

Breaking New Ground? Developing a Scottish tax to replace the UK Aggregates Levy

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 19,000 members and extensive volunteer network, in providing our response.
- 1.2 The final design and scope of the tax, including the extent of any divergence from the rest of the UK, is a matter of Scottish Government policy. Factors to be considered will include whether exports are to be encouraged or discouraged, whether the tax is intended to deter the winning of primary aggregate, and so on. If these policy choices are broadly consistent with those behind the existing UK levy, there would then be clear advantages to any Scottish tax emulating the rules of the existing UK levy as far as possible as it is something which, over the last 20 years, operators have become familiar with and are well versed in the meaning of the legislation.

If however the Scottish Government does want to set a different course with its own levy (perhaps reflecting the unique geology of Scotland, as compared to the rest of the UK) then the legislation could state expressly which aggregates are chargeable (with anything not stated therefore being exempt), which was an approach suggested by the Office of Tax Simplification (OTS)¹ for environmental taxes. Whilst the current UK levy is a simple one on the face of it, with a blanket £2 per tonne, the exemptions behind this are many, often unclear and have been subject to numerous disputes both in and outside of court. The OTS approach would provide greater clarity and certainty.

Although the rate of the Scottish levy is a matter for Scottish policy, there would be advantages if the rate of a Scottish levy were set at the same rate of that in the UK, to maintain consistency as far as possible as well as reducing potential complexity (especially with cross-border transactions).

Careful thought should be given to the issue of imports/exports between Scotland and the rest of the UK. This would be a devolved tax with potential cross-border issues. Whilst Scotland would generate greater revenues

¹ OTS – Review of Tax Reliefs. May 2011 (para 2.45)

from a levy which applied to exports to the rest of the UK, there is a possibility of operators in the rest of the UK then suffering a levy in both jurisdictions for the same materials (once in Scotland, and then on importation into the rest of the UK). Thought must be given as to whether this is a desirable outcome; if not, then a mechanism for double-taxation relief should be considered, and whether this should apply to the Scottish levy or to the UK's. Related to this, the point of commercial exploitation should be made clear to determine whether the Scottish or UK levy has precedence. All of these issues add additional complexity and would probably require negotiation with the UK government to ensure aggregate won and remaining within the UK is only taxed under one levy.

Presently there is no central register of quarries/site operators in Scotland, as there is for the register of landfill sites/operators held by the Scottish Environmental Protection Agency (SEPA). We understand that HMRC has such a list but wonder whether Revenue Scotland alone could preside over a register of all Scottish quarries and police the conditions behind the levy, as well as processing and administering the levy's returns and payments. We would ask whether there might be an additional role to play by SEPA, similar to its role in landfill tax.

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 (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.
- 2.5 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 Introduction

- 3.1 The Scotland Act 2016 allows for the devolution of an aggregates levy to Scotland. There has been a UK-wide levy in place since 2002², now charging £2 per tonne on the commercial exploitation of primary aggregate. This consultation's 'evidence review and policy options' highlights that, in 2012, imports of crushed rock into Scotland from England amounted to only 16,000 tonnes, compared to the 5.573million tonnes exported, representing 30% to 40% of its rock aggregates³. As Scotland's share of the UK-wide levy is approximately £59 million, the treatment of exports will have a significant impact on retained revenues. A Scottish aggregates levy is expected to be administered and collected by Revenue Scotland.
- 3.2 We are pleased that the Scottish Government is consulting on this matter at stage 1 of the tax consultation framework, to ensure fundamental principles can be given due consideration at an early stage. This would be aided by the timely resumption of the work of the Devolved Taxes Legislation Working Group (DTLWG), which was established to consider alternative legislative processes for devolved tax legislation and which could include consideration of an annual Finance Bill and Finance Bill process. This response will not be answering all the specific questions laid down in the consultation, rather we intend to provide our thoughts on the more fundamental principles which should be considered when developing any Scottish levy.

4 Context for a devolved aggregates tax

- 4.1 The Scottish Government should be clear about its policy aims for a devolved levy – whether, in addition to the environmental and planning objectives, it is intended to tax the aggregates exploited in Scotland more accurately, to produce a levy markedly different from the UK's, to alter the current trend of imports and exports, or a combination of these things? Therefore, policy will be a big driver behind the development of this levy.

In response to question A2, we believe that a devolved levy on primary aggregates could support Scotland's broader circular economy ambitions, provided that the objectives are clear and that the legislation is clear, concise and is kept up to date to ensure that it remains effective and relevant in achieving them. In this context it would be very helpful if Scotland were committed to an annual Finance Bill, to ensure a devolved levy is kept up to date and amendments can be made easily. This also lends further argument to our long-standing call to resurrect the DTLWG to ensure the infrastructure is in place to monitor and evaluate the effectiveness of legislation, including that to be introduced to enact the levy.

5 Scope of the tax

Definition of aggregates

- 5.1 The current definition of aggregates, contained within section 17 of Finance Act (FA) 2001⁴, is very wide and it is for this reason that there are many exemptions over the types of aggregate subject to the current UK levy, and reliefs which exclude certain processes from it. The 'Framework for Tax' and 'Ambitions for a Circular Economy' are both in tune with the rationale behind the UK levy ie to dissuade exploitation of

² Finance Act 2001 ss16-49 and schedules 4 and 10

³ [Analysis of the Scottish Aggregates Market - Scottish Aggregates Levy: evidence review and policy options - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/analysis-of-the-scottish-aggregates-market-scottish-aggregates-levy-evidence-review-and-policy-options/pages/12.aspx)

⁴ 'Any rock, gravel or sand, together with whatever substances are for the time being incorporated in the rock, gravel or sand or naturally occur mixed with it.'

primary resources and instead focus on recycled ones. The UK approach is to tax all aggregates, but exempt aggregates derived from certain processes (discarded as spoil etc) to encourage the use of such discards and discourage exploitation of new aggregate. Such an approach in Scotland may be attractive to producers who are familiar now after 20 years with what is taxable or is not. However, particularly if the Scottish Government wishes to tax different things, taking account of Scotland's specific geology, it may prefer to specify precisely which minerals come within the scope of the levy: this may be achieved through primary legislation which can be updated and amended according to political or geological necessity. If the Scottish Government wants something distinct from the UK's levy, then this approach may make the legislation more focused, clear, efficient, as well as minimize the risks of confusion and avoidance.

Commercial exploitation

- 5.2 With respect to commercial exploitation, the definition used for the UK levy is also very wide⁵, but section 19(3) FA 2001 gives further instances when exploitation is deemed to have taken place: where the aggregate is removed from, when made subject to an agreement to supply, when used for construction purposes, and when mixed with anything other than water. We see no need for a Scottish levy to deviate from the existing definition. However, question A8 touches upon an issue which needs careful thought, which we will discuss further below, and that is movements of aggregate between Scotland and the rest of the UK. It is critical for there to be clarity as to where the commercial exploitation took place to determine whether the UK or Scottish levy is chargeable (assuming it is not intended to tax such aggregate twice). If s.19(3) rules were to be adopted in Scotland, the criteria which concerns 'where aggregate is removed from' should be adapted to ensure that any aggregates whose originating site is in England is deemed not to have been commercially exploited in Scotland, and vice versa: ideally, with relief being available for the operator in each case against the other country's levy. Thus, aggregates quarried or won from Scotland but exported would be liable to the Scottish Levy and exempt in UK, whereas aggregates quarried or won in UK but exported to Scotland would be liable to the UK levy and exempt in Scotland.

Treatment of imports and exports

- 5.3 Imports into the UK are taxed under the current levy, and the desire is for a Scottish levy to do the same. For imports coming into Scotland direct from outside the UK, we would agree with the status quo; however, any imports into Scotland having already paid the UK levy, should be relieved from paying a devolved one. Likewise, aggregate already subject to a devolved levy should ideally be relieved from the UK levy. This would likely require discussions between the UK and Scottish governments to ensure the two levies work together effectively and fairly.

Besides avoiding any issues of double taxation, which was raised in HM Treasury's July 2020 Review of Aggregates Levy⁶, another reason for providing relief of imports into Scotland is that it would save the need for policing those imports. Whilst the border between England and Scotland is not as long or porous as that between Northern Ireland and the Republic of Ireland, policing those imports coming in on routes other than the A1 and M74 roads would be difficult and consume vast resources which Revenue Scotland may not have.

Currently, aggregate exported from the UK does not pay the levy; however, Schedule 1 of the Scotland Act 2016 provides that exports from Scotland into the rest of the UK are subject to the UK levy ie treated like any other imports into the UK. Commercial exploitation in the UK of minerals exported from Scotland could

⁵ Per s.19(3)a) '*subjected to exploitation in the course or furtherance of a business carried on by the person, or one of the persons, responsible for subjecting it to exploitation*'

⁶ at para 3.16

[\(2020.07.20 Review of the Aggregates Levy summary of responses to the discussion paper and government next steps.pdf \(publishing.service.gov.uk\)\)](#)

therefore lead to double taxation. There are few imports into Scotland, but the same concerns over double taxation apply to those imports from the rest of the UK – there should only be one levy paid on the same aggregates originating from within the UK.

Questions A17 and 18 address this issue and the relationship between the UK levy and a devolved one. Given that much of Scotland's aggregates are exported to England, there would be a significant loss of revenues if exports to the UK were exempt. However, if UK customers are also facing a further charge under the UK levy, then ideally there should be a mechanism in place to allow for relief from that UK levy if the source of aggregates was Scotland thus giving Scotland's levy priority over the UK's; and visa-versa – almost like a Double Tax Treaty. As stated above, it needs to be established in which country the aggregate was exploited in order to determine which country's levy applies and, if necessary, construct a method of double tax relief so the aggregates are only taxed once within the UK.

Whilst it may require considerable diplomatic effort, it should be an objective of policy that imports to Scotland from countries outside the UK should face a levy in their country of origin (as they do with the existing UK levy) and exports from Scotland to other countries outside the UK should likewise be treated as exempt in those countries.

6 Exemptions and reliefs

- 6.1 Question A11 in the consultation, about recycled aggregate's being exempt from a devolved levy, can be easily answered, but also fits into a wider point. Yes, recycled aggregate should be outside the scope of a Scottish levy because the whole point would presumably be to encourage the use of this over primary aggregate. Taxing recycled materials would run contrary to the ambitions for a circular economy.
- 6.2 The wider point, which is touched upon in question A14, concerns opportunities to simplify arrangements for exemptions, should the Scottish Government decide that a diversion from the UK levy is desirable. If legislation is specific about what is subject to the tax, then everything else, by definition, will be exempt. Certain minerals can be specifically cited as being subject to the levy – anything else would automatically fall outside it. This original recommendation by the OTS is referred to in para 3.7 of the consultation document (footnote 2) and is one the Scottish government may wish to consider. The 2020 review of the Aggregates levy by HM Treasury also highlighted suggestions that *'definitions needed to be clearer to avoid misdescription of material either mistakenly or deliberately to gain an advantage'*⁷. We too appreciate that in practice it may be difficult, but if the consideration which goes into the exemptions is focussed on isolating and stating precisely what aggregate is to be chargeable, then it could save considerable difficulties in the future. This is also a good opportunity for those drafting the legislation to consider which aggregates are apt to be taxed in a Scottish context: the current aggregates definition is more than 20 years old and covers the whole of the UK, not necessarily taking into account Scotland's unique geology or what minerals might be commercially exploitable 20 years hence. We would therefore recommend that those drafting devolved legislation for a distinct levy in Scotland approach it from this angle as far as is possible and make the most of this opportunity to give the levy a precise, clear and local definition of what is chargeable, with the means to amend that legislation as time and geology permits.
- 6.3 Reliefs are clearly different from exemptions – these leave aggregates chargeable in principle but escape the levy based on their usage: agricultural, industrial, post-levy, and as part of disposals. Question A15 asks whether these UK reliefs should apply to Scotland. As we've already stated, we believe the Scottish levy

⁷ Ibid at para 4.3

should mirror that of the UK as far as possible, and this includes the reliefs. The only addition/amendment we would suggest is that in the case of the relief for processes after the levy has been brought into account, in order to avoid double taxation, that relief should apply whether it is the UK or Scottish levy that has been brought into account.

7 Tax rates

- 7.1 The current rate of tax for the UK levy is £2 per tonne, though, as the consultation document points out, this has been the rate since 2009. Were this to have been adjusted for inflation, the rate would be at £2.65-£2.70 a tonne (at the time of the consultation's publication). Question A19 and A20 ask what factors should be considered when setting the rate, and whether there should even be more than one rate of tax.
- 7.2 An important factor, again, is the UK levy and whether differentials are sought and the tax behaviours this may drive. Any deviation from the UK rate of £2 per tonne may cause distortions in the market. Consideration would include whether a high a rate in Scotland would cause the major aggregates firms to increase their operations in England and have a major impact on Scottish aggregates industry; and of course vice versa.

There is some precedent which may help inform this policy.

In 2003, the House of Commons Northern Ireland Affairs Committee⁸ looked into the effect of the aggregate levy in Northern Ireland one year after it was introduced. The British Aggregates Association reported a 'massive' decline in sales and huge increase in smuggling. Given the nature of the border between Northern Ireland and the Republic of Ireland and the many smaller country roads linking the two, smuggling has long been an issue, but the levy had added c.56% to the cost per tonne and imports from the Republic were at 2million tonnes – whereas imports were negligible before the levy. Likewise, a 2020 review of options for developing a Scottish Aggregates Levy gives details on the Northern Ireland experience and tells a similar tale of increase in the supply of black-market aggregates (3million tonnes and 38 illegal quarries in the province was cited⁹), a huge increase in imports across the border from the Republic of Ireland (89 lorries a day crossing at eight border points, 1,470 tonnes of imports in 1998 to 4,847 in 2002) and a fall in sales (10% in 2002). However, it was also pointed out that Northern Ireland-Republic of Ireland comparisons to England-Scotland are not necessarily fair ones: firstly, there is a much longer border in Ireland and one which is notoriously difficult to police; second, there are two different currencies on the island of Ireland and fluctuations between those would skew the comparative prices; and third, there is a big disparity in diesel prices between Northern Ireland and the Republic of Ireland, it being much lower in the latter thus reducing the price of transporting aggregates north.

Nonetheless, that is not to say that a such things could not happen in Scotland were a levy to be introduced which makes it more expensive to operate there than in England. If imports into Scotland from the rest of the UK were to be taxed in addition to any UK levy, then the incentive for smuggling would be greater still.

- 7.3 The suggestion that there could be more than one rate could potentially address some of these issues, by allowing for incentives to be put in place to suit the prevailing market, industry conditions and policy objectives. The Scottish Landfill Tax has a standard and lower rate, the latter for less-polluting 'inert' materials. However, some of the obvious questions are: how many rates would there be for an aggregates levy? What would be rates be on (tonnage won, specific types of aggregate based on scarcity, cost of

⁸ HoC NI Affairs Committee 'Introduction of the aggregate levy in Northern Ireland: one year on'. 3rd report of session 2003/04. 16 September 2003

⁹ A concern also raised in Chapter 4 of the 2020 Review of Aggregates Levy (footnote 6)

extraction)? How would any thresholds be determined (tonnage, the profits/turnover of the business exploiting the aggregate)?

Despite the complexity of the exemptions and reliefs, the UK levy is essentially a very simple tax – a flat rate based on tonnage won. This makes administration and compliance much easier, and if a company is potentially having to deal with cross-border issues, and with multiple levy returns for sites in England and Scotland, and for Scottish levy exemptions and reliefs etc, then a devolved levy needs to be kept as simple as possible, ideally also with one flat rate.

8 Sustainability fund

8.1 Proceeds from a devolved levy would go into central Scottish Government funds, but the idea of retaining a fixed percentage for environment projects is fine in principle. As the consultation document points out, there was a sustainability fund for the UK levy between 2002-11 whereby 10% was set aside to reduce the local effects of extraction, and which benefitted Scotland as well as the rest of the UK. In Scotland, a Community Environmental Renewal Scheme ran from 2002-08, before it was replaced by the Climate Challenge Fund with much greater resources. There is currently a devolved sustainability fund for the Scottish Landfill Tax – the Scottish Landfill Communities Fund (SLCF) came in with the devolved tax in 2015. Administered by Revenue Scotland, the SLCF takes contributions from landfill operators (5.6% of tax liability, in return for a 90% tax credit). However, the Scottish Landfill Tax will bring in £660million in 2022/23 (according to the OBR¹⁰), whereas the aggregates levy throughout the whole UK only raised £367million in 2018/19 – it will only give Scotland £59million in 2022/23, meaning less than £6million for a 10% fund, and far less once the various administration and maintenance costs are factored in.

A sustainability fund from a devolved aggregates levy would therefore likely be very small and it is questionable whether it would make a noticeable difference. The fund for the UK levy was scrapped in 2011 and one might question for how long a new fund would be sustained.

8.2 With respect to questions A21, 22 and 23 in the consultation document, we question whether, in this instance, a sustainability fund from a devolved levy would be sufficiently large to make a difference and whether the Scottish Government could afford to divert any sums away from central funds. If such a fund were to be established and deemed viable, the objective thereof should be along the lines of the old UK levy fund ie to aid more environmental-friendly extraction and improve the areas round the quarries and minimise the effects of extraction. We have no particular view as to how any fund should be modelled, but would suggest broadly a charitable company or trust, overseen by expert individuals and organisations in the industry who can channel the funds with the greatest efficiency and positive environmental effect.

9 Registration

9.1 We would recommend that the registration process be as close to the existing UK levy as possible to minimise administrative disruption. Those firms who operate quarries in Scotland and the rest of the UK will be having to file two sets of returns and ensuring close alignment would make life a lot easier for those having to deal with compliance. The additional cost and burdens imposed upon such firms does not appear to have been acknowledged.

¹⁰ [Landfill tax - Office for Budget Responsibility \(obr.uk\)](https://obr.uk/landfill-tax/)

Several of our members have also questioned whether each quarry would need to be registered with and policed by Revenue Scotland – instead could SEPA or some other Government agency not do this, with Revenue Scotland simply processing the levy and handling the payments? It will be a considerable burden on Revenue Scotland to register and record all quarry details and police the conditions behind the levy as well as presiding over quarterly returns and handling payments.

Declaring exempt aggregate

- 9.2 In many respects, ‘declaring exempt aggregate’ is a contradiction in terms – the aggregate is either exempt in which case you don’t declare it, or it is chargeable and you do. The UK levy states that those exploiting only exempt aggregates need not register, but exploiting certain types of exempt aggregate requires the provision of data to HMRC, even if no tax is charged. As stated above, if the Scottish Government is to draft a levy distinct from the UK’s, we would urge the legislation to simply state what is chargeable – anything outside of that list are, by definition, already exempt and does not require payment of levy or reporting to Revenue Scotland. Any business which is only exploiting materials outside of that list therefore should not have to register or provide any data to Revenue Scotland; only if they are exploiting prescribed material should they do so.

Cross-border movements

- 9.3 As we have already stated, it is vital for business operating both sides of the border for convenient and efficient tax administration of cross-border movements that the UK and devolved taxes are as closely aligned as possible, with certainty as to where a levy is charged and, if a policy of the Scottish Government, for the risk of double taxation being removed. Registration for both the Scottish and UK levy to facilitate payment of levies to HMRC and Revenue Scotland will presumably require companies operating both sides of the border to change their IT systems accordingly which will incur additional expense. However, if it were possible for HMRC and Revenue Scotland to liaise and collaborate their data such that a business who has paid the levy in one country is automatically relieved from reporting paying the levy to another, that would certainly make the change more bearable.

10 Tax Returns and payments

- 10.1 The proposal is for a standard quarterly tax return cycle, per the UK levy as well as the Scottish Landfill Tax – so the two devolved taxes and their compliance and payments should hopefully run in tandem. Whilst it would therefore make sense to have those quarterly dates, some businesses may prefer to use their VAT quarter-ends instead. If provision were in place for that to be the base if so desired, we would consider that a welcome change.

11 Tax compliance

- 11.1 We agree that if Revenue Scotland are to preside over a devolved levy, then they should have all necessary investigative and enforcement powers necessary to do this. However, we would point out again, that enforcement and inspections of quarries would be a considerable extra burden upon Revenue Scotland, in addition to handling administration of the levy itself. We would suggest the possibility of another body, such as SEPA, being involved in ‘front-line’ compliance including enquiries and inspections, with Revenue Scotland confining itself to the quarterly returns and payments of the levy.

12 Tax avoidance and evasion

- 12.1 There are several possible avenues by which avoidance and evasion can potentially occur. If the rates of the devolved levy are no greater than that of the UK, then there is much less likely to be the motivation of illicit activity as was seen in Northern Ireland. If the levy is much greater in Scotland, then not only would this likely incentivise ‘rate shopping’ and acquisition of aggregates from south of the border, but it could even encourage smuggling or avoidance of paying the levy in Scotland.
- 12.2 The other potential source of lost revenue could be complexity. With the UK levy, businesses may seek to avoid the levy by taking advantage of the wide definition of aggregates and utilising the complex rules around exemptions. If the devolved legislation clearly states what is subject to the charge, with detailed and clear definitions, avoidance should be considerably harder. Of course, differences between the scope of the two taxes and how what is chargeable is defined might create ‘gaps’ where no tax is charged at all, or conversely something is taxed twice because it meets both definitions.
- 12.3 With respect to tax evasion, the existing powers of the Scottish Government over devolved taxes, we believe, are sufficient and there is no need for any further legislation in this regard.

13 Penalties

- 13.1 We agree that a devolved levy should be subject to the list of penalties within the consultation document, with the RSTPA 2014 being amended to accommodate an aggregates levy. We do not believe that any further civil penalties are necessary beyond these.

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

1 December 2022