

Tax Policy and the Budget – Scottish Government consultation

Response by the Chartered Institute of Taxation and the Low Incomes Tax Reform Group

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 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 Overall, we welcome the publication of a Framework for Tax to communicate the functions, principles and policy objectives that underpin how tax changes in Scotland are assessed and delivered. The document itself seems accessible to a fairly wide audience, and the introduction is helpful in setting out the purpose of the Framework so that it is clear to the user.
- 1.3 We think the document might include more to explain the benefits of the core aim of transparency.
- 1.4 We have a concern in relation to the sixth principle, anti-avoidance. It seems narrower and more negative than the other principles. A more positive and proactive framing of this would arguably align better with the other five principles. We think it might be better to replace this with a principle of effectiveness. Taxes should be designed to raise the intended revenues and achieve the other deliberate purposes of the policy, including being designed to make avoidance as difficult as possible.
- 1.5 In relation to the fifth principle, engagement, we welcome the fact that the Scottish Government has, in general, engaged well with stakeholders when developing tax policy. We think that engagement should extend to sharing information openly with stakeholders throughout the life of a tax. It would be helpful if the Scottish Government could provide clear updates to stakeholders as to the status of work in tax areas – this is particularly important where the taxes affect business decisions. One option might be to have a dedicated webpage on the Scottish Government website that shows the status of all Scottish taxes (fully devolved, partially devolved and local) – including information such as whether legislation has been passed, and whether or not the tax is active.

- 1.6 On page 19, the document briefly sets out the role of Revenue Scotland. For transparency and clarity, we think it would be helpful to have several brief paragraphs or highlighted boxes setting out the roles of different parties, including Revenue Scotland, HMRC, Scottish Government, Scottish Parliament, the Tax Tribunals and the Scottish Fiscal Commission for example. Given the key aim of transparency for the Framework, this would assist with improving general understanding of the different parties involved in tax policy, legislation and operation.
- 1.7 We think priorities for local and devolved taxes over the course of the next parliament include fulfilling a previous commitment to make changes to the group relief provisions for Land and Buildings Transaction Tax, reforming Council Tax and examining options for taxes and tax policies to assist with the achievement of the net zero target. These should assist with the Scottish Government's aim of creating a fairer, greener and more progressive Scotland.

2 About us

CIOT

- 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 (LITRG), 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', to represent the leading tax qualification.

LITRG

- 2.5 LITRG is an initiative of the CIOT to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.6 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

3 Introduction

- 3.1 We welcome the opportunity to respond to the Scottish Government's consultation *Tax Policy and the Budget* – a consultation on Scotland's first Framework for Tax and tax policy in relation to the Scottish Budget 2022-23.
- 3.2 In August, we responded to the call for views on Scotland's public finances in 2022-23 and the impact of COVID-19 published by the Finance and Public Administration Committee of the Scottish Parliament. Our response may also be of interest to the Scottish Government.¹
- 3.3 We also responded to the 2019 Scottish Government consultation *Devolved taxes: a policy framework*. We welcome that the work to enhance the tax policy making process is being picked up following a hiatus. We think that moving forward, it is important that the work on the legislative processes for tax is also picked up – hopefully leading to the institution of an annual Finance Bill. Together this should help ensure improved scrutiny, avoid unintended consequences for stakeholders, and encourage better engagement. Additional advantages of an annual Finance Bill process would be a likely improvement in taxpayer awareness and understanding of Scottish taxes. This is not only important for ensuring accountability, but may also help to improve taxpayer buy-in to the tax system.²
- 3.4 To ensure Scotland is well-placed to address risks arising from the level and rate of recovery relative to the rest of the UK, it is important that Scotland's tax system has a secure tax base, and that processes and mechanisms are in place such that the tax system is responsive to changing circumstances. By proceeding with its work on a policy framework and the legislative processes for tax, the Scottish Government can ensure Scotland has a tax system, policy framework and process for making tax policy and legislation that has integrity, credibility and is fit for purpose.
- 3.5 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.
- 3.6 LITRG published its paper 'A better deal for the low-income taxpayer' in December 2020, setting out practical steps to making the tax and associated welfare systems work better for people on low incomes. The paper groups its recommendations around seven principles for the tax system that LITRG believes should be borne in mind by those designing and managing the tax system.³

¹ <https://www.tax.org.uk/ref817>

² <https://www2.deloitte.com/uk/en/pages/press-releases/articles/the-tax-education-gap-majority-of-the-uk-dont-understand-personal-tax.html>

³ <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

4 1. What are your views on the draft Framework for Tax?

- 4.1 Overall, we think it is a good idea to use this document to communicate the functions, principles and policy objectives that underpin how tax changes in Scotland are assessed and delivered. The document itself seems accessible to a fairly wide audience, in that it is concisely written and makes good use of graphics. The introduction is helpful in setting out the purpose of the Framework so that it is clear to the user.
- 4.2 Page 7 of the document sets out what the Framework does, and indicates that a core aim is transparency. Although there is some explanation of the benefits of transparency on the following page, it might be helpful to briefly set out its benefits on page 7 – the current statement is bald, and may leave the reader wondering why transparency is a key aim. There are many benefits of transparency, including improving understanding of which part of the Scottish Government and administrative set up has responsibility for what, as well as the split between UK and Scottish powers. In addition, it can help stakeholders understand why there is a need to raise revenue and appreciate the rationale for particular taxes and tax policies.
- 4.3 Page 14 sets out the Scottish Government’s approach to taxation and its six core principles. The sixth of these is ‘anti-avoidance’. We have a concern about this. It seems narrower and more negative than the other principles. The discussion of anti-avoidance suggests it is viewed as a way of countering avoidance once it has taken place or been spotted – reactive rather than proactive. We think it might be better to replace this with a principle of effectiveness. Taxes should be designed to raise the intended revenues and achieve the other deliberate purposes of the policy, including being designed to make avoidance as difficult as possible. This would also offer a more positive framing, which would arguably align better with the other five principles.
- 4.4 In relation to the principle of efficiency, we would challenge the definition of deadweight loss. We would expect this to be defined as a cost that arises to public revenues if the tax system provides a tax credit or tax relief for an activity that would have taken place even if the credit or relief did not exist, for example it is known that much Research and Development (R&D) activity would take place even without the tax credits provided by the UK tax system. The example cited in the framework document, of the increased price of consumer goods when VAT is added is something that we would view as simply an unavoidable cost, reflecting the fact that if additional resources are required for tax-financed public services then the same resources are inevitably not available for private consumption. It seems odd to make it a principle of good tax policy that one could somehow avoid the basic choices that society has to make.
- 4.5 In relation to the fifth principle of engagement, we welcome the fact that the Scottish Government has, in general, engaged well with stakeholders when developing tax policy. There have been occasions however when tax changes or new taxes have been announced without any prior engagement, for example, the announcement that both a Workplace Parking Levy and a Transient Visitor Levy would be introduced. While we acknowledge that this decision was part of an agreement to ensure that the Scottish Budget Bill passed, it means that the decision to have these taxes was not up for consultation, only how they would be implemented and operated. The question of whether they may or may not be the most appropriate new (local) taxes to introduce was not discussed. Related to this, the tax policy cycle is set out on page 18 f. of the document. This comprises five stages. To ensure the greatest chances of achieving workable legislation that fulfils its desired objectives, it is important that each of the five stages is completed. It would be helpful to have a commitment to this, (perhaps allowing for limited exceptions), and a means of holding the Scottish Government to account in relation to such a commitment.

- 4.6 We think that engagement should extend to sharing information openly with stakeholders throughout the life of a tax. Due to the coronavirus pandemic, work on both the aforementioned local taxes was put on hold, as was work in other areas. It would be helpful if Scottish Government could provide clear updates to stakeholders as to the status of work in tax areas such as these, as there is uncertainty about if and when such taxes will be implemented. This is particularly important where the taxes affect businesses and their decisions, for example in relation to office locations. One option might be to have a dedicated webpage on the Scottish Government website that shows the status of all Scottish taxes (fully devolved, partially devolved and local) – including information such as whether legislation has been passed, as in the case of Air Departure Tax, for example, and whether or not the tax is active. This might prove especially helpful as Scotland makes use of more tax powers.
- 4.7 Table 1 sets out the areas that need to be considered when making tax decisions. We think that this covers the key areas. The final area is Deliverability and Administration. The wording suggests that this is mainly concerned with the tax authority. This should also cover similar considerations for all parties involved, whether taxpayers, agents or other stakeholders, such as software providers.
- 4.8 It might be worth also including a reference to behavioural effects, which sometimes may be a policy driver (principles and objectives), but may also be unintended consequences (impact assessment), depending on the policy in question. The impact assessment part of the matrix could also recognise the potential for knock-on effects as a result of interactions with other systems. This is partly covered by the part on policy alignment, but not all interactions are necessarily picked up on in advance. For example, when the UK Government made changes to income tax relief for landlord finance costs, there were knock-on effects for tax credits, which were subsequently alleviated through further legislative changes, but also for student finance.
- 4.9 On page 19, the document briefly sets out the role of Revenue Scotland. For transparency and clarity, we think it would be helpful to have several brief paragraphs or highlighted boxes setting out the roles of different parties, including Revenue Scotland, HMRC, Scottish Government, Scottish Parliament, the Tax Tribunals and the Scottish Fiscal Commission for example. Given the key aim of transparency for the Framework, this would assist with improving general understanding of the different parties involved in tax policy, legislation and operation.
- 4.10 Table 2 sets out types of policy change and the legislative process involved – whether secondary or primary, and whether UK legislation is also needed. We appreciate that this sets out the current position. However, we would hope that once the work of the Devolved Taxes Legislation Working Group has completed, that category B in particular would see some changes – we would hope for there to be a regular Scottish Finance Bill, which could ensure that care and maintenance changes are dealt with by primary legislation and receive the appropriate consultation and parliamentary scrutiny. This is something that the former Finance Secretary also thought would be helpful, saying ‘It would be nice to have a finance bill like the one at Westminster that is able to do a lot of tidying up when there might be unintended consequences or anomalies or when refinement might be required.’⁴

5 **2. What should the Scottish Government’ priorities for devolved and local tax be over the course of this Parliament?**

⁴ Former Finance Secretary Derek Mackay to the Finance and Constitution Committee, 7 February 2018: <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11358>

- 5.1 While the work of the Devolved Taxes Legislation Working Group is being picked up, and we hope that an outcome of this might be a regular Scottish Finance Bill, in the meantime there are some long-standing issues with some of the devolved tax legislation, that should be resolved sooner rather than later. By way of example, there has been a problem in relation to group relief in the Land and Buildings Transaction Tax (Scotland) Act 2013 that has been known about for several years. Although the optimal vehicle to solve this issue would be a Finance Bill that could also include other such corrections to tax legislation, it can equally be resolved by means of a standalone piece of primary legislation. There is a Ministerial commitment to make this change: 'I can confirm that ... the Scottish Government intends to introduce legislation to make the change in question retrospective in effect at an appropriate future opportunity.'⁵ This issue should now be resolved without waiting for a Finance Bill process to be instituted. This would give certainty to affected business.
- 5.2 The Scottish Government has indicated that it wants to deliver a fairer, greener and more progressive Scotland.⁶ We also note the commitment in the Programme for Government to reform Council Tax to make it fairer.⁷ The concept of fairness can be heavily contested and understood in different ways. Expanding on what is meant by 'fairness' or 'fairer' in the context of particular objectives and priorities will enhance accountability in allowing stakeholders to assess whether policies achieve their objectives. It may therefore be of value to identify some metrics by which it may be assessed at the time the legislation / changes are brought into effect and, perhaps, subsequently in a post implementation review.
- 5.3 There has been a recent early-stage consultation on a Minimum Income Guarantee (MIG), to which LITRG responded.⁸ A MIG is an assurance that no one will fall below a set income level that would allow them to live a dignified life. The Scottish Government has committed to commence work in the current Parliament on delivering this.⁹ The attainment of this policy goal could be assisted by the reform of Council Tax.
- 5.4 We think the reform of Council Tax (referred to above) should be prioritised – we note that the commitment is to engage on reform and respond within this Parliament, rather than start to deliver reform. We recognise the value that a Citizen's Assembly can bring when discussing a tax like this, where reform has proved difficult to progress, as it may allow a variety of views to be aired. However, it must be clear what role a Citizen's Assembly is playing and where accountability for making and scrutinising final policy decisions lies. Ideally, we would also like to see full consultation followed by the commencement of substantive reform during this Parliament – otherwise there is a risk that reform will simply be delayed yet again. There have been a few reviews of Council Tax over the past 15 years, including the Burt Review of 2006 and the Commission on Local Tax Reform of 2015.¹⁰ These have led to only relatively minor changes, though. A well-considered reform, following proper consultation, including up to date valuations of properties, could assist the Scottish Government with the achievement of more than one policy objective. Reform could assist with ensuring that Scotland is fairer and more progressive (subject to how this is defined), by making Council Tax more proportionate to the current value of properties and there might be some possibility within this to raise higher revenues than currently. Although the structure is arguably more progressive than that in England, nevertheless, the tax continues to place a disproportionate burden on lower value properties. The perceived

⁵ Former Finance Secretary Derek Mackay to the Finance and Constitution Committee, 13 June 2018:

<https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11607&i=105194#ScotParlOR>

⁶ <https://www.gov.scot/news/date-set-for-2022-23-scottish-budget/?cldee=andhbGtlckBjaW90Lm9yZy51aw%3d%3d&recipientid=contact-69e9870c3ec6e711810f70106faa2721-b7514975bdc44f6bbfe5b2db2170e89b&esid=8761f6a0-2a1d-ec11-b6e7-0022481a5033>

⁷ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/pages/8/>

⁸ <https://consult.gov.scot/social-security/minimum-income-guarantee/>

⁹ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/pages/5/>

¹⁰ <https://localtaxcommission.scot/>

unfairness of the Council Tax is exacerbated by the real problems arising from the fact that property valuations date back to 1991 and the spread of values covered by the banding structure is narrow.

- 5.5 Moreover, both by making the tax more progressive in itself and by providing additional funding to councils, such that they are better able to fund services, reform of Council Tax could assist with the attainment of a MIG.
- 5.6 Given the aim to achieve a greener Scotland and the legal commitment to achieve net zero carbon emissions by 2045,¹¹ we think the Scottish Government should examine policy options within the tax system that support its environmental objectives. This could encompass both policy options for an environmental tax such as Scottish Landfill Tax,¹² and also policy decisions in relation to non-environmental taxes. So, for example, the Scottish Government could ensure that property taxes, both devolved and local (Land and Buildings Transaction Tax (LBTT) and Non-Domestic Rates respectively), and their policies complement and support environmental objectives. At the very least, we think that care should be taken to ensure that tax policies do not work against Scotland's environmental objectives.
- 5.7 We welcome the confirmation that the Scottish Government is to undertake a review of the LBTT Additional Dwelling Supplement, and look forward to contributing to it.
- 5.8 We note that the Just Transition Committee recommended that the Scottish Government develops a position on the role of a carbon border tax.¹³ It is essential that the Scottish Government and UK Government work closely together in relation to carbon pricing and border adjustment mechanisms, to prevent carbon leakage. It should be noted that the target of net zero emissions of 2045 for Scotland relates to emissions produced. Ideally, this should relate to emissions consumed, otherwise there is a risk that in achieving net zero for emissions produced in Scotland, carbon emissions consumed in Scotland will actually increase.
- 5.9 The Scottish Government has also committed to reviewing UK Air Passenger Duty rates and bands before introducing the devolved Air Departure Tax. We welcome the commitment to ensure the policy aligns with Scotland's climate change goals. We responded to the UK consultation on Aviation Tax Reform, and we note that not all the proposals in that document align with environmental goals. We would encourage you to review our response, which sets out our position in detail.¹⁴
- 5.10 We note that the Scottish Government intends to use the review of the Fiscal Framework in 2022 to push for the strengthening of Scotland's tax powers – in particular the devolution of VAT, full powers over income tax and National Insurance contributions.¹⁵ In all three cases, it would be essential to undertake comprehensive assessments of the practical implications of the devolution of such powers – for taxpayers and the tax authority. With full devolution, it would be expected that Revenue Scotland would need to grow its headcount significantly and also develop the necessary operational machinery for collection, management and compliance activity.

¹¹ <https://www.legislation.gov.uk/asp/2019/15/part/1/crossheading/the-netzero-emissions-target>

¹² We note the commitment in the Programme for Government to explore the use of Scottish Landfill Tax: <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/pages/6/>

¹³ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/pages/6/>

¹⁴ <https://www.tax.org.uk/ref779>

¹⁵ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/pages/11/>

6 3. How should the Scottish Government use its devolved and local tax powers as part of Scottish Budget 2022-23?

- 6.1 Although we offer comments on taxes, we do not provide views on the future required level of taxation. Nor do we comment on where the burden of taxation should fall. These are matters for politicians. Paragraph 3.5 above sets out our objectives for the tax system, and hence where our interests lie. Prior to the coronavirus pandemic, the Scottish Government had been considering methods of improving the tax policy-making process and the legislative processes for taxes in Scotland. It will be necessary to see this work through to fruition in order to ensure that Scotland's tax system is in the best position possible to support its economic recovery. We are pleased that this consultation document progresses the tax policy-making process strand of this work.
- 6.2 Whatever tax powers Scotland has and whatever policies are implemented, it is essential that the Scottish tax system, its policy framework and the process for making tax legislation operate effectively and with credibility.
- 6.3 When making choices relating to tax policies in the context of the tax powers that Scotland has, it is important that the Scottish Government gives detailed consideration to interactions between Scottish tax policies (both national and local taxes) and those for reserved taxes (including the reserved aspects of income tax). In addition, consideration needs to be given to interactions between Scottish tax policies and Scottish social security policies, as well as between those policies and UK reserved social security policies.
- 6.4 For all changes to existing devolved and local taxes, it is essential that adequate time and capacity is given over to ensuring that the taxes can continue to be administered effectively and efficiently and that there is clear and accessible guidance for affected taxpayers, as well as awareness-raising of any changes, their timing and what they mean for taxpayers.
- 6.5 For the duration of this Parliament, the Scottish Government has committed to freeze income tax rates, and to increase thresholds by no more than inflation. Scottish income tax currently provides Scotland with a significant chunk of its tax revenues. Scottish income tax powers are limited to the ability to set the rates and thresholds in relation to non-savings and non-dividend income, so this commitment only further limits the Government's options.

7 Acknowledgement of submission

- 7.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation and the Low Incomes Tax Reform Group are included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation and the Low Incomes Tax Reform Group

26 October 2021