

SCOTTISH PARLIAMENT FINANCE COMMITTEE INQUIRY

THE SCOTTISH APPROACH TO TAXATION

CALL FOR EVIDENCE - RESPONSE FROM REVENUE SCOTLAND SEPTEMBER 2016

Revenue Scotland

Revenue Scotland welcomes the opportunity to contribute to the Finance Committee's inquiry considering the Scottish approach to taxation.

Revenue Scotland is the tax authority responsible for the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT). These taxes came into effect on 1 April 2015, replacing their UK equivalents (Stamp Duty Land Tax and UK Landfill Tax respectively). Revenue Scotland will also be responsible for the collection and management of Scotland's third devolved tax, a replacement for Air Passenger Duty, from 1 April 2018.

Revenue Scotland was established by the Revenue Scotland and Tax Powers Act 2014 (RSTPA 2014) as a Non-Ministerial Department (NMD) on 1 January 2015. As an NMD, governed by a Board, Revenue Scotland is part of the Scottish Administration, accountable to Parliament to ensure that the collection and management of the devolved taxes is independent, fair and impartial. Revenue Scotland is not involved in tax policy issues such as the setting of tax rates and bands or the forecasting of tax revenues, which are the responsibility of the Scottish Government. In that context, and to help inform the debate, this response to the Committee's call for evidence discusses what the principles underpinning the Scottish approach to taxation mean in strategic and operational terms to Revenue Scotland and sets out examples of how Revenue Scotland applies the Scottish approach to taxation in its collection and management of the taxes for which it is responsible. The response does not provide a critique of the Scottish approach to taxation, nor does it examine alternative approaches.

Background to the Scottish approach to taxation

The Scottish approach to taxation was initially set out by the then Cabinet Secretary for Finance, John Swinney, in a statement to Parliament on 7 June 2012¹. The approach is founded on four principles first articulated in the 18th century by Adam Smith in his book 'An Inquiry into the Nature and Causes of the Wealth of Nations'².

¹ The Scottish Government's Approach to Taxation, Statement to the Scottish Parliament, June 7, 2012, available at: <http://www.gov.scot/news/speeches/taxation07062012>

² 'An Inquiry into the Nature and Causes of the Wealth of Nation', page 454, Adam Smith, 1776, available at:

- Provide **certainty** around the amount of tax that individuals have to pay;
- Provide **convenience** and ease of payment through a system that is simple to operate”;
- The tax system should be **efficient**; and
- Taxes should be **proportionate to the ability to pay**.

The four principles have been applied and interpreted within a modern Scottish policy and legal framework to a 21st century tax system in the digital age.

In addition to the adoption of the four ‘Adam Smith principles’, Revenue Scotland’s approach to taxation is also characterised by the efficient, online collection of tax and a strong commitment to work collaboratively with stakeholders in the design and delivery of devolved taxes in Scotland.

The Scottish Government has also made clear that in the design of the devolved taxes legislation, it takes a rigorous approach to tax avoidance. The approach is intended to encourage a culture of responsible taxpaying where the burden of tax is proportionate to the ability to pay and taxes are paid as Parliament intended.

The four principles that underpin the Scottish approach to taxation

i. Certainty to taxpayers

The legislative framework for Scotland’s two devolved taxes consists of three Acts, with each tax having its own Act specifying the rules and governance for the collection of tax, working to the broadly common rules for tax management set out in the RSTPA 2014.

For the vast majority of land transactions and disposals of waste, the devolved taxes legislation, passed by Parliament in 2013 and 2014, sets out the circumstances in which tax is payable and how much tax is due. To deal with the complex aspects of land transactions, more detailed legislative provisions and guidance can be required to provide a clear method to assess how much LBTT is due.

The Revenue Scotland website (www.revenue.scot) provides tax calculators to help taxpayers and their agents work out how much tax is due. It also includes extensive guidance, including worked examples, on the application of devolved taxes legislation. The guidance is regularly reviewed in light of user feedback which can be provided through the website itself. The Support Desk provides a first point of contact for assistance with registration and access to the online SETS (Scottish Electronic Tax System) platform and general queries about guidance. Over the course of the year the Support Desk received nearly 8,000 calls and the average waiting time was around 10 seconds. Revenue Scotland publishes information on each of its Key Performance Indicators on a quarterly basis.³

http://www.ifaarchive.com/pdf/smith_-_an_inquiry_into_the_nature_and_causes_of_the_wealth_of_nations%5B1%5D.pdf

³ Revenue Scotland Key Performance Indicators, published quarterly, available at: <https://www.revenue.scot/about-us/publications/key-performance-indicators>

Revenue Scotland seeks to achieve certainty for taxpayers through a consistent and transparent application and interpretation of the devolved taxes legislation and the associated guidance. For example, where a taxpayer or an agent has a technical query about the application of LBTT legislation or guidance, they can send an email to the LBTT mailbox, or write to us requesting a Revenue Scotland opinion.

During 2015-16, Revenue Scotland provided 38 opinions on the tax consequences of specific transactions and responded to 1,931 items of taxpayer-initiated written communication, 96% (1,846) of which were answered within 10 days. There have been instances where guidance has been clarified or amended in light of the experience of dealing with complex cases. Where appropriate, additional worked examples have been added to the guidance to provide a steer on how the legislative provisions are applied to the circumstances of particular land transactions.

Parts 6 to 11 of the RSTPA 2014 set out a number of powers that enable Revenue Scotland to carry out a range of tax management and compliance activities to protect the revenue. These Parts of the Act make provision for Revenue Scotland assessments, investigatory powers, the issue and collection of penalties and interest, Revenue Scotland's enforcement powers and the review and appeal of Revenue Scotland decisions, all of which help to create certainty for taxpayers within the tax system.

ii. Convenience and ease of payment

LBTT is a self-assessed tax and it is the responsibility of the taxpayer to complete and submit an LBTT return and pay any tax due.

In accordance with the Scottish Government's 'digital first' approach, Revenue Scotland encourages taxpayers and their agents to make use of the online SETS (Scottish Electronic Tax System) platform as it is the easiest and most convenient method available to make returns. A key benefit of the SETS platform is that it is available to taxpayers' agents at any time from any device that has internet access.

When the SETS platform was being developed, Revenue Scotland worked closely with stakeholders to ensure that the platform was tested by users. The purpose of the user testing – other than to test whether the system worked effectively – was to ensure that users were satisfied that the functionality of the system supported the ease of making an LBTT return and payment. This feedback improved the functionality of the platform that was delivered for the introduction of LBTT on 1 April 2015 and led to increasing confidence among agents and taxpayers in utilising it to make LBTT returns. Indeed, in the first year of operation, over 98% of returns for the devolved taxes (over 113,000) submitted by taxpayers and their agents were made using the online SETS platform.

Since it was made available to users, the SETS platform has been stable and secure. In the first year of operation, it was available online for 99.975% of the time. Over the year, the SETS platform experienced only 1 hour and 10 minutes of unplanned outage time.

To ensure that taxpayers and their agents who do not have access to the online SETS platform (or choose not to use it) are able to make SLfT or LBTT returns, taxpayers have the option to post a paper return. All SLfT returns are submitted to Revenue Scotland, whether on paper or through the SETS platform. Using the power available in section 4(1)(a) of the RSTPA 2014, Revenue Scotland has delegated to Registers of Scotland the processing of all LBTT returns and amendments made in paper form and the processing of all LBTT cheque payments received by post or hand delivered. During 2015-16, Registers of Scotland processed around 2,200 paper returns on behalf of Revenue Scotland.

Alongside the convenience of the SETS platform for making returns, Revenue Scotland offers a range of payment methods for LBTT and SLfT to make paying the devolved taxes as easy and simple as possible. These include direct debits, BACS and CHAPS payments and payment by cheque. For the replacement for Air Passenger Duty in April 2018, Revenue Scotland will explore the possibility of offering an additional option to pay the tax using a credit or debit card. This may make payment of the tax easier for some taxpayers, most notably occasional operators or business jet users.

iii. Efficiency

The convenience of the online SETS platform to taxpayers and their agents and the efficiencies that it offers to Revenue Scotland often go hand in hand. For example, taxpayers' agents were able to register for the SETS platform simply by verifying their registration details held by the Registers of Scotland for its online system. That verification pre-populated the registration data in the SETS platform and avoided the need for agents to submit their details a further time. This meant that the registration process avoided the need for extensive validation checks and was efficient to both taxpayers' agents and Revenue Scotland with registration taking place within 24 hours.

The online return form on the SETS system offers other efficiencies to taxpayers' agents compared to the process involved in making a return on paper and posting it to Revenue Scotland:

Making returns

- Prior to submitting the tax return online, taxpayers are able to create, edit, save and delete draft returns. The taxpayer is also able to preview the completed form and print a hard copy for their records should they wish to do so. They can save a local copy of the completed form as a pdf document. (However Revenue Scotland does not accept a print-out of an online return that is sent in the post).
- The online form includes dynamic validation checks that prevent the return form from being submitted with blank mandatory fields, or information in the wrong format.
- Pre-population of data fields is done wherever possible to avoid the need for data to be inputted twice to save taxpayer effort and time. For example, to reduce the amount of data input, the online form is pre-populated with the details of the taxpayer's agent, drawing on the user account information they submitted at registration.
- Upon submission of the tax return, the taxpayer receives an acknowledgement that the return has been submitted successfully along with a unique reference number for that return.

Amendments to the tax return form

- A taxpayer wishing to amend a paper return must do so, subject to the time limit rule of 12 months for making amendments to returns set out in section 83 of the RSTPA 2014, by writing to Revenue Scotland.
- Taxpayers' agents who used the SETS platform to submit the return are able to amend a return within the SETS system. We understand that this functionality is not currently available for Stamp Duty Land Tax.
- If more tax is payable as a result of the amendments made then the normal payment rules and arrangements apply. If less tax is payable, Revenue Scotland will repay that amount to the taxpayer with interest.

A unique feature of the Scottish approach to taxation is the link between the payment of LBTT and the registration of title to land for the property being acquired. Under the provisions of section 43 of the Land and Buildings Transaction Tax (Scotland) Act 2013, the Keeper of the Registers of Scotland (RoS) may not accept an application for registration, in any of her registers, of a document effecting or evidencing a notifiable transaction unless a LBTT return has been made to Revenue Scotland and any tax due has been paid. In a standard house purchase this means that the disposition cannot be registered unless the LBTT position is in order. This creates an efficient tax system and helps to protect the revenue as it incentivises the early submission of returns and payments of tax soon after the effective date of the land transaction.

Revenue Scotland has conducted an internal review of the processes involved in making and managing tax returns for both devolved taxes. The mapping exercise undertaken will help us to identify where further process efficiencies might be made.

To improve the accessibility of the information available, Revenue Scotland has involved users in a review of the content of its website. Work is ongoing to redesign the structure and content website to help users find the information they are seeking more quickly and easily.

iv. Taxes that are proportionate to the ability to pay

Ensuring that a tax is proportionate to the ability to pay primarily relates to the structure of the tax and the setting of rates and bands. This is not a matter upon which Revenue Scotland has any comment; the Scottish Government is responsible for deciding the tax structure and for the setting of tax rates and bands. The tax rates and bands are subject to Parliamentary scrutiny and approval.

Revenue Scotland's collaborative work with stakeholders

Since early 2015, Revenue Scotland has held roadshow events and webinars for taxpayers' agents across Scotland to make taxpayers and their agents aware of the systems, processes and requirements of each tax. The events included demonstrations of the use of the SETS platform and provided an opportunity to those making returns to have their queries addressed.

Since the introduction of the first two devolved taxes, Revenue Scotland has continued to adopt an inclusive and transparent approach to its communications and engagement activities, working jointly with representative bodies and others on projects and ensuring it is represented in relevant external networks and at conferences.

The Devolved Tax Collaborative (DTC) was established in 2013 by the Scottish Government as a forum for taxpayers, agents, academics and representative groups with an interest in the development of the devolved taxes. For each of the taxes, Revenue Scotland has established a forum to discuss emerging tax issues and forthcoming changes. Bilateral meetings have also been held with a number of membership bodies, where appropriate, either on request from the membership body or by Revenue Scotland.

Listening to the views of stakeholders was integral to the successful delivery of the LBTT Additional Dwelling Supplement project in early 2016. The Chartered Institute of Taxation, the Institute of Chartered Accountants in Scotland and the Law Society of Scotland all provided helpful views and feedback on the extensive draft guidance and worked examples which were published on the Revenue Scotland website. The Additional Dwelling Supplement module on the SETS platform was also tested by a number of users from professional firms prior to its release.

Revenue Scotland's collaborative approach to the design and implementation of taxes as the approach has proved to be highly effective. It allows for the concerns of taxpayers and their agents and Revenue Scotland to be discussed and understood, often working together to find joint solutions. It also leads to a joint understanding of the interpretation of legislation and a sharing of perspectives, making for more effective outcomes.

Revenue Scotland will continue the collaborative approach with stakeholders and realise these sorts of benefits in the design and delivery of Scotland's third devolved tax, a replacement for Air Passenger Duty. Already, two workshops have been held with airline operators to seek their views on the opportunities provided by an online system for tax returns. That dialogue will continue towards the implementation of the replacement tax in April 2018.

Encouraging a culture of responsible taxpaying

When tax returns are submitted, Revenue Scotland carries out an initial compliance assessment and contacts taxpayer' agents where returns have been found to include inaccuracies. The information in returns is then amended by taxpayers' agents or corrected by Revenue Scotland. In some cases, this has involved amending or correcting the amount of tax that is payable for the land transaction. In some cases, the return may be passed to the compliance team for further investigation.

Although LBTT is broadly similar in nature to Stamp Duty Land Tax, the introduction of LBTT created a range of significant changes and challenges for taxpayers and their agents, including a new legislative framework, different tax rates and bands, new guidance, a new online system for making returns and new payment processes. In recognition of this complexity and to assist taxpayers and their agents with the transition to LBTT from Stamp

Duty Land Tax, Revenue Scotland did not raise penalties or charge interest for late registrations, late returns and late payments for the first six months of the operation of LBTT and, indeed, SLfT.

Around 93% of LBTT payments were received on time during the financial year. Where payments are not received on time, Revenue Scotland staff initially contact agents and taxpayers to expedite settlement. Where necessary, Revenue Scotland uses the powers provided in the RSTPA 2014 to take more formal action to recover the outstanding debt. As a result, a total of 99.8% of all expected LBTT payments were received for the financial year 2015-16.

In 2015-16, a total of £450,000 of LBTT and £568,000 of SLfT⁴ was secured through the range of Revenue Scotland's compliance activities, which include initial compliance checks, tax assessments and statutory tax enquiries. These figures include tax paid following an application for a Revenue Scotland opinion where the liabilities reported were greater than the amount of tax originally proposed by the taxpayer / agent. Of the £145,000 worth of penalties and interest charged between October 2015 and end March 2016, a total of £58,268 was paid by the year end. Penalties and interest totalling a further £166,000 had been identified at the year end, making the total chargeable for the financial year to £311,000.

Revenue Scotland's statutory duty under section 3(2)(d) of the RSTPA 2014 to protect the revenue against tax avoidance is supported by the General Anti Avoidance Rule (GAAR) in Part 5 of the RSTPA 2014 which allows Revenue Scotland to take counteraction against any tax avoidance arrangements considered to be artificial. In relation to LBTT, the Scottish GAAR allows for counteraction measures to be taken in a wider range of circumstances than is the case for Stamp Duty Land Tax.

The principal role of the GAAR, particularly in the context of LBTT, is to act as a deterrent to any tax avoidance schemes or practices seeking to exploit the rules set out in the devolved taxes legislation by constructing land transactions in an artificial way in order to minimise a tax liability. Revenue Scotland has not, as yet, had to make use of the GAAR. Revenue Scotland has considered the possibility of avoidance in respect of several transactions, but in each case it was able to respond to counter the risk, relying on specific provisions in the LBTT legislation.

Conclusion

Revenue Scotland has found the Scottish approach to taxation, founded on the four tax principles, a collaborative approach to working with stakeholders and a robust approach to tax avoidance to be an extremely effective framework for the successful design and delivery of the devolved taxes.

⁴ The compliance yield from Scottish Landfill Tax represents the cumulative additional tax over the year secured from the compliance interventions i.e. tax from the initial compliance intervention and tax from subsequent tax returns using the corrected approach.

As described above, the four tax principles underpin all that Revenue Scotland does: they are integral to the structure of Revenue Scotland's Corporate Plan and central to its purpose, strategic objectives, operational approach and measures of performance and success. Revenue Scotland has also applied the tax principles to its assessment of the tax collection options for the replacement of Air Passenger Duty.

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