties on a case by case basis rather than setting a standard period (Tax). Another respondent urged that the time period should be as short as possible, as their experience of HMRC has been that internal reviews rarely result in a different decision to the original being reached (Leg).

7.23 Various time periods were suggested by others ranging from:

- 14 days where this does not compromise thoroughness (1 mention)
- 20 days (1 mention)
- 4 weeks (1 mention)
- 30 days (1 mention)
- 45 days (3 mentions)

- six weeks to three months (1 mention)
- three months or as otherwise agreed (1 mention)

7.24 Two respondents (Tax, PB) recommended that where it is predicted that the time limit is going to be breached, then the taxpayer should be kept fully informed.

Views on whether the review should be mandatory

7.25 A common view was that although Revenue Scotland should be required to conduct an internal review if requested by the taxpayer, the latter should not have to follow this route if they feel their case justifies progression straight to a higher rung in the dispute resolution ladder. One respondent (Tax) suggested that even if an internal review has commenced, a taxpayer should retain the option to request their case be moved onto the next stage, if they are dissatisfied with progress.

7.26 One respondent (Leg) advocated making it mandatory for a reviewer to offer to have a meeting with the taxpayer face-to-face.

Other relevant comments

7.27 A suggestion was made (Tax) for the establishment of a quasi-judicial review team sitting outside Revenue Scotland, a precedent being the Department of Work and Pension's previous Internal Review Service set up to review decisions in relation to the Social Fund.

7.28 Guidelines on the circumstances in which a review can be instigated were recommended (Tax) in order to avoid triggering by low level, simple, technical arguments.

7.29 One respondent (Tax) expressed concern over the resource implications of the proposals for Revenue Scotland, as a small organisation.

Mediation

7.30 Mediation plays a role in resolution of tax disputes in a number of jurisdictions around the world. Mediation can be much quicker, cheaper and more effective in resolving tax disputes than through more formal judicial procedures.

7.31 Mediation is a confidential process enabling parties in dispute to reach a solution which they form and agree themselves. Mediation is facilitated by a trained and objective third party and seeks to enable the disputing parties to reach an agreed position. The mediator must not impose a solution. In the context of tax, it is expected that any agreement reached would be final and underpinned by appropriate rules on settlement.

7.32 Mediation works as a voluntary process. It is proposed that Revenue Scotland should adopt mediation as its own preferred approach to resolving disputes that cannot be resolved after dialogue and internal review.

7.33 The consultation asked:

Question 26: What are your views on the proposal to encourage the voluntary use of mediation? Should we be considering any other approaches to dispute resolution?

7.34 Twenty respondents (71% of all respondents) addressed this question.

Table 27: Respondents to Question 26

Category	No.	%
Tax accountants and professional tax bodies	8	40
Public bodies	3	15
Legal professional bodies	3	15
Local authority bodies	3	15
Business	3	15
Total	20	100

7.35 Fifteen of those who provided a view expressed general support for the proposed voluntary use of mediation in dispute resolution. Where reasons were stated these included:

- mediation is a cost effective mechanism for resolving disputes (4 mentions)
- can reduce the number of cases proceeding to a tribunal (1 mention)
- mediation is efficient and fair (1 mention)
- cases can be resolved more quickly with mediation (1 mention)
- It represents a proportionate way to resolve many tax disputes (1 mention).

7.36 Several respondents qualified their support, on the condition that mediation remains a voluntary option for taxpayers.

7.37 Two respondents (Tax, Tax) considered that publishing information and statistics on mediation use will be helpful. Another (PB) suggested that the publication by Revenue Scotland of anonymised case studies, successful and unsuccessful, could boost use.

7.38 Recommendations were made by either one or two respondents for ensuring mediation works effectively:

- It should be made clear to both parties that there are no “winners” and “losers” and the outcome will not be black and white.
- The underlying principles of mediation should be made clear.

- Mediators should be independent and not in-house personnel as in the model adopted by HMRC.
- Mediators should have mediation expertise.
- Revenue Scotland should make clear in published guidance the grounds on which they may be prepared to compromise.
- Revenue Scotland should be permitted to resolve disputes by means of financial compromise.
- Confidentiality should be assured.

7.39 Some respondents expressed caution over the proposals. Three (LA, Tax, Tax) considered that mediation will not always be appropriate within the context of disputes over tax. One commented:

“...a successful conclusion to mediation can require both parties to be flexible in their approach and to work together to get a resolution which is suitable to both parties. This can be difficult to achieve in a situation where a dispute arises over tax liability, where clear rules and guidelines exist” (South Lanarkshire Council).

7.40 Two respondents (Tax, Leg) remarked that independent mediators can be expensive, and mediation can become time consuming.

7.41 One legal professional body described how precedents which could help in future disputes, cannot be readily set, due to confidentiality surrounding mediation. Another respondent (Bus) recommended that care should be taken to minimise the potential for other taxpayers to perceive that there are inconsistencies in the way disputes are being resolved.

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

7.42 Should it not be possible for the new devolved taxes jurisdiction to be included in the newly formed Scottish Tribunals System immediately after the devolved taxes come into effect in April 2015 then transitional options will need to be considered for where appeal cases might be heard. Three options are:

- a) The UK Chambers (in the First Tier and Upper Tribunal) of the UK Tribunal could be asked to take appeals against devolved taxes for the period until it is appropriate to move the jurisdiction into the Scottish Tribunal System.
- b) Refer appeals against the devolved Scottish taxes to existing devolved tribunals.
- c) Refer appeals against devolved taxes to the Scottish court system.

7.43 The consultation asked:

Question 27: What do you think would be the best option for dealing with appeals to a tribunal until a tax jurisdiction is established in the Scottish Tribunal System?

7.44 Eighteen respondents (64% of all respondents) addressed this question.

Table 28: Respondents to Question 27

Category	No.	%
Tax accountants and professional tax bodies	8	44
Public bodies	2	11
Legal professional bodies	3	17
Local authority bodies	2	11
Business	3	17
Total	18	100

7.45 The view of 16 of the 18 respondents who addressed the issue was in favour of option a), namely asking the UK Chambers to take appeals against devolved taxes during the transitional period. Table 29 below summarises responses:

Table 29: Preferences for options to deal with appeals to a tribunal until a tax jurisdiction is established in the Scottish Tribunal System

Option	No. of respondents
a) UK Chambers	16
b) Existing devolved tribunals	1
c) Scottish court system	1
Commentary only – no preference stated	2
Total	18*

*NB Two respondents gave two preferred options.

7.46 The reasons provided in favour of option a) were:

- uses existing experience and expertise (9 mentions)
- already established infrastructure (2 mentions)
- only a small number of cases are envisaged (2 mentions)
- lowest cost option (1 mention)
- promotes most confidence in the appeals process (1 mention)
- best option for facilitating a smooth transition (1 mention)
- minimises risks of uncertainty to best for business (1 mention).

7.47 Very few comments were made in relation to the remaining two options. Option b) was acceptable to one public body; option c) deemed workable to one tax professional who welcomed the Scottish control this would bring. However,

others argued that option c) had associated issues of capacity which may result in delays in processing of court cases (Tax, LA).

7.48 Two general comments were that whatever approach is adopted, consideration should be given to capacity (LA); and that any period of uncertainty could bring unwanted impacts (Bus).

7.49 Two suggestions were made for alternative arrangements:

- Core team of Scottish judges supplemented by the existing tribunal judges and members, with a clerk to the tribunal being Scottish law trained (Tax).
- The UK Tax Tribunal System deals with all devolved tax cases as a matter of course (as only two devolved taxes are expected to be introduced in 2015) (Tax).

Meeting the costs of mediation or tribunal appeals

7.50 Whichever option is selected, there will be costs associated with appeals. There will also be costs for mediation. The consultation asked:

Question 28: How should the costs of mediation or tribunal appeals be met or shared?

7.51 Seventeen respondents (61% of all respondents) addressed this question.

Table 30: Respondents to Question 28

Category	No.	%
Tax accountants and professional tax bodies	8	47
Public bodies	2	12
Legal professional bodies	3	18
Local authority bodies	2	12
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

Views on meeting the costs of mediation

7.52 The most common view (9 mentions) was that each party should bear its own costs, with Revenue Scotland perhaps bearing the standing charge costs.

Arguments in support of this view were:

- this is the generally accepted protocol with mediation
- it is a voluntary agreement
- otherwise the mediator's independence could be called into question
- in keeping with the collaborative nature of the mediation process.

7.53 One respondent (Tax) highlighted the possibility of an alternative arrangement being agreed as part of the mediation process. Another (PB) suggested that sharing the costs is only appropriate if independent mediators are

deployed, but not if in-house staff are the mediators, in which Revenue Scotland should meet the costs.

7.54 Three respondents (Tax, Tax, Bus) emphasised that taxpayers should be informed of the likely costs of mediation before opting for this route.

7.55 One tax professional recommended that the costs of mediation to businesses should be tax deductible.

Views on meeting the costs for tribunals

7.56 There were mixed views on how the costs for tribunals should be met. One respondent (Leg) expressed concern that the consultation document states that the existing principle is “loser pays costs”. Their understanding was that it is only in complex cases where “cost shifting” occurs, otherwise only cases in which one party has behaved in an unreasonable manner will costs awards be triggered.

7.57 Three respondents (LA, LA, Tax) supported the principle of “loser pays costs”, one considering this an accepted principle; one respondent (Tax) disagreed stating that this could act as a deterrent to some; another (Tax) commented that this principle may be difficult to apply as some elements of the case may have been won by one party, and some by another.

7.58 Two respondents (Tax, Leg) argued for parties to bear their own tribunal costs, with Revenue Scotland also paying the standing costs. An opposing view (Tax) was that this route could deter small businesses and individuals who feel that they cannot pursue a case as they may incur considerable costs even if they win their case.

7.59 Another potential option was that if Revenue Scotland loses the case, it must bear all costs, but if the taxpayer loses, then the costs could be shared (Tax).

7.60 Four respondents (Tax, Tax, PB, Leg) advocated following the tribunal’s own cost rules. However, three of these respondents (Tax, Tax, PB) understood these to be that broadly no costs will be invoked at the First Tier stage; the remaining respondent (Leg) reported these to be that each side pays their own costs, win or lose (at least in the first instance and unless there has been unreasonable behaviour in relation to the appeal by either party), with the winner of any subsequent appeal being entitled to the expenses of the further appeal.

7.61 A few respondents urged that arrangements are in place to enable those on low income to be able to use the appeals process. Ideas were that a volunteer panel of tax advisers be recruited who provide *pro bono* advice to those otherwise unable to afford professional help; reimbursement of out-of-pocket expenses for those on low incomes; and giving tribunals the discretion to take into account individual financial circumstances in allocating costs.

General comments

7.62 Two respondents (Tax, Tax) requested clarity on the cost policy in the context of the new powers, including defining what constitutes “costs”.

7.63 A tax professional commented that if a taxpayer is impoverished by having taken their case to mediation or a tribunal, then according to the EU principle of effectiveness, the remedy has failed.

7.64 One respondent (PB) cautioned that whatever cost policy is put in place, this should not put additional financial burdens on agencies acting on behalf of Revenue Scotland.

Applying the learning for future decisions

7.65 It is considered important that Revenue Scotland ensures it learns from disputes. Whilst the details of any individual dispute may well be confidential, it is proposed that Revenue Scotland should publish in its annual report a summary statement covering at least:

- key statistics on the numbers and nature of disputes that arose during the year including the time taken to resolve them, and for those that have been resolved, whether this was following internal review, mediation or tribunal; and
- the main points of learning which Revenue Scotland has drawn from dealing with the disputes during the year and what action it intends to take as a result.

7.66 The consultation asked:

Question 29: What are your views on how Revenue Scotland could best demonstrate that it is learning from the resolution of disputes?

7.67 Nineteen respondents (68% of all respondents) addressed this question.

Table 31: Respondents to Question 29

Category	No.	%
Tax accountants and professional tax bodies	8	42
Public bodies	3	16
Legal professional bodies	4	21
Local authority bodies	2	11
Business	2	11
Total	19	100

NB Percentages may not total 100% exactly due to rounding.

7.68 The proposal that Revenue Scotland publishes in its annual report a summary statement covering key statistics and main learning points was broadly welcomed.

Specific views on the proposed inclusion of key statistics

7.69 One respondent (Tax) remarked that this action will demonstrate clearly Revenue Scotland's ongoing commitment to improving its dispute handling. It was suggested that the statement should include statistics for previous years in order to identify trends (LA). One view (Tax) was that targets could be set on the basis of statistics collected, with Revenue Scotland reporting back on the degree to which these have been achieved.

7.70 One respondent (Tax) considered that the first bulleted point (in 7.65 above) relates to Revenue Scotland's accountability, whereas the second point refers to the separate matter of organisational competence.

Specific views on the proposed inclusion of main learning points and resulting action

7.71 Two suggestions were made. One was for the publication of learning points on a quarterly rather than annual basis (Tax); the other was for Revenue Scotland to include details of action taken as a result of previous points identified (Tax).

Other proposals

7.72 Other recommendations were made by respondents for how Revenue Scotland could best demonstrate that it is learning from the resolution of disputes:

- publication of anonymised details of previous cases (possibly in manuals) and the resulting action taken (4 mentions)
- implementation of audit and performance measures which show a reduction in disputes generally (2 mentions)
- timely updating and amendment of guidance and manuals to reflect court decisions (although also ensuring historical guidance is available to allow for analysis of how thinking has evolved) (2 mentions)
- occasional newsletter articles outlining rulings and their implications (1 mention)
- staff who are clearly abreast of ruling decisions (1 mention).

Managing complaints

7.73 Complaints arise when taxpayers are unhappy with the way that Revenue Scotland or individual members of staff have behaved. As such, they are not about substantive decisions made about tax, but about how the handling and communication of these decisions has been handled.

7.74 It is proposed that the handling of complaints relating to the administration of the devolved taxes should be aligned to the established approach for the management of complaints about devolved services in Scotland. This has three key stages:

1. The best approach is to avoid complaints arising. This can be done by providing clear statements of customer service standards and providing good-quality guidance and training for staff on what is expected of them.
2. When complaints do arise, they should be raised directly with the body concerned. The body concerned should have a formal published complaints procedure which is easily available and provides for appropriate review at a senior level if the person complaining is dissatisfied with the initial response.
3. Where the complainant remains dissatisfied after going through the complaints process for the body concerned, they may then refer the complaint to the SPSO, or, in the case of complaints about criminal investigations, to the Police Complaints Commissioner for Scotland.

7.75 The consultation asked:

Question 30: What are your views on the proposed approach to the handling of complaints?

7.76 Seventeen respondents (61% of all respondents) addressed this question.

Table 32: Respondents to Question 30

Category	No.	%
Tax accountants and professional tax bodies	7	41
Public bodies	3	18
Legal professional bodies	2	12
Local authority bodies	3	18
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

7.77 There was broad support across sectors for the proposals, with an acknowledgment that these are in-line with the established approach for the management of complaints about devolved services in Scotland.

7.78 An emerging theme was that the complaints procedure should be visible to taxpayers and their agents, with the proposed Taxpayers' Charter one avenue for publicising the procedure. Two public bodies emphasised what they perceived to be the importance of defining clearly the difference between complaints and review. One remarked:

“We consider it particularly important that Revenue Scotland provide clear and unambiguous information for taxpayers on what matters of service performance may be subject to complaint as separate and distinct from any question of review or appeal rights” (Scottish Committee of the Administrative Justice and Tribunals Council).

The other provided their view that the public do not understand the difference between review and complaint, but do understand the route they need to take to achieve their desired outcome, therefore clear signposting from Revenue Scotland is essential:

“...in practice, these two processes will need to work together, and information from each will be helpful in improving the overall service for the public and preventing the recurrence of any problems” (SPSO).

7.79 Another key theme to emerge was to question the proposed action in cases where complaints are against organisations to which Revenue Scotland has delegated powers. Three respondents (Tax, Tax, Bus) argued that Revenue Scotland should act as the gatekeeper for such complaints. Another respondent (Tax) recommended that rather than it being “expected” that a body with delegated powers notifies Revenue Scotland of a complaint against it, this should be mandatory.

7.80 Three respondents (Tax, Tax, LA) explicitly welcomed the proposal to publish an annual summary of information on complaints handling. This was seen as aiding transparency and a basis to create goals for future complaints handling with subsequent reports demonstrating performance against these.

7.81 In relation to Revenue Scotland being overseen by SPSO, the latter documented their understanding that if Revenue Scotland becomes a NMD, then it will automatically fall within their remit, with resulting resource implications for SPSO.

7.82 One respondent (Tax) recommended the establishment of a structured complaints review process after four to five years. Another suggested it would be helpful to have feedback from complaints handling and further discussion at a forum with taxpayers’ agents (Tax).

8. TREATMENT OF TAXPAYER INFORMATION

Background

8.1 It is proposed that Revenue Scotland handles the personal information it receives with care, with any disclosure having to be authorised and taxpayer information protected and shared only for defined purposes.

8.2 The consultation asked:

Question 31: What are your views on the proposed statutory provision forbidding disclosure of information held by Revenue Scotland? Should there be criminal sanctions if information is disclosed?

8.3 Nineteen respondents (68% of all respondents) addressed this question.

Table 33: Respondents to Question 31

Category	No.	%
Tax accountants and professional tax bodies	8	42
Public bodies	2	11
Legal professional bodies	3	16
Local authority bodies	3	16
Business	3	16
Total	19	100

NB Percentages may not total 100% exactly due to rounding.

8.4 The proposed statutory provision forbidding disclosure of information held by Revenue Scotland was supported by all of the respondents who addressed this question. Two respondents (LA, Leg) indicated explicitly their preference for this approach over what they perceived to be the more open regimes, with respect to disclosure of information, operating in countries such as Norway and Sweden.

8.5 One respondent (Tax) recommended that it should be made clear who has the power to authorise any information sharing and who has accountability for such decisions. One public body also called for clear guidance on what information can or cannot be published when an organisation holds the same or similar information as Revenue Scotland, but for different reasons. For example, SEPA publishes information on companies and individuals who may also become Landfill taxpayers.

8.7 A local authority commented that the consultation makes no mention of the Data Protection Act and Revenue Scotland's role as data controller.

8.8 A suggestion was made (Leg) that perhaps the police should require a warrant if they wish to obtain confidential information from Revenue Scotland, in

the same way that Revenue Scotland has to seek permission from a Sheriff to obtain information in cases of suspected fraud.

8.9 Nine respondents expressed their support for the proposal that there should be criminal sanctions if information is disclosed.

Information sharing

8.10 Revenue Scotland will need to handle with due care the confidential information it receives. However, it will be appropriate in specific circumstances for information to be shared by Revenue Scotland with other public bodies in Scotland or the rest of the UK. It is proposed that sharing should be permissible:

- to help in assessing or collecting taxes or other charges etc payable to a public body; and
- to help to prevent or detect suspected crime or the apprehension or prosecution of offenders.

8.11 The consultation asked:

Question 32: Do you agree that Revenue Scotland should be empowered to share information with other public bodies and other tax authorities internationally for the purposes outlined? Do you think there are other purposes for which information should be shared? Should such sharing be governed by some kind of formal agreement, and if so what form should that agreement take?

8.12 Twenty four respondents (86% of all respondents) addressed this question, making it the most frequently answered question in the consultation.

Table 34: Respondents to Question 32

Category	No.	%
Tax accountants and professional tax bodies	8	33
Public bodies	4	17
Legal professional bodies	5	21
Local authority bodies	4	17
Business	3	12
Total	24	100

Views on whether Revenue Scotland should be empowered to share information with other public bodies

8.13 All respondents agreed that Revenue Scotland should be empowered to share information with other public bodies and other tax authorities according to agreed strict protocol and safeguards. Purposes for sharing information were proposed:

- with local authorities to assist with the collection of council tax and non-domestic rates (LA, LA, LA)

- in connection with an earnings arrestment (both Sheriff Officer respondents called for the enactment of Part 16 of the Bankruptcy and Diligence etc (Scotland) Act 2007 in this regard)
- in connection with the National Fraud Initiative (LA, LA, PB), one respondent remarked, “to include the NFI would send a clear signal about the Government’s intention to minimise fraud” (Audit Scotland).
- with HMRC for tax compliance and anti-avoidance efforts (Bus, Tax)
- with Audit Scotland who should have the same access to taxpayer information that the National Audit Office has for HMRC information (PB)
- for benefit payment assessments by the Department of Work and Pensions (LA, Bus)
- with other tax authorities internationally in the light of EU directives (Tax, Bus)
- with other public bodies including the Office of the Scottish Charity Regulator in dealing with the investigation of actual or suspected crime or misconduct in relation to charities (PB).

8.14 The Guidelines for a Better Implementation of the Existing Council of Europe’s Recommendation on Enforcement were referred to by the two Sheriff Officer respondents, who requested that Scotland introduces similar guidelines encouraging the speedy access to information on a defendant’s assets for enforcement agents.

8.15 Clarification was requested on what constitutes “public interest” in relation to Revenue Scotland sharing information with other tax authorities (Tax, Bus).

Views on whether sharing information should be governed by some kind of formal agreement

8.16 There was general agreement that it would be beneficial for a formal agreement to govern protocol on sharing information. Three respondents emphasised that any such agreement should be in the public domain (Tax, Tax, LA), perhaps set out in Information Sharing Agreements (LA). Making this publicly available was seen as helping taxpayers to understand when the sharing of their information can be challenged (Tax, Bus).

8.17 Safeguards governing information sharing were viewed as essential aspects of any formal agreement. Such safeguards were envisaged as including tests to be used in determining whether the power to share information can be exercised (Leg); protocol for considering the sharing of historical taxpayer information (Tax); the binding by the rules (such as confidentiality) of bodies with delegated powers such as SEPA and RoS (Tax); who can give authorisation for disclosure of information (Tax); what information can be shared (LA); and the purposes for which the information can be used (LA).

Whistle-blowing

8.18 There is already a framework in Scotland (the Public Interest Disclosure Act 1998 and the Civil Service Code) that covers public interest disclosure on “whistle-blowing” and sets out what a public official should do if they suspect that there is wrongdoing. The Scottish Government believes that this works well and proposes that this framework should apply to Revenue Scotland also.

8.19 The consultation asked:

Question 33: Do you agree that the existing framework for public interest disclosure is sufficient for Revenue Scotland?

8.20 Seventeen respondents (61% of all respondents) addressed this question.

Table 35: Respondents to Question 33

Category	No.	%
Tax accountants and professional tax bodies	7	41
Public bodies	2	12
Legal professional bodies	3	18
Local authority bodies	3	18
Business	2	12
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

8.21 All of the respondents who addressed this question agreed that the existing framework for public interest disclosure, as described, is sufficient for Revenue Scotland. It was felt that this would be consistent with the rest of the public sector (LA, Bus); and should be communicated widely (LA). Two respondents (Tax, Bus) cautioned that the arrangements should not extend to disclosure of specific taxpayer details. A call was made for guidance on what is deemed to be in the “public interest” (LA).

Freedom of information

8.22 HMRC, as the UK tax authority, is able under the UK Freedom of Information Act 2000 to refuse to release information sought under the Act when that would identify or could be used to identify a taxpayer. If Revenue Scotland were to be subject to similar taxpayer confidentiality obligations as HMRC then it would seem reasonable for there to be a similar type of exemption from the Freedom of Information (Scotland) act 2002 (FOISA).

8.23 The consultation asked:

Question 34: Do you agree that certain information held by Revenue Scotland and bodies to which it has delegated powers should be exempt from Freedom of Information legislation in order to prevent disclosure of information that would identify or could be used to identify a taxpayer?

8.24 Eighteen respondents (64% of all respondents) addressed this question.

Table 36: Respondents to Question 34

Category	No.	%
Tax accountants and professional tax bodies	8	44
Public bodies	3	17
Legal professional bodies	2	11
Local authority bodies	3	17
Business	2	11
Total	18	100

8.25 Of the 18 respondents who addressed this question, 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 indemnify or could be used to identify a taxpayer.

8.26 Two further respondents (Tax, LA) recommended that there should not be blanket exemptions, but cases should be reviewed individually, on their own merits. The final respondent (LA) considered that if Revenue Scotland is brought within the ambit of FOISA, exemptions are already in place in the Act which would allow requests for such information to be refused.

8.27 SEPA provided general agreement, but highlighted that consideration will need to be given to information that SEPA already holds and publishes.

9. ACCELERATED TAX CHANGES

Background

9.1 There are situations when tax changes may need to be made without extensive advance consultation. Most tax jurisdictions have in place a mechanism to enable the swift introduction of tax changes with subsequent Parliamentary scrutiny: the UK has the provisional collection of taxes regime. It is for the Scottish Parliament to determine the appropriate mechanism for Scotland.

9.2 It is proposed to make provision for a mechanism for “accelerated tax changes” that will apply to all devolved taxes, will allow for changes to rates and thresholds and other elements of tax systems where appropriate, will require statutory instruments (rather than arising from Parliamentary resolutions), and will require reimbursement of any tax measure that is not subsequently endorsed by the Parliament.

9.3 There is no intention that tax changes made under the accelerated tax changes regime would have retrospective effect.

9.4 The consultation asked:

Question 35: What are your views on the proposals for an accelerated tax changes regime?

9.5 Seventeen respondents (61% of all respondents) addressed this question.

Table 37: Respondents to Question 35

Category	No.	%
Tax accountants and professional tax bodies	8	47
Public bodies	1	6
Legal professional bodies	3	18
Local authority bodies	2	12
Business	3	18
Total	17	100

NB Percentages may not total 100% exactly due to rounding.

9.6 Whilst it was accepted by all of the respondents who provided a view that an accelerated tax changes regime will be required to 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.

9.7 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.

9.8 The use of accelerated tax changes was viewed by respondents as generally more acceptable for closing loopholes and addressing avoidance schemes than for changing tax rates and thresholds. Indeed, three tax professionals argued that they were not convinced that the regime should be used for tax rate and threshold changes. One legal professional body and one business respondent agreed that its use for tax rate and threshold changes should be confined to exceptional circumstances only.

Views on proposal for no retrospective effect

9.8 Eight respondents provided a view on proposal that there is no intention that tax changes made under the accelerated tax changes regime would have retrospective effect. All supported this proposal, one requesting that the wording be stronger, “to provide that it should be impossible for them to have retrospective effect” (Law Society of Scotland). However, two respondents (Tax, Tax) considered that in extreme circumstances, perhaps to protect the Exchequer, tax changes should have retrospective effect. Another respondent weighed up the arguments:

“Whilst (retrospective effect is) perhaps warranted in highly abusive situations this is a power which could dilute the overriding principle of certainty and clarity of the legislation. Better that the legislation is clear and the intended purpose behind it is easily understood using the measures proposed....in any event would there ever be a situation where retrospective legislation was required if there is a GAAR?”
(British Bankers’ Association).

Views on associated risks

9.9 For a few respondents (Tax, Bus), there were concerns that lack of prior consultation could lead to unintended consequences. A business view was:

“Businesses require a stable and predictable legislative and fiscal environment, the possibility of change creates uncertainty” (Scottish Council for Development and Industry).

9.10 Other risks documented by respondents were:

- Using statutory instruments could have the effect of unnecessarily complicating the legislation (Tax).
- Too many changes within a year would give very little time for proper consultation (Tax).

Views on necessary safeguards

9.11 Four safeguards were suggested by tax professionals as helping to reduce risks:

- There should be appropriate limitations on the use of the regime, for example, after demonstrating that significant amounts of tax revenue (e.g. a particular threshold) will otherwise be lost (2 mentions).
- To prevent too many changes in one year, it might be possible to define certain set periods during which accelerated changes can be made (1 mention).
- Accelerated tax changes should be permitted only after, say, consultation with members of the Devolved Tax Collaborative (1 mention)

10. ANY OTHER COMMENTS

10.1 The consultation asked:

Question 38: Do you have any other comments you wish to make on the arrangements for tax management?

General comments

10.2 Two tax professionals re-iterated their support for the governing principles at the heart of the proposals (proportionate to ability to pay; certainty; convenience for taxpayer; and efficiency) and the key assumptions underpinning the tax management consultation. One emphasised assumptions which they felt were of key importance:

- tax management provisions should be common across all taxes;
- recognition that many taxpayers will appoint agents and so rules and systems much facilitate engagement with agents as well as taxpayers;
- be alert to what HMRC is doing and be prepared to learn from this, particularly in the interactions with the voluntary sector.

Key themes

10.3 Three key themes emerged from responses:

- **Resourcing.** The importance of Revenue Scotland having sufficient, appropriately trained staff was emphasised (Tax). Investment in appropriate IT systems with sufficient security and data handling protocols was also advocated (Tax).
Another tax professional cautioned that in determining a way forward to a draft Tax Management Bill, consideration should be given to the scale of the tax and the time and resource constraints in the Scottish Government and Revenue Scotland. This respondent suggested a staged approach be adopted: firstly, this consultation to provide the necessary legislation to operate the taxes known to be devolved; second or later stages to follow when any future tax powers are devolved. A further consideration raised by this respondent to tackle resourcing, was for involving HMRC and its systems in Revenue Scotland's tax administrative role, particularly in the context of the limited range of devolved taxes. This arrangement was viewed as potentially useful to reduce duplication of effort and infrastructure costs.
- **Commonality with HMRC.** Concern was expressed that companies operating throughout the UK including Scotland may end up adhering to two sets of rules, placing them at a disadvantage. The example was given of the proposed five-year retention rate for records under the Scottish Tax Management regime, which is out of step with UK protocol. It was suggested that for UK firms it would prove difficult to separate out "Scottish records" from others (Tax). Another respondent agreed that the focus should be on common standards between the UK and Scottish

models with deviation only where there is a good reason. They concluded:

“Common time limits, penalties and other provisions will support better compliance and should minimise the additional costs to the taxpayers” (Deloitte LLP).

- **Local democratic responsibility.** Two local authority respondents argued that under the new tax management environment for Scotland, local democratic responsibility for taxation must be a key feature. One commented:
“In the same way that taxation powers are being devolved to Scotland, in turn COSLA would argue that greater powers to control resources should be devolved to the local level. COSLA would therefore want to see the principles of localism and local democratic decision-making applied to any changes in the tax system going forward” (COSLA).

Additional considerations raised

10.4 A number of additional considerations were highlighted by tax professionals:

- Thought should be given to practical issues for taxpayers operating in Scotland but based outside, e.g. adviser attendance at meetings and hearings.
- With the adoption of the “Digital First” approach, emphasis should be placed on understanding and addressing the needs of those digitally excluded.
- Regard should be had for low income taxpayers. Consideration should be given to permitting Legal Aid in all cases, so that these taxpayers have access to the same legal remedies as others. Systems like “loser pays” and paying own costs could discriminate and deter.
- The degree of competition faced by Scottish companies is fierce, particularly against other European countries. The guiding principles of any tax management regime should include stability and certainty.
- Plans should be put in place to address issues which will be raised if Scotland votes in 2014 to become independent.

Specific comments

10.5 Two specific comments were documented:

- Consideration should be given to how some of the practical requests for information and tax-related returns from businesses occupying commercial premises and potentially liable at point of release for LBTT will relate with existing demands and requirements from nationally set but locally collected taxes (e.g. business rates) (Bus).
- The potential implications of the new Devolved Taxes for the UK’s existing network of double tax treaties, and the possible necessity of intra-UK memoranda of understanding on double taxation between devolved UK

administrations and HMRC, may need to be considered in due course (Tax).

ANNEX 1: VIEWS ON THE DRAFT PARTIAL EQUALITIES ASSESSMENT

Three respondents commented on the draft partial equalities assessment. Their views were:

1. The assessment appears to be satisfactory (Tax).
2. It is clear that public sector bodies will need to demonstrate compliance with the general public sector equality duty, in particular evidencing that they have considered the needs of the protected groups. The general duty encourages the mainstreaming of equality into authorities' core business so it is not a marginal activity but a key component of what authorities do (PB).
3. Although the assessment states that there is no information to suggest there may be a differential impact on older people, the Digital First approach could have a differential impact on older people, who are more likely than others to be digitally excluded. The same point applies to people with certain disabilities and those on low incomes. It is important that there are other channels available apart from digital. It is also important that materials are disability tested, for example, colour blindness testing and the use of minimum 12 point font (Tax).

ANNEX 2: VIEWS ON THE DRAFT PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Six respondents commented on the draft partial equalities assessment as follows:

Tax authority options

One public body welcomed in particular the Scottish Government intention to adopt option two for managing the devolved taxes and option one for the transitional arrangements for appeals.

Tax framework options

A preference for option two over option three was highlighted by one tax professional, who disputed the suggestion in the assessment that option two may lead to the system becoming “fragmented and complex”, so long as new provisions are introduced only where necessary, proportionate and effective in the collection and administration of the new powers.

Another respondent (Tax) supported option three as providing a single framework for Scottish taxes which should, in theory, lead to a more coherent system, and hopefully efficiencies.

One view (Tax) was to caution against any future modification of the devolved tax management framework in order to accommodate specific additional devolved taxes. It was agreed that this could lead to fragmentation of the system. This respondent argued that it appeared better to have an effective tax and a less uniform management system than an ineffective tax and a uniform management system.

Costs

Three tax professionals raised issues around costs:

- There will be an identifiable public sector cost associated with the consultation and legislative drafting processes.
- The impact of the appeals process on costs for taxpayers will depend on a number of factors such as the clarity of the legislation and the policy decision on how costs might be awarded, as well as the skill and expertise of the tribunal members in arriving at decision that both parties are able to understand and abide by, rather than appeal further.
- It is not clear in the assessment whether an estimated cost of training staff at Revenue Scotland, RoS and SEPA has been included. These costs should not be ignored.
- Concern that the costs and complexity of the establishment and operation of Revenue Scotland have been underestimated.

ANNEX 3: LIST OF RESPONDENTS

Tax professionals

Baker Tilly Tax and Accounting Limited
Chartered Institute of Taxation and Association of Taxation Technicians
Deloitte LLP
Ernst & Young
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
KPMG LLP (UK)
Low Incomes Tax Reform Group
Price Waterhouse Cooper

Public bodies

Audit Scotland
Equality and Human Rights Commission
Office of the Scottish Charity Regulator
Scottish Committee of the Administrative Justice and Tribunals Council
Scottish Environmental Protection Agency
Scottish Public Services Ombudsman

Legal professional bodies

Brodies LLP
Faculty of Advocates
Law Society of Scotland
Society of Messengers-at-Arms and Sheriff Officers
Walker Love, Messengers-at-Arms and Sheriff Officers

Business

British Bankers' Association
Scottish Council for Development and Industry
Scottish Property Federation

Local authority bodies

Convention of Scottish Local Authorities
East Ayrshire Council
Inverclyde Council
South Lanarkshire Council

Individuals

One individual respondent

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