



Law Society
of Scotland

Consultation Response

Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

13 February 2024



Introduction

The Law Society of Scotland is the professional body for over 13,000 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 consider and respond to the Finance and Public Administration Committee's call for views on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill (the **Bill**).¹ The sub-committee has the following comments to put forward for consideration.

General Comments

Our comments primarily concern the administrative amendments to the Revenue Scotland and Tax Powers Act 2014, provided for at Part 2 of the Bill. Whilst we welcome changes made to improve the efficiency of the devolved tax system, we have concerns about some of the Bill's provisions, in particular section 52 and section 56. We also believe that there are a number of additional necessary changes to the devolved tax legislation which could have been included in the Bill. We comment further on these changes in our response to question 8 below. We appreciate that any legislative changes included in the Bill need to fall within its scope. However, we would have welcomed the scope of Part 2 of the Bill to have been framed in such a way that these additional changes could have been included within the Bill as introduced.

We note that the Scottish Government's overall approach to taxation is embedded in Adam's Smith's four principles: certainty, convenience, efficiency and proportionality to the ability to pay; and based on a firm approach to tax avoidance and a commitment to stakeholder engagement. We consider that is important therefore that the proposed Scottish Aggregates Tax (**SAT**) respects these principles.

It is important that the law is clear so that individuals and businesses can guide their conduct accordingly. We highlight the importance of any changes to the policy and legislative position in this area being accompanied by an appropriate awareness-raising campaign and clear guidance to assist taxpayers and their professional advisers. We consider it essential that guidance is published in advance of the introduction of the SAT and the other proposed changes taking effect, to allow a sufficient lead-in time for taxpayers and their professional advisers to familiarise themselves with the updated provisions.

We also highlight that the provisions at Part 2, as discussed at questions 7 and 8 below, are reflective of why we would greatly welcome the introduction of a process that allows for regular maintenance of, and amendment to, the devolved taxes. We suggest that this would form part of the budget process, including formalising a regular timetable and mechanism for stakeholders to give input on any operational and policy

¹ [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Bill](#)

concerns with the tax legislation – including so-called “care and maintenance” matters as well as substantive changes to tax policy and to rates and bands.

We believe that an annual process, perhaps including an annual “fiscal event”, would allow for greater transparency and increased opportunity for proposed draft legislation to be considered by stakeholders.

Questions

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

We have no comments to make.

- 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.**

We have no comments to make.

- 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?**

We note the consistency in the definition of aggregate for the SAT, and consider that a potential benefit of this approach is clarity for taxpayers working with the both the SAT and UK Aggregates Levy.

- 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?**

We have no comments to make.

- 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?

We have no comments to make.

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

We have no specific comments on the penalties themselves, other than to note that these should be reasonable in the circumstances and reflect the desire to ensure compliance, rather than being used as a mechanism to raise revenue. The possible penalties themselves should also be well publicised and should be proportionate to the amounts involved.

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?

As mentioned above, we have concerns about section 52 and section 56 of the Bill.

Section 52 of the Bill seeks to deny taxpayers the right to make a repayment claim (an overpayment relief claim) where the taxpayer has failed to pay an amount of a different tax. We would welcome greater clarity in relation to this provision. For example, on the intended effect of the words “an amount of a different tax to the tax which is the subject of the claim” – particularly whether this is intended to only cover tax arising from a different devolved tax (to that in relation to the repayment claim), or whether this would apply in relation to a separate liability arising under the same tax (e.g. two separate Land and Buildings Transaction Tax (**LBTT**) returns). Assuming that it does only apply to amounts due under another devolved tax, we anticipate that this situation is unlikely to arise often in practice. In addition, there do not appear to be any safeguards for taxpayers to deal with situations where the taxpayer may not agree that they have failed to pay an amount of tax, because they do not believe the tax is payable. We believe the draft legislation should make it clear that the new Case H would not apply where there was a dispute over the outstanding tax amount.

We also note the provisions concerning set-off by Revenue Scotland in relation to tax credits and debits, provided for at section 56. We have concerns as to the proportionality and necessity of these powers being introduced. As with section 52, there do not appear to be any safeguards for taxpayers in the legislation to address the situation where there is a dispute between a taxpayer and Revenue Scotland about whether an amount of tax is outstanding. We understand that the provisions in section 56 are based on equivalent UK provisions in the Finance Act 2008, section 130. We would highlight that, so far as we are aware, the provisions at section 130 are not used very often, and we would suggest that its introduction is disproportionate in a tax system which only includes two devolved taxes (being LBTT and the Scottish Landfill Tax). We anticipate that, even if the number of devolved taxes increase to include the prospective SAT and Scottish Building Safety Levy, there will not be many situations in practice where the set off provisions like those in section 56 would apply. We further anticipate that difficulties would arise in the operation of this power, and would welcome greater information on the proposed use and policy intention behind it.

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?

There are several further technical legislative changes that we would welcome to support the effective administration of devolved taxes in Scotland, detailed below, should it be possible for these to be legislated for in the Bill.

A. LBTT Group Relief and Scottish Share Pledges

The Bill could provide the opportunity to make changes to Schedule 10 of the Land and Buildings Transaction Tax (Scotland) Act 2013, in order to give retrospective effect to the amendments to the group relief provisions which were made by The Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018. These changes were made to address the LBTT group relief issues caused by Scottish share pledges which had the effect of denying LBTT group relief. The 2018 changes only apply to transactions with an effective date on or after 30 June 2018, because they were introduced by statutory instrument and so could not have retrospective effect. This meant that in relation to many transactions entered into before 2018, taxpayers could have claimed LBTT group relief in circumstances where it was not in fact available.

The Scottish Government indicated in 2018 that it would introduce primary legislation to give retrospective effect to the 2018 changes at an appropriate future date. We understand that the Scottish Government's policy intention is still to legislate to give retrospective effect to the changes at an appropriate future opportunity. For example, please see the extract below from Revenue Scotland's guidance at LBTT 3025:²

"The Scottish Government has announced its intention to bring forward legislation to give retrospective effect to the Order at an appropriate future opportunity. Until such legislation has been approved by the Scottish Parliament and formally commenced, the un-amended legislation will continue to apply to transactions where the effective date is before 30 June 2018."

We consider that the Bill appears to offer an opportunity to give retrospective effect to the changes made by the 2018 Order, which would be of great assistance to taxpayers who entered into transactions before 30 June 2018 and looked to claim group relief, but where share pledges were in place so that in fact group relief was not available. Although some time has now passed since the changes were made by the 2018 Order, the point does still come up in due diligence reviews carried out in advance of purchase transactions. It would therefore be very helpful if appropriate changes could be made to the LBTT group relief legislation to make it clear that LBTT group relief was, in fact, available in transactions which took place before 2018 but where Scottish share pledges were in place.

B. LBTT Sub-sale Development Relief – 5 Year Period

We also note that legislative changes would be welcomed to in relation to the five year period for the purposes of sub-sale development relief (**SSDR**), in respect of the Land and Buildings Transaction Tax. The relevant provisions are found in the Land and Buildings Transaction Tax (Scotland) Act 2013, Schedule 10A, paragraph 4(3).

² Accessible here: [LBTT3025 - Group relief | Revenue Scotland](#).

For context, in a transaction where A contracts to sell to B, and before that contract has completed, B contracts to sell to C, B can claim SSSR provided significant development on the land is carried out by C within five years. However, currently the legislation refers to the incorrect five year period. The legislation as currently drafted provides that the five year period runs from the date when B enters into the contract with C, and not from the date the two contracts are completed, and C owns the land. No development can start until C actually owns the land, as C could not start development on land which they did not yet own. As such, we consider it is clear that the five year period should run from the date when C acquires the land, rather than from the date B contracts to sell the land to C.

We therefore consider that the LBTT legislation should be amended so that the five year period in which development has to take place runs from completion of the B to C contract, rather than from the date the B to C contract is entered into (which could be several years earlier).

C. LBTT Group Relief and Demergers

There are also some other issues relating to LBTT group relief and company demergers, which have the effect of denying LBTT group relief in situations where Stamp Duty Land Tax (**SDLT**) group relief would be available. One of these issues relates to non-partition demergers, i.e. where the business and assets of a company are transferred to two separate companies for various commercial reasons, but the owners of the new companies are the same as the owners of the "old company". In these circumstances other UK tax reliefs, including SDLT relief, is available so that the reorganisation can take place without tax charges – however, LBTT group relief is not available. This is because HMRC guidance confirms that SDLT group relief is available in non-partition demergers, despite the fact that the strict wording of the legislation would deny relief. We understand that it is not the Scottish Government's policy intention to deny LBTT group relief in non-partition demergers, but it has not proved possible for Revenue Scotland to issue guidance which has the same effect as the equivalent SDLT guidance. In order to allow LBTT group relief to be available in non-partition demergers, a change to the primary LBTT legislation would be required.

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?

We have no comments to make.

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?

We have no comments to make.

For further information, please contact:

Robbie Forbes
Policy Team
Law Society of Scotland
0131 476 816
policy@lawscot.org.uk