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Aggregates Tax and Devolved Taxes Administration (Scotland) Bill - Call for Views

Response by the Chartered Institute of Taxation

1 Executive summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our nearly 20,000 members, and extensive volunteer network, in providing our response and our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party political organisation.

1.2 The proposed Scottish Aggregates Tax (SAT) provisions are broadly consistent with the existing UK aggregates levy (UKAL), which should assist with simplicity, continuity and familiarity for those affected. The power to make administrative adjustments by ministers to give effect to operational flexibility is necessary given the absence of a Scottish annual Finance Bill. However, we suggest that some of the provisions (such as the very wide 'ancillary provisions' power contained within s.59 in Part 2) should be embedded fully within this draft Bill for the purposes of greater certainty, scrutiny and transparency. We have no other significant concerns with Part 2 of the Bill, but any new administrative adjustments should only be introduced with prior warning and/or public consultation.

We also wish to highlight the potential loss of income to Revenue Scotland by the provisions concerning cross-border transactions between Scotland and rest of the UK (rUK), given the extent of Scotland's higher level of aggregate exports compared to imports. However, given the remit laid down of the Scotland Act 2016 with respect to commercial exploitation, the final provisions in the Bill represented the simplest option available to the Scottish Government. We would also suggest further controls (more detail below) are placed upon the system of credits with interactions between SAT and UKAL to reduce the likelihood of potential abuses taking place.

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group, the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA' and 'CTA(Fellow)', to represent the leading tax qualification.

3 Introduction

3.1 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

This call for evidence from the Scottish Parliament follows on from our response to an initial consultation in 2022 - 'Breaking New Ground? Developing a Scottish tax to replace the UK Aggregates Levy' held from September to December 2022, and our response to that[1].

4 The questions

4.1 ***Question 1. Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates?***

4.2 The whole point of the UKAL was to dissuade the exploitation of primary aggregates and depletion of those natural resources, and instead provide a greater incentive to use secondary and recycled aggregate. We are unable to comment on the merit or otherwise of any policy behind environmental taxes, but agree that if maintaining natural resources in Scotland was the ultimate aim, focusing a tax on primary rather than secondary or recycled aggregate through a devolved levy seems a sensible use of taxation powers.

[1] https://www.tax.org.uk/ref1025

4.3 ***Question 2. Does the proposed Scottish Aggregates Tax (SAT) align with the Scottish Government's Framework for Tax 2021, which sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation?***

In particular, please set out the extent to which you consider that the proposed SAT reflects the principles of good tax policy making, included in the Framework for Tax, namely proportionality, certainty, convenience, engagement, effectiveness and efficiency.

4.4 The SAT, like the Scottish Landfill Tax will only affect a relatively small number of taxpayers, all of whom will be operating a business. Notwithstanding that, the tax clearly needs to be measured against the principles of good tax policy. The requirements for proportionality, certainty and convenience are seemingly met by these proposed changes: the proposed tax is a single rate per tonne, the simplicity of the uniform-application of the SAT with respect to a weight-based tax at a single rate would seem to meet those criteria. Engagement ie awareness of taxes, is a wider issue in which CIOT has been engaged for some time, but as the SAT is aimed at a specific industry which has been subject to the UKAL for over 20 years, we have no concerns with SAT in this regard. Paragraph 19 of the Policy memorandum states:

'…..The Framework ensures that decisions on tax policy are coherent and rooted in a defined set of principles and strategic objectives, rigorously appraised and developed through an established policy cycle, which puts proactive engagement with stakeholders and partners at the heart of tax policy making'.

Through this extensive consultation process and meetings of the SAT advisory group (in which CIOT was represented), it can certainly be said that 'rigorous appraisal' has also been carried out.

Regarding effectiveness and efficiency, again the simplicity of the levy and the existing UKAL should mean that the SAT will be as efficient and effective as it can be, given the constraints of the Scotland Act 2016. We note that s.37 of the Bill allows for the delegation of powers to the Scottish Environmental Protection Agency (SEPA) or any other authority. Their involvement could potentially assume the burden of enforcing the SAT at 'ground level' on the sites and managing data collection, thus allowing Revenue Scotland to focus on the administration and collection of the SAT itself.

One area of widespread concern is the interaction of SAT and UKAL and cross-border transfers. This is the first time a devolved tax will be levied on assets that are also potentially subject to a similar tax in rUK. The potential problems this might raise were acknowledged within the Policy Memorandum:

'recognition of the complexities associated with creating two tax jurisdictions where there was previously one, including in terms of the treatment of crossborder movements of aggregate and the importance of avoiding double taxation[2]*'*

The precise location of commercial exploitation will need to be ascertained to determine which tax applies. There is a possibility that, in the early stages after implementation, there might be scope for confusion until site operators and businesses are used to the new SAT and the interaction with UKAL. To minimise the risk of this, we would advise that sufficient guidance and assistance is available for SAT payers. The strategic objectives within the Framework for tax are: stable revenues, wellbeing economy, national outcomes, and responsive to societal shifts. Given the projected (increasing) share of Scottish revenues from UKAL per the Financial Memorandum, there is no reason to suppose that the SAT will not yield stable revenues. However, with respect to exports to the rUK (which substantially outweigh imports), Scotland is losing out on revenue from Scottish-

[2] Paragraph 37

sourced aggregate when commercially-exploited in rUK (believed to be between £6-10million assuming a £2 per tonne levy).

4.5 ***Question 3. In this Bill, the Scottish Government has chosen to use the same definition of aggregate for the SAT on the basis that 'it is compatible with the intended objectives for the tax, is well understood by aggregate producers, and is supported by existing UK Aggregates Levy (UKAL) taxpayers'. Do you agree with this approach of using the same definitions as UKAL for the Scottish Aggregates Tax?***

4.6 Yes. Part of our remit is to promote simplification within the tax system(s), so we would support any move which makes the SAT more accessible and simpler for those affected by it. If that can be achieved by offering definitions in line with an existing and familiar levy, then we would support such a move.

4.7 ***Question 4. Part 1, Chapter 2 of the Bill provides definitions of some terms such as aggregate. It also sets out exemptions to the SAT such as particular types of aggregate and excepted processes. Are these definitions and exemptions appropriate and will they deliver the strategic and policy objectives which the Scottish Government has set for the Bill?***

4.8 Yes, by keeping the definitions and exemptions largely in line with those within the existing UKAL, we believe they are appropriate. Paragraph 63 of the Policy Memorandum encapsulates our view by saying:

'…..(1) the definitions had developed over a long period of time with extensive engagement between the UK Government and stakeholders, (2) they are widely understood by the industry, and (3) they had been considered and validated through litigation, including by the European courts'

4.9 ***Question 5. Should the Bill be passed, aggregate moved to Scotland from the rest of the UK will be subject to SAT, while aggregate moved to the rest of the UK from Scotland is expected to be subject to UKAL on the same basis as imports. What are the main benefits and challenges that may arise in relation to the tax treatment of cross-border movement of aggregate? Do you foresee any cross-border issues, behavioural or revenue impacts arising from this proposed approach?***

4.10 The Scotland Act 2016 provides that the basis for SAT is situs of commercial exploitation, so to base SAT on the source of the aggregate would have needed a change of that legislation; any such change rests with the UK Government. Consequently, the SAT provisions need to be as drafted. This is an area of some concern, which we addressed within our 2022 consultation response and subsequently. By basing the charge in whichever country the aggregate is subject to commercial-exploitation, Scotland is losing out on the export revenue of their natural resources, but it is at least consistent with the UKAL's position with exports – so the simplicity, familiarity and consistency with UKAL is one benefit.

We would not foresee adverse cross border behavioural impacts, but that is assuming the actual rate of SAT will be similar to the prevailing UKAL rate. Whilst we do not comment on individual tax rates themselves, clearly if there were a significant differential in rates between SAT and UKAL, then behavioural impacts would be more likely. The revenue impacts are the most profound. Scotland exports far more aggregate to rUK than it imports (over 5.5million tonnes compared to 16,000 tonnes), so the Scottish Government will be losing out on a significant amount of revenue with that commercial exploitation taking place in rUK (although we would assume this would be reflected in the block grant adjustments – see our answer to question 9 below). The credit for movement of aggregate from Scotland to rUK does potentially expose SAT to risk of abuse. A credit could be claimed for movement to rUK whilst actually delivering the aggregate for use in Scotland, either directly or indirectly by a third person. This risk could be mitigated through secondary legislation and conditions imposed for the credit to be allowed. For example, it could be a requirement that the taxpayer claiming the credit has to obtain proof of registration for UKAL and proof that UKAL has been declared and paid. This would

mirror the requirements currently in place for plastic packaging tax where a credit is claimed for components which are subject to a later conversion.

4.11 ***Question 6. Are the arrangements for penalties and appeals as set out in the Bill appropriate?***

4.12 Yes, the provisions for penalties and appeals seem appropriate. However, the proposed s.43, which introduces a new section 216B into the Revenue Scotland and Tax Powers Act (RS&TPA) 2014, creates a penalty of 100% of the potential lost revenue where a document submitted to Revenue Scotland in support of a tax credit claim for industrial and agricultural process relief is incorrect. This penalty applies to both the person submitting the document to Revenue Scotland and any person who provided it to anyone else with a view to it being used as evidence to support a claim for tax credit. In practice, a customer will provide a document supporting the claim for industrial and agricultural process relief to the quarry operator. The quarry operator then submits the claim for relief. The customer is the person initiating the claim for relief and has the best knowledge of their process. It would seem appropriate that a Scotland-based customer should face the consequence of making an incorrect claim in the form of a penalty of 100% of the tax claimed. But it seems unduly harsh that the quarry operator would also be subject to a penalty of 100% of the tax claimed (meaning that Revenue Scotland can impose two 100% penalties for a single error), rather than being subject to the normal self-assessment regime of behaviour-based penalties for errors in their tax returns. We also note, however, that Revenue Scotland already has the power under s.185 RS&TPA to impose penalties on a taxpayer who deliberately submits false information claiming industrial and agricultural process relief which is not properly due to the quarry operator.

4.13 ***Question 7. Do you consider that the provisions set out in Part 2 of the Bill will support effective and efficient administration of devolved taxes by Revenue Scotland?***

4.14 There are two general points we wish to make about Part 2: first, we are disappointed that these provisions were not subject to public consultation; the public was not even made aware that they would be announced. Second, the fact that they had to be included within an unrelated piece of legislation further demonstrates the case for Scotland to be able to pass its own annual Finance Bills for administrative changes like this.

Notwithstanding those comments about Part 2's publication, overall, we believe those provisions will aid an effective and efficient running of the administration of devolved taxes. The changes seem reasonable and proportionate. However, there are certain safeguards that should be included within this primary legislation. We would like some assurances that investigation will be made by Revenue Scotland into the individual taxpayer's circumstances before putting such powers into action. For example, a taxpayer may be reliant upon a repayment which is being denied or offset, with such a move causing undue hardship. It should also be made clear, with respect to the repayment refusal and off-set provisions (sections 52 and 56 respectively), whether it can involve a mixture of devolved taxes or they must be the same eg whether a Land and Buildings Transaction Tax (LBTT) liability could be offset by an SAT repayment. Whilst it may be unlikely that the same taxpayer would incur debits and credits across the current devolved taxes, any future expansion of Revenue Scotland's remit would make this issue more relevant. To most taxpayers, it would probably seem unjust to deny the repayment of one tax just because another is outstanding; the two would be completely unrelated and based on entirely different transactions, the fact that they are both fully devolved taxes is not reason enough to treat them as the same tax. Clarification would also be needed as to whether/to what extent the set-off provisions apply when an overdue tax is subject to an appeal.

We also have some concerns over the use of automation under s.55. Having something as important as tax delegated to computers, rather than allowing a taxpayer to interact with a human being, should not be permitted without safeguards against errors. The well-known scandal involving sub-postmasters and an IT system is a stark (though admittedly extreme) warning of what could happen when unquestioning reliance is

placed on computers. The draft legislation allows ministers to automate functions of Revenue Scotland through regulations, with minimal scrutiny or transparency. Provisions like this should be contained within primary legislation and with clear limitations (see further points on our answer to question 8 below).

4.15 ***Question 8. Are there other changes you would like to see included in Part 2 of the Bill to support the effective administration of devolved taxes in Scotland?***

4.16 As with some of the provisions mentioned above, the 'ancillary provision' powers afforded to ministers within s.59 in Part 2 would appear to be very wide – as acknowledged in the Delegated Powers Memorandum. We would prefer these powers to come with limitations and safeguards, rather than be so open-ended and subject to regulations only. The authority granting those powers should be exclusively within primary legislation to afford certainty and permit greater scrutiny. Primary legislation concerns itself with what is taxed ie when an obligation is imposed upon the citizens of a country; whereas secondary legislation should confine itself to powers on how the tax is administered. The ability of the executive to grant itself unfettered powers which might impose any further obligations on taxpayers must be contained within primary legislation, for the sake of transparency and legitimacy.

4.17 ***Question 9. Do you consider that the estimated costs and savings set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?***

4.18 We are not in a position to comment on this; however, we would ask that figures relating to the potential loss of revenue to Scotland with respect to cross-border transactions be included within the document as far as possible. We would also like to see figures concerning how this Bill might affect the block grant.

We note that there is no assessment of the additional cost to business at this point. For rUK operators supplying aggregate to Scotland there will be an evident business impact. These changes will inevitably increase the workload and associated costs in needing to have two registrations going forward, with two sets of reporting requirements, preparing, reviewing, reconciling and filing both UKAL and SAT returns and dealing with any queries or audits.

4.19 ***Question 10. One policy objective of the Bill is to minimise necessary exploitation of primary aggregates. Therefore, it appears that, similarly to the Scottish Landfill Tax, the policy objective of the Bill is to reduce revenues deriving from this tax power over time. Do you agree with this approach?***

4.20 We are not in a position to comment on the merit or otherwise of policy objectives.

5 Acknowledgement of submission

5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

8 February 2024