



Law Society
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Years
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Consultation Response

Devolved taxes: a policy framework

June 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Tax Law sub-committee welcomes the opportunity to consider and respond to Scottish Government's consultation on *Devolved taxes: a policy framework*¹. We have the following comments to put forward for consideration.

General comments

We consider 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. This includes 'care and maintenance' matters as well as substantive changes to tax policy and to rates and bands.

We welcome the collaborative approach to working between the Scottish Government and Revenue Scotland as detailed in section 7 of the consultation document, and hope that this will continue to develop as the devolved tax regime settles in Scotland. We would welcome a closer policy partnership and recognise that the implementation of this will be key to the successful operation of the devolved tax regime.

It is important that there is clear information for, and communication to, taxpayers not only as to the division of responsibilities between Scottish Government and Revenue Scotland but also as to how this will affect them. To ensure clarity and predictability in relation to tax, there needs to be clear messaging about the law, how it will affect taxpayers, and consequently, how much tax a taxpayer will pay.

¹ <https://www.gov.scot/publications/devolved-taxes-policy-framework/>

Consultation questions

Question 1: Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?

We consider that with a carefully framed purpose and remit, the DTC may be a helpful tax forum to facilitate the engagement of a range of stakeholders with Scottish Government on tax policy. The DTC previously covered both policy matters and aspects of the operation and implementation of the legislation. While we recognise that some cross-over is required, we suggest that the focus of the DTC should be on policy matters and that technical issues relating to the legislation as well as administrative aspects of its operation should be dealt with elsewhere.

We understand that the DTC is intended to be used as a forum to seek early thinking on tax policies. We suggest therefore that one of the objectives for the DTC should be to obtain views and evidence from industry and business. It is important that there are clear objectives for the DTC and that these are well publicised so that individuals and businesses understand who the DTC is aimed at and how they may benefit from participating.

We consider that existing engagement with professional bodies and the LBTT and SLfT forums, hosted by Revenue Scotland, provide a good opportunity to engage with professionals on the implementation of tax policy and operation of the taxes. It is important that there is interaction between tax policy, tax legislation and operational matters and as such, we consider it would be helpful for Scottish Government to play a role in the LBTT and SLfT forums alongside Revenue Scotland. We suggest that meetings take place at the same time involving personnel from both organisation, while being mindful of the necessary independence of Revenue Scotland. We also consider that it is important for adequate time to be devoted to discussion of technical issues and not just to operational matters. There are complex technical issues relating to LBTT and ADS which affect many taxpayers, solicitors and other tax advisers. It is in the interests of all if these matters can be discussed. The SDLT Working Together Steering Group which meets quarterly in London could provide a useful blue-print. As well as discussion about operational issues, a significant part of those meetings addresses technical issues which allows representatives from professional bodies to discuss technical concerns with HMRC and on occasion, also with HM Treasury officials.

Question 2: Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?

It would be helpful if Scottish Government could utilise public-facing media, including social media, more often to pass on information about changes to or important messages about the devolved taxes. Both HMRC and HM Treasury tweet about important tax changes, both at Budget time and at other significant dates, for example when a particular tax change takes effect. As well as passing on information and messages quickly, having posts or tweets “from the horse’s mouth” means that professional bodies and other tax professionals can easily share these with confidence.

Many taxpayers are now likely to use the internet as the first port of call for information about tax and tax changes. We believe consideration should be given as to where information and details of forthcoming tax legislation is hosted. For example, more information about the recent changes in the rates of ADS and the commercial rates of LBTT could have been included on Revenue Scotland's website in advance of the change. We understand that many solicitors and taxpayers were left confused about whether the rates were going to change.

It is important to ensure that there is information easily available in the public domain about upcoming tax changes so that there is certainty in the law and individuals and business can plan their affairs accordingly. When the ADS was introduced in 2016, there was very little information available until the ADS Bill was introduced to the Scottish Parliament. The lack of information resulted in a number of advisors explaining what the SDLT consultation process was indicating about the equivalent SDLT proposals, which became the Higher Rates for Additional Dwellings (HRAD).

Even though the timescale for the introduction of ADS was exceptionally short, we consider it would have been helpful if the matter had been consulted upon. This would have given taxpayers and advisors indications of the likely shape of the new tax and could likely have elicited some helpful comments from stakeholders about the issues which would need to be addressed in drafting the legislation.

As we refer further to below, we consider that if draft legislation can be shared with professional bodies, on a restricted and embargoed basis as deemed necessary, this could contribute to legislation achieving its policy aims and to helping to ensure that such legislation is fit for purpose.

We recognise that for some stakeholders, the use of questionnaires may be helpful as this may be considered to be more accessible than requiring respondents to provide a detailed written answer.

Question 3: Do you support the Scottish Government's proposed approach to tax consultations, in particular consulting on issues collectively rather than on an individual basis?

We recognise that in some circumstances, it may be practical to group matters for consultation, for example, where matters are similar in nature or where an approach to one issue may affect another matter. However, we consider it is also important to ensure that the consultation process is accessible to all and therefore suggest that Scottish Government should not limit itself to one consultation per year to cover all tax matters. In the event that all matters are consulted upon by way of one consultation document, that consultation would likely include a great deal of material which would not be of relevance to a number of those reading the consultation. This may be off-putting for some individuals and businesses and could result in views getting lost if only some aspects of the consultation are addressed.

We do consider that it would be helpful to have consultations dealt with in a regular cycle so that interested individuals, businesses and stakeholders know and understand how and when they can engage with Scottish Government.

We note that measures may require different forms and types of consultation – for example, some may require consultation with the public at large or input from specific business sectors (perhaps a policy consultation) and others may require technical input (such as draft legislation). There are likely to be differing parties who have contributions to make to these consultations, in particular technical input which is likely to be of greater relevance to professional bodies and their members. In the event that there is limited opportunity for Parliamentary scrutiny of legislation, consultation with stakeholders on draft legislation in advance of its introduction to the Parliament may be of particular benefit.

Question 4: What are your views on the proposed policy and legislative cycle?

We welcome the proposed cycle and consider that this will help to ensure clarity and predictability for individuals and businesses as to when tax changes will take effect. We understand that there was uncertainty among many taxpayers and advisors in respect of the change to ADS rates in January 2019.

It is important that the cycle is regular and that the policy consultation cycle fits with the legislative process. There is some benefit to an annual cycle – two years may not be suitable where something requires legislative change quickly. In the event that a biennial approach is favoured, there could be a possibility of making a change in the intervening year if that was required. This may be particularly appropriate to deal with any ‘care and maintenance’ issues arising. By contrast, we believe some proposed legislative change may take more than 12 months to bring to enacted legislation, and may need more than one round of consultation (on the overall policy and shape of the proposed legislation, and also on the draft legislation itself).

We recognise that depending on the approach taken to a legislative vehicle to implement changes, consideration will need to be given as to the timing of legislation – for example, will it be dealt with at the same time as the annual Budget Bill or at another time of year? It is important that any measures receive sufficient Parliamentary scrutiny and therefore any legislative vehicle should be used to implement changes or new measures where these have been consulted upon or where required, rather than to make unnecessary change.

We welcome the inclusion of a mechanism for post-implementation review to ensure that legislation is operating in line with its policy aims. In the event that issues do arise, it will be important that steps are taken to resolve problems with the legislation or to amend or remove provisions which are not effective.

Question 5: What are your views on how frequent the cycle should occur – annually or every two years?

Please see our answer to question 4.

Question 6: Do you consider the existing documents that are published, and the Scottish Government's approach to drafting them, as a sufficient means of clarifying the intention and impacts of a policy?

We believe that the more detail which can be given about the policy intention of legislation, the more likely it is that the legislation will be effective and robust. It is helpful that a policy memorandum is published alongside a bill when it is introduced to the Scottish Parliament. We would suggest, however, that in some cases, the explanation of the policy intention does not go into sufficient detail and could be extended.

Given the wide ranging impacts of tax policy on individuals and businesses, we support strong public engagement on tax matters.

Question 7: Do you agree with the Scottish Government's approach to the circumstances set out in this section?

We recognise that there may be circumstances where the Scottish Government will require to act at short notice and may not be able to consult fully with stakeholders. It is important that there is flexibility to allow tax changes to be made, for example in response to changes made by the UK Government.

In the event that it is impractical to carry out full consultation, there may be opportunities to engage with particular groups of stakeholders on specific matters, such as the detail of draft legislation. We, along with other professional bodies, are willing to become involved in considering draft legislation or amendments, even at short notice, in the interests of ensuring that any technical defects in draft legislation have been ironed out, that the legislation enacted properly reflects the policy intentions and that, so far as possible, there are no unintended consequences.

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