



Law Society
of Scotland

Consultation response

Tax policy and the budget: consultation

October 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax Law Sub-committee welcomes the opportunity to respond to the Scottish Government's consultation on *Tax policy and the budget – a Framework for Tax*¹. We have previously responded to the *Devolved Taxes Legislation Working Group's Interim Report* consultation² and Scottish Government's consultation on *Devolved taxes: a policy framework*³.

Consultation questions

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

We consider that the draft Framework for Tax usefully sets out the Scottish Government's overall approach to tax policy making in a way which is clear and able to be understood.

Chapter 1 of the Framework helpfully sets out of the landscape within which devolved taxation sits and key relevant economic considerations. We support the aims of the Scottish Government set out on page 8 of the document. We note the importance of strong collaboration between the UK and Scottish Governments in relation to tax and fiscal matters, particularly in the context of decisions about tax changes being taken in one jurisdiction which may affect another.

It would be advantageous, particularly for the sake of clarity for the taxpayer, if a brief summary of the key bodies involved in tax policy and administration was set out in the paper. It is important that there is clear information available to taxpayers around the division of responsibilities between bodies, particularly the Scottish Government and Revenue Scotland, and around how this will affect them.

We consider that it is helpful that the Framework sets out the Scottish Government's strategic objectives in relation to tax and sets this against the wider Scottish Government operating environment (Chapter 3).

In connection with the principles set out in Chapter 2 and strategic objectives set out in Chapter 3, we note that there is a distinction to be drawn between tax policy and technical matters. The policy aspect generally

¹ <https://consult.gov.scot/financial-strategy/tax-policy-and-the-budget-a-framework-for-tax/>

² <https://www.lawscot.org.uk/media/368638/20-03-27-tax-devolved-tax-working-group-interim-report.pdf>

³ <https://www.lawscot.org.uk/media/362876/19-06-06-tax-consultation-devolved-taxes-policy.pdf>

concerns high level principles and the strategic policy direction, for example the identified functions of tax policy and tax rates. We have limited comment to make on such matters but recognise the wider interest and need for engagement with the public and other stakeholders. In terms of technical matters, the focus is on the smooth and efficient operation of the tax system. Many of these matters are specialist in nature and engagement with professional bodies and other stakeholders on an ongoing basis and at an early stage of policy development will help to identify issues of practical significance and ensure that taxes operate as intended.

In relation to Chapter 4 on sequencing, we refer to our comments below in relation to supporting a clear process for consulting on and implementing legislative changes and are supportive of the Devolved Taxes Legislative Working Group being reconvened in order to develop a more structured approach. Early consultation with stakeholders is key to ensuring that any new tax legislation is fit for purpose, and it is essential that sufficient time is given to stakeholders to input into the process. It is therefore important that strong emphasis is placed on the 'Engagement and Analysis' stage of the policy cycle.

2. What should the Scottish Government's priorities for devolved and local tax be over the course of this Parliament (2021-2026).

In our response to the 2019 consultation on devolved tax policy making, we noted that as devolved taxes continue to settle in Scotland, there will be a growing need for a clear process to consult on and implement legislative change – both in terms of substantive changes to tax policy such as the introduction of new taxes, new reliefs and changes to rates and bands, as well as in relation to 'care and maintenance' matters. We consider that this remains a key priority for managing the devolved taxes over the course of this Parliamentary session.

We were pleased to be a member of the Devolved Taxes Legislation Working Group and to respond to the Group's interim report in spring 2020⁴. We have previously noted that there is currently a mix of legislative processes used in respect of devolved taxes. This can be confusing for taxpayers and their advisors and lacks consistency and clarity. We have previously suggested that an annual or regular Finance Bill would be a useful tool to address technical issues or relatively minor changes arising through the devolved tax system regularly and efficiently, creating a more predictable timetable for change. We are supportive of this Working Group being reconvened in order to progress the work around legislative processes.

We support an early review of LBTT Additional Dwelling Supplement. A number of aspects of the existing ADS legislation are unclear and there are a number of issues which have arisen with the application and implementation of ADS which would benefit from resolution or clarification. Many of these would appear to be unintended consequences. It is important that the law is clear so that individuals can guide their conduct accordingly. Some aspects of the ADS have the potential to create distort taxpayer behaviour, or at least to create disadvantages for those in certain circumstances, contrary to the usual approach of the tax system.

⁴ <https://www.lawscof.org.uk/media/368638/20-03-27-tax-devolved-tax-working-group-interim-report.pdf>

We consider that a key focus needs to be on ensuring that revenue and benefits authorities are fit for purpose, have the requisite powers to amend the law by way of regulation and the resource agility to respond and amend the system, how it operates, and its guidance as required. It is important that such bodies can use their devolved powers fully – this requires strong strategic ability to consider how to use such powers and responsiveness and agility so as to use powers effectively and at the appropriate time.

Greater transparency and understanding for taxpayers will increase public and professional confidence in the management and administration of taxes. For example, there has been some concern to date around professional confidence in how taxes are regulated and operationalised by Scottish Government and Revenue Scotland. Concerns about legislative drafting, quality of decision making, content of guidance, and poor communication with taxpayers and agents can undermine the competency of the tax system. A lack of agility in the tax system is likely to have economic impacts for Scotland including inhibiting inward investment, and will reduce trust and confidence in our tax system. It is important that priority is given to resolving these issues so that Scotland can maintain a strong position in the global economy.

We therefore consider it crucial that priority is given to delivering a clear policy cycle for tax legislation including an emphasis on ‘Engagement and Analysis’, supporting a strong policy partnership between Scottish Government and revenue and benefits authorities in particular Revenue Scotland, as well as delivering a well-resourced and agile tax authority.

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

No comment.

For further information, please contact:

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