Passage of the

Revenue Scotland and Tax Powers Bill 2013

SPPB 206
Passage of the

Revenue Scotland and Tax Powers Bill 2013

SP Bill 43 (Session 4), subsequently 2014 asp 16

SPPB 206

EDINBURGH: APS GROUP SCOTLAND
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# Contents

<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td></td>
</tr>
<tr>
<td><strong>Introduction of the Bill</strong></td>
<td></td>
</tr>
<tr>
<td>Bill (As Introduced) (SP Bill 43)</td>
<td>1</td>
</tr>
<tr>
<td>Explanatory Notes (and other accompanying documents) (SP Bill 43-EN)</td>
<td>127</td>
</tr>
<tr>
<td>Policy Memorandum (SP Bill 43-PM)</td>
<td>200</td>
</tr>
<tr>
<td>Delegated Powers Memorandum (SP Bill 43-DPM)</td>
<td>229</td>
</tr>
<tr>
<td><strong>Stage 1</strong></td>
<td></td>
</tr>
<tr>
<td>Stage 1 Report, Finance Committee</td>
<td>265</td>
</tr>
<tr>
<td>Annexe A: Reports from other committees (Delegated Powers and</td>
<td>299</td>
</tr>
<tr>
<td>Law Reform Committee)</td>
<td></td>
</tr>
<tr>
<td>Extracts from the Minutes, Delegated Powers and Law Reform Committee,</td>
<td>327</td>
</tr>
<tr>
<td>4 February 2014</td>
<td></td>
</tr>
<tr>
<td>Official Report, Delegated Powers and Law Reform Committee, 4 February</td>
<td>328</td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>Annexe B: Oral evidence to the Finance Committee</td>
<td>333</td>
</tr>
<tr>
<td>Annexe C: Written evidence to the Finance Committee</td>
<td>447</td>
</tr>
<tr>
<td>Extracts from the Minutes of the Finance Committee relating to the</td>
<td>615</td>
</tr>
<tr>
<td>Stage 1 Report</td>
<td></td>
</tr>
<tr>
<td>Briefing for the Finance Committee by its Tax Adviser, Professor</td>
<td>625</td>
</tr>
<tr>
<td>Gavin McEwen, 14 February 2014</td>
<td></td>
</tr>
<tr>
<td>Correspondence from the Public Audit Committee to the Finance Committee</td>
<td>652</td>
</tr>
<tr>
<td>20 March 2014</td>
<td></td>
</tr>
<tr>
<td>Extracts from the Minutes, Public Audit Committee, 15 January 2014</td>
<td>668</td>
</tr>
<tr>
<td>and 19 March 2014</td>
<td></td>
</tr>
<tr>
<td>Correspondence from the Scottish Government to the Finance Committee</td>
<td>670</td>
</tr>
<tr>
<td>regarding appointments to Revenue Scotland, 29 April 2014</td>
<td></td>
</tr>
<tr>
<td>Papers for the meeting of the Delegated Powers and Law Reform Committee</td>
<td>672</td>
</tr>
<tr>
<td>13 May 2014, incorporating Scottish Government response to the Committee's report at Stage 1</td>
<td></td>
</tr>
<tr>
<td>Extract from the Minutes, Delegated Powers and Law Reform Committee,</td>
<td>677</td>
</tr>
<tr>
<td>13 May 2014</td>
<td></td>
</tr>
<tr>
<td>Official Report, Delegated Powers and Law Reform Committee, 13 May 2014</td>
<td>678</td>
</tr>
<tr>
<td>Scottish Government response to the Stage 1 Report, 14 May 2014</td>
<td>679</td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 20 May 2014</td>
<td>698</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 20 May 2014</td>
<td>699</td>
</tr>
<tr>
<td><strong>Stage 2</strong></td>
<td></td>
</tr>
<tr>
<td>1st Marshalled List of Amendments for Stage 2 (SP Bill 43-ML1)</td>
<td>722</td>
</tr>
<tr>
<td>1st Groupings of Amendments for Stage 2 (SP Bill 43-G1)</td>
<td>773</td>
</tr>
<tr>
<td>Extract from the Minutes, Finance Committee, 11 June 2014</td>
<td>776</td>
</tr>
<tr>
<td>Official Report, Finance Committee, 11 June 2014</td>
<td>778</td>
</tr>
</tbody>
</table>
Bill (As Amended at Stage 2) (SP Bill 43A) 795
Revised Explanatory Notes (SP Bill43A-EN) 945
Supplementary Delegated Powers Memorandum (SP Bill 43A-DPM) 1005

After Stage 2
Correspondence from the Cabinet Secretary for Finance, Employment and Sustainable Growth to the Finance Committee regarding proposed Stage 3 amendments, 31 July 2014 1022
Report on the Revenue Scotland and Tax Powers Bill as amended at Stage 2, Delegated Powers and Law Reform Committee 1025
Extract from the Minutes, Delegated Powers and Law Reform Committee, 12 August 2014 1035
Official Report, Delegated Powers and Law Reform Committee, 12 August 2014 1036

Stage 3
Marshalled List of Amendments selected for Stage 3 (SP Bill 43A-ML) 1039
Groupings of Amendments for Stage 3 (SP Bill 43A-G (Timed)) 1057
Extract from the Minutes of the Parliament, 19 August 2014 1059
Official Report, Meeting of the Parliament, 19 August 2014 1060

Bill (As Passed) (SP Bill 43B) 1079
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The oral and written evidence received by the Finance Committee at Stage 1, and the report to the Finance Committee by the Delegated Powers and Law Reform Committee, were originally published on the web only. This material is now included in full in this volume, along with other relevant material.

The Public Audit Committee considered the audit arrangements for Revenue Scotland at its meeting on 19 March 2014. Although not a formal part of Stage 1 of the legislative process, the papers for this meeting along with the relevant extracts from the minutes are included in this volume.

The Scottish Government made a written response to the report of the Delegated Powers and Law Reform Committee at Stage 1, in addition to the Government’s general response to the Stage 1 Report of the Finance Committee. The Delegated Powers and Law Reform Committee considered the response at its meeting on 13
May 2014. Relevant material from that meeting, including the Scottish Government’s response, is included in this volume.
Revenue Scotland and Tax Powers Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1
OVERVIEW OF ACT

1 Overview of Act

PART 2
REVENUE SCOTLAND

Establishment of Revenue Scotland

2 Revenue Scotland

Functions of Revenue Scotland

3 Functions of Revenue Scotland

Delegation of Revenue Scotland functions

4 Delegation of functions by Revenue Scotland

Money

5 Payments into the Scottish Consolidated Fund
6 Rewards

Independence of Revenue Scotland

7 Independence of Revenue Scotland

Ministerial guidance

8 Ministerial guidance

Provision of information, advice or assistance to Ministers

9 Provision of information, advice or assistance to the Scottish Ministers

Charter of standards and values

10 Charter of standards and values

Corporate plan

11 Corporate plan

Annual report

12 Annual report

SP Bill 43

Session 4 (2013)
PART 3
INFORMATION

Use of information by Revenue Scotland

13 Use of information by Revenue Scotland

Protected taxpayer information

14 Protected taxpayer information
15 Confidentiality of protected taxpayer information
16 Protected taxpayer information: declaration of confidentiality
17 Wrongful disclosure of protected taxpayer information

PART 4
THE SCOTTISH TAX TRIBUNALS

CHAPTER 1
INTRODUCTORY

18 Overview

CHAPTER 2
ESTABLISHMENT AND LEADERSHIP

Establishment

19 The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

Leadership

20 President of the Tax Tribunals
21 Functions of the President of the Tax Tribunals
22 Business arrangements
23 Temporary President

CHAPTER 3
MEMBERSHIP

Membership of Tax Tribunals

24 Members

Judicial members

25 Judicial members

Status and capacity

26 Status and capacity of members

CHAPTER 4
DECISION-MAKING AND COMPOSITION

27 Decisions in the First-tier Tribunal
28 Decisions in the Upper Tribunal
29 Declining jurisdiction
30 Composition of the Tribunals

CHAPTER 5
APPEAL OF DECISIONS

Appeal from First-tier Tribunal
31 Appeal from the First-tier Tribunal
32 Disposal of an appeal under section 31

Appeal from Upper Tribunal
33 Appeal from the Upper Tribunal
34 Disposal of an appeal under section 33
35 Procedure on second appeal

Further provision on permission to appeal
36 Process for permission

CHAPTER 6
SPECIAL JURISDICTION
37 Judicial review cases
38 Decision on remittal
39 Additional matters
40 Meaning of judicial review

CHAPTER 7
POWERS AND ENFORCEMENT
41 Venue for hearings
42 Conduct of cases
43 Enforcement of decisions
44 Award of expenses
45 Additional powers

CHAPTER 8
PRACTICE AND PROCEDURE
Tribunal rules: general
46 Tribunal rules
47 Exercise of functions
48 Extent of rule-making

Particular matters
49 Proceedings and steps
50 Hearings in cases
51 Evidence and decisions

Issuing directions
52 Practice directions
CHAPTER 9
ADMINISTRATION
53 Administrative support
54 Guidance
55 Annual reporting

CHAPTER 10
INTERPRETATION
56 Interpretation

PART 5
THE GENERAL ANTI-AVOIDANCE RULE
Introductory
57 The general anti-avoidance rule: introductory

Artificial tax avoidance arrangements
58 Tax avoidance arrangements
59 Meaning of “artificial”
60 Meaning of “tax advantage”

Counteracting tax advantages
61 Counteracting tax advantages
62 Proceedings in connection with the general anti-avoidance rule
63 Notice to taxpayer of proposed counteraction of tax advantage
64 Final notice to taxpayer of counteraction of tax advantage
65 Assumption of tax advantage

General anti-avoidance rule: commencement and transitional provision
66 General anti-avoidance rule: commencement and transitional provision

PART 6
TAX RETURNS, ENQUIRIES AND ASSESSMENTS
CHAPTER 1
OVERVIEW
67 Overview

CHAPTER 2
TAXPAYER DUTIES
General taxpayer duties
68 Taxpayer duties

Duties to keep records
69 Duty to keep and preserve records
70 Preservation of information etc.
71 Penalty for failure to keep and preserve records
72 Further provision: land and buildings transaction tax

CHAPTER 3

TAX RETURNS

Filing dates

73 Dates by which tax returns must be made

Amendment and correction of returns

74 Amendment of return by taxpayer
75 Correction of return by Revenue Scotland

CHAPTER 4

REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

76 Notice of enquiry
77 Scope of enquiry

Amendment of return during enquiry

78 Amendment of self-assessment during enquiry to prevent loss of tax

Referral during enquiry

79 Referral of questions to appropriate tribunal during enquiry
80 Withdrawal of notice of referral
81 Effect of referral on enquiry
82 Effect of determination
83 “Appropriate tribunal”

Completion of enquiry

84 Completion of enquiry
85 Direction to complete enquiry

CHAPTER 5

REVENUE SCOTLAND DETERMINATIONS

86 Determination of tax chargeable if no return made
87 Determination to have effect as a self-assessment
88 Determination superseded by actual self-assessment

CHAPTER 6

REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayment

89 Assessment where loss of tax
90 Assessment to recover excessive repayment of tax
91 References to “Revenue Scotland assessment”
92 References to the “taxpayer”
Conditions for making Revenue Scotland assessments
93 Conditions for making Revenue Scotland assessments
94 Time limits for Revenue Scotland assessments
95 Losses brought about carelessly or deliberately

Notice of assessment and other procedure
96 Assessment procedure

CHAPTER 7
RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment
97 Relief in case of double assessment

Overpaid tax etc.
98 Claim for relief for overpaid tax etc.

Order changing tax basis not approved
99 Claim for repayment if order changing tax basis not approved

Defence of unjustified enrichment
100 Defence to certain claims for relief under section 98 or 99
101 Unjustified enrichment: further provision
102 Unjustified enrichment: reimbursement arrangements
103 Reimbursement arrangements: penalties

Other defences to claims
104 Cases in which Revenue Scotland need not give effect to a claim

Procedure for making claims
105 Procedure for making claims etc.
106 Time-limit for making claims
107 The claimant: partnerships
108 Assessment of claimant in connection with claim

Contract settlements
109 Contract settlements

PART 7
INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1
INVESTIGATORY POWERS: INTRODUCTORY

Overview
110 Investigatory powers of Revenue Scotland: overview

Interpretation
111 Designated investigation officers
112 Meaning of “tax position”
CHAPTER 2
INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

115 Power to obtain information and documents from taxpayer
116 Power to obtain information and documents from third party
117 Approval of taxpayer notices and third party notices
118 Copying third party notice to taxpayer
119 Power to obtain information and documents about persons whose identity is not known
120 Third party notices and notices under section 119: groups of undertakings
121 Third party notices and notices under section 119: partnerships
122 Power to obtain information about persons whose identity can be ascertained
123 Notices
124 Complying with information notices
125 Producing copies of documents
126 Further provision about powers relating to information notices

CHAPTER 3
RESTRICTIONS ON POWERS IN CHAPTER 2

127 Information notices: general restrictions
128 Types of information
129 Taxpayer notices following a tax return
130 Protection for privileged communications between legal advisers and clients
131 Protection for auditors
132 Auditors: supplementary

CHAPTER 4
INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises
133 Power to inspect business premises
134 Power to inspect business premises of involved third parties
135 Carrying out inspections under section 133 or 134

Inspection for valuation etc.
136 Power to inspect property for valuation etc.
137 Carrying out inspections under section 136

Approval of tribunal for premises inspections
138 Approval of tribunal for premises inspections

Other powers in relation to premises
139 Power to mark assets and to record information
140 Power to take samples

Restriction on inspection of documents
141 Restriction on inspection of documents
CHAPTER 5
FURTHER INVESTIGATORY POWERS
142 Power to copy and remove documents
143 Computer records

CHAPTER 6
REVIEWS AND APPEALS AGAINST INFORMATION NOTICES
144 Review or appeal against information notices
145 Disposal of reviews and appeals in relation to information notices

CHAPTER 7
OFFENCES RELATING TO INFORMATION NOTICES
146 Offence of concealing etc. documents following information notice
147 Offence of concealing etc. documents following information notification

PART 8
PENALTIES
CHAPTER 1
PENALTIES: INTRODUCTORY
148 Penalties: overview

Double jeopardy

CHAPTER 2
PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX
150 Penalty for failure to make returns
151 Penalty for failure to pay tax
152 Interaction of penalties under section 150 with other penalties
153 Interaction of penalties under section 151 with other penalties
154 Reduction in penalty under section 150 for disclosure
155 Suspension of penalty under section 151 during currency of agreement for deferred payment
156 Special reduction in penalty under sections 150 and 151
157 Reasonable excuse for failure to make return or pay tax
158 Assessment of penalties under sections 150 and 151
159 Time limit for assessment of penalties under sections 150 and 151

CHAPTER 3
PENALTIES RELATING TO ERRORS
160 Penalty for error in taxpayer document
161 Suspension of penalty for careless inaccuracy under section 160
162 Penalty for error in taxpayer document attributable to another person
163 Under-assessment by Revenue Scotland
164 Special reduction in penalty under sections 160, 162 and 163
165 Reduction in penalty under sections 160, 162 and 163 for disclosure
166 Assessment of penalties under sections 160, 162 and 163

CHAPTER 4

PENALTIES RELATING TO INVESTIGATIONS

167 Penalties for failure to comply or obstruction
168 Daily default penalties for failure to comply or obstruction
169 Penalties for inaccurate information or documents
170 Power to change amount of penalties under sections 167, 168 and 169
171 Concealing, destroying etc. documents following information notice
172 Concealing, destroying etc. documents following information notification
173 Failure to comply with time limit
174 Reasonable excuse for failure to comply or obstruction
175 Assessment of penalties under sections 167, 168 and 169
176 Enforcement of penalties under sections 167, 168 and 169
177 Increased daily default penalty
178 Enforcement of increased daily default penalty
179 Tax-related penalty
180 Enforcement of tax-related penalty

CHAPTER 5

OTHER ADMINISTRATIVE PENALTIES

181 Penalty for failure to register for tax

PART 9

INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax
183 Interest on penalties
184 Interest on repayment of tax overpaid etc.
185 Rates of interest

PART 10

ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1

ENFORCEMENT: GENERAL

Issue of tax demands and receipts

186 Issue of tax demands and receipts

Fees for payment

187 Fees for payment

Certificates of debt

188 Certificates of debt
Court proceedings

Summary warrant

Recovery of penalties and interest

CHAPTER 2
ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

192 Requirement for contact details for debtor
193 Power to obtain details
194 Reviews and appeals against notices or requirements
195 Penalty
196 Power to change amount of penalty under section 195

PART 11
REVIEWS AND APPEALS

CHAPTER 1
INTRODUCTORY

Overview

Appealable decisions

CHAPTER 2
REVIEWS

Review of appealable decisions

199 Right to request review
200 Notice of review
201 Late notice of review
202 Duty of Revenue Scotland to carry out review
203 Nature of review etc.
204 Notification of conclusions of review
205 Effect of conclusions of review

CHAPTER 3
APPEALS

206 Right of appeal
207 Notice of appeal
208 Late notice of appeal
209 Disposal of appeal
CHAPTER 4

SUPPLEMENTARY

210 Reviews and appeals not to postpone recovery of tax
211 Settling matters in question by agreement
212 Application of this Part to joint buyers
213 Application of this Part to trustees
214 References to the “tribunal”
215 Interpretation

PART 12

FINAL PROVISIONS

Interpretation

216 General interpretation
217 Index of defined expressions

Subordinate legislation

218 Subordinate legislation

Ancillary provision

219 Ancillary provision

Modification of enactments

220 Minor and consequential modifications of enactments

Crown application

221 Crown application: criminal offences
222 Crown application: powers of entry
223 Crown application: Her Majesty

Commencement and short title

224 Commencement
225 Short title

Schedule 1—Revenue Scotland
Schedule 2—The Scottish Tax Tribunals
  Part 1—Appointment of members
  Part 2—Conditions of membership etc.
  Part 3—Conduct and discipline
  Part 4—Fitness and removal
Schedule 3—Claims for relief from double assessment and for repayment
Schedule 4—Minor and consequential modifications
Schedule 5—Index of defined expressions
Revenue Scotland and Tax Powers Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

PART 1

OVERVIEW OF ACT

1 Overview of Act

This Act is arranged as follows—

Part 2 establishes Revenue Scotland and provides for its general functions and responsibilities,

Part 3 makes provision about the use and protection of taxpayer and other information,

Part 4 establishes the Scottish Tax Tribunals,

Part 5 puts in place a general anti-avoidance rule,

Part 6 contains provisions on the self-assessment system, the checking of tax returns by Revenue Scotland and claims for repayment of tax,

Part 7 makes provision for Revenue Scotland’s investigatory powers,

Part 8 sets out the matters in relation to which penalties may be imposed,

Part 9 makes provision about the interest payable on unpaid tax, on penalties and on tax repayments,

Part 10 contains provisions on debt enforcement by Revenue Scotland,

Part 11 sets out the system for the review, mediation and appeal of Revenue Scotland decisions, and

Part 12 contains general and final provisions.
PART 2

REVENUE SCOTLAND

Establishment of Revenue Scotland

(1) There is established a body corporate to be known as Revenue Scotland.

(2) In Gaelic, Revenue Scotland is to be known as Teachd-a-steach Alba.

(3) Schedule 1 makes further provision about the membership, procedures and staffing of Revenue Scotland.

Functions of Revenue Scotland

(1) Revenue Scotland’s general function is the collection and management of the devolved taxes.

(2) Revenue Scotland has the following particular functions—
   (a) providing information, advice and assistance to the Scottish Ministers relating to tax,
   (b) providing information and assistance to other persons relating to the devolved taxes,
   (c) efficiently resolving disputes relating to the devolved taxes,
   (d) protecting the revenue against tax fraud and tax avoidance.

(3) “Devolved taxes” has the meaning given by section 80A(4) of the Scotland Act 1998 (c.46).

Delegation of Revenue Scotland functions

(1) Revenue Scotland may delegate—
   (a) any of its functions relating to land and buildings transaction tax to the Keeper of the Registers of Scotland (“the Keeper”),
   (b) any of its functions relating to Scottish landfill tax to the Scottish Environment Protection Agency (“SEPA”).

(2) Revenue Scotland may give directions to the Keeper or to SEPA as to how a delegated function is to be exercised and the Keeper and SEPA must comply with any such direction.

(3) Delegations or directions under this section may be varied or revoked at any time.

(4) Revenue Scotland must publish information about—
   (a) delegations under this section, and
   (b) directions given under this section.

(5) Revenue Scotland must lay before the Scottish Parliament a copy of information published under subsection (4).
(6) Subsections (4) and (5) do not apply to the extent that Revenue Scotland considers that publication of the information would prejudice the effective exercise of its functions.

(7) Delegation of a function under this section does not affect—
   (a) Revenue Scotland’s ability to exercise that function,
   (b) Revenue Scotland’s responsibility for that function.

(8) Revenue Scotland may reimburse the Keeper or SEPA for any expenditure incurred which is attributable to the exercise by the Keeper or SEPA of functions delegated under this section.

Money

5 Payments into the Scottish Consolidated Fund

(1) Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund.

(2) But Revenue Scotland may do so after deduction of payments in connection with repayments, including payments of interest on—
   (a) repayments, or
   (b) payments treated as repayments.

6 Rewards

Revenue Scotland may pay a reward to a person in return for a service which relates to a function of Revenue Scotland.

Independence of Revenue Scotland

7 Independence of Revenue Scotland

(1) The Scottish Ministers must not—
   (a) give directions relating to, or
   (b) otherwise seek to control,
   the exercise by Revenue Scotland of its functions.

(2) This section is subject to any contrary provision made by or under this Act or any other enactment.

Ministerial guidance

8 Ministerial guidance

(1) The Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions.

(2) Revenue Scotland must have regard to any guidance given by Ministers.

(3) Ministers must publish any guidance given to Revenue Scotland under this section as they consider appropriate.

(4) Subsection (1) does not apply to the extent that Ministers consider that publication of the guidance would prejudice the effective exercise by Revenue Scotland of its functions.
Provision of information, advice or assistance to Ministers

9 Provision of information, advice or assistance to the Scottish Ministers

(1) Revenue Scotland must provide the Scottish Ministers with such information, advice or assistance relating to its functions as Ministers may from time to time require.

(2) The information, advice or assistance must be provided in such form as Ministers determine.

Charter of standards and values

10 Charter of standards and values

(1) Revenue Scotland must prepare a Charter.

(2) The Charter must include—

(a) standards of behaviour and values which Revenue Scotland will aspire to when dealing with people in the exercise of its functions, and

(b) standards of behaviour and values which Revenue Scotland expects people to aspire to when dealing with Revenue Scotland.

(3) Revenue Scotland must—

(a) publish the Charter as it considers appropriate,

(b) review the Charter from time to time, and

(c) revise the Charter when it considers it appropriate to do so.

(4) Revenue Scotland must lay the first Charter and any revised Charter before the Scottish Parliament.

Corporate plan

11 Corporate plan

(1) Revenue Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval by the Scottish Ministers.

(2) The corporate plan must set out—

(a) Revenue Scotland’s main objectives for the planning period,

(b) the outcomes by reference to which the achievement of the main objectives may be measured, and

(c) the activities which Revenue Scotland expects to undertake during the planning period.

(3) Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Revenue Scotland.

(4) If Ministers approve a corporate plan, Revenue Scotland must—

(a) publish the plan as Revenue Scotland considers appropriate, and

(b) lay a copy of the plan before the Scottish Parliament.

(5) During the planning period to which a corporate plan relates, Revenue Scotland may review the plan and submit a revised corporate plan to Ministers for approval.
Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

“Planning period” means—
(a) a first period specified by the Scottish Ministers by order, and
(b) each subsequent period of 3 years.

The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

Annual report

(1) As soon as possible after the end of each financial year, Revenue Scotland must—
(a) prepare and publish a report on the exercise of its functions during that year,
(b) send a copy of the report to the Scottish Ministers, and
(c) lay a copy of the report before the Scottish Parliament.

(2) “Financial year” means—
(a) the period beginning with the establishment of Revenue Scotland and ending on 31 March in the following year, and
(b) each subsequent period of a year ending on 31 March.

(3) Revenue Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

Use of information by Revenue Scotland

(1) Revenue Scotland may use information held by it in connection with a function in connection with any other function.

(2) Subsection (1) is subject to any provision which prohibits or restricts the use of information and which is contained in—
(a) this Act,
(b) any other enactment,
(c) an international or other agreement to which the United Kingdom, Her Majesty’s Government or the Scottish Ministers is or are party.

(3) In this section and section 14 “Revenue Scotland” includes any or all of the following persons—
(a) Revenue Scotland,
(b) a member of Revenue Scotland,
(c) a committee of Revenue Scotland (and a member of any committee),
(d) the chief executive or any other member of staff of Revenue Scotland,
(e) a person to whom Revenue Scotland has delegated any of its functions.

(4) In this section and section 14 references to a “function” are references to—
   (a) a function of any of the persons mentioned in subsection (3)(a) to (d),
   (b) in the case of a person mentioned in subsection (3)(e)—
      (i) a function which Revenue Scotland has delegated to the person, and
      (ii) a function under any other enactment.

Protected taxpayer information

14 Protected taxpayer information

(1) “Protected taxpayer information” means information relating to a person—
   (a) which is held by Revenue Scotland in connection with a function of Revenue Scotland, and
   (b) by which a person may be identified.

(2) Subsection (1)(a) does not apply to information about internal administrative arrangements of Revenue Scotland (whether the information relates to members or staff of Revenue Scotland or to others).

(3) For the purposes of subsection (1)(b), a person may be identified by information if—
   (a) the person’s identity is specified in the information, or
   (b) the person’s identity can be deduced from the information (whether from that information on its own or from that information taken together with other information disclosed by or on behalf of Revenue Scotland).

Confidentiality of protected taxpayer information

15 Confidentiality of protected taxpayer information

(1) A Revenue Scotland official must not disclose protected taxpayer information unless the disclosure is permitted by subsection (3).

(2) In this section and section 16 “Revenue Scotland official” means any individual who is or was—
   (a) a member of Revenue Scotland,
   (b) a member of a committee of Revenue Scotland,
   (c) the chief executive or any other member of staff of Revenue Scotland,
   (d) exercising functions on behalf of Revenue Scotland.

(3) A disclosure is permitted by this subsection if—
   (a) it is made with the consent of each person to whom the information relates,
   (b) it is made in accordance with any provision made by or under this Act or any other enactment requiring or permitting the disclosure,
   (c) it is made for the purposes of civil proceedings,
   (d) it is made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime,
   (e) it is made in pursuance of an order of a court or tribunal,
(f) it is made to a person to whom Revenue Scotland has delegated any of its functions for the purposes of those functions,

(g) it is made to a person exercising functions on behalf of Revenue Scotland (other than a person mentioned in paragraph (f)) for the purposes of those functions.

16 **Protected taxpayer information: declaration of confidentiality**

(1) Each Revenue Scotland official must make a declaration acknowledging the obligation of confidentiality under section 15.

(2) A declaration must be made—

(a) as soon as reasonably practicable following the person’s appointment, and

(b) in such form and manner as Revenue Scotland may determine.

(3) For the purposes of subsection (2)(a)—

(a) the renewal of a fixed term appointment is not to be treated as an appointment,

(b) a person mentioned in section 15(2)(d) is to be treated as appointed when the person begins to exercise functions on behalf of Revenue Scotland.

17 **Wrongful disclosure of protected taxpayer information**

(1) A person commits an offence if the person discloses protected taxpayer information contrary to section 15(1).

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed—

(a) that the disclosure was lawful under section 15, or

(b) that the information had already lawfully been made available to the public.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(4) This section does not affect the pursuit of any remedy or the taking of any action in relation to a contravention of section 15(1).

**PART 4**

**THE SCOTTISH TAX TRIBUNALS**

**CHAPTER 1**

**INTRODUCTORY**

18 **Overview**

This Part makes provision establishing tribunals to exercise functions in relation to devolved taxes and about—
(a) the leadership of those tribunals,
(b) the appointment, conduct, fitness and removal of members of those tribunals,
(c) the taking of decisions by and composition of those tribunals,
(d) appeals to and from, and other proceedings before, those tribunals, and
(e) the procedure before and administration of those tribunals (including the making of tribunal rules).

CHAPTER 2
ESTABLISHMENT AND LEADERSHIP

Establishment

19 The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

(1) There is established a tribunal to be known as the First-tier Tax Tribunal for Scotland.
(2) The First-tier Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.
(3) There is also established a tribunal to be known as the Upper Tax Tribunal for Scotland.
(4) The Upper Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.
(5) In this Act—
(a) the First-tier Tax Tribunal for Scotland is referred to as the First-tier Tribunal,
(b) the Upper Tax Tribunal for Scotland is referred to as the Upper Tribunal, and
(c) collectively, they are referred to as the Tax Tribunals.

Leadership

20 President of the Tax Tribunals

(1) The Scottish Ministers must appoint a person as President of the Tax Tribunals.
(2) Before appointing such a person, the Scottish Ministers must consult the Lord President.
(3) The President of the Tax Tribunals is appointed on such terms and conditions as the Scottish Ministers may determine.

21 Functions of the President of the Tax Tribunals

(1) The President of the Tax Tribunals is the senior member of the Tax Tribunals.
(2) The President has the functions exercisable by him or her by or under this Act.

22 Business arrangements

(1) The President of the Tax Tribunals is responsible for making and maintaining appropriate arrangements for securing the efficient disposal of business in the Tax Tribunals.
(2) The President is responsible for ensuring that appropriate arrangements are made and maintained as to the welfare of the members of the tribunals.

23 Temporary President

(1) If there is a vacancy in the presidency of the Tax Tribunals, the Scottish Ministers may appoint a person as Temporary President during the vacancy.

(2) A person is eligible to be appointed as Temporary President only if the person is—
(a) a legal member of the Tax Tribunals, or
(b) eligible to be appointed as such a member.

(3) The functions of the President of the Tax Tribunals are exercisable by the Temporary President.

(4) Except where the context otherwise requires, a reference in or under this Part to the President includes the Temporary President.

(5) For the purposes of subsection (1) “vacancy” includes where the President of the Tax Tribunals has been suspended under paragraph 36(2) or 37(2) of schedule 2 (by virtue of paragraphs 29(2) and 41 of that schedule).

CHAPTER 3
MEMBERSHIP

Membership of Tax Tribunals

24 Members

(1) The First-tier Tribunal is to consist of its ordinary and legal members.

(2) The Upper Tribunal is to consist of its legal and judicial members.

(3) The President of the Tax Tribunals is, by virtue of holding that position, a member of both the First-tier Tribunal and the Upper Tribunal.

(4) Schedule 2 contains the following further provision about members of the Tax Tribunals—
(a) Part 1 contains provisions about the eligibility for and appointment to—
   (i) the position of President of the Tax Tribunals,
   (ii) ordinary and legal membership of the First-tier Tribunal,
   (iii) legal membership of the Upper Tribunal,
(b) Part 2 contains provision about the terms and conditions on which members of the tribunals hold office,
(c) Part 3 contains provision about investigation of members’ conduct and imposition of disciplinary measures, and
(d) Part 4 contains provision about the assessment of members’ fitness and removal from position.
Judicial members

25  Judicial members
   (1) A judge of the Court of Session (including a temporary judge but not the Lord
       President) is, by reason of holding judicial office, eligible to act as a member of the
       Upper Tribunal.
   (2) Such a judge may act as a member of the Upper Tribunal only if authorised by the
       President of the Tax Tribunals to do so.
   (3) An authorisation for the purpose of subsection (2) requires—
       (a) the Lord President’s approval (including as to the judge to be authorised), and
       (b) the agreement of the judge concerned.
   (4) An authorisation for the purpose of subsection (2) remains in effect until such time as
       the President of the Tax Tribunals may determine (with the same approval and
       agreement requirements as are mentioned in subsection (3) applying accordingly).

Status and capacity

26  Status and capacity of members
   (1) A member of either of the Tax Tribunals, whether that membership is as an ordinary or
       as a legal member, has judicial status and capacity for the purpose mentioned in
       subsection (3).
   (2) For the avoidance of doubt, a judicial member of the Upper Tribunal has judicial status
       and capacity for the purpose mentioned in subsection (3) by reason of holding judicial
       office.
   (3) The purpose referred to in subsections (1) and (2) is the purpose of holding the position
       and acting as member of the First-tier Tribunal or (as the case may be) the Upper
       Tribunal.

Chapter 4
Decision-making and composition

27  Decisions in the First-tier Tribunal
   (1) The First-tier Tribunal's function of deciding any matter in a case before the tribunal is
       to be exercised by—
       (a) two or more members of the tribunal, presided over by a legal member, or
       (b) a legal member sitting alone.
   (2) The member or members are to be chosen by the President of the Tax Tribunals (who
       may choose himself or herself).
   (3) The President’s discretion in choosing the member or members is subject to—
       (a) any relevant provisions in regulations made under section 30(1),
       (b) any relevant directions given by virtue of section 32(5)(b).
28 Decisions in the Upper Tribunal

(1) The Upper Tribunal's function of deciding any matter in a case before the tribunal is to be exercised by a single member chosen by the President of the Tax Tribunals (who may choose himself or herself).

(2) The President’s discretion in choosing the member is subject to—
   (a) any relevant provisions in regulations made under section 30(1),
   (b) any relevant directions given by virtue of section 34(5)(b).

29 Declining jurisdiction

(1) A member of either of the Tax Tribunals is not incapable of acting as such in any proceedings by reason of being, as one of a class of taxpayers or persons of any other description, liable in common with others to pay, or contribute to, or benefit from, any tax which may be increased, reduced or in any way affected by those proceedings.

(2) In this section “tax” includes—
   (a) any fund formed from the proceeds of any such tax, and
   (b) any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such tax are or might be applied.

30 Composition of the Tribunals

(1) The Scottish Ministers may by regulations make provision for determining the composition of—
   (a) the First-tier Tribunal,
   (b) the Upper Tribunal,
   when convened to decide any matter in a case before the tribunal.

(2) Regulations under subsection (1) may treat separately the tribunal’s decision-making functions—
   (a) at first instance,
   (b) on appeal.

Chapter 5

Appeal of decisions

Appeal from First-tier Tribunal

31 Appeal from the First-tier Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made—
   (a) by a party in the case,
   (b) on a point of law only.

(3) An appeal under this section requires the permission of—
Part 4—The Scottish Tax Tribunals
Chapter 5—Appeal of decisions

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

(5) This section is subject to section 36(2) and to sections 123(4), 138(6) and 145(5).

32 Disposal of an appeal under section 31

(1) In an appeal under section 31, the Upper Tribunal may uphold or quash the decision on the point of law in question.

(2) If the Upper Tribunal quashes the decision, it may—

   (a) re-make the decision,

   (b) remit the case to the First-tier Tribunal, or

   (c) make such other order as the Upper Tribunal considers appropriate.

(3) In re-making the decision, the Upper Tribunal may—

   (a) do anything that the First-tier Tribunal could do if re-making the decision,

   (b) reach such findings in fact as the Upper Tribunal considers appropriate.

(4) In remitting the case, the Upper Tribunal may give directions for the First-tier Tribunal’s reconsideration of the case.

(5) Such directions may relate to—

   (a) issues of law or fact (including the Upper Tribunal’s opinion on any relevant point),

   (b) procedural issues (including as to the members to be chosen to reconsider the case).

33 Appeal from the Upper Tribunal

(1) A decision of the Upper Tribunal in any matter in a case before the tribunal may be appealed to the Court of Session (sitting as the Court of Exchequer).

(2) An appeal under this section is to be made—

   (a) by a party in the case,

   (b) on a point of law only.

(3) An appeal under this section requires the permission of—

   (a) the Upper Tribunal, or

   (b) if the Upper Tribunal refuses its permission, the Court of Session.

(4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that—

   (a) there are arguable grounds for the appeal, and
(b) in relation to the matter in question—
    (i) the appeal would raise an important issue of principle or practice, or
    (ii) there is another compelling reason for allowing the appeal to proceed.

(5) This section is subject to section 36(2) and to sections 123(4), 138(6) and 145(5).

34 Disposal of an appeal under section 33

(1) In an appeal under section 33, the Court of Session may uphold or quash the decision on
    the point of law in question.

(2) If the Court quashes the decision, it may—
    (a) re-make the decision,
    (b) remit the case to the Upper Tribunal, or
    (c) make such other order as the Court considers appropriate.

(3) In re-making the decision, the Court may—
    (a) do anything that the Upper Tribunal could do if re-making the decision,
    (b) reach such findings in fact as the Court considers appropriate.

(4) In remitting the case, the Court may give directions for the Upper Tribunal’s
    reconsideration of the case.

(5) Such directions may relate to—
    (a) issues of law or fact (including the Court’s opinion on any relevant point),
    (b) procedural issues (including as to the member to be chosen to reconsider the
        case).

35 Procedure on second appeal

(1) Section 34 is subject to subsections (2) and (3) as regards a second appeal.

(2) For the purpose of subsection (1), subsections (2)(b) and (3)(a) of section 34 have effect
    in relation to a second appeal as if the references in them to the Upper Tribunal include,
    as alternative references, references to the First-tier Tribunal.

(3) Where, in exercising the choice arising by virtue of subsection (2) (and instead of re-
    making the decision in question), the Court of Session remits the case to the Upper
    Tribunal rather than the First-tier Tribunal—
        (a) the Upper Tribunal, instead of reconsidering the case itself, may remit the case to
            the First-tier Tribunal,
        (b) if the Upper Tribunal does so, it must send to the First-tier Tribunal any directions
            accompanying the Court’s remittal of the case to the Upper Tribunal.

(4) In this section “second appeal” means appeal under section 33 against a decision in an
    appeal under section 31.
Further provision on permission to appeal

36 Process for permission

(1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 31(3) or 33(3) must be sought.

(2) A refusal to give the permission required by section 31(3) or 33(3) is not appealable under section 31 or 33.

CHAPTER 6
SPECIAL JURISDICTION

37 Judicial review cases

(1) Subsection (2) applies where a petition is made to the Court of Session for judicial review.

(2) The Court may by order remit the petition to the Upper Tribunal if—

(a) both of conditions A and B are met, and

(b) having regard to the functions and expertise of the Tribunal in relation to the subject-matter of the petition, the Court considers that it is appropriate to do so.

(3) Condition A is that the petition does not seek anything other than the exercise of the Court’s judicial review function.

(4) Condition B is that the petition falls within a category specified by an Act of Sederunt made by the Court for the purpose of this subsection.

38 Decision on remittal

(1) The Upper Tribunal is to determine the issues raised in each petition remitted to it under section 37.

(2) In relation to a petition so remitted, the Upper Tribunal—

(a) has the same powers as the Court of Session has on a petition to it for judicial review,

(b) is to apply the same principles as the Court applies in the exercise of its judicial review function.

(3) An order made by the Upper Tribunal on a petition so remitted has the same effect as an order made by the Court of Session on a petition for judicial review (and the order is therefore enforceable accordingly).

(4) Subsection (3) does not limit the operation of section 33 in connection with a determination under subsection (1).

39 Additional matters

(1) Where a petition is remitted to the Upper Tribunal under section 37, any order made or step taken by the Court of Session in relation to the petition is to be treated as if made or taken by the tribunal (except the order by which the petition is so remitted (or an associated step)).
(2) Tribunal rules may make further provision with respect to the exercise by the Upper Tribunal of its functions under this Chapter.

40 Meaning of judicial review

In this Chapter—

(a) a reference to a petition to the Court of Session for judicial review is to an application to the supervisory jurisdiction of the Court,

(b) a reference to the exercise of the Court of Session’s judicial review function is to the exercise of the Court’s supervisory jurisdiction (and includes the making of any order in connection with or in consequence of the exercise of that function).

CHAPTER 7

POWERS AND ENFORCEMENT

41 Venue for hearings

The Tax Tribunals are to sit at such times and in such places as the President of the Tax Tribunals may determine.

42 Conduct of cases

(1) In relation to the things mentioned in subsection (3), each of the First-tier Tribunal and the Upper Tribunal has such powers, rights, privileges and other authority with respect to any case before it as are provided for in tribunal rules.

(2) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to any kind of authority by reference to any authority of a relevant description exercisable by the sheriff or the Court of Session.

(3) The things are—

(a) the attendance or examination of witnesses,

(b) the recovery, production or inspection of relevant materials,

(c) the commissioning of reports of any relevant type,

(d) other procedural, evidential or similar measures.

(4) In subsection (3)(b) “materials” means documents and other items.

43 Enforcement of decisions

(1) A decision made by the First-tier Tribunal or the Upper Tribunal in any matter in a case before it is enforceable by the means provided for in tribunal rules.

(2) Subsection (1) applies to a decision—

(a) on the merits of such a case,

(b) as to—

(i) payment of a sum of money, or

(ii) expenses by virtue of section 44, or
(c) otherwise affecting the rights, obligations or interests of a party in such a case.

(3) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to a relevant order by reference to the means of enforcing an order of the sheriff or the Court of Session.

(4) In subsection (3), “relevant order” means an order of either of the Tax Tribunals giving effect to a decision to which subsection (1) applies.

44 Award of expenses

(1) In connection with proceedings in a case before the First-tier Tribunal or the Upper Tribunal, the tribunal may award expenses so far as allowed in accordance with tribunal rules.

(2) Where such expenses are awarded, the awarding tribunal may specify by and to whom they are to be paid (and to what extent).

(3) Tribunal rules may make provision—

(a) for scales or rates of such expenses,

(b) for—

(i) such expenses to be set-off against any relevant sums,

(ii) interest at the specified rate to be chargeable on such expenses where unpaid,

(c) for—

(i) disallowing any wasted expenses,

(ii) requiring a person who has given rise to any wasted expenses to meet them,

(d) stating the general or particular factors to be taken into account when exercising discretion as to such expenses,

(e) about such expenses in other respects.

(4) Rules making provision as described in subsection (3) may also prescribe meanings for “relevant sums”, “specified rate” and “wasted expenses” as used in that subsection.

45 Additional powers

(1) The Scottish Ministers may by regulations confer on the First-tier Tribunal and the Upper Tribunal such additional powers as are necessary or expedient for the proper exercise of their functions.

(2) Regulations under subsection (1) may include provision—

(a) relying on the effect of an Act of Sederunt made by the Court of Session,

(b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) to apply to the making of a relevant Act of Sederunt as it does to the making of tribunal rules.
46 Tribunal rules

Tribunal rules: general

There are to be rules regulating the practice and procedure to be followed in proceedings at—

(a) the First-tier Tribunal,
(b) the Upper Tribunal.

Rules of the kind mentioned in subsection (1) are to be known as Scottish Tax Tribunal Rules (and in this Act they are referred to as tribunal rules).

Tribunal rules are to be made by the Court of Session by Act of Sederunt.

Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) includes further provision about the making of tribunal rules.

47 Exercise of functions

Tribunal rules may, in relation to any functions exercisable by the members of the Tax Tribunals—

(a) state—
(i) how a function is to be exercised,
(ii) who is to exercise a function,
(b) cause something to require further authorisation,
(c) permit something to be done on a person’s behalf,
(d) allow a specified person to make a decision about any of those matters.

Tribunal rules may make provision relying on the effect of directions issued, or to be issued, under section 52.

48 Extent of rule-making

Tribunal rules may make—

(a) provision applying—
(i) equally to both of the First-tier Tribunal and the Upper Tribunal, or
(ii) specifically to one of them,
(b) particular provision for each of them about the same matter.

Tribunal rules may make particular provision for different types of proceedings.

Tribunal rules may make different provision for different purposes in any other respects.

The generality of section 46 is not limited by—

(a) sections 49 to 51, or
(b) any other provisions of this Act about the content of tribunal rules.
**49 Proceedings and steps**

(1) Tribunal rules may make provision about proceedings in a case before the Tax Tribunals.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) provide for the form and manner in which a case is to be brought,

(b) allow for the withdrawal of a case (with or without restrictions on subsequent proceedings as respects the same matter),

(c) set time limits for—

(i) making applications,

(ii) taking particular steps,

(d) specify circumstances in which the tribunals may take particular steps on their own initiative.

**50 Hearings in cases**

(1) Tribunal rules may make provision about hearings in a case before the Tax Tribunals.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) provide for certain matters to be dealt with—

(i) without a hearing,

(ii) at a private hearing,

(iii) at a public hearing,

(b) require notice to be given of a hearing (and for the timing of such notice),

(c) specify persons who may—

(i) appear on behalf of a party in a case,

(ii) attend a hearing in order to provide support to a party or witness in a case,

(d) specify circumstances in which particular persons may appear or be represented at a hearing,

(e) specify circumstances in which a hearing may go ahead—

(i) at the request of a party in a case despite no notice of it having been given to another party in the case,

(ii) in the absence of a particular member chosen to exercise the function of deciding any matter in a case,

(f) allow for an adjournment of a hearing for the purpose of giving the parties in a case an opportunity to use a process of negotiation, mediation, arbitration or adjudication for resolving a dispute to which the case relates,

(g) allow for the imposition of reporting restrictions for particular reasons arising in a case.
Evidence and decisions

1. Tribunal rules may, in connection with proceedings before the Tax Tribunals—
   (a) make provision about the giving of evidence and the administering of oaths,
   (b) modify the application of any other rules relating to either of those matters so far
       as they would otherwise apply to such proceedings.

2. Tribunal rules may, in connection with proceedings before the Tax Tribunals, provide
   for the payment of expenses and allowances to a person who—
   (a) gives evidence,
   (b) produces a document, or
   (c) attends such proceedings (or is required to do so).

3. Tribunal rules may, in connection with proceedings before the Tax Tribunals, make
   provision by way of presumption (for example, as to the serving of something on
   somebody).

4. Tribunal rules may make provision about decisions of the Tax Tribunals (in particular,
   as to the recording and publication of such decisions).

Issuing directions

52. Practice directions

1. The President of the Tax Tribunals may issue directions as to the practice and procedure
   to be followed in proceedings in—
   (a) the First-tier Tribunal,
   (b) the Upper Tribunal.

2. Directions under subsection (1) may include instruction or guidance on the manner of
   making of any decision in a case.

3. Directions under subsection (1) may—
   (a) vary or revoke earlier such directions,
   (b) make different provision for different purposes (in the same respects as tribunal
       rules).

4. Directions under subsection (1) must be published in such manner as the President of the
   Tax Tribunals considers appropriate.

Chapter 9

Administrative support

53. The Scottish Ministers must ensure that the Tax Tribunals are provided with such
    property, services and personnel as the Scottish Ministers consider to be reasonably
    required for the proper operation of the tribunals.

2. The Scottish Ministers must have regard to any representations made to them by the
   President of the Tax Tribunals in relation to the fulfilment of the duty under subsection
   (1).
(3) In fulfilling the duty under subsection (1), the Scottish Ministers may—
   (a) fund or supply property, services and personnel for use by the tribunals,
   (b) appoint persons as members of staff of the tribunals.

(4) The Scottish Ministers may make arrangements as to—

   (a) the payment of remuneration or expenses to or in respect of persons so appointed,
   (b) the payment of pensions, allowances and gratuities to or in respect of persons so appointed,
   (c) contributions or other payments towards provision of such pensions, allowances and gratuities.

(5) The references in subsection (4) to pensions, allowances and gratuities include pensions, allowances and gratuities to be paid by way of compensation for loss of office.

54 Guidance

The President of the Tax Tribunals may issue such guidance about the administration of the Tax Tribunals as appears to the President to be necessary or expedient for the purpose of securing that the functions of the tribunals are exercised efficiently and effectively.

55 Annual reporting

(1) The President of the Tax Tribunals is to prepare an annual report about the operation and business of the Tax Tribunals.

(2) An annual report is to be given to the Scottish Ministers at the end of each financial year.

(3) An annual report—
   (a) must explain how the Tax Tribunals have exercised their functions during the financial year,
   (b) may contain such other information as—
        (i) the President of the Tax Tribunals considers appropriate, or
        (ii) the Scottish Ministers require to be covered.

(4) The Scottish Ministers must—

   (a) publish each annual report in a manner suitable for bringing it to the attention of persons having an interest in the operation and business of the Tax Tribunals,
   (b) before so publishing it, lay a copy of the report before the Scottish Parliament.

CHAPTER 10
INTERPRETATION

56 Interpretation

In this Part—
a reference to—

(a) a legal member of the Tax Tribunals is to a person who is appointed under paragraph 3(1) or 5(1) of schedule 2,

(b) a judicial member of the Upper Tribunal is to a person who is authorised for the purpose of section 25(2),

(c) an ordinary member of the First-tier Tribunal is to a person who is appointed under paragraph 2(1) of schedule 2,

the “Lord President” means the Lord President of the Court of Session.

PART 5

THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

(1) This Part has effect for the purpose of counteracting tax advantages arising from tax avoidance arrangements that are artificial.

(2) The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

(3) In this Part “authorised officer” means a member of staff of Revenue Scotland or other person who is, or a category of members or other persons who are, authorised by Revenue Scotland for the purposes of the general anti-avoidance rule.

Artificial tax avoidance arrangements

58 Tax avoidance arrangements

(1) An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.

(2) An “arrangement”—

(a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and

(b) may comprise one or more stages or parts.

59 Meaning of “artificial”

(1) A tax avoidance arrangement is artificial if condition A or B is met.

(2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances, including—

(a) whether the substantive results of the arrangement are consistent with—

(i) any principles on which those provisions are based (whether express or implied), and

(ii) the policy objectives of those provisions,
(b) whether the arrangement is intended to exploit any shortcomings in those provisions.

(3) Condition B is met if the arrangement lacks commercial substance.

(4) Each of the following is an example of something which might indicate that a tax avoidance arrangement lacks commercial substance—

(a) whether the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,

(b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,

(c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,

(d) whether transactions are circular in nature.

(5) The fact that—

(a) a tax avoidance arrangement accords with established practice, and

(b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,

is an example of something that might indicate that the arrangement is not artificial.

(6) The examples given in subsections (4) and (5) are not exhaustive.

(7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

60 Meaning of “tax advantage”

(1) A “tax advantage” includes in particular—

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) avoidance or reduction of a charge to tax or an assessment to tax,

(d) avoidance of a possible assessment to tax, and

(e) deferral of a payment of tax or advancement of a repayment of tax.

(2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

61 Counteracting tax advantages

(1) Revenue Scotland may make such adjustments as it considers just and reasonable to counteract the tax advantages that would (ignoring this Part) arise from a tax avoidance arrangement that is artificial.

(2) The adjustments may be made in respect of the tax in question or any other devolved tax.
(3) The adjustments that may be made include those that impose or increase a liability to tax in any case where (ignoring this Part) there would be no liability or a smaller liability, and tax is to be charged in accordance with any such adjustment.

(4) Any adjustments required to be made under this section (whether by Revenue Scotland or the person to whom the tax advantage would arise) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(5) No steps may be taken by Revenue Scotland unless the procedural requirements of sections 63 and 64 have been complied with.

62 Proceedings in connection with the general anti-avoidance rule

(1) In proceedings before a court or tribunal in connection with the general anti-avoidance rule, Revenue Scotland must show—

(a) that there is a tax avoidance arrangement that is artificial, and
(b) that the adjustments made to counteract the tax advantages arising from the tax avoidance arrangement are just and reasonable.

(2) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal must take into account any guidance published by Revenue Scotland about the general anti-avoidance rule (at the time the tax avoidance arrangement was entered into).

(3) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal may take into account—

(a) guidance, statements or other material (whether by Revenue Scotland or anyone else) that was in the public domain at the time the tax avoidance arrangement was entered into, and
(b) evidence of established practice at that time.

63 Notice to taxpayer of proposed counteraction of tax advantage

(1) If an authorised officer considers—

(a) that a tax advantage has arisen to a person ("the taxpayer") from a tax avoidance arrangement that is artificial, and
(b) that the advantage should be counteracted under section 61,

the officer must give the taxpayer a written notice to that effect.

(2) The notice must—

(a) specify the tax avoidance arrangement and the tax advantage,
(b) explain why the officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial,
(c) set out the counteraction that the officer considers should be taken, and
(d) inform the taxpayer of the period under subsection (4) for making representations.

(3) The notice may set out the steps that the taxpayer may take to avoid the proposed counteraction.
(4) If a notice is given to a taxpayer under subsection (1), the taxpayer has 45 days beginning with the day on which the notice is given to send written representations in response to the notice to the authorised officer.

(5) The authorised officer may, on a written request made by the taxpayer, extend the period during which representations may be made.

(6) The authorised officer must take into account any representations made by the taxpayer.

64 Final notice to taxpayer of counteraction of tax advantage

(1) The authorised officer must, after the expiry of the period in which representations may be made under section 63, give the taxpayer a written notice setting out whether the tax advantage arising from the tax avoidance arrangement is to be counteracted under the general anti-avoidance rule.

(2) If the notice states that a tax advantage is to be counteracted, the notice must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it.

65 Assumption of tax advantage

(1) An authorised officer may give a notice under section 63 or 64 where the officer considers that a tax advantage might have arisen to the taxpayer.

(2) Accordingly, any notice given by an authorised officer under section 63 or 64 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

General anti-avoidance rule: commencement and transitional provision

66 General anti-avoidance rule: commencement and transitional provision

(1) The general anti-avoidance rule has effect in relation to any tax avoidance arrangement entered into on or after the date on which this Part comes into force.

(2) Where the tax avoidance arrangement forms part of any other arrangements entered into before that day, those other arrangements are to be ignored for the purposes of section 59(7), subject to subsection (3).

(3) Account is to be taken of those other arrangements if, as a result, the tax avoidance arrangement would not be artificial.

PART 6
TAX RETURNS, ENQUIRIES AND ASSESSMENTS
CHAPTER 1
OVERVIEW

67 Overview

This Part makes provision about the assessment of devolved taxes including—
(a) taxpayers’ duties in relation to devolved taxes,
(b) the timing of tax returns,
(c) amendment and correction of tax returns by taxpayers and Revenue Scotland,
(d) enquiries by Revenue Scotland into taxpayers’ self-assessments,
(e) determination by Revenue Scotland of tax due where no return is made,
(f) assessment by Revenue Scotland of tax due outwith enquiries where tax losses or other situations are brought about by taxpayers carelessly or deliberately, and
(g) claims for relief from double assessment and for repayment of tax.

Chapter 2

Taxpayer duties

General taxpayer duties

68 Taxpayer duties

(1) Taxpayers must—
(a) notify Revenue Scotland of any taxable activities undertaken by them,
(b) inform Revenue Scotland if tax is due,
(c) make tax returns on time,
(d) take reasonable care to ensure that the information made in tax returns is accurate and complete,
(e) assess any tax due to Revenue Scotland,
(f) pay any tax due when required to do so, and
(g) keep adequate records relating to tax.

(2) Subsection (1) is without prejudice to any provision made by or under this Act or any enactment.

Duties to keep records

69 Duty to keep and preserve records

(1) A person who is required to make a tax return in relation to a devolved tax must—
(a) keep any records that may be needed to enable the person to make a correct and complete return, and
(b) preserve those records in accordance with this section.

(2) The records must be preserved until the end of the later of the relevant day and the date on which—
(a) an enquiry into the return is completed, or
(b) if there is no enquiry, a designated officer no longer has power to enquire into the return.

(3) “The relevant day” means—
(a) the fifth anniversary of the day on which the return is made or, if the return is amended, the day notice of the amendment is given under section 74, or
(b) any earlier day that may be specified in writing by Revenue Scotland.

(4) Different days may be specified for different purposes under subsection (3)(b).

(5) The records required to be kept and preserved under this section include—

(a) details of any relevant transaction (including relevant instruments relating to any transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents),
(b) details of any relevant taxable activity,
(c) records of relevant payments, receipts and financial arrangements.

(6) The Scottish Ministers may by regulations—

(a) provide that the records required to be kept and preserved under this section do, or do not, include records specified in the regulations, and
(b) specify supporting documents that are required to be kept under this section.

(7) Regulations under this section may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(8) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

70 Preservation of information etc.

The duty under section 69 to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or
(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by Revenue Scotland.

71 Penalty for failure to keep and preserve records

(1) A person who fails to comply with section 69 in relation to a devolved tax is liable to a penalty not exceeding £3,000, subject to the following exception.

(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to Revenue Scotland.

72 Further provision: land and buildings transaction tax

(1) This section applies in relation to land and buildings transaction tax.

(2) The Scottish Ministers may by regulations make provision for the keeping and preservation of records in relation to land transactions that are not notifiable.

(3) Regulations under this section may require the buyer in a land transaction which is not notifiable to—

(a) keep such records as may be needed to enable the buyer to demonstrate that the transaction is not notifiable, and
(b) preserve those records in accordance with the regulations.

(4) The regulations may apply sections 69 to 71 (with or without modifications) to a buyer mentioned in subsection (3) as those sections apply to a person mentioned in section 69(1).

(5) Expressions used in this section and in the 2013 Act have the meanings given in that Act.

CHAPTER 3

TAX RETURNS

Filing dates

73 Dates by which tax returns must be made

(1) The Scottish Ministers may make regulations about the dates by which tax returns must be made to Revenue Scotland.

(2) Regulations under subsection (1) may modify any enactment (including this Act).

(3) In this Act “the filing date” in relation to a tax return is the date by which that return requires to be made (whether by virtue of regulations under subsection (1) or by or under any other enactment).

Amendment and correction of returns

74 Amendment of return by taxpayer

(1) A person (the “taxpayer”) who has made a tax return may amend the return by notice to Revenue Scotland.

(2) Revenue Scotland may require that notices under this section—
   
   (a) are in a specified form,
   
   (b) contain specified information.

(3) An amendment under this section must be made by the end of the period of 12 months beginning with the relevant date (the “amendment period”).

(4) The relevant date is—
   
   (a) the filing date, or
   
   (b) such other date as the Scottish Ministers may by order prescribe.

75 Correction of return by Revenue Scotland

(1) Revenue Scotland may correct any obvious error or omission in a tax return.

(2) A correction under this section—
   
   (a) is made by notice in writing to the taxpayer, and
   
   (b) is regarded as effecting an amendment of the return.

(3) The reference in subsection (1) to an error includes, for instance, an arithmetical mistake or an error of principle.
(4) A correction under this section must be made by the end of the period of 3 years beginning with the day on which the return was made.

(5) A correction under this section has no effect if the taxpayer rejects it by—
   (a) during the amendment period, amending the return so as to reject the correction,
   or
   (b) after that period, giving a notice rejecting the correction.

(6) A notice under subsection (5)(b) must be given to Revenue Scotland before the end of the period of 3 months beginning with the date of issue of the notice of correction.

CHAPTER 4

REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

76 Notice of enquiry

(1) A designated officer may enquire into a tax return if subsection (2) has been complied with.

(2) Notice of the intention to make an enquiry must be given—
   (a) to the person by whom or on whose behalf the return was made (“the relevant person”),
   (b) before the end of the period of 3 years after the relevant date.

(3) The relevant date is—
   (a) the filing date, if the return was made on or before that date, or
   (b) the date on which the return was made, if the return was made after the filing date.

(4) A return that has been the subject of one notice under this section may not be the subject of another, except a notice given in consequence of an amendment of the return under section 74.

(5) A notice under this section is referred to as a “notice of enquiry”.

77 Scope of enquiry

(1) An enquiry extends to anything contained in the tax return, or required to be contained in the return, that relates—
   (a) to the question whether the relevant person is chargeable to the devolved tax to which the return relates, or
   (b) to the amount of tax chargeable on the relevant person.

(2) Subsection (3) applies if the notice of enquiry is given as a result of the amendment of a return under section 74 after an enquiry into the return has been completed.

(3) The enquiry is limited to—
   (a) matters to which the amendment relates, and
   (b) matters affected by the amendment.
Amendment of return during enquiry

78 Amendment of self-assessment during enquiry to prevent loss of tax

(1) If, at a time when an enquiry is in progress into a tax return, a designated officer forms the opinion—
   (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
   (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice in writing to the relevant person amend the assessment to make good the deficiency.

(2) If the enquiry is one that is limited by sections 77(2) and (3) to matters arising from an amendment of the return, subsection (1) applies only so far as the deficiency is attributable to the amendment.

(3) For the purposes of this section and section 79 the period during which an enquiry is in progress is the whole of the period—
   (a) beginning with the day on which the notice of enquiry is given, and
   (b) ending with the day on which the enquiry is completed.

Referral during enquiry

79 Referral of questions to appropriate tribunal during enquiry

(1) At any time when an enquiry is in progress into a tax return any question arising in connection with the subject-matter of the return may be referred to the appropriate tribunal for determination.

(2) Notice of the referral must be given to the appropriate tribunal jointly by the relevant person and a designated officer.

(3) More than one notice of referral may be given under this section in relation to an enquiry.

80 Withdrawal of notice of referral

A designated officer or the relevant person may withdraw a notice of referral under section 79.

81 Effect of referral on enquiry

(1) While proceedings on a referral under section 79 are in progress in relation to an enquiry—
   (a) no closure notice may be given in relation to the enquiry, and
   (b) no application may be made for a direction to give a closure notice.

(2) Proceedings on a referral are “in progress” where—
   (a) notice of referral has been given and has not been withdrawn, and
   (b) the question referred has not been finally determined.
(3) A question referred has been “finally determined” when—
   (a) it has been determined by the appropriate tribunal, and
   (b) there is no further possibility of the determination being varied or set aside
        (disregarding any power to grant permission to appeal out of time).

82 Effect of determination

(1) A determination under section 79 is binding on the parties to the referral in the same
     way, and to the same extent, as a decision on a preliminary plea in an appeal.

(2) The designated officer conducting the enquiry must take the determination into
     account—
     (a) in reaching conclusions on the enquiry, and
     (b) in the formulation of any amendments of the tax return that may be required to
         give effect to those conclusions.

(3) The question determined may not be reopened on an appeal, except to the extent that it
     could be reopened if it had been determined as a preliminary plea in that appeal.

83 “Appropriate tribunal”

(1) Where the question to be referred under section 79 is of the market value of any land,
    the appropriate tribunal is the Lands Tribunal for Scotland.

(2) In any other case a referral under section 79 is to be made to—
    (a) the First-tier Tribunal,
    (b) where determined by or under tribunal rules, the Upper Tribunal, or
    (c) any other court or tribunal specified by the Scottish Ministers by order.

(3) References to the “appropriate tribunal” in sections 79 and 81 are to be read accordingly.

Completion of enquiry

84 Completion of enquiry

(1) An enquiry under section 76 is completed when a designated officer informs the
    relevant person by a notice in writing (a “closure notice”) that the enquiry is complete
    and states the conclusions reached in the enquiry.

(2) A closure notice must be given no later than 3 years after the relevant date.

(3) A closure notice must either—
    (a) state that in the officer’s opinion no amendment of the tax return is required, or
    (b) make the amendments of the return required to give effect to the officer’s
        conclusions.

(4) A closure notice takes effect when it is issued.

(5) In subsection (2) “relevant date” has the same meaning as in section 76.
85 Direction to complete enquiry

(1) The relevant person may apply to the tribunal for a direction that a closure notice is to be given within a specified period.

(2) The tribunal hearing the application must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.

(3) In this paragraph “the tribunal” means—
   (a) the First-tier Tribunal, or
   (b) where determined by or under tribunal rules, the Upper Tribunal.

CHAPTER 5

REVENUE SCOTLAND DETERMINATIONS

86 Determination of tax chargeable if no return made

(1) This section applies where—
   (a) Revenue Scotland has reason to believe that a person (“P”) is chargeable to a devolved tax,
   (b) P has not made a tax return in relation to that liability, and
   (c) the relevant filing date has passed.

(2) “The relevant filing date” means the date by which Revenue Scotland believes a return was required to be made.

(3) Revenue Scotland may make a determination (a “Revenue Scotland determination”) to the best of its information and belief of the amount of tax to which P is chargeable.

(4) Notice of the determination must be given to P and must state the date on which it is issued.

(5) No Revenue Scotland determination may be made more than 5 years after the relevant date.

(6) The relevant date is—
   (a) the relevant filing date, or
   (b) such other date as the Scottish Ministers may by order prescribe.

87 Determination to have effect as a self-assessment

(1) A Revenue Scotland determination has effect for enforcement purposes as if it were a self-assessment made by P.

(2) In subsection (1) “for enforcement purposes” means for the purposes of Part 10.

(3) Nothing in this section affects any liability of a person to a penalty for failure to make a tax return.
Determination superseded by actual self-assessment

(1) If, after a Revenue Scotland determination has been made, P makes a tax return with respect to the tax in question, the self-assessment included in that return supersedes the determination.

(2) Subsection (1) does not apply to a return made—
   (a) more than 5 years after the power to make the determination first became exercisable, or
   (b) more than 3 months after the date of the determination,
whichever is the later.

(3) Where—
   (a) proceedings have been begun for the recovery of any tax charged by a Revenue Scotland determination, and
   (b) before the proceedings are concluded the determination is superseded by a self-assessment,
the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not yet been paid.

CHAPTER 6
Revenue Scotland assessments

Assessment where loss of tax or of excessive repayment

(1) This section applies if a designated officer comes to the view honestly and reasonably that—
   (a) an amount of devolved tax that ought to have been assessed as tax chargeable on a person has not been assessed,
   (b) an assessment of the tax chargeable on a person is or has become insufficient, or
   (c) relief has been claimed or given that is or has become excessive.

(2) The designated officer may make an assessment of the amount or further amount that ought in the officer’s opinion to be charged in order to make good to the Crown the loss of tax.

Assessment to recover excessive repayment of tax

(1) If an amount of tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid tax.

(2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.
References to “Revenue Scotland assessment”
In this Act “Revenue Scotland assessment” means an assessment under section 89(2) or 90(1), as the case may be.

References to the “taxpayer”
In sections 93 to 96 “taxpayer” means—
(a) in relation to an assessment under section 89, the person chargeable to the tax,
(b) in relation to an assessment under section 90, the person mentioned in section 90(1).

Conditions for making Revenue Scotland assessments

(1) A Revenue Scotland assessment may be made only where the situation mentioned in section 89(1) or 90(1) was brought about carelessly or deliberately by—
(a) the taxpayer,
(b) a person acting on the taxpayer’s behalf, or
(c) a person who was a partner of the taxpayer.

(2) But no Revenue Scotland assessment may be made if—
(a) the situation mentioned in section 89(1) or 90(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and
(b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

Time limits for Revenue Scotland assessments

(1) The general rule is that no Revenue Scotland assessment may be made more than 5 years after the relevant date.

(2) An assessment of a person in any case involving a loss of tax or a situation brought about deliberately by the taxpayer or a related person may be made up to 20 years after the relevant date.

(3) An assessment under section 90 (assessment to recover excessive repayment of tax) is not out of time if it is made within the period of 12 months beginning with the date on which the repayment in question was made.

(4) If the taxpayer has died—
(a) any assessment on the personal representatives must be made within 3 years after the death, and
(b) an assessment is not to be made by virtue of subsection (1) in respect of a relevant date more than 5 years before the death.

(5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on a review or appeal against the assessment.

(6) In this section—
“related person”, in relation to the taxpayer, means—

(a) a person acting on the taxpayer’s behalf, or
(b) a person who was the partner of the taxpayer,

“relevant date” means—

(a) the filing date, or
(b) the date on which the return was made, if the return was made after the filing date.

95 Losses brought about carelessly or deliberately

(1) This section applies for the purposes of sections 93 and 94.

(2) A loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation.

(3) Subsection (4) applies where—

(a) information is provided to Revenue Scotland,
(b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
(c) that person fails to take reasonable steps to inform Revenue Scotland.

(4) Any loss of tax or situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(5) References to a loss of tax or to a situation brought about deliberately by a person include a loss of tax or situation brought about as a result of a deliberate inaccuracy in a document given to Revenue Scotland by or on behalf of that person.

96 Assessment procedure

(1) Notice of a Revenue Scotland assessment must be served on the taxpayer.

(2) The notice must state—

(a) the tax due,
(b) the date on which the notice is issued, and
(c) the time within which any review or appeal against the assessment must be requested.

(3) After notice of the assessment has been served on the taxpayer, the assessment may not be altered except in accordance with the express provisions of this Part or of Part 5.

(4) Where a designated officer has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, the officer may entrust to some other designated officer the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.
CHAPTER 7
RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

97 Relief in case of double assessment
A person who believes that tax has been assessed on that person more than once in respect of the same matter may make a claim to Revenue Scotland for relief against any double charge.

Overpaid tax etc.

98 Claim for relief for overpaid tax etc.
(1) This section applies where—
(a) a person has paid an amount by way of tax but believes the tax was not chargeable, or
(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, but the person believes the tax is not chargeable.
(2) The person may make a claim to Revenue Scotland for the amount to be repaid or discharged.
(3) Where this section applies, Revenue Scotland is not liable to give relief, except as provided in this Part or by or under any other provision of this Act.
(4) For the purposes of this section and sections 100 to 109, an amount paid by one person on behalf of another is treated as paid by the other person.

Order changing tax basis not approved

99 Claim for repayment if order changing tax basis not approved
(1) This section applies where a relevant order has ceased to have effect by virtue of a relevant provision and—
(a) a person has paid an amount by way of tax that would not have been payable but for the order, or
(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, that would not have been chargeable but for the order.
(2) The person may make a claim to Revenue Scotland—
(a) for the amount of tax, and
(b) any related penalty or interest,
to be repaid or discharged to the extent that it was paid, or assessed or determined as chargeable, in consequence of the relevant order.
(3) A “relevant order” is an order mentioned in column 1, and a “relevant provision”, in relation to such an order, is the provision mentioned in the corresponding entry in column 2, of the following table.
Revenue Scotland and Tax Powers Bill
Part 6—Tax returns, enquiries and assessments
Chapter 7—Relief in case of excessive assessment or overpaid tax

### Relevant orders

<table>
<thead>
<tr>
<th>Relevant orders</th>
<th>Relevant provisions</th>
</tr>
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<tbody>
<tr>
<td>Under the 2013 Act—</td>
<td>Section 68(4)(b) of that Act</td>
</tr>
<tr>
<td>(a) a second or subsequent order under section 24(1),</td>
<td></td>
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<tr>
<td>(b) a second or subsequent order under paragraph 3(1) of schedule 19.</td>
<td></td>
</tr>
<tr>
<td>Under the 2014 Act—</td>
<td>Section 41(3)(b) of that Act</td>
</tr>
<tr>
<td>(a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal,</td>
<td></td>
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<tr>
<td>(b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed,</td>
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<tr>
<td>(c) a second or subsequent order under section 13(2) or (5),</td>
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<tr>
<td>(d) an order under section 13(4),</td>
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</tr>
<tr>
<td>(e) an order under section 14(7) other than one which provides only that an earlier order under section 14(7) is not to apply to material.</td>
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</tbody>
</table>

(4) A penalty or interest is related to an amount of tax to the extent that it—

(a) is attributable to the amount, and

(b) would not have been incurred but for the relevant order.

(5) A claim for repayment must be made before the end of the period of 2 years after the relevant date.

(6) The relevant date is—

(a) the filing date, or

(b) the date on which the tax return was made, if the return was made after the filing date.

(7) For the purposes of this section and sections 100 to 103, 105, 107 and 109, an amount paid by one person on behalf of another is treated as paid by the other person.

(8) Expressions used in this section and in the 2014 Act have the meanings given in that Act.

### Defence of unjustified enrichment

100 **Defence to certain claims for relief under section 98 or 99**

It is a defence to a claim for relief made under section 98 or 99 that repayment or, as the case may be, discharge of the amount would unjustly enrich the claimant.
101 Unjustified enrichment: further provision

(1) This section applies where—

(a) there is an amount paid by way of tax (apart from section 100) which would fall to be repaid or discharged to any person (“the taxpayer”), and

(b) the whole or a part of the cost of the payment of that amount to Revenue Scotland has, for practical purposes, been borne by a person other than the taxpayer.

(2) Where, in a case to which this section applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any provisions relating to a tax, that loss or damage is to be disregarded, except to the extent of the quantified amount, in the making of any determination—

(a) of whether or to what extent the repayment or discharge of an amount to the taxpayer would enrich the taxpayer, or

(b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3) In subsection (2) “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions.

(4) The reference in subsection (2) to provisions relating to a tax is a reference to any provisions of—

(a) any enactment, subordinate legislation or EU legislation (whether or not still in force) which relates to that tax or to any matter connected with it, or

(b) any notice published by Revenue Scotland under or for the purposes of any such enactment or subordinate legislation.

102 Unjustified enrichment: reimbursement arrangements

(1) The Scottish Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 100 except where the arrangements—

(a) contain such provision as may be required by the regulations, and

(b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to Revenue Scotland.

(2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 98 or 99 which—

(a) are made by any person for the purpose of securing that the person is not unjustly enriched by the repayment or discharge of any amount in pursuance of the claim, and

(b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland.
(3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—

(a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations,

(b) provision for the repayment of amounts to Revenue Scotland where those amounts are not reimbursed in accordance with the arrangements,

(c) provision requiring interest paid by Revenue Scotland on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay Revenue Scotland,

(d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to Revenue Scotland, or to a designated officer.

(4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—

(a) to make the repayments to Revenue Scotland that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c),

(b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d).

(5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to Revenue Scotland in accordance with the regulations and any such provision may allow for those matters to be determined by Revenue Scotland in accordance with the regulations.

103 Reimbursement arrangements: penalties

(1) Regulations under section 102 may make provision for penalties where a person breaches an obligation imposed by virtue of section 102(4).

(2) The regulations may in particular make provision including provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of repayments which the person would have been liable to make to Revenue Scotland if the obligation had been breached,

(d) about the procedure for issuing penalties,

(e) about appealing penalties,

(f) about enforcing penalties.

(3) But the regulations may not create criminal offences.

(4) Regulations made by virtue of this section may amend any enactment (including this Act).
Other defences to claims

104 Cases in which Revenue Scotland need not give effect to a claim

(1) Revenue Scotland need not give effect to a claim under section 98 if or to the extent that the claim falls within a case described in this section.

(2) Case A is where the amount of tax paid, or liable to be paid, is excessive because of—
   (a) a mistake in a claim, or
   (b) a mistake consisting of making, or failing to make, a claim.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C is where the claimant—
   (a) could have sought relief by taking such steps within a period that has now expired, and
   (b) knew or ought reasonably to have known, before the end of that period, that such relief was available.

(5) Case D is where the claim is made on grounds that—
   (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
   (b) have been put to Revenue Scotland in the course of a review or appeal by the claimant relating to that amount that is treated as having been determined by the tribunal by virtue of section 211 (settling matters in question by agreement).

(6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
   (a) the date on which a relevant appeal in the course of which the ground could have been put forward was determined by a court or tribunal (or is treated as having been so determined),
   (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal,
   (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(7) In subsection (6) “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.

(8) Case F is where the amount in question was paid or is liable to be paid—
   (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Revenue Scotland, or
   (b) in accordance with an agreement between the claimant and Revenue Scotland settling such proceedings.

(9) Case G is where—
   (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to tax, and
   (b) liability was calculated in accordance with the practice generally prevailing at the time.
(10) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(11) For the purposes of subsection (10), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

### Procedure for making claims

105 **Procedure for making claims etc.**

Schedule 3 applies in relation to claims under sections 97 to 99.

106 **Time-limit for making claims**

(1) A claim under section 97 or 98 must be made within the period of 5 years after the date by which the tax return, to which the payment by way of tax, or the assessment or determination relates, required to be made.

(2) A claim under section 98 may not be made by being included in a return.

107 **The claimant: partnerships**

(1) This section is about the application of sections 98 and 99 in a case where either—

(a) (in a case falling within section 98(1)(a) or 99(1)(a)) the person paid the amount in question in the capacity of a responsible partner or representative partner, or

(b) (in a case falling within section 98(1)(b) or 99(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity.

(2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under section 98 or 99 in respect of the amount in question.

(3) The relevant persons are all the persons who would have been liable as responsible partners to pay the amount in question had the payment been due or (in a case falling within section 98(1)(b) or 99(1)(b)) had the assessment or determination been correctly made.

108 **Assessment of claimant in connection with claim**

(1) This section applies where—

(a) a claim is made under section 98,

(b) the grounds for giving effect to the claim also provide grounds for a Revenue Scotland assessment on the claimant in respect of the tax, and

(c) such an assessment could be made but for a relevant restriction.
In a case falling within section 107(1)(a) or (b), the reference to the claimant in subsection (1)(b) of this section includes any relevant person (as defined in section 107(3)).

The following are relevant restrictions—

(a) the restrictions in section 93 (conditions for assessment where return has been delivered),

(b) the expiry of a time limit for making a Revenue Scotland assessment.

Where this section applies—

(a) the relevant restrictions are to be disregarded, and

(b) the Revenue Scotland assessment is not out of time if it is made before the final determination of the claim.

A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on review, appeal or otherwise).

Contract settlements

In sections 98(1)(a) and 99(1)(a) the reference to an amount paid by a person by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.

Subsections (3) to (7) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.

In relation to a claim under section 98 in respect of that amount—

(a) the references to the claimant in section 104(5), (6) and (8) (Cases D, E and F) have effect as if they included the taxpayer,

(b) the reference to the claimant in section 104(9) (Case G) has effect as if it were a reference to the taxpayer, and

(c) the reference to the claimant in section 108(1)(b) has effect as if it were a reference to the taxpayer.

In relation to a claim under section 98 or 99 in respect of that amount, references to tax in schedule 3 (as it applies to a claim under section 98 or 99) include the amount paid under the contract settlement.

Subsection (6) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a Revenue Scotland assessment on the taxpayer in respect of the tax.

Revenue Scotland may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.

The obligations of Revenue Scotland and the taxpayer are discharged to the extent of any set-off under subsection (6).

“Contract settlement” means an agreement made in connection with any person's liability to make a payment to Revenue Scotland by or under this Act or any other enactment.
PART 7
INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1
INVESTIGATORY POWERS: INTRODUCTORY

Overview

Investigatory powers of Revenue Scotland: overview

This Part is arranged as follows—

(a) Chapter 2 sets out Revenue Scotland’s investigatory powers in relation to information and documents,

(b) Chapter 3 contains restrictions on the powers in Chapter 2,

(c) Chapter 4 sets out Revenue Scotland’s investigatory powers in relation to premises and other property,

(d) Chapter 5 sets out further investigatory powers,

(e) Chapter 6 is about reviews and appeals against information notices, and

(f) Chapter 7 sets out offences relating to information notices.

Interpretation

Designated investigation officers

In this Part “designated investigation officer” means a member of staff of Revenue Scotland or other person who is, or a category of members or other persons who are, designated by Revenue Scotland for the purposes of this Part.

Meaning of “tax position”

(1) In this Part unless otherwise stated “tax position”, in relation to a person, means the person’s position as regards any devolved tax, including the person’s position as regards—

(a) past, present and future liability to pay any devolved tax,

(b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any devolved tax, and

(c) claims, elections, applications and notices that have been or may be made or given in connection with the person's liability to pay any devolved tax,

(and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly).

(2) References in this Part to the tax position of a person include the tax position of—

(a) an individual who has died,

(b) a company that has ceased to exist.
Revenue Scotland and Tax Powers Bill
Part 7—Investigatory powers of Revenue Scotland
Chapter 2—Investigatory powers: information and documents

(3) References in this Part to a person’s tax position are to the person’s tax position at any time or in relation to any period, unless otherwise stated.

(4) References to checking a person’s tax position include carrying out an investigation or enquiry of any kind.

113 Meaning of “carrying on a business”

(1) In this Part references to carrying on a business include—
(a) the letting of property,
(b) the activities of a charity, and
(c) the activities of a local authority and any other public authority.

(2) The Scottish Ministers may by regulations provide that for the purposes of this Part—
(a) the carrying on of an activity specified in the regulations, or
(b) the carrying on of such an activity (or any activity) by a person specified in the regulations,
is or is not to be treated as the carrying on of a business.

114 Meaning of “statutory records”

(1) For the purposes of this Part information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve by or under this Act, subject to subsections (2) and (3).

(2) To the extent that any information or document that is required to be kept and preserved by or under this Act—
(a) does not relate to the carrying on of a business, and
(b) is not also required to be kept or preserved by or under any other enactment relating to devolved tax,
it forms part of a person’s statutory records only to the extent that any accounting period or periods to which it relates has or have ended.

(3) Information and documents cease to form part of a person’s statutory records when the period for which they are required to be preserved by or under this Act has expired.

CHAPTER 2
Investigatory powers: information and documents

115 Power to obtain information and documents from taxpayer

(1) If the condition in subsection (2) is met, a designated officer may by notice in writing require a person (“the taxpayer”—
(a) to provide information, or
(b) to produce a document.

(2) That condition is that—
(a) the information or document is reasonably required by the officer for the purpose of checking the taxpayer’s tax position, and
(b) it is reasonable for the taxpayer to be required to provide the information or to produce the document.

(3) In this Part “taxpayer notice” means a notice under this section.

116 Power to obtain information and documents from third party

(1) If the condition in subsection (2) is met, a designated officer may by notice in writing require a person—

(a) to provide information, or
(b) to produce a document.

(2) That condition is that—

(a) the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”), and
(b) it is reasonable for the person to be required to provide the information or to produce the document.

(3) A notice under this section must name the taxpayer to whom it relates, unless the tribunal has approved the giving of the notice and disapplied this requirement under section 117.

(4) In this Part “third party notice” means a notice under this section.

117 Approval of taxpayer notices and third party notices

(1) A designated officer may not give a third party notice without—

(a) the agreement of the taxpayer, or
(b) the approval of the tribunal.

(2) A designated officer may ask for the approval of the tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see sections 144 and 146).

(3) An application for approval under this section may be made without notice (except as required under subsection (4)).

(4) The tribunal may not approve the giving of a taxpayer notice or third party notice unless—

(a) an application for approval is made by, or with the agreement of, a designated investigation officer,
(b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
(c) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and has been given a reasonable opportunity to make representations to a designated officer,
(d) the tribunal has been given a summary of any representations made by that person, and

(e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why a designated officer requires the information and documents.

5 (5) Paragraphs (c) to (e) of subsection (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.

(6) Where the tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the designated officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

118 Copying third party notice to taxpayer

(1) A designated officer who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the tribunal has disapproved this requirement.

15 (2) The tribunal may not disapply that requirement unless—

(a) an application for approval is made by, or with the authority of, a designated investigation officer, and

(b) the tribunal is satisfied that the officer applying has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

119 Power to obtain information and documents about persons whose identity is not known

(1) If the condition in subsection (2) is met, a designated investigation officer may by notice in writing require a person—

(a) to provide information, or

(b) to produce a document.

(2) That condition is that the information or document is reasonably required by the officer for the purpose of checking the tax position of—

(a) a person whose identity is not known to the officer, or

(b) a class of persons whose individual identities are not known to the officer.

30 (3) A designated officer may also give such a notice but only with the approval of the tribunal.

(4) An application for approval may be made without notice.

35 (5) The tribunal may not approve the giving of a notice under subsection (3) unless it is satisfied that—

(a) the notice would meet the condition in subsection (2),

(b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law relating to a devolved tax,
(c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax, and

(d) the information or document to which the notice relates is not readily available from another source.

5  120  Third party notices and notices under section 119: groups of undertakings

(1) This section applies where an undertaking is a parent undertaking in relation to another undertaking (a “subsidiary undertaking”).

(2) Where a third party notice is given to any person for the purpose of checking the tax position of the parent undertaking and any of its subsidiary undertakings—

(a) section 116(3) only requires the notice to state this and name the parent undertaking, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the parent undertaking.

(3) In relation to such a notice—

(a) in sections 117 and 118 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to the parent undertaking, but

(b) in section 144(2)(b) (no review or appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking and each of its subsidiary undertakings.

(4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—

(a) section 116(3) only requires the notice to state this, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement.

(5) In relation to such a notice—

(a) in section 117 (approval of notices), subsections (1) and (4)(e) do not apply;

(b) section 118(1) (copying third party notices to taxpayer) does not apply,

(c) section 129 (restriction on giving taxpayer notice following a tax return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings), and

(d) in section 144(2)(b) (no review or appeal in relation to a taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.

(6) Where a notice is given under section 119 to the parent undertaking for the purposes of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice, subsections (3) and (5) of that section (approval of tribunal) have effect as if they permitted (but did not require) the officer to obtain the approval of the tribunal.
(7) In this section “parent undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given in sections 1161 and 1162 of, and schedule 7 to, the Companies Act 2006 (c.46).

121 Third party notices and notices under section 119: partnerships

(1) This section applies where a business is carried on by two or more persons in partnership.

(2) Where, in respect of a transaction entered into as buyer by or on behalf of the members of the partnership, any partner has made a tax return, section 129 has effect as if that return had been made by each of the partners.

(3) Where a third party notice is given for the purpose of checking the tax position of more than one of the partners (in their capacity as such)—

   (a) section 116(3) only requires the notice to state this and give a name in which the partnership is registered for any purpose, and

   (b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the partnership.

(4) In relation to such a notice given to a person other than one of the partners—

   (a) in sections 117 and 118 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to at least one of the partners, and

   (b) in section 144(2)(b) (no review or appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such)—

   (a) in section 117 (approval of notices), subsections (1) and (4)(e) do not apply,

   (b) section 118(1) (copying third party notices to taxpayer) does not apply, and

   (c) in section 144(2)(b) (no review or appeal in relation to a taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

(6) Where a notice is given under section 119 to one of the partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice, subsections (3) and (5) of that section (approval of tribunal) have effect as if they permitted (but did not require) the officer to obtain the approval of the tribunal.

122 Power to obtain information about persons whose identity can be ascertained

(1) A designated investigation officer may by notice in writing require a person (“P”) to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that—
(a) the taxpayer’s identity is not known to the officer, but
(b) the officer holds information from which the taxpayer’s identity can be ascertained.

(4) Condition C is that the officer has reason to believe that—

(a) P will be able to ascertain the taxpayer’s identity from the information held by the officer, and
(b) P obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “Relevant information” means all or any of the following—

(a) name,
(b) last known address, and
(c) date of birth (in the case of an individual).

(7) This section applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “taxpayer” are to be read accordingly).

123 Notices

(1) In this Part, “information notice” means a notice under section 115, 116, 119 or 122.

(2) An information notice may specify or describe the information or documents to be provided or produced.

(3) If an information notice is given with the approval of the tribunal, it must state that it is given with that approval.

(4) A decision of the tribunal under section 117, 118 or 119 is final.

124 Complying with information notices

(1) Where a person is required by an information notice to provide information or produce a document, the person must do so—

(a) within such period, and
(b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.

(2) Where an information notice requires a person to produce a document, it must be produced—

(a) at a place agreed to by that person and a designated officer, or
(b) at such place as a designated officer may reasonably specify.

(3) A designated officer must not specify for the purposes of subsection (2)(b) a place that is used solely as a dwelling.

(4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.
125 Producing copies of documents

(1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Scottish Ministers.

(2) Subsection (1) does not apply where—
   (a) the notice requires the person to produce the original document, or
   (b) a designated officer subsequently makes a request in writing to the person for the original document.

(3) Where a designated officer requests a document under subsection (2)(b), the person to whom the request is made must produce the document—
   (a) within such period, and
   (b) at such time and by such means (if any), as is reasonably requested by the designated officer.

126 Further provision about powers relating to information notices

The Scottish Ministers may by regulations make further provision about—
   (a) the form and content of information notices,
   (b) the time periods for complying with information notices, and
   (c) the manner of complying with information notices.

CHAPTER 3

Restrictions on powers in Chapter 2

127 Information notices: general restrictions

(1) An information notice requires a person to produce a document only if it is in the person’s possession or power.

(2) An information notice may not require a person to produce a document if the whole of the document originates more than 5 years before the date of the notice, unless the notice is given by, or with the agreement of, a designated investigation officer.

(3) An information notice given for the purposes of checking the tax position of a person who has died may not be given more than 4 years after the person’s death.

128 Types of information

(1) An information notice does not require a person to provide or produce—
   (a) information that relates to the conduct of a pending review or appeal relating to tax (or any part of a document containing such information), or
   (b) journalistic material (or information contained in such material).

(2) In subsection (1)(b) “journalistic material” means material acquired or created for the purposes of journalism.
(3) Material is to be treated as journalistic material if it is in the possession of someone who acquired or created it for the purposes of journalism.

(4) A person who receives material from someone who intends that the recipient will use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(5) An information notice does not require a person to provide or produce personal records or information contained in such records, subject to subsection (7).

(6) In subsection (5) “personal records” means documentary and other records concerning an individual (“P”) (whether living or dead) who can be identified from them and relating—

(a) to P’s physical or mental health,

(b) to spiritual counselling or assistance given or to be given to P, or

(c) to counselling or assistance given or to be given to P, for the purposes of P’s personal welfare, by any voluntary organisation or by any individual who—

(i) by reason of an office or occupation has responsibilities for P’s personal welfare, or

(ii) by reason of an order of a court has responsibilities for P’s supervision.

(7) An information notice may require a person—

(a) to produce documents (or copies of documents) that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and

(b) to provide any information contained in such records that is not personal information.

129 Taxpayer notices following a tax return

(1) Where a person has made a tax return in relation to a devolved tax in relation to an accounting period, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that tax in relation to that accounting period.

(2) Where a person has made a tax return in relation to a devolved tax in relation to a transaction, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that transaction.

(3) Subsections (1) and (2) do not apply where (or to the extent that) either of condition A or B is met.

(4) Condition A is that a notice of enquiry has been given in respect of—

(a) the return, or

(b) a claim or election (or an amendment of a claim or election) made by the person in relation to—

(i) the accounting period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”), or

(ii) the transaction to which the return relates, and the enquiry has not been completed.
(5) Condition B is that, as regards the person, a designated officer has reason to suspect that—

(a) an amount that ought to have been assessed to relevant tax for the accounting period or, as the case may be, the transaction may not have been assessed,

(b) an assessment to relevant tax for the accounting period or, as the case may be, the transaction may be or have become insufficient, or

(c) relief from relevant tax given for the accounting period or, as the case may be, the transaction may be or have become excessive.

(6) References in this section to the person who made the return are only to that person in the capacity in which the return was made.

### 130 Protection for privileged communications between legal advisers and clients

(1) An information notice does not require a person—

(a) to provide privileged information, or

(b) to produce any part of a document that is privileged.

(2) For the purposes of this Part, information or a document is privileged if it is information or a document in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.

(3) The Scottish Ministers may by regulations make provision for the resolution by the tribunal of disputes as to whether any information or document is privileged.

(4) The regulations may, in particular, make provision as to the custody of a document while its status is being decided.

### 131 Protection for auditors

(1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—

(a) to provide information held in connection with the performance of the person’s functions under that enactment, or

(b) to produce documents which are that person’s property and which were created by that person or on that person’s behalf for or in connection with the performance of those functions.

(2) Subsection (1) has effect subject to section 132.

### 132 Auditors: supplementary

(1) Section 131(1) does not have effect in relation to—

(a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, Revenue Scotland, or

(b) a document which contains such information.

(2) In the case of a notice given under section 119, section 131(1) does not have effect in relation to—
CHAPTER 4

INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

133 Power to inspect business premises

(1) If the condition in subsection (2) is met, a designated officer may enter a person’s business premises and inspect—

(a) the premises,
(b) business assets that are on the premises,
(c) business documents that are on the premises.

(2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the person’s tax position.

(3) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

(4) In this Chapter—

“business assets” means assets that a designated officer has reason to believe are owned, leased or used in connection with the carrying on of a business by any person (but does not include documents),

“business documents” means documents or copies of documents—

(a) that relate to the carrying on of a business by any person, and
(b) that form part of any person’s statutory records,

“business premises”, in relation to a person, means premises (or any part of premises) that a designated officer has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person,

“premises” includes any building or structure, any land and any means of transport.

134 Power to inspect business premises of involved third parties

(1) If the condition in subsection (2) is met, a designated officer may enter business premises of an involved third party and inspect—
Revenue Scotland and Tax Powers Bill
Part 7—Investigatory powers of Revenue Scotland
Chapter 4—Investigatory powers: premises and other property

(a) the premises,
(b) business assets that are on the premises, and
(c) relevant documents that are on the premises.

(2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the position of any person or class of persons as regards a relevant devolved tax.

(3) In this section—
“involved third party” means a person who is, or a category of persons who are, specified by the Scottish Ministers by order,
“relevant documents” means such documents as may be so specified,
“relevant devolved tax” means such devolved tax as may be so specified.

(4) The powers under this section may be exercised whether or not the identity of that person is, or the individual identities of those persons are, known to the designated officer.

(5) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

135 Carrying out inspections under section 133 or 134

(1) An inspection under section 133 or 134 may be carried out only—
(a) at a time agreed to by the occupier of the premises, or
(b) if subsection (2) is satisfied, at any reasonable time.

(2) This subsection is satisfied if—
(a) the occupier of the premises has been given at least 7 days’ notice of the time of the inspection (whether in writing or otherwise), or
(b) the inspection is carried out by, or with the agreement of, a designated investigation officer.

(3) A designated officer seeking to carry out an inspection under subsection (2)(b) must provide a notice in writing as follows—
(a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,
(b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person,
(c) in any other case, the notice must be left in a prominent place on the premises.

(4) The notice referred to in subsection (3) must state the possible consequences of obstructing the designated officer in the exercise of the power.

(5) If a notice referred to in subsection (3) is given in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.
136 **Power to inspect property for valuation etc.**

(1) A designated officer may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person’s tax position.

(2) A designated officer may enter premises and inspect—

(a) the premises,

(b) any other property on the premises,

for the purpose of valuing, measuring or determining the character of the premises or property.

(3) Subsection (2) only applies if the valuation, measurement or determination is reasonably required for the purposes of checking any person’s tax position.

(4) A person who the designated officer considers is needed to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.

137 **Carrying out inspections under section 136**

(1) An inspection under section 136 may be carried out only if condition A or B is met.

(2) Condition A is that—

(a) the inspection is carried out at a time agreed to by a relevant person, and

(b) the relevant person has been given notice in writing of the agreed time of the inspection.

(3) “Relevant person” means—

(a) the occupier of the premises, or

(b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.

(4) Condition B is that—

(a) the inspection has been approved by the tribunal, and

(b) any relevant person specified by the tribunal has been given at least 7 days’ notice in writing of the time of the inspection.

(5) A notice under subsection (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power.

(6) If a notice is given under this section in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.

(7) A designated officer seeking to carry out an inspection under section 136 must produce evidence of authority to carry out the inspection if asked to do so by—

(a) the occupier of the premises, or

(b) any other person who appears to the officer to be in charge of the premises or property.
Approval of tribunal for premises inspections

138 Approval of tribunal for premises inspections

(1) A designated officer may ask the tribunal to approve an inspection under section 133, 134 or 136 (and for the effect of obtaining such approval see section 167 (penalties for failure to comply or obstruction)).

(2) An application for approval under this section may be made without notice (except as required under subsection (4)).

(3) The tribunal may not approve an inspection under section 133 or 134 unless—
   (a) an application for approval is made by, or with the agreement of, a designated investigation officer, and
   (b) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(4) The tribunal may not approve an inspection under section 136 unless—
   (a) an application for approval is made by, or with the agreement of, a designated investigation officer,
   (b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the designated officer about that inspection,
   (c) the occupier of the premises has been given a reasonable opportunity to make such representations,
   (d) the tribunal has been given a summary of any representations made, and
   (e) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(5) Subsection (4)(c) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.

(6) A decision of the tribunal under this section is final.

Other powers in relation to premises

139 Power to mark assets and to record information

The powers under sections 133 to 137 include—

(a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and

(b) power to obtain and record information (whether electronically or otherwise) relating to the premises, property, assets and documents that have been inspected.

140 Power to take samples

(1) If the condition in subsection (2) is met, a designated officer may enter premises and take samples of material on the premises.

(2) That condition is that the designated officer has reason to believe that the taking of the sample is reasonably required for the purpose of checking a person’s tax position.
The powers under this section do not include power to enter any part of the premises that is used as a dwelling.

Any sample taken under this section is to be disposed of in such manner as Revenue Scotland may determine.

**Restriction on inspection of documents**

A designated officer may not inspect a document under this Chapter if (or to the extent that), by virtue of Chapters 2 and 3, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

**CHAPTER 5**

**FURTHER INVESTIGATORY POWERS**

**142 Power to copy and remove documents**

(1) Where a document is produced to, or inspected by, a designated officer, the officer may take copies of, or make extracts from, the document.

(2) Where a document is produced to, or inspected by, a designated officer, the officer may—
   
   (a) remove the document at a reasonable time, and
   
   (b) retain it for a reasonable period, if it appears to the officer to be necessary to do so.

(3) Where a document is removed in accordance with subsection (2), the person who produced the document may request—
   
   (a) a receipt for the document, and
   
   (b) if the document is reasonably required for any purpose, a copy of the document.

(4) A designated officer must comply with a request under subsection (3) without charge.

(5) The removal of a document under this section is not to be regarded as breaking any lien claimed on the document.

(6) Where a document removed under this section is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

(7) In this section, references to a document include a copy of a document.

**143 Computer records**

(1) This section applies to any provision of this Part or Part 8 (penalties) that—
   
   (a) requires a person to produce a document or cause a document to be produced,
   
   (b) requires a person to permit a designated officer—
   
   (i) to inspect a document, or
   
   (ii) to make or take copies of or extracts from or remove a document,
(c) makes provision about penalties or offences in connection with the production or inspection of documents, including with the failure to produce or permit the inspection of documents, or
(d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).

(2) A provision to which this section applies has effect as if—
(a) any reference in the provision to a document were a reference to anything in which information of any description is recorded, and
(b) any reference in the provision to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

(3) A designated officer may, at any reasonable time, obtain access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.

(4) In subsection (3) “relevant document” means a document that a person has been, or may be, required by or under a provision of this Part—
(a) to produce or cause to be produced, or
(b) to permit a designated officer—
(i) to inspect,
(ii) to make or take copies of or extracts from, or
(iii) to remove.

(5) A designated officer may require—
(a) the person by whom or on whose behalf the computer is or has been so used, or
(b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
to provide the designated officer with such reasonable assistance as may be required for the purposes of subsection (3).

(6) A person who—
(a) obstructs the exercise of a power conferred by this section, or
(b) fails to comply within a reasonable time with a requirement under subsection (5),
is liable to a penalty of £300.

(7) Section 149 and sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167.
144 Review or appeal against information notices

(1) This section applies where a person seeks, under Part 11, to have a decision in relation to the giving of an information notice or in relation to any requirement in such a notice reviewed or appealed.

(2) The following are not appealable decisions for the purposes of section 198(1)(f)—

(a) a decision to give a taxpayer notice or third party notice if the tribunal approved the giving of the notice under section 117,

(b) a decision to include a requirement in such a notice if it is a requirement to provide any information, or produce any document, that forms part of a taxpayer’s statutory records.

(3) A person may give notice of review or notice of appeal in relation to a decision to give a third party notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

(4) But in a case to which section 120(4) or 121(5) applies, a notice of review or notice of appeal may be given on any grounds.

(5) A person may give notice of review or notice of appeal in relation to a decision to give a notice under section 119 or 122, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

(6) But in a case to which section 120(6) or 121(6) applies—

(a) a notice of review or notice of appeal may be given on any grounds,

(b) a notice of review or notice of appeal may not be given in relation to a decision to include a requirement in a notice under section 119—

(i) if it is a requirement to provide any information, or produce any document, that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings, or

(ii) if it is a requirement to provide any information, or produce any document, that forms part of the partner’s statutory records.

(7) In subsection (6)(b)(i), “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meanings as in section 120.

145 Disposal of reviews and appeals in relation to information notices

(1) This section applies where a person gives notice of review or notice of appeal in relation to a decision relating to an information notice or a requirement in it.

(2) Where the conclusions of the review under section 203 uphold or vary the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement within such period as is reasonably specified in writing by a designated officer.
(3) But subsection (2) does not apply where section 205(2) applies (conclusions of review not to have effect of settlement agreement if mediation entered into or notice of appeal given).

(4) Where the tribunal, under section 209 (disposal of appeals), upholds or varies the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement—
   (a) within the period specified by the tribunal, or
   (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by a designated officer following the tribunal’s decision.

(5) A decision of the tribunal on an appeal to which this section applies is final.

CHAPTER 7

OFFENCES RELATING TO INFORMATION NOTICES

146 Offence of concealing etc. documents following information notice

(1) A person commits an offence if—
   (a) the person is required to produce a document by an information notice,
   (b) the tribunal approved the giving of the notice in accordance with section 117 or 119, and
   (c) the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) that document.

(2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).

(3) Subsection (1) does not apply, in a case to which section 125 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was so produced unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).

(4) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

147 Offence of concealing etc. documents following information notification

(1) A person commits an offence if the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document after the person has been informed by a designated officer in writing that—
   (a) the document is to be, or is likely to be, the subject of an information notice addressed to that person, and
   (b) a designated officer intends to seek the approval of the tribunal to the giving of the notice under section 117 or 119 in respect of the document.
(2) A person does not commit an offence under this section if the person acts after—
(a) at least 6 months has expired since the person was (or was last) so informed, or
(b) an information notice has been given to the person requiring the document to be produced.

(3) A person who commits an offence under subsection (1) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

PART 8
Penalties

CHAPTER 1
Penalties: introductory

Overview

148 Penalties: overview
This Part is arranged as follows—
Chapter 2 sets out penalties relating to failure to make tax returns or to pay tax,
Chapter 3 sets out penalties relating to errors,
Chapter 4 sets out penalties relating to investigations, and
Chapter 5 sets out other administrative penalties.

Double jeopardy

149 Double jeopardy
A person is not liable to a penalty under this Part in respect of anything in respect of which the person has been convicted of an offence.

CHAPTER 2
Penalties for failure to make returns or pay tax

150 Penalty for failure to make returns
(1) A penalty is payable by a person (“P”) where P fails to make a tax return on or before the filing date (see section 73).
(2) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision—
(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of tax which P would have been liable to pay if the return had been made,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(3) Regulations under subsection (2) may not create criminal offences.

(4) Regulations under subsection (2) may modify any enactment (including this Act).

151 **Penalty for failure to pay tax**

(1) A penalty is payable by a person (“P”) where P fails to pay tax on or before the date payment was due.

(2) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision—

(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of tax which the person has failed to pay,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(3) Regulations under subsection (2) may not create criminal offences.

(4) Regulations under subsection (2) may modify any enactment (including this Act).

152 **Interaction of penalties under section 150 with other penalties**

(1) Where P is liable to a penalty under any provision made under section 150 which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to “any other penalty” does not include—

(a) a penalty under any other provision made under section 150, or
(b) a penalty under any provision made under section 151.

153 **Interaction of penalties under section 151 with other penalties**

(1) Where P is liable to a penalty under any provision made under section 151 which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to “any other penalty” does not include—

(a) a penalty under any other provision made under section 151, or
(b) a penalty under any provision made under section 150.
Reduction in penalty under section 150 for disclosure

(1) Revenue Scotland may reduce a penalty under provision made under section 150 where P discloses information which has been withheld by a failure to make a return (“relevant information”).

(2) P discloses relevant information by—
   (a) telling Revenue Scotland about it,
   (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
   (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

(3) Reductions under this section may reflect—
   (a) whether the disclosure was prompted or unprompted, and
   (b) the quality of the disclosure.

(4) Disclosure of relevant information—
   (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
   (b) otherwise, is “prompted”.

(5) In relation to disclosure, “quality” includes timing, nature and extent.

Suspension of penalty under section 151 during currency of agreement for deferred payment

(1) This section applies if—
   (a) P fails to pay an amount of tax when it becomes due and payable,
   (b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and
   (c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under provision made under section 151 for failing to pay that amount, P is not liable to that penalty.

(3) But if—
   (a) P breaks the agreement, and
   (b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),

P becomes liable to that penalty at the date of the notice.

(4) P breaks an agreement if—
   (a) P fails to pay the amount of tax in question when the deferral period ends, or
   (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.
(5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

156 Special reduction in penalty under sections 150 and 151

(1) Revenue Scotland may reduce a penalty under any provision made under section 150 or 151 if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

(b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

157 Reasonable excuse for failure to make return or pay tax

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under provision made under section 150 does not arise in relation to that failure.

(2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under provision made under section 151 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

158 Assessment of penalties under sections 150 and 151

(1) Where P becomes liable to a penalty under provision made under section 150 or 151, Revenue Scotland must—

(a) assess the penalty,

(b) notify the person, and
(c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.

(2) A penalty under provision made under section 150 or 151 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under provision made under section 150 or 151—
(a) is to be treated for enforcement purposes as an assessment to tax, and
(b) may be combined with an assessment to tax.

(4) In relation to penalties under provision made under section 150—
(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
(b) a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.

(5) In relation to penalties under provision made under section 151—
(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,
(b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.

(6) An amendment made under subsection (5)(b)—
(a) does not affect when the penalty must be paid,
(b) may be made after the last day on which the assessment in question could have been made under section 159.

159 Time limit for assessment of penalties under sections 150 and 151

(1) An assessment of a penalty under provision made under section 150 or 151 in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2) Date A is the last day of the period of 2 years beginning with—
(a) in the case of failure to make a return, the filing date, or
(b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.

(3) Date B is the last day of the period of 12 months beginning with—
(a) in the case of provision made under section 150—
(i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
(ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or
(b) in the case of provision made under section 151—
Part 8—Penalties

Chapter 3—Penalties relating to errors

(i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
(ii) if there is no such assessment, the date on which that amount of tax is ascertained.

(4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—

(a) an appeal could be brought, or
(b) an appeal that has been brought has not been determined or withdrawn.

CHAPTER 3

Penalties relating to errors

160 Penalty for error in taxpayer document

(1) A penalty is payable by a person (“P”) where—

(a) P gives Revenue Scotland a relevant document (see subsection (7)), and
(b) conditions A and B below are met.

(2) Condition A is that the document contains an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,
(b) a false or inflated statement of a loss, exemption or relief, or
(c) a false or inflated claim for relief or to repayment of tax.

(3) Condition B is that the inaccuracy was—

(a) deliberate on P’s part (“a deliberate inaccuracy”), or
(b) careless on P’s part (“a careless inaccuracy”).

(4) An inaccuracy is careless if it is due to a failure by P to take reasonable care.

(5) An inaccuracy in a document given by P to Revenue Scotland, which was neither deliberate nor careless on P’s part when the document was given, is to be treated as careless if P—

(a) discovered the inaccuracy at some later time, and
(b) did not take reasonable steps to inform Revenue Scotland.

(6) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

(7) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision—

(a) about what are relevant documents,
(b) about the amounts of penalties,
(c) for different amounts of penalties for deliberate inaccuracies and careless inaccuracies,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(8) Regulations under subsection (7) may not create criminal offences.

(9) Regulations under subsection (7) may modify any enactment (including this Act).

161  **Suspension of penalty for careless inaccuracy under section 160**

(1) Revenue Scotland may suspend all or part of a penalty for a careless inaccuracy under section 160 by notice in writing to P.

(2) A notice must specify—

(a) what part of the penalty is to be suspended,

(b) a period of suspension not exceeding 2 years, and

(c) conditions of suspension to be complied with by P.

(3) Revenue Scotland may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under section 160 for careless inaccuracy.

(4) A condition of suspension may specify—

(a) action to be taken, and

(b) a period within which it may be taken.

(5) On the expiry of the period of suspension—

(a) if P satisfies Revenue Scotland that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and

(b) otherwise, the suspended penalty or part becomes payable.

(6) If, during the period of suspension of all or part of a penalty under section 160, P becomes liable for another penalty under that section, the suspended penalty or part becomes payable.

162  **Penalty for error in taxpayer document attributable to another person**

(1) A penalty is payable by a person (“T”) where—

(a) another person (“P”) gives Revenue Scotland a relevant document (see subsection (4)),

(b) the document contains a relevant inaccuracy, and

(c) the inaccuracy was attributable—

(i) to T deliberately supplying false information to P (whether directly or indirectly), or

(ii) to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.

(2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,

(b) a false or inflated statement of a loss, exemption or relief, or
Revenue Scotland and Tax Powers Bill
Part 8—Penalties
Chapter 3—Penalties relating to errors

(c) a false or inflated claim for relief or to repayment of tax.

(3) A penalty is payable by T under this section in respect of an inaccuracy whether or not P
is liable to a penalty under section 160 in respect of the same inaccuracy.

(4) The Scottish Ministers may by regulations make further provision about penalties under
this section, including provision about—

(a) what are relevant documents,
(b) the amounts of penalties,
(c) the procedure for issuing penalties,
(d) appealing penalties,
(e) enforcing penalties.

(5) Regulations under subsection (4) may not create criminal offences.

(6) Regulations under subsection (4) may modify any enactment (including this Act).

163 Under-assessment by Revenue Scotland

(1) A penalty is payable by a person (“P”) where—

(a) a Revenue Scotland assessment understates P’s liability to a relevant tax, and
(b) P has failed to take reasonable steps to notify Revenue Scotland, within the period
of 30 days beginning with the date of the assessment, that it is an under-
assessment.

(2) In deciding what steps (if any) were reasonable, Revenue Scotland must consider—

(a) whether P knew, or should have known, about the under-assessment, and
(b) what steps would have been reasonable to take to notify Revenue Scotland.

(3) The Scottish Ministers may by regulations make further provision about penalties under
this section, including provision about—

(a) what are relevant taxes,
(b) the amounts of penalties,
(c) the procedure for issuing penalties,
(d) appealing penalties,
(e) enforcing penalties.

(4) Regulations under subsection (3) may not create criminal offences.

(5) Regulations under subsection (3) may modify any enactment (including this Act).

(6) In this section—

(a) “Revenue Scotland assessment” includes “Revenue Scotland determination”, and
(b) accordingly, references to an under-assessment include an under-determination.

164 Special reduction in penalty under sections 160, 162 and 163

(1) Revenue Scotland may reduce a penalty under any provision made under section 160,
162 or 163 if it thinks it right to do so because of special circumstances.
(2) In subsection (1) “special circumstances” does not include—
   (a) ability to pay, or
   (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—
   (a) remitting a penalty entirely,
   (b) suspending a penalty, and
   (c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

165 Reduction in penalty under sections 160, 162 and 163 for disclosure

(1) Revenue Scotland may reduce a penalty under provision made under sections 160, 162 or 163 where a person makes a qualifying disclosure.

(2) A “qualifying disclosure” means disclosure of—
   (a) an inaccuracy,
   (b) a supply of false information or withholding of information, or
   (c) a failure to disclose an under-assessment.

(3) A person makes a qualifying disclosure by—
   (a) telling Revenue Scotland about it,
   (b) giving Revenue Scotland reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
   (c) allowing Revenue Scotland access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(4) Reductions under this section may reflect—
   (a) whether the disclosure was prompted or unprompted, and
   (b) the quality of the disclosure.

(5) Disclosure of relevant information—
   (a) is “unprompted” if made at a time when the person making it has no reason to believe that Revenue Scotland has discovered or is about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
   (b) otherwise, is “prompted”.

(6) In relation to disclosure, “quality” includes timing, nature and extent.
166  **Assessment of penalties under sections 160, 162 and 163**

(1) Where a person becomes liable to a penalty under provision made under section 160, 162 or 163, Revenue Scotland must—

(a) assess the penalty,

(b) notify the person, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under provision made under section 160, 162 or 163 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under provision made under section 160, 162 or 163—

(a) is to be treated for enforcement purposes as an assessment to tax, and

(b) may be combined with an assessment to tax.

(4) An assessment of a penalty under section 160 or 162 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the decision correcting the inaccuracy, or

(b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(5) An assessment of a penalty under section 163 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(6) In subsections (4) and (5) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(7) Subject to subsections (4) and (5), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

### Chapter 4

**Penalties relating to investigations**

167  **Penalties for failure to comply or obstruction**

(1) This section applies to a person who—

(a) fails to comply with an information notice, or

(b) deliberately obstructs a designated officer in the course of an inspection that has been approved by the tribunal under section 138.

(2) The person is liable to a penalty of £300.
(3) The reference to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document in breach of section 171 or 172.

168 Daily default penalties for failure to comply or obstruction

(1) This section applies if the failure or obstruction mentioned in section 167(1) continues after the date on which a penalty is imposed under that section in respect of the failure or obstruction.

(2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

169 Penalties for inaccurate information or documents

(1) This section applies if—
   (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
   (b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is careless or deliberate.

(3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.

(4) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform Revenue Scotland at that time.

(5) Condition C is that the person—
   (a) discovers the inaccuracy some time later, and
   (b) fails to take reasonable steps to inform Revenue Scotland.

(6) The person is liable to a penalty not exceeding £3,000.

(7) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

170 Power to change amount of penalties under sections 167, 168 and 169

(1) If it appears to the Scottish Ministers that there has been a change in the value of money since the last relevant date, they may by order substitute for the sums for the time being set out in sections 167(2), 168(2) and 169(6) such other sums as appear to them to be justified by the change.

(2) In subsection (1), in relation to a specified sum, “relevant date” means—
   (a) the date on which this section came into force, and
   (b) each date on which the power conferred by subsection (1) has been exercised in relation to that sum.

(3) An order under this section does not apply to—
   (a) any failure or obstruction which began before the date on which it comes into force, and
   (b) an inaccuracy in any information or document provided to Revenue Scotland before that date.
Revenue Scotland and Tax Powers Bill
Part 8—Penalties
Chapter 4—Penalties relating to investigations

171 Concealing, destroying etc. documents following information notice

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document that is the subject of an information notice addressed to the person, unless subsection (2) or (3) applies.

(2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).

(3) Subsection (1) does not apply, in a case to which section 125 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that section unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).

172 Concealing, destroying etc. documents following information notification

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document if a designated officer has informed the person that the document is to be, or is likely to be, the subject of an information notice addressed to that person, unless subsection (2) applies.

(2) Subsection (1) does not apply if the person acts after—

(a) at least 6 months has expired since the person was (or was last) so informed, or

(b) an information notice has been given to the person requiring the document to be produced.

173 Failure to comply with time limit

A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 167 or 168 if the person did it within such further time (if any) as a designated officer may have allowed.

174 Reasonable excuse for failure to comply or obstruction

(1) Liability to a penalty under section 167 or 168 does not arise if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for the failure or the obstruction of a designated officer.

(2) For the purposes of this section—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control,

(b) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and

(c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.
175  **Assessment of penalties under sections 167, 168 and 169**

(1) Where a person becomes liable for a penalty under section 167, 168 or 169 Revenue Scotland must—

(a) assess the penalty, and

(b) notify the person.

(2) An assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to subsection (3).

(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the latest of the following—

(a) the date on which the person became liable to the penalty,

(b) the end of the period in which notice of an appeal against the information notice could have been given, and

(c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.

(4) An assessment of a penalty under section 169 must be made—

(a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of a designated officer, and

(b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

176  **Enforcement of penalties under sections 167, 168 and 169**

(1) A penalty under section 167, 168 or 169 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under section 175 was issued,

(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,

(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or

(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 167, 168 or 169 is to be treated for enforcement purposes as an assessment to tax.

177  **Increased daily default penalty**

(1) This section applies if—

(a) a penalty under section 168 is assessed under section 175 in respect of a person’s failure to comply with a notice under section 119,
(b) the failure continues for more than 30 days beginning with the date on which
notification of that assessment was issued, and
(c) the person has been told that an application may be made under this section for an
increased daily penalty to be imposed.

(2) If this section applies, a designated officer may make an application to the tribunal for
an increased daily penalty to be imposed on the person.

(3) If the tribunal decides that an increased daily penalty should be imposed, then for each
applicable day on which the failure continues—
(a) the person is not liable to a penalty under section 168 for the failure, and
(b) the person is liable instead to a penalty under this section of an amount
determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.

(5) In determining the amount the tribunal must have regard to—
(a) the likely cost to the person of complying with the notice,
(b) any benefits to the person of not complying with it, and
(c) any benefits to anyone else resulting from the person’s non-compliance.

(6) Section 170 applies in relation to the sum specified in subsection (4) as it applies in
relation to the sums mentioned in section 170(1).

(7) If a person becomes liable to a penalty under this section, Revenue Scotland must notify
the person.

(8) The notification must specify the day from which the increased penalty is to apply.

(9) That day and any subsequent day is an “applicable day” for the purposes of subsection
(3).

178 Enforcement of increased daily default penalty

(1) A penalty under section 177 must be paid before the end of the period of 30 days
beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 177 is to be treated for enforcement purposes as an assessment
to tax.

179 Tax-related penalty

(1) This section applies where—
(a) a person becomes liable to a penalty under section 167,
(b) the failure or obstruction continues after a penalty is imposed under that section,
(c) a designated officer has reason to believe that, as a result of the failure or
obstruction, the amount of tax that the person has paid, or is likely to pay, is
significantly less than it would otherwise have been,
(d) before the end of the period of 12 months beginning with the relevant date, a
designated officer makes an application to the Upper Tribunal for an additional
penalty to be imposed on the person, and
(e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.

(2) The person is liable to a penalty of an amount decided by the Upper Tribunal.

(3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.

(4) Where a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(5) Any penalty under this section is in addition to the penalty or penalties under section 167 or 168.

(6) In subsection (1)(d), the “relevant date” means—

(a) in a case involving an information notice against which a person may appeal, the latest of—

(i) the date on which the person became liable to the penalty under section 167,

(ii) the end of the period in which notice of an appeal against the information notice could have been given, and

(iii) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn, and

(b) in any other case, the date on which the person became liable to the penalty under section 167.

180 Enforcement of tax-related penalty

(1) A penalty under section 179 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 179 is to be treated for enforcement purposes as an assessment to tax.

CHAPTER 5

OTHER ADMINISTRATIVE PENALTIES

181 Penalty for failure to register for tax

(1) A penalty is payable by a person where the person fails to comply with a requirement imposed by or under section 22 or 23 of the 2014 Act.

(2) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision about—

(a) the amounts of penalties,

(b) the procedure for issuing penalties,

(c) appealing penalties,

(d) enforcing penalties.

(3) Regulations under subsection (2) may not create criminal offences.

(4) Regulations under subsection (2) may modify any enactment (including this Act).
PART 9
INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax
(1) Interest is payable on the amount of any unpaid tax from the end of the period of 30 days after the relevant date until the tax is paid.

(2) For the purposes of this section, the “relevant date” is the date for payment of the tax which is specified by the Scottish Ministers in regulations.

(3) If an amount is lodged with Revenue Scotland in respect of the tax payable on a transaction, the amount on which interest is payable is reduced by that amount.

(4) Interest under this section is calculated at the rate specified in provision made under section 185.

183 Interest on penalties
(1) Interest is payable on the amount of any unpaid penalty from the date on which the penalty is due to be paid until it is paid.

(2) Interest under this section is calculated at the rate specified in provision made under section 185.

184 Interest on repayment of tax overpaid etc.
(1) A repayment by Revenue Scotland to which this section applies must be made with interest for the period between the relevant date and the date when the repayment is issued.

(2) This section applies to—
   (a) any repayment of tax,
   (b) any repayment of a penalty, and
   (c) any repayment of interest (whether on tax or penalty).

(3) In the cases mentioned in subsection (2), the “relevant date” is the date on which the payment of the tax, penalty or interest was made.

(4) This section also applies to a repayment by Revenue Scotland of an amount lodged with it in respect of the tax payable in respect of a transaction.

(5) In the case mentioned in subsection (4), the “relevant date” is the date on which the amount was lodged with Revenue Scotland.

(6) Interest under this section is calculated at the rate specified in provision made under section 185.

185 Rates of interest
(1) The rate of interest that applies for the purposes of sections 182, 183 and 184 is the rate specified by the Scottish Ministers in regulations.

(2) Regulations under subsection (1) may—
   (a) provide for different rates for different devolved taxes or different penalties,
(b) provide for circumstances in which alteration of a rate of interest is or is not to take place,

(c) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.

PART 10

ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1

ENFORCEMENT: GENERAL

Issue of tax demands and receipts

186 Issue of tax demands and receipts

(1) Where tax is due and payable, Revenue Scotland may demand the sum charged from the person liable to pay it.

(2) On payment of the tax, Revenue Scotland must give a receipt, if requested to do so.

Fees for payment

187 Fees for payment

(1) The Scottish Ministers may by regulations provide that, where a person makes a payment to Revenue Scotland or a person authorised by Revenue Scotland using a method of payment specified in the regulations, the person must also pay a fee specified in, or determined in accordance with, the regulations.

(2) A method of payment may only be specified in regulations under this section if Revenue Scotland expects that it, or the person authorised by it, will be required to pay a fee or charge (however described) in connection with amounts paid using that method of payment.

(3) The fee provided for in regulations under this section must not exceed what is reasonable having regard to the costs incurred by Revenue Scotland, or a person authorised by it, in paying the fee or charge mentioned in subsection (2).

(4) Regulations under this section—

(a) may make provision about the time and manner in which the fee must be paid,

(b) may make provision generally or only for specified purposes.

Certificates of debt

188 Certificates of debt

(1) A certificate of a designated officer that, to the best of that officer’s knowledge and belief, a relevant sum has not been paid is sufficient evidence that the sum mentioned in the certificate is unpaid.

(2) In subsection (1) “relevant sum” means a sum payable to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.
(3) Any document purporting to be such a certificate is to be treated as if it were such a certificate until the contrary is proved.

Court proceedings

189 Court proceedings

Tax due and payable may be sued for and recovered from the person liable to pay it as a debt due to the Crown by proceedings—

(a) in the sheriff court, or

(b) in the Court of Session (sitting as the Court of Exchequer).

Summary warrant

190 Summary warrant

(1) This section applies if a person does not pay an amount that is payable by that person to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.

(2) A designated officer may apply to the sheriff for a summary warrant.

(3) An application under subsection (2) must be accompanied by a certificate which—

(a) complies with subsection (4), and

(b) is signed by the officer.

(4) A certificate complies with this subsection if—

(a) it states that—

(i) none of the persons specified in the application has paid the sum payable by that person,

(ii) the officer has demanded payment from each such person of the sum payable by that person, and

(iii) the period of 14 days beginning with the day on which the demand is made has expired without payment being made, and

(b) it specifies the sum payable by each person specified in the application.

(5) The sheriff must, on an application by a designated officer under subsection (2), grant a summary warrant in (or as nearly as may be in) the form prescribed by Act of Sederunt.

(6) A summary warrant granted under subsection (5) authorises the recovery of the sum payable by—

(a) attachment,

(b) money attachment,

(c) earnings arrestment,

(d) arrestment and action of forthcoming or sale.

(7) Subject to subsection (8) and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment)—

(a) the sheriff officer’s fees, and
(b) any outlays reasonably incurred by that officer, in connection with the execution of a summary warrant are to be chargeable against the person in relation to whom the summary warrant was granted.

(8) No fees are to be chargeable by the sheriff officer against the person in relation to whom the summary warrant was granted for collecting, and accounting to Revenue Scotland for, sums paid to that officer by that person in respect of the sum payable.

Recovery of penalties and interest

191 Recovery of penalties and interest
The provisions of this Chapter have effect in relation to the recovery of any unpaid amount by way of—

(a) penalty, or

(b) interest (whether on unpaid tax or penalty),
as though that amount were an amount of unpaid tax.

CHAPTER 2

ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

192 Requirement for contact details for debtor

(1) This Chapter applies where—

(a) a sum is payable by a person (“the debtor”) to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement,

(b) a designated officer reasonably requires contact details for the debtor for the purpose of collecting that sum,

(c) the officer has reasonable grounds to believe that a person (“the third party”) has any such details, and

(d) the condition in subsection (2) is met.

(2) The condition is that—

(a) the third party is a company or a local authority, or

(b) the officer has reasonable grounds to believe that the third party obtained the details in the course of carrying on a business.

(3) This Chapter does not apply if—

(a) the third party is a charity and obtained the details in the course of providing services free of charge, or

(b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.

(4) In this Chapter—

“business” includes—
(a) a profession, and

(b) a property business (within the meaning of section 263(6) of the Income Tax (Trading and Other Income) Act 2005 (c.5)),

“contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted.

193 Power to obtain details

(1) A designated officer may by notice in writing require the third party to provide the contact details.

(2) The notice must name the debtor.

(3) If a notice is given under subsection (1), the third party must provide the details—

(a) within such period, and

(b) at such time, by such means and in such form (if any),
as is reasonably specified or described in the notice.

194 Reviews and appeals against notices or requirements

(1) This section applies where a third party seeks, under Part 11, to have a decision in relation to the giving of a notice under section 193 or in relation to any requirement in such a notice reviewed or appealed.

(2) A third party may give notice of review or notice of appeal in relation to a decision to give a notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

195 Penalty

(1) This section applies if the third party fails to comply with the notice.

(2) The third party is liable to a penalty of £300.

(3) Section 149 and sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167 (and references in those provisions to an information notice include a notice under this Chapter).

196 Power to change amount of penalty under section 195

(1) If it appears to the Scottish Ministers that there has been a change in the value of money since the last relevant date, they may by order substitute for the sum for the time being set out in section 195 such other sum as appears to them to be justified by the change.

(2) In subsection (1) “relevant date” means—

(a) the date on which this section came into force, and

(b) each date on which the power conferred by subsection (1) has been exercised.

(3) An order under this section does not apply to any failure which began before the date on which it comes into force.
PART 11
REVIEWS AND APPEALS

CHAPTER 1
INTRODUCTORY

Overview

This Part makes provision about the review and appeal of certain decisions of Revenue Scotland including—

(a) which decisions are, and which are not, reviewable and appealable,
(b) the taxpayer’s right to have decisions reviewed and the nature and conduct of those reviews,
(c) the option of mediation following a review that doesn’t settle the matter in question,
(d) the taxpayer’s right to appeal decisions to the tribunal, whether following review or otherwise, and
(e) settling tax disputes by agreement and other supplementary matters.

Appealable decisions

(1) The following decisions of Revenue Scotland are appealable decisions—

(a) a decision which affects whether a person is chargeable to tax,
(b) a decision which affects the amount of tax to which a person is chargeable,
(c) a decision which affects the amount of tax a person is required to pay,
(d) a decision which affects the date by which any amount by way of tax, penalty or interest must be paid,
(e) a decision in relation to the imposition of a penalty,
(f) subject to subsection (2), a decision in relation to the giving of an information notice or in relation to the use of any of the other investigatory powers in Part 7,
(g) subject to subsection (3), a decision in relation to the giving of a notice under section 193.

(2) See section 144 for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances.

(3) See section 194 for the grounds on which decisions in relation to the giving of notices under section 193 are appealable.

(4) The following decisions of Revenue Scotland are not appealable decisions—

(a) the making of a Revenue Scotland determination,
(b) a decision to give a notice of enquiry under section 76 or paragraph 9 of schedule 3.
(5) The decisions mentioned in subsection (1) are appealable whether they are decisions under this Act or any other enactment.

(6) The Scottish Ministers may by order modify subsection (1) or (4) to—
(a) add a decision to either subsection,
(b) vary the description of a decision,
(c) remove a decision from either subsection.

CHAPTER 2
REVIEWS

Review of appealable decisions

199 Right to request review
(1) A person aggrieved by an appealable decision (the “appellant”) may request Revenue Scotland to review the decision.

(2) An appellant may not request review where—
(a) the decision which the appellant seeks to review is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and
(b) the enquiry has not been completed.

(3) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

200 Notice of review
(1) Notice of review under section 199 must be given—
(a) in writing,
(b) within 30 days after the specified date,
(c) to Revenue Scotland.

(2) In subsection (1) “specified date” means—
(a) the date on which the appellant was notified of the appealable decision, or
(b) in a case to which section 199(2) applies, the date the appellant was given notice that the enquiry was completed.

(3) The notice of review must specify the grounds of review.

201 Late notice of review
(1) This section applies in a case where—
(a) notice of review may be given to Revenue Scotland under this Part, but
(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—
(a) Revenue Scotland agrees, or
(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested in writing that Revenue Scotland does so and Revenue Scotland is satisfied—

(a) that there was reasonable excuse for not giving the notice before the relevant time limit, and

(b) that the request has been made without unreasonable delay.

(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(5) In this section “relevant time limit”, in relation to notice of review, means the time before which the notice is to be given (but for this section).

202 Duty of Revenue Scotland to carry out review

(1) If the appellant gives Revenue Scotland notice of review, Revenue Scotland must—

(a) notify the appellant of Revenue Scotland's view of the matter in question within the relevant period, and

(b) review the matter in question in accordance with section 203.

(2) Subsection (1) does not apply if—

(a) the appellant has already given notice of review under section 200 in relation to the same matter in question, or

(b) Revenue Scotland has concluded a review of the matter in question.

(3) In this section “relevant period” means—

(a) the period of 30 days beginning with the day on which Revenue Scotland receives the notice of review, or

(b) such longer period as is reasonable.

203 Nature of review etc.

(1) This section applies if Revenue Scotland is required by section 202 to review the matter in question.

(2) The nature and extent of the review are to be such as appear appropriate to Revenue Scotland in the circumstances.

(3) For the purpose of subsection (2), Revenue Scotland must, in particular, have regard to steps taken before the beginning of the review—

(a) by Revenue Scotland in deciding the matter in question, and

(b) by any person in seeking to resolve disagreement about the matter in question.

(4) The review must take account of any representations made by the appellant at a stage which gives Revenue Scotland a reasonable opportunity to consider them.

(5) The review may conclude that Revenue Scotland's view of the matter in question is to be—

(a) upheld,
(b) varied, or
(c) cancelled.

204 Notification of conclusions of review

(1) Revenue Scotland must notify the appellant of the conclusions of the review and its reasoning within—
   (a) the period of 45 days beginning with the relevant day, or
   (b) such other period as may be agreed.

(2) In subsection (1) “relevant day” means the day when Revenue Scotland notified the appellant of Revenue Scotland's view of the matter in question.

(3) Where Revenue Scotland is required to undertake a review but does not give notice of the conclusions within the period specified in subsection (1), the review is treated as having concluded that Revenue Scotland's view of the matter in question (see section 202(1)) is upheld.

(4) If subsection (3) applies, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

205 Effect of conclusions of review

(1) If Revenue Scotland gives notice of the conclusions of a review (see section 204)—
   (a) the conclusions are to be treated as if they were contained in a settlement agreement (see section 211(2)), but
   (b) section 211(3) (withdrawal from agreement) does not apply in relation to that notional agreement.

(2) Subsection (1) does not apply to the matter in question if, or to the extent that—
   (a) the appellant and Revenue Scotland enter into mediation and conclude that mediation by entering into a settlement agreement, or
   (b) the appellant gives notice of appeal under section 207.

Chapter 3

Appeals

206 Right of appeal

(1) An appellant may appeal to the tribunal against an appealable decision.

(2) An appellant may not give notice of appeal under section 207 if subsection (3), (4) or (5) applies.

(3) This subsection applies where—
   (a) the decision which the appellant seeks to appeal is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and
   (b) the enquiry has not been completed.

(4) This subsection applies where—
(a) the appellant has given notice of review, and
(b) the review has not been concluded or treated as concluded.

(5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland and has not withdrawn from the agreement under section 211(3).

(6) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

207 **Notice of appeal**

(1) Notice of appeal must be given—
   (a) in writing,
   (b) within 30 days of the specified date,
   (c) to Revenue Scotland.

(2) In subsection (1) “specified date” means—
   (a) in a case to which section 206(3) applies, the date the appellant was given notice that the enquiry was completed,
   (b) where the appellant does not request a review under section 199, the date on which the appellant was notified of the appealable decision,
   (c) where the appellant requests such a review, the date on which the conclusions of review are notified to the appellant under section 204,
   (d) where, following a review under section 202, the appellant and Revenue Scotland entered into mediation, the date either Revenue Scotland or the appellant gave notice of withdrawal from mediation,
   (e) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.

(3) The notice of appeal must specify the grounds of appeal.

208 **Late notice of appeal**

(1) This section applies in a case where—
   (a) notice of appeal may be given to Revenue Scotland under this Part, but
   (b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—
   (a) Revenue Scotland agrees, or
   (b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested in writing that Revenue Scotland does so and Revenue Scotland is satisfied—
   (a) that there was reasonable excuse for not giving the notice before the relevant time limit, and
   (b) that the request has been made without unreasonable delay.
(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(5) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

209 Disposal of appeal

(1) This section applies if notice of appeal is given under section 207.

(2) The tribunal is to determine the matter in question and may conclude that Revenue Scotland's view of the matter in question is to be—

(a) upheld,

(b) varied, or

(c) cancelled.

CHAPTER 4

SUPPLEMENTARY

210 Reviews and appeals not to postpone recovery of tax

(1) Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal.

(2) The Scottish Ministers may by regulations make provision for the postponement of any such tax, penalty or interest pending reviews or appeals, including provision—

(a) for applications by appellants to Revenue Scotland for postponement of amounts of tax, penalty and interest,

(b) for the effect of any determination by Revenue Scotland on such applications,

(c) for agreements between appellants and Revenue Scotland as to postponement of amounts of tax, penalty and interest,

(d) for applications to the tribunal for such postponement,

(e) for appeals in relation to such determinations by Revenue Scotland and decisions by the tribunal on such applications.

(3) Regulations under subsection (2) may modify any enactment (including this Act).

211 Settling matters in question by agreement

(1) In relation to a review, mediation or an appeal under this Part, “settlement agreement” means an agreement between the taxpayer and Revenue Scotland that is—

(a) entered into—

(i) before the review is concluded,

(ii) as the conclusion of the mediation, or

(iii) before the appeal is determined, and

(b) to the effect that the decision reviewed, taken to mediation or appealed should be upheld without variation, varied in a particular manner or cancelled.
(2) Where a settlement agreement is entered into in relation to a review, mediation or an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was entered into, the tribunal had determined an appeal in relation to the matter in question and had upheld the decision without variation, varied it in that manner or cancelled it, as the case may be.

(3) Subsection (2) does not apply if, within 30 days from the date when the settlement agreement was entered into, the appellant gives notice in writing to Revenue Scotland that the appellant wishes to withdraw from the agreement.

(4) Where a settlement agreement is not in writing—

(a) subsection (2) does not apply unless the fact that an agreement was entered into, and the terms agreed, are confirmed by notice in writing given by Revenue Scotland to the appellant or by the appellant to Revenue Scotland, and

(b) the references in subsections (2) and (3) to the time when the agreement was entered into are to be read as references to the time when the notice of confirmation was given.

(5) References in this section to an agreement being entered into with an appellant, and to the giving of notice by or to the appellant, include references to an agreement being entered into, or notice being given by or to, a person acting on behalf of the appellant in relation to the review.

212 Application of this Part to joint buyers

(1) This section applies where, in relation to land and buildings transaction tax, there are two or more buyers who are or will be jointly entitled to the interest acquired by the land transaction.

(2) In a case where some (but not all) of the buyers give notice of review under section 200—

(a) notification of the review must be given by Revenue Scotland to each of the other buyers whose identity is known to it,

(b) any of the other buyers may be a party to the review if they notify Revenue Scotland in writing,

(c) the agreement of all the buyers is required if the review is to be settled by agreement,

(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the other buyers whose identity is known to Revenue Scotland, and

(e) section 205 (effect of conclusions of review) applies in relation to all of the buyers.

(3) In a case where the buyers and Revenue Scotland agree to enter into mediation—

(a) notification of the agreement must be given by Revenue Scotland to each of the buyers whose identity is known to it,

(b) any of the buyers may be a party to the mediation if they notify Revenue Scotland, and
(c) the agreement of all the buyers is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—
(a) the appeal may be brought by any of the buyers,
(b) notice of the appeal must be given by the buyers bringing the appeal to each of the other buyers,
(c) the agreement of all the buyers is required if the appeal is to be settled by agreement,
(d) if the appeal is not settled, any of the buyers are entitled to be parties to the appeal, and
(e) the tribunal's decision on the appeal binds all of the buyers.

(5) This section has effect subject to—
(a) the provisions of schedule 17 to the 2013 Act (relating to partnerships), and
(b) the provisions of schedule 18 to that Act (relating to trustees).

213 Application of this Part to trustees

(1) This section applies where, in relation to land and buildings transaction tax, the buyers in the land transaction are a trust.

(2) In a case where some (but not all) of the trustees give notice of review under section 200—
(a) notification of the review must be given by Revenue Scotland to each of the other relevant trustees whose identity is known to it,
(b) any of the other relevant trustees may be a party to the review if they notify Revenue Scotland in writing,
(c) the agreement of all the relevant trustees is required if the review is to be settled by agreement,
(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the relevant trustees whose identity is known to Revenue Scotland, and
(e) section 205 (effect of conclusions of review) applies in relation to all of the relevant trustees.

(3) In a case where the trust and Revenue Scotland agree to enter into mediation—
(a) notification of the agreement must be given by Revenue Scotland to each of the relevant trustees whose identity is known to it,
(b) any of the relevant trustees may be a party to the mediation if they notify Revenue Scotland, and
(c) the agreement of all the relevant trustees is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—
(a) the appeal may be brought by any of the relevant trustees,
(b) notice of the appeal must be given by the trustee or trustees bringing the appeal to each of the other relevant trustees,

(c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,

(d) if the appeal is not settled, any of the relevant trustees are entitled to be parties to the appeal, and

(e) the tribunal's decision on the appeal binds all of the relevant trustees.

(5) In this section “relevant trustees” has the meaning given by paragraph 16 of schedule 18 to the 2013 Act.

(6) This section has effect subject to the provisions of schedule 18 to the 2013 Act (relating to trustees).

214 References to the “tribunal”

In this Part “the tribunal” means—

(a) the First-tier Tribunal,

(b) where determined by or under tribunal rules, the Upper Tribunal.

215 Interpretation

(1) In this Part—

(a) “matter in question” means the matter to which a review, mediation or appeal relates,

(b) a reference to a notification is a reference to a notification in writing.

(2) In this Part, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—

(a) notification of Revenue Scotland's view under section 202(1), and

(b) notification of the conclusions of a review under section 204.

(3) But if a notification falling within paragraph (a) or (b) of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

PART 12

FINAL PROVISIONS

Interpretation

216 General interpretation

In this Act—

“the 2013 Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11),

“the 2014 Act” means the Landfill Tax (Scotland) Act 2014 (asp 00),
“designated officer” means a member of staff of Revenue Scotland or other person who is, or a category of members of staff or other persons who are, designated by Revenue Scotland for the purposes of this Act,

“notice of appeal” means a notice under section 207,

“notice of review” means a notice under section 200,

“Revenue Scotland determination” means a determination under section 86,

“tribunal” has the meaning given by section 214.

217  Index of defined expressions

Schedule 5 contains an index of expressions defined or otherwise explained in this Act.

Subordinate legislation

218  Subordinate legislation

(1) Orders and regulations under this Act are subject to the negative procedure.

(2) Subsection (1) does not apply to—

(a) orders and regulations for which provision is made in subsection (3) or (4),

(b) orders under section 224(2).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

(a) section 30(1),

(b) section 45(1),

(c) section 72(2),

(d) section 73(1),

(e) section 150(2),

(f) section 151(2),

(g) section 160(7),

(h) section 162(4),

(i) section 163(3),

(j) section 170(1),

(k) section 181(2),

(l) section 185(1),

(m) section 196(1),

(n) section 198(6),

(o) section 210(2).

(4) Orders and regulations under the following provisions which contain provision which adds to, replaces or omits any part of the text of an Act are also subject to the affirmative procedure—

(a) section 102(1),
(b) section 219(1).

(5) Orders and regulations under this Act may—

(a) make different provision for different purposes (including for different devolved taxes),

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(6) Subsection (5)(b) does not apply to orders under section 219(1).

Ancillary provision

219 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

Modification of enactments

220 Minor and consequential modifications of enactments

Schedule 4 makes minor and consequential amendments and repeals of enactments.

Crown application

221 Crown application: criminal offences

(1) No contravention by the Crown of any provision of or made under this Act makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

222 Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<table>
<thead>
<tr>
<th>Crown land</th>
<th>Appropriate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of the Crown and forms part of the Crown estate</td>
<td>The Crown Estate Commissioners</td>
</tr>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government department having the management of the land</td>
</tr>
</tbody>
</table>
### Crown land

<table>
<thead>
<tr>
<th>Description</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to an office-holder in the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which belongs to a Government department</td>
<td>The relevant Government department</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of a Government department</td>
<td>The relevant Government department</td>
</tr>
</tbody>
</table>

(3) “Government department” means a department of the Government of the United Kingdom”.

#### Crown application: Her Majesty

Nothing in this Act affects Her Majesty in Her private capacity.

**Commencement and short title**

#### Commencement

(1) This section and sections 218, 219, 221, 222, 223 and 225 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

#### Short title

The short title of this Act is the Revenue Scotland and Tax Powers Act 2014.
SCHEDULE 1
(introduced by section 2(3))

REVENUE SCOTLAND

Membership

1 (1) Revenue Scotland is to consist of no fewer than 5 and no more than 9 members appointed by the Scottish Ministers.

(2) Ministers are to appoint one of the members to chair Revenue Scotland (“the Chair”).

(3) Ministers may by order amend sub-paragraph (1) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.

4 (4) Membership of Revenue Scotland is for such period and on such terms as Ministers may determine.

(5) A member may resign by giving notice in writing to Ministers.

(6) A person who is (or who has been) a member may be reappointed.

Disqualification

1 (1) A person may not be appointed as a member of Revenue Scotland (and may not continue as a member) if that person—

(a) is (or becomes)—

(i) a member of the Scottish Parliament,

(ii) a member of the House of Commons,

(iii) a member of the European Parliament,

(iv) a councillor of any local authority,

(v) a member of the Scottish Government,

(vi) a Minister of the Crown,

(vii) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,

(viii) an office-holder in the Scottish Administration,

(ix) a civil servant,

(b) is (or has been) insolvent,

(c) is (or has been) disqualified as a company director under the Company Directors Disqualification Act 1986 (c.46) (or any analogous disqualification provision, anywhere in the world), or

(d) is (or has been) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (or any analogous disqualification provision, anywhere in the world).

2 (2) For the purposes of sub-paragraph (1)(b) a person is (or has been) insolvent if—

(a) the person’s estate is or has been sequestrated,

(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,
(c) the person is (or has been) the subject of any other kind of arrangement analogous to those described in paragraphs (a) and (b), anywhere in the world.

Removal of members

3 The Scottish Ministers may, by giving notice in writing, remove a member if—

(a) any of sub-paragraphs (1)(a) to (d) of paragraph 2 apply to the member,

(b) the member has been absent from meetings of Revenue Scotland for a period longer than 6 months without permission from Revenue Scotland, or

(c) Ministers consider that the member is otherwise unfit to be a member or is unable to carry out the member’s functions.

Remuneration and expenses

4 (1) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such remuneration as it may, with the approval of the Scottish Ministers, determine.

(2) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such sums as it may, with the approval of Ministers, determine by way of reimbursement of expenses incurred by them in carrying out their functions.

Committees

5 (1) Revenue Scotland may establish committees for any purpose relating to its functions.

(2) Revenue Scotland may determine the composition of its committees.

(3) Revenue Scotland may appoint persons who are not members of Revenue Scotland to be members of a committee, but those persons are not entitled to vote at meetings of the committee.

Procedure

6 (1) Revenue Scotland may regulate its own procedure (including quorum) and that of any committee.

(2) The validity of any proceedings or acts of Revenue Scotland (or of any committee) is not affected by—

(a) any vacancy in its membership,

(b) any defect in the appointment of a member, or

(c) disqualification of a person as a member after appointment.
Internal delegation by Revenue Scotland

7  (1)  Revenue Scotland may authorise—

(a) a member,
(b) a committee, or
(c) the chief executive or any other member of staff,

to exercise such of its functions (and to such extent) as it may determine.

(2) Sub-paragraph (1) does not affect Revenue Scotland’s responsibility for the exercise of its functions.

Chief executive and other staff

8  (1)  Revenue Scotland is to employ a chief executive.

(2) The person employed as chief executive may not be a member of Revenue Scotland.

(3) The first person employed as chief executive is to be appointed by the Scottish Ministers on such terms as they may determine.

(4) Before appointing the first chief executive, Ministers must consult the Chair (if a person holds that position).

(5) Each subsequent chief executive is to be appointed by Revenue Scotland on such terms as it may, with the approval of Ministers, determine.

(6) Revenue Scotland may appoint other members of staff on such terms as it may, with the approval of Ministers, determine.

Powers

9  In addition to any other powers it has, Revenue Scotland may do anything which it considers—

(a) necessary or expedient in connection with the exercise of its functions,
(b) incidental or conducive to the exercise of those functions.

SCHEDULE 2
(introduced by section 24(4))

THE SCOTTISH TAX TRIBUNALS

PART 1

APPOINTMENT OF MEMBERS

President of the Tax Tribunals: eligibility for appointment

1  (1)  A person is eligible for appointment as President of the Tax Tribunals only if qualifying under sub-paragraphs (2) and (3).

(2) The person qualifies under this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as—

(a) a solicitor or advocate in Scotland, or
Revenue Scotland and Tax Powers Bill
Schedule 2—The Scottish Tax Tribunals
Part 1—Appointment of members

(b) a solicitor or barrister in England, Wales or Northern Ireland.

(3) The person qualifies under this sub-paragraph if the person has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate.

First-tier Tribunal: ordinary members

2 (1) The Scottish Ministers must appoint persons as ordinary members of the First-tier Tribunal.

(2) A person is eligible for appointment only if the person meets the criteria as to qualifications, experience and training that the Scottish Ministers prescribe by regulations.

First-tier Tribunal: legal members

3 (1) The Scottish Ministers must appoint persons as legal members of the First-tier Tribunal.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 4.

4 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 5 years, as—

(a) a solicitor or advocate in Scotland, or

(b) a solicitor or barrister in England, Wales or Northern Ireland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

Upper Tribunal: legal members

5 (1) The Scottish Ministers must appoint persons as legal members of the Upper Tribunal.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 6.

6 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as—

(a) a solicitor or advocate in Scotland, or

(b) a solicitor or barrister in England, Wales or Northern Ireland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.
Disqualification from office

7 A person is disqualified from appointment, and from holding a position, as President of the Tax Tribunals or as a member of the Tax Tribunals if the person is or becomes—

(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(c) a member of the European Parliament,
(d) a Minister of the Crown,
(e) a member of the Scottish Government,
(f) a civil servant.

Eligibility under regulations

8 (1) Regulations under paragraph 4(2) may describe a person by reference to the matters mentioned in sub-paragraph (3) or (6).

(2) Regulations under paragraph 6(2) may describe a person by reference to the matters mentioned in sub-paragraph (4) or (6).

15 (3) The matters referred to in sub-paragraph (1) are—

(a) previous practice for a period of not less than 5 years as—

(i) a solicitor or advocate in Scotland, or
(ii) a solicitor or barrister in England, Wales or Northern Ireland, and

(b) subsequent engagement in any of the activities listed in sub-paragraph (5).

20 (4) The matters referred to in sub-paragraph (2) are—

(a) previous practice for a period of not less than 10 years as—

(i) a solicitor or advocate in Scotland, or
(ii) a solicitor or barrister in England, Wales or Northern Ireland, and

(b) subsequent engagement in any of the activities listed in sub-paragraph (5).

25 (5) The activities referred to in sub-paragraph (3)(b) and (4)(b) are—

(a) exercising judicial functions in any court or tribunal,
(b) practice or employment as a lawyer of any kind,
(c) whether or not in the course of practice or employment as a lawyer—

(i) advising on the application of the law,
(ii) drafting documents intended to affect rights or obligations under the law,
(iii) assisting persons involved in a legal or other process for the resolution of disputes as to the law,
(iv) acting as a mediator or arbitrator for the purpose of resolving disputes that are (or could be) the matter of legal proceedings,
(d) teaching or researching law at or for an educational institution.
(6) The other matters referred to in sub-paragraphs (1) and (2) are suitability attributable to experience in law through engagement in—

(a) any of the activities listed in sub-paragraph (5), or

(b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.

9 (1) The Scottish Ministers may by regulations make provision—

(a) as regards the calculation of the 5-year period mentioned in paragraph 4(1) or 8(3)(a) (for example, by reference to recent or continuous time),

(b) as regards the calculation of the 10-year period mentioned in paragraph 6(1) or 8(4)(a) (for example, by reference to recent or continuous time),

(c) to which paragraph 8(3)(a) or 8(4)(a) is subject (for example, by reference to debarment from practice),

(d) for the purpose of paragraph 8(6), about—

(i) the criteria for suitability (for example, by reference to equivalence to past or present practice as a solicitor),

(ii) the nature of experience required (for example, by reference to engagement for a particular period of time (within the United Kingdom or elsewhere)).

(2) The Scottish Ministers may by regulations modify the list in paragraph 8(5).

PART 2

CONDITIONS OF MEMBERSHIP ETC.

Application of this Part

10 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) The following paragraphs of this Part also apply in relation to the position of President of the Tax Tribunals—

(a) paragraph 15 (with the modification that the reference in paragraph 15(c) to the President of the Tax Tribunals is to be read as a reference to the Scottish Ministers), and

(b) paragraph 16.

Initial period of office

11 A person who is appointed to a position as a member of the Tax Tribunals holds the position for the period of 5 years beginning with the date of the appointment.

Reappointment

12 (1) Unless sub-paragraph (3) applies, a member of the Tax Tribunals is to be reappointed as such at the end of each period for which the position is held.
(2) Reappointment under sub-paragraph (1) is to the position for the period of 5 years beginning with the date of the reappointment.

(3) This sub-paragraph applies if—
   (a) the member has declined to be reappointed,
   (b) the member is ineligible for reappointment,
   (c) the President of the Tax Tribunals has recommended to the Scottish Ministers that the member should not be reappointed.

(4) In sub-paragraph (1) the reference to the period for which a position is held is to—
   (a) the period for which the position is held in accordance with paragraph 11, or
   (b) any further period for which the position is held by virtue of reappointment in accordance with sub-paragraphs (1) and (2).

For the purpose of paragraph 12(3)(b), a member is ineligible for reappointment only if the member would not be eligible for appointment to the position in accordance with the relevant provisions of Part 1 of this schedule were the member being appointed to the position for the first time.

For the purpose of paragraph 12(3)(c), the President of the Tax Tribunals may recommend to the Scottish Ministers that a member should not be reappointed only if satisfied that—
   (a) the member has failed to comply with—
      (i) any of the relevant terms and conditions of membership, or
      (ii) any other requirement imposed on the member by or under this Act, or
   (b) the tribunal concerned no longer requires—
      (i) a member with the qualifications, experience and training of that member, or
      (ii) the same number of members for the efficient disposal of its business.

Termination of appointment

15 A member of the Tax Tribunals ceases to hold the position to which the member was appointed if the member—
   (a) becomes disqualified from holding the position (see paragraph 7),
   (b) is removed from the position under paragraph 40, or
   (c) resigns the position by giving notice in writing to the President of the Tax Tribunals.

Pensions etc.

16 (1) The Scottish Ministers may make arrangements as to—
   (a) the payment of pensions, allowances and gratuities to or in respect of members of the Tax Tribunals or former members,
   (b) contributions or other payment towards provision for such pensions, allowances and gratuities.
The references in sub-paragraph (1) to pensions, allowances and gratuities include pensions, allowances and gratuities paid by way of compensation for loss of office.

**Oaths**

17 (1) Each of the members of the Tax Tribunals must take the required oaths in the presence of the President of the Tax Tribunals.

(2) In this paragraph, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868 (c.72).

**Other conditions**

18 (1) Other than as provided for in this Act, the Scottish Ministers may determine the terms and conditions on which a member of the Tax Tribunals holds the position.

(2) Under sub-paragraph (1), the determination may (in particular)—

(a) include provision for sums to be payable by way of remuneration, allowances and expenses,

(b) make different provision for different categories of member or other different purposes.

**PART 3**

**CONDUCT AND DISCIPLINE**

**Application of this Part**

19 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) Paragraphs 20 to 22 also apply to the position of the President of the Tax Tribunals.

**Conduct Rules**

20 The Scottish Ministers are responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 21(1) may make provision.

21 (1) The Scottish Ministers may make rules for the purposes of or in connection with—

(a) the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals,

(b) the review of any such determination.

(2) Rules under sub-paragraph (1) may include provision about (in particular)—

(a) the circumstances in which an investigation must or may be undertaken,

(b) the making of a complaint by any person,

(c) the steps that are to be taken by a person making a complaint before it is to be investigated,

(d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),
(c) the time limits for taking steps and procedures for extending such time limits,
(f) the person by whom an investigation (or part of an investigation) is to be carried out,
(g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the President of the Tax Tribunals or any other person,
(h) the making of recommendations by the person carrying out an investigation (or part of one),
(i) the obtaining of information relating to a complaint,
(j) the keeping of a record of an investigation,
(k) the confidentiality of communications or proceedings,
(l) the publication of information or its supply to any person.

Rules under paragraph 21(1)—
(a) may make different provision for different purposes,
(b) are to be published in such manner as the Scottish Ministers may determine.

Reprimand etc.

Where the condition in sub-paragraph (2) is met in relation to a member of the Tax Tribunals, the President of the Tax Tribunals may, for disciplinary purposes, give the member—
(a) formal advice,
(b) a formal warning, or
(c) a reprimand.

The condition is that—
(a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 21(1), and
(b) the person carrying out the investigation has recommended that the President exercise the power conferred by sub-paragraph (1).

Paragraph 23 does not limit what the President of the Tax Tribunals may do—
(a) informally,
(b) for other purposes, or
(c) where no advice or warning is given in a particular case.

Suspension of membership

If the President of the Tax Tribunals considers that it is necessary for the purpose of maintaining public confidence in the Tax Tribunals, the President may suspend a member of the tribunals.

Suspension under sub-paragraph (1)—
(a) is for such period as the President may specify when suspending the member,
(b) may be revoked or extended subsequently by the President.

26 Suspension under paragraph 25(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

_Judicial Complaints Reviewer_

27 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).

(2) The functions are—

(a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 21(1) to consider whether the investigation has been carried out in accordance with the rules,

(b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Scottish Ministers,

(c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules, and

(d) to make written representations to the Scottish Ministers about procedures for handling the investigation of matters concerning the conduct of members of the Tax Tribunals.

(3) The Scottish Ministers are to have regard to any written representations made under sub-paragraph (2)(d).

(4) In sub-paragraph (2)(a), “relevant person” means—

(a) the person whose complaint led to the carrying out of the investigation, or

(b) the member of the Tax Tribunals with respect to whom the investigation has been carried out.

28 (1) Sub-paragraph (2) applies where a case is referred to the Scottish Ministers by the Judicial Complaints Reviewer under paragraph 27(2)(b).

(2) The Scottish Ministers may—

(a) vary or revoke wholly or partly the determination made in the case to which the investigation relates,

(b) cause a fresh investigation to be carried out,

(c) confirm the determination in the case, or

(d) deal with the referral in such other way as the Scottish Ministers consider appropriate.

**PART 4**

**FITNESS AND REMOVAL**

35 **Application of this Part**

29 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).
(2) This Part also applies to the position of the President of the Tax Tribunals subject to the modifications mentioned in paragraph 41.

**Constitution and procedure**

30 (1) The Scottish Ministers must constitute a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals.

(2) The Scottish Ministers may constitute a fitness assessment tribunal—
   
   (a) in such other circumstances as they think fit, and
   
   (b) following consultation with the President.

(3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

31 The Scottish Ministers may make rules as to the procedure to be followed in proceedings at a fitness assessment tribunal.

**Composition and remuneration**

32 (1) A fitness assessment tribunal is to consist of—

   (a) one person who is, or has been—
   
      (i) a judge of the Court of Session (except a temporary judge), or
   
      (ii) a sheriff (except a part-time sheriff),
   
   (b) one person who is—
   
      (i) where the person under investigation is an ordinary member, another ordinary member,
   
      (ii) where the person under investigation is a legal member, another legal member, and
   
   (c) one person who does not fall (and has never fallen) within a category of person referred to in paragraph (a) or (b).

(2) The selection of persons to be members of the fitness assessment tribunal is to be made by the Scottish Ministers with the agreement of the Lord President.

33 (1) The Scottish Ministers—

   (a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,

   (b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.

(2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

**Proceedings before fitness assessment tribunal**

34 (1) A fitness assessment tribunal may require any person—

   (a) to attend its proceedings for the purpose of giving evidence,
Revenue Scotland and Tax Powers Bill
Schedule 2—The Scottish Tax Tribunals
Part 4—Fitness and removal

(b) to produce documents in the person’s custody or under the person’s control.

(2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.

35 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 34(1)—

(a) refuses or fails, without reasonable excuse—

(i) to comply with the requirement,

(ii) while attending the tribunal proceedings to give evidence, to answer any question,

(b) deliberately alters, conceals or destroys any document which the person is required to produce.

(2) The Court of Session may, on an application made to it by the tribunal—

(a) make such order for enforcing compliance or otherwise as it thinks fit, or

(b) deal with the matter as if it were a contempt of the Court.

Suspension during investigation

36 (1) Sub-paragraph (2) applies if the President of the Tax Tribunals requests the Scottish Ministers to constitute a fitness assessment tribunal to investigate whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

(2) The President may suspend the member from the position at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—

(a) the President revokes it, or

(b) the report is laid as required by paragraph 39(3).

37 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—

(a) recommends that a member of the Tax Tribunals who is subject to its investigation should be suspended from the position as member of the tribunals,

(b) does so in writing at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(2) The Scottish Ministers may suspend the member from the position at any time before laying the report as required by paragraph 39(3).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—

(a) the Scottish Ministers revoke it, or

(b) the report is laid as required by paragraph 39(3).

38 Suspension under paragraph 36(2) or 37(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.
Report and removal

39 (1) A report by a fitness assessment tribunal must—
   (a) be in writing, and
   (b) contain reasons for its conclusions.

(2) As soon as reasonably practicable after it is completed, such a report must be submitted
by the fitness assessment tribunal to—
   (a) the Scottish Ministers, and
   (b) the President of the Tax Tribunals.

(3) The Scottish Ministers must lay before the Scottish Parliament each report submitted
under sub-paragraph (2).

40 (1) If the relevant condition is met, the Scottish Ministers may remove a member of the Tax
Tribunals from the position of member of the tribunals.

(2) The relevant condition is that a fitness assessment tribunal has submitted a report under
paragraph 39(2) concluding that the member is unfit to hold the position of member of
the Tax Tribunals.

Application of this Part to the President of the Tax Tribunals

41 (1) This Part of this schedule applies in relation to the President of the Tax Tribunals with
the following modifications.

(2) In paragraph 30, sub-paragraphs (1) and (2)(b) do not apply.

(3) Paragraph 32 is to apply in relation to a fitness assessment tribunal constituted to
investigate and report on whether the President is unfit to hold that position as it applies
to a legal member of the Tax Tribunals.

(4) In paragraph 36—
   (a) sub-paragraph (1) does not apply,
   (b) the references in sub-paragraphs (2) and (3)(a) to the President are to be read as
references to the Scottish Ministers.

(5) Paragraph 39(2)(b) does not apply.

Interpretation

42 In this Part of this schedule, the references to unfitness to hold the position of member
of the Tax Tribunals are to unfitness by reason of inability, neglect of duty or
misbehaviour.

SCHEDULE 3
(introduced by section 105)

CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

Introduction

1 This schedule applies to a claim under section 97, 98 or 99.
Making of claims

2 (1) A claim must be made in such form as Revenue Scotland may determine.

(2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.

(3) The form of claim may require—

(a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim,

(b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct,

(c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).

(4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

Duty to keep and preserve records

3 (1) A person who wishes to make a claim must—

(a) keep such records as may be needed to enable the person to make a correct and complete claim, and

(b) preserve those records in accordance with this paragraph.

(2) The records must be preserved until the latest of the following times—

(a) the end of the period of 3 years beginning with the day on which the claim was made,

(b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed,

(c) where the claim is amended and there is no enquiry into the amendment, the time when Revenue Scotland no longer has power to enquire into the amendment.

(3) The Scottish Ministers may by regulations—

(a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and

(b) provide that those records include supporting documents so specified.

(4) Regulations under this paragraph may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(5) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

Preservation of information etc.

4 The duty under paragraph 3 to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or
Schedule 3—Claims for relief from double assessment and for repayment

(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by Revenue Scotland.

Penalty for failure to keep and preserve records

5 (1) A person who fails to comply with paragraph 3 in relation to a claim that the person makes is liable to a penalty not exceeding £3,000, subject to the following exception.

5 (2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to it.

Amendment of claim by claimant

6 (1) The claimant may amend the claim by notice in writing to Revenue Scotland.

6 (2) No such amendment may be made—

(a) more than 12 months after the day on which the claim was made, or

(b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the period—

15 (i) beginning with the day on which notice is given, and

15 (ii) ending with the day on which the enquiry under that paragraph is completed.

Correction of claim by Revenue Scotland

7 (1) Revenue Scotland may by notice in writing to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).

7 (2) No such correction may be made—

(a) more than 9 months after the day on which the claim was made, or

(b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the period—

25 (i) beginning with the day on which notice is given, and

25 (ii) ending with the day on which the enquiry under that paragraph is completed.

7 (3) A correction under this paragraph is of no effect if, within 3 months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.

7 (4) Notice under sub-paragraph (3) must be given to Revenue Scotland.

Giving effect to claims and amendments

8 (1) As soon as practicable after a claim is made, amended or corrected under paragraph 6 or 7, Revenue Scotland must give effect to the claim or amendment by discharge or repayment of tax.

8 (2) Where Revenue Scotland enquires into a claim or amendment—
Revenue Scotland and Tax Powers Bill

Schedule 3—Claims for relief from double assessment and for repayment

(a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 10 (completion of enquiry), and then it applies subject to paragraph 12 (giving effect to amendments under paragraph 10), but

(b) Revenue Scotland may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as it thinks fit.

Notice of enquiry

9 (1) Revenue Scotland may enquire into a person's claim or amendment of a claim if it gives the claimant notice of its intention to do so (“notice of enquiry”) before the end of the period of 3 years after the day on which the claim was made.

(2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

Completion of enquiry

10 (1) An enquiry under paragraph 9 is completed when Revenue Scotland by notice (a “closure notice”) informs the claimant that it has completed its enquiries and states its conclusions.

(2) A closure notice must be given no later than 3 years after the date on which the claim was made.

(3) A closure notice must either—

(a) state that in the opinion of Revenue Scotland no amendment of the claim is required, or

(b) if in Revenue Scotland's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

(4) In the case of an enquiry into an amendment of a claim, sub-paragraph (3)(b) applies only so far as the deficiency or excess is attributable to the amendment.

(5) A closure notice takes effect when it is issued.

Direction to complete enquiry

11 (1) The claimant may apply to the tribunal for a direction that Revenue Scotland gives a closure notice within a specified period.

(2) Any such application is to be subject to the relevant provisions of tribunal rules.

(3) The tribunal must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 10

12 (1) Within 30 days after the date of issue of a notice under paragraph 10(3)(b) (closure notice that amends claim), Revenue Scotland must give effect to the amendment by making such adjustment as may be necessary, whether—

(a) by way of assessment on the claimant, or

(b) by discharge or repayment of tax.
(2) An assessment made under sub-paragraph (1) is not out of time if it is made within the
time mentioned in that sub-paragraph.

**Appeals against amendments under paragraph 10**

13 (1) An appeal may be brought against a conclusion stated or amendment made by a closure
notice.

(2) Notice of the appeal must be given—

(a) in writing,

(b) within 30 days after the date on which the closure notice was issued,

(c) to Revenue Scotland.

(3) The notice of appeal must specify the grounds of appeal.

(4) Part 11 (reviews and appeals) applies in relation to an appeal under this paragraph as it
applies in relation to an appeal under that Part.

(5) On an appeal against an amendment made by a closure notice, the tribunal may vary the
amendment appealed against whether or not the variation is to the advantage of the
appellant.

(6) Where any such amendment is varied, whether by the tribunal or by the order of a court,
paragraph 12 (giving effect to amendments under paragraph 10) applies (with the
necessary modifications) in relation to the variation as it applied in relation to the
amendment.

**SCHEDULE 4**

(introduced by section 220)

**MINOR AND CONSEQUENTIAL MODIFICATIONS**

**Public Finance and Accountability (Scotland) Act 2000**

1 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1)
(Keeper of the Registers of Scotland: financial arrangements), after “Sums” insert
“(other than payments of land and buildings transaction tax)”.

**Ethical Standards in Public Life etc. (Scotland) Act 2000**

2 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3
(devolved public bodies), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

**Freedom of Information (Scotland) Act 2002**

3 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 2 of schedule 1
(Scottish public authorities), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.
Public Appointments and Public Bodies etc. (Scotland) Act 2003

4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies” at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Services Reform (Scotland) Act 2010

5 In the Public Services Reform (Scotland) Act 2010 (asp 8), in schedule 8 (listed public bodies), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Records (Scotland) Act 2011

6 In the Public Records (Scotland) Act 2011 (asp 12), in the schedule, under the heading “Scottish Administration” at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Land and Buildings Transaction Tax (Scotland) Act 2013

7 (1) The 2013 Act is amended as follows.

(2) In section 35 (form and content of returns), in subsection (1)—

(a) the word “and” after paragraph (a) is repealed,

(b) after paragraph (b) insert “, and

(c) be made in such manner as specified by the Tax Authority.”.

(3) In section 48 (joint buyers), after subsection (3) insert—

“(3A) See also section 212 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc. where joint buyers).”.

(4) In section 50 (trusts), after subsection (2) insert—

“(3) See also section 213 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc.: trustees).”.

(5) In section 54 (the Tax Authority)—

(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,

(b) subsection (2) is repealed.

(6) Section 55 (delegation of functions to Keeper) is repealed.

(7) Section 56 (review and appeal) is repealed.

(8) In section 68 (subordinate legislation)—

(a) in subsection (2), paragraph (h) is repealed,

(b) in subsection (3), paragraph (c) is repealed,

(c) after subsection (6) insert—

“(6A) Subsection (4)(b) is without prejudice to—
(a) anything previously done by reference to an order mentioned in
subsection (5), or
(b) the making of a new order.”.

(9) In section 70(1) (commencement), “55,” is repealed.

5 Landfill Tax (Scotland) Act 2014

(1) The 2014 Act is amended as follows.

(2) In section 25 (accounting for tax and time for payment), for paragraph (b) substitute—
“(b) make returns in relation to such accounting periods.”.

(3) After section 25 insert—

“25A Form and content of returns

(1) A return under this Act must—
(a) be in the form specified by the Tax Authority,
(b) contain such information specified by the Tax Authority, and
(c) be made in such manner as specified by the Tax Authority.

(2) The Tax Authority may specify different forms and information for different
kinds of return.

(3) A return is treated as containing any information provided by the person
making it for the purpose of completing the return.”.

(4) Section 29 (recovery of overpaid tax) is repealed.

(5) In section 34 (the Tax Authority)—
(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,
(b) subsection (2) is repealed.

(6) Section 35 (delegation of functions to SEPA) is repealed.

(7) Section 36 (review and appeal) is repealed.

(8) In section 41 (subordinate legislation)—
(a) in subsection (2), paragraph (b) is repealed,
(b) in subsection (7), paragraph (e) is repealed (but not the word “and” immediately
following it).

(9) In section 42 (commencement), “35,” is repealed.

30 Tribunals (Scotland) Act 2014

(1) The Tribunals (Scotland) Act 2014 (asp 00) is amended as follows.

(2) In schedule 1 (listed tribunals), in Part 1, after paragraph 10 (the entry for “A Police
Appeals Tribunal”) insert—

“10A The First-tier Tax Tribunal for Scotland

10B The Upper Tax Tribunal for Scotland”.
## Schedule 5
(introduced by section 217)

### Index of Defined Expressions

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 Act</td>
<td>section 216</td>
</tr>
<tr>
<td>2014 Act</td>
<td>section 216</td>
</tr>
<tr>
<td>appealable decision</td>
<td>section 198</td>
</tr>
<tr>
<td>appellant</td>
<td>section 199(1)</td>
</tr>
<tr>
<td>authorised officer</td>
<td>section 57(3)</td>
</tr>
<tr>
<td>business assets</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>business documents</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>business premises</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>carrying on a business</td>
<td>section 113</td>
</tr>
<tr>
<td>closure notice</td>
<td>section 84(1) (for the purposes of Part 6) and paragraph 10(1) of schedule 3 (for the purposes of that schedule)</td>
</tr>
<tr>
<td>contact details</td>
<td>section 192(4)</td>
</tr>
<tr>
<td>contract settlement</td>
<td>section 109(8)</td>
</tr>
<tr>
<td>designated investigation officer</td>
<td>section 111</td>
</tr>
<tr>
<td>designated officer</td>
<td>section 216</td>
</tr>
<tr>
<td>devolved tax</td>
<td>section 3(3)</td>
</tr>
<tr>
<td>filing date</td>
<td>section 73</td>
</tr>
<tr>
<td>First-tier Tribunal</td>
<td>section 19(5)(a)</td>
</tr>
<tr>
<td>general anti-avoidance rule</td>
<td>section 57(2)</td>
</tr>
<tr>
<td>information notice</td>
<td>section 123(1)</td>
</tr>
<tr>
<td>judicial member</td>
<td>section 56</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>Keeper</td>
<td>section 4(1)(a)</td>
</tr>
<tr>
<td>legal member</td>
<td>section 56</td>
</tr>
<tr>
<td>Lord President</td>
<td>section 56</td>
</tr>
<tr>
<td>matter in question</td>
<td>section 215(1)(a)</td>
</tr>
<tr>
<td>notice of appeal</td>
<td>section 216</td>
</tr>
<tr>
<td>notice of enquiry</td>
<td>section 76(5) (for the purposes of Part 6) and paragraph 9(1) of schedule 3 (for the purposes of that schedule)</td>
</tr>
<tr>
<td>notice of review</td>
<td>section 216</td>
</tr>
<tr>
<td>ordinary member</td>
<td>section 56</td>
</tr>
<tr>
<td>protected taxpayer information</td>
<td>section 14(1)</td>
</tr>
<tr>
<td>Revenue Scotland assessment</td>
<td>section 91</td>
</tr>
<tr>
<td>Revenue Scotland determination</td>
<td>section 216</td>
</tr>
<tr>
<td>SEPA</td>
<td>section 4(1)(b)</td>
</tr>
<tr>
<td>settlement agreement</td>
<td>section 211(1)</td>
</tr>
<tr>
<td>statutory records</td>
<td>section 114</td>
</tr>
<tr>
<td>tax position</td>
<td>section 112</td>
</tr>
<tr>
<td>Tax Tribunals</td>
<td>section 19(5)(c)</td>
</tr>
<tr>
<td>taxpayer notice</td>
<td>section 115(3)</td>
</tr>
<tr>
<td>third party</td>
<td>section 192(1)(c)</td>
</tr>
<tr>
<td>third party notice</td>
<td>section 116(4)</td>
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Revenue Scotland and Tax Powers Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

Introduced by: John Swinney
On: 12 December 2013
Bill type: Government Bill
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

REVENUE SCOTLAND AND TAX POWERS BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Revenue Scotland and Tax Powers Bill introduced in the Scottish Parliament on 12 December 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 43–PM.
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Revenue Scotland and Tax Powers Bill is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. It follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 that received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Bill which is currently being considered by the Parliament.

4. The Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as a new non-ministerial department which will be the tax authority responsible for collecting Scotland’s devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

THE BILL

OVERVIEW

5. The Bill comprises 225 sections and five schedules and is divided into 12 Parts as follows:

- **PART 1** provides an overview of the Bill’s structure in relation to the different Parts and schedules.
- **PART 2** establishes Revenue Scotland and provides for its general functions and responsibilities.
- **PART 3** makes provision about the use and protection of taxpayer and other information.
- **PART 4** sets out in detail the composition and operational arrangements of the new two-tier Scottish Tax Tribunals.
- **PART 5** outlines the general anti-avoidance rule applying to avoidance of the two devolved taxes.
- **PART 6** sets out the powers and duties of taxpayers and Revenue Scotland, outlines the arrangements and time limits for taxpayer self-assessments and Revenue
Scotland assessments and the arrangements for handling of double or overpayment of tax.

- **PART 7** makes provision for Revenue Scotland’s investigatory powers.
- **PART 8** sets out the matters in relation to which penalties may be imposed.
- **PART 9** makes provision about the interest payable on unpaid tax and on penalties.
- **PART 10** contains provisions on debt enforcement by Revenue Scotland.
- **PART 11** sets out the reviews and appeals process.
- **PART 12** outlines final provisions including an index of defined expressions, subordinate legislation and ancillary powers.

**PART 1 – OVERVIEW OF BILL**

6. Section 1 sets out the content of the Bill and provides a brief description of what each Part does.

**PART 2 - REVENUE SCOTLAND**

7. Part 2 formally establishes Revenue Scotland and introduces schedule 1. It sets out Revenue Scotland’s functions, its independence from and relationship with the Scottish Ministers in the exercise of those functions, including the payment of tax receipts into the Scottish Consolidated Fund, its powers of delegation, and procedures for the publication and reporting of its Charter of standards and values, corporate plan and annual report.

**Establishment of Revenue Scotland**

*Section 2 - Revenue Scotland*

8. This section establishes Revenue Scotland as a corporate body with a separate legal personality to that of the Scottish Ministers. Revenue Scotland’s Gaelic name (Teachd-a-steach Alba) has equal legal status. Section 2 also introduces schedule 1 which is concerned with the membership, procedures and staffing of Revenue Scotland.

9. Revenue Scotland will have the status of a non-ministerial department, as distinct from the status of a non-departmental public body. As with other devolved non-ministerial departments, Revenue Scotland will be a Crown body. Revenue Scotland is expected to have the status of an office-holder in the Scottish administration, within the meaning of section 126(8) of the Scotland Act 1998, by virtue of an order under that Act.

**Functions of Revenue Scotland**

*Section 3 - Functions of Revenue Scotland*

10. Subsection (1) sets out Revenue Scotland’s general function as the collection and management of the devolved taxes (devolved taxes having the meaning given by section 80A(4) of the Scotland Act 1998). By virtue of section 51(3) of the Commissioners for Revenue and

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1 Revenue Scotland in its current form is an administrative Division of the Scottish Government.
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Customs Act 2005 (c.11), the reference to collection and management has the same meaning as references to care and management in older tax statutes. This means that a jurisprudence concerning the proper bounds of the tax authority’s role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions.

11. Subsection (2) sets out the particular functions relating to Revenue Scotland as:
   - the provision of information, advice and assistance to the Scottish Ministers on matters concerning tax; reflecting that the Scottish Ministers will lead on devolved tax policy development and future legislation;
   - the provision of information, assistance and advice to enable other persons, for example taxpayers and their agents, to comply with the requirements of the devolved taxes;
   - the efficient resolution of disputes on matters of tax liability or compliance; and
   - the protection of the revenue against tax fraud (that is to say, tax evasion) and tax avoidance; Revenue Scotland might do this through robust whilst proportionate compliance activity, through application of Targeted Anti-Avoidance Rules (TAARs) or through application of the General Anti-Avoidance Rule (see Part 5 of the Bill).

Delegation of functions by Revenue Scotland

Section 4 - Delegation of functions by Revenue Scotland

12. Subsection (1) provides a power for Revenue Scotland to delegate any of its functions to the Keeper of the Registers of Scotland (RoS) with respect to LBTT and to the Scottish Environment Protection Agency (SEPA) with respect to the Scottish Landfill Tax (although Revenue Scotland will retain responsibility and accountability for the collection and management of both devolved taxes). Subsection (2) provides that in the delegation of these functions, both RoS and SEPA must comply with any directions Revenue Scotland gives to each regarding how to carry out the functions. Subsection (3) gives Revenue Scotland the power to change or revoke anything regarding the delegation or directions of these functions at any time.

13. Subsection (4) provides that Revenue Scotland must publish information regarding any delegation or directions of its functions and must also lay a copy of this information before the Scottish Parliament (subsection (5)), unless it considers that to do so would impact upon the ability to carry out its functions effectively. RoS and SEPA may be reimbursed by Revenue Scotland for any expenditure incurred in exercising its delegated functions in accordance with subsection (8).

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2 The leading English case is the “Fleet Street casuals case”; Inland Revenue v National Federation of Self-employed and Small Businesses Ltd [1982] A.C. 617.
Money

Section 5 – Payments into the Scottish Consolidated Fund

14. This section provides that, subject to deduction of payments in connection with repayments, interest on repayments and payments treated as repayments, Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund. This is consistent with the general position of Scottish Administration bodies set out in section 64(3) of the Scotland Act 1998. Paragraph 1 of schedule 4 (minor and consequential modifications) makes a consequential amendment to section 9 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) so that RoS may direct LBTT receipts to the Scottish Consolidated Fund.

Section 6 – Rewards

15. This section provides that Revenue Scotland may pay a reward to a person for a service relating to a function of Revenue Scotland, an example being information which leads to the collection of undeclared tax.

Independence of Revenue Scotland

Section 7 - Independence of Revenue Scotland

16. This section makes provision for Revenue Scotland’s independence in that the Scottish Ministers must not direct or otherwise seek to control Revenue Scotland in the exercise of its functions. Revenue Scotland’s independence is, however, subject to any contrary provisions made in this or any other enactment of the Scottish Parliament.

Ministerial guidance

Section 8 - Ministerial guidance

17. This section sets out that the Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions and that Revenue Scotland must have regard to that guidance. The guidance provided must be published, as considered appropriate by Ministers, unless the Scottish Ministers consider that to do so would impact upon the ability to carry out its functions effectively.

Provision of information, advice or assistance to Ministers

Section 9 - Provision of information, advice or assistance to the Scottish Ministers

18. This section sets out that Revenue Scotland must provide the Scottish Ministers with information or advice relating to its functions when required to do so and in such format as Ministers may determine.

Charter of standards and values

Section 10 - Charter of standards and values

19. This section provides that Revenue Scotland must prepare and publish a Charter (including laying it before the Scottish Parliament) setting out: the standards of behaviour and
values it expects from its members and staff when dealing with taxpayers and their agents; and the standards of behaviour and values it expects from anyone it deals with. Revenue Scotland must review and revise the Charter as and when it considers it appropriate to do so.

**Corporate plan**

*Section 11 - Corporate plan*

20. This section provides that Revenue Scotland must prepare a corporate plan. Subsections (5), (7) and (8) relate specifically to the planning period for each corporate plan. Subsection (7) sets out that the first plan is to be published no later than a date to be appointed by an order made by the Scottish Ministers and that subsequent plans are to be submitted no later than the end date specified by that order and thereafter at three-yearly intervals. Subsection (5) provides that Revenue Scotland may review and submit a revised plan at any time for the approval of Ministers and subsection (8) enables Ministers by order to substitute such other period as they consider appropriate for the planning period.

21. The remaining subsections together set out procedures for the approval and publication of the corporate plan. The plan must describe Revenue Scotland’s main objectives, the outcomes by which these objectives may be measured and its main activities for the duration of the planning period. Each plan must be submitted to the Scottish Ministers for approval, with approval being subject to any modifications as agreed between Ministers and Revenue Scotland. Following approval, a copy of the plan must be laid before the Scottish Parliament and published as Revenue Scotland considers appropriate.

**Annual report**

*Section 12 - Annual report*

22. This section sets out a requirement for Revenue Scotland to prepare and publish an annual report (including sending a copy of the report to the Scottish Ministers and laying it before the Scottish Parliament) as soon as possible after the end of each financial year. The annual report might contain, for example, details of how Revenue Scotland has demonstrated the standards of behaviour and values in the Charter of standards and values referred to in section 10. Revenue Scotland may also publish other reports and information it considers relevant and appropriate to the exercise of its functions.

23. On the basis that Revenue Scotland will be part of the Scottish Administration, the accountability and audit provisions of Part 2 of the Public Finance and Accountability (Scotland) Act 2000 will apply, including the duty to prepare accounts under section 19.

**PART 3 – INFORMATION**

**Use of information by Revenue Scotland**

*Section 13 - Use of information by Revenue Scotland*

24. Section 13 allows for information (whether taxpayer information or other information) to be shared freely within Revenue Scotland, subject to statutory or international prohibitions or restrictions on such sharing. Subsection (3) gives “Revenue Scotland” an expanded meaning
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

with the effect that delegates of Revenue Scotland (as is provided for in section 4) may participate in such sharing within their organisations and with Revenue Scotland.

Protected taxpayer information

Section 14 - Protected taxpayer information

25. Section 14 establishes the concept of “protected taxpayer information”. The special statutory protection for taxpayer information provided for in Part 3 of the Bill is additional to the existing legal protections that may apply to taxpayer and other forms of information, for example under the Data Protection Act 1998 (c.29) which includes as data protection principle seven that appropriate technical and organisational measures be taken to protect all personal data. “Protected taxpayer information” is identifiable information concerning taxpayers and other persons (for example their personal or business associates) that becomes held by Revenue Scotland in the exercise of its functions. “Revenue Scotland” in this context has the expanded meaning that it has in section 13.

Section 15 - Confidentiality of protected taxpayer information

26. Section 15 prohibits Revenue Scotland officials from disclosing taxpayer information unless the disclosure is expressly permitted in subsection (3). Breach of this requirement is a criminal offence (see section 17). The grounds for lawful disclosure in that subsection include disclosure with the consent of the person or persons to whom the protected taxpayer information relates, and disclosure in connection with legal proceedings (whether civil or criminal). Revenue Scotland may also disclose protected taxpayer information in accordance with existing or future statutory provisions such as Part 2A of the Public Finance and Accountability (Scotland) Act 2000 (data matching for the detection of fraud etc.).

27. Subsection (2) provides that ‘Revenue Scotland official’ has an expanded meaning covering individuals working for delegates of Revenue Scotland or otherwise exercising functions on behalf of Revenue Scotland, for example an advocate contracted to conduct litigation for Revenue Scotland in the higher courts.

Section 16 - Protected taxpayer information: declaration of confidentiality

28. Revenue Scotland officials, within the expanded meaning in section 15, must make a formal declaration acknowledging their statutory duty of confidentiality under section 15. Subsections (2) and (3) provide for when and how the declaration is to be made.

Section 17 - Wrongful disclosure of protected taxpayer information

29. Section 17 makes it a criminal offence to breach section 15, that is to say to disclose protected taxpayer information where there is not specific statutory authority under section 15(3). The penalty is imprisonment and/or a fine, with the length of sentence and the amount of the fine being higher on solemn prosecution (conviction on indictment) (see subsection (3)). It is a defence where a person reasonably believed that disclosure was lawful or the information disclosed had already lawfully been made public.
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

30. Subsection (4) clarifies that other legal measures may be taken against a person who breaches section 15, for example disciplinary measures in terms of employment law or a breach of confidence action.

PART 4 – THE SCOTTISH TAX TRIBUNALS

CHAPTER 1 — INTRODUCTORY

Section 18 - Overview

31. This section provides an overview of Part 4 of the Bill which provides for the establishment of the Tax Tribunals to hear appeals and exercise other functions in relation to devolved taxes.

CHAPTER 2 — ESTABLISHMENT AND LEADERSHIP

Establishment

Section 19 - The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

32. This section provides for the establishment of the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland, referred to as the First-tier Tribunal and the Upper Tribunal and collectively as the Tax Tribunals in this Bill.

Leadership

Section 20 - President of the Tax Tribunals

33. This section provides for the leadership of the Tax Tribunals. The Tax Tribunals will be led by the President of the Tax Tribunals who will be appointed by the Scottish Ministers. The section provides that the President of the Tax Tribunals is to be appointed on such terms and conditions that are determined by the Scottish Ministers.

Section 21 - Functions of the President of the Tax Tribunals

34. This section provides that the President of the Tax Tribunals is the senior member of the Tax Tribunals and has the functions laid out in this Act.

Section 22 - Business arrangements

35. This section sets out the President’s functions in relation to the business of the Tax Tribunals and responsibility for the welfare of the members of the Tax Tribunals.

Section 23 - Temporary President

36. This section provides for the Scottish Ministers to appoint a temporary president. The temporary president will be appointed from the legal members of the Tax Tribunals. All functions of the President can be carried out by a Temporary President. As such, all reference to the President in this Bill can be taken as applying to a Temporary President.
CHAPTER 3 — MEMBERSHIP

Membership of Tax Tribunals

Section 24 - Members

37. This section provides that the First-tier Tribunal’s membership will be made up of ordinary and legal members. The Upper Tribunal will be made up of legal members and Court of Session judges. Schedule 2 provides further details about ordinary and legal members.

Judicial members

Section 25 – Judicial members

38. This section provides that a Court of Session judge may sit as a member of the Upper Tribunal if authorised to do so by the President of the Tax Tribunals. Such an authorisation would have to be approved by the Lord President and by the person involved.

Status and capacity

Section 26 – Status and capacity of members

39. This section provides for the members of the Tax Tribunals to have judicial capacity for the purpose of making a decision on any case before the Tax Tribunals.

CHAPTER 4 — DECISION-MAKING AND COMPOSITION

Section 27 - Decisions in the First-tier Tribunal

40. This section sets out the composition of a panel hearing a case in the First-tier Tribunal and details the President’s responsibility for selecting the size and composition of the panel and the individual members that are to sit on the panel. The President may choose him or herself.

Section 28 - Decisions in the Upper Tribunal

41. This section sets out the President’s responsibility for selecting the individual legal member or Court of Session judge who will make up the panel in the Upper Tribunal. The President may choose him or herself.

Section 29 - Declining jurisdiction

42. This section provides that any of the members of the tax tribunal are still able to hear a case simply because they pay the tax in question.

Section 30 - Composition of the Tribunals

43. This section provides for the Scottish Ministers to make regulations regarding the composition of the Tax Tribunals and may differentiate between decision making on a case heard at first instance or on appeal.
CHAPTER 5 — APPEAL OF DECISIONS

Appeal from First-tier Tribunal

Section 31 - Appeal from the First-tier Tribunal

44. This section provides that any decision of the First-tier Tribunal can be appealed to the Upper Tribunal by a party in the case on a point of law. The appeal needs either the permission of the First-tier Tribunal or the Upper Tribunal.

Section 32 - Disposal of an appeal under section 31

45. This section provides for the Upper Tribunal’s consideration of an appeal from the First-tier Tribunal. When reaching a decision the Upper Tribunal may quash the decision of the First-tier Tribunal, remake the decision or remit the case back to the First-tier Tribunal with any directions the Upper Tribunal sees fit.

Appeal from Upper Tribunal

Section 33 - Appeal from the Upper Tribunal

46. This section provides for an appeal from the Upper Tribunal to the Court of Session. Such an appeal would only be allowed on a point of law and would require the permission of the Upper Tribunal or the Court of Session.

Section 34 - Disposal of an appeal under section 33

47. This section provides for the Court of Session’s consideration of an appeal from the Upper Tribunal. When reaching a decision, the Court of Session may quash the decision of the Upper Tribunal, remake the decision or remit the case back to the Upper Tribunal with any directions the Court of Session sees fit.

Section 35 - Procedure on second appeal

48. This section makes provision for “second appeals” — appeals to the Court of Session from the Upper Tribunal, where the decision being appealed was itself a decision on an appeal from the First-tier Tribunal. The Court has the powers of either tribunal if remaking the decision appealed. The Court may remit the case either to the Upper Tribunal or to the First-tier Tribunal. And where the Court remits the case to the Upper Tribunal, the Upper Tribunal may itself remit the case to the First-tier Tribunal. Where it does so, however, it must send to that tribunal any directions given by the Court of Session to the Upper Tribunal.

Further provision on permission to appeal

Section 36 - Process for permission

49. This section provides for the Scottish Ministers, by regulations, to specify a time limit within which permission for an appeal must be sought. A refusal to give permission is not appealable.
CHAPTER 6 — SPECIAL JURISDICTION

Section 37 - Judicial review cases

50. This section provides for judicial review. The Court of Session may remit such a petition for judicial review to the Upper Tribunal if the Court of Session is content that the petition does not seek anything other than the exercise of the Court’s judicial review function and the petition falls within a category specified by an Act of Sederunt made by the Court for the purposes of this subsection. The Court of Session also has to be satisfied that the matter in question falls within the functions and expertise of the tribunal.

Section 38 - Decision on remittal

51. This section sets out that, when considering a petition remitted from the Court of Session, the Upper Tribunal in determining the issues raised has the same powers as the Court of Session and will apply the same principles that the Court of Session would when considering a petition for judicial review. An order made by the Upper Tribunal in these circumstances will have the same effect as if it was made by the Court of Session. This section does not limit the right of appeal from the Upper Tribunal to the Court of Session.

Section 39 - Additional matters

52. This section sets out that any step or order made by the Court of Session in a remitted case is to be treated as if it was made by the Upper Tribunal, further provisions on cases remitted from the Court of Session to the Upper Tribunal may be made in the tribunal rules.

Section 40 - Meaning of judicial review

53. This section defines what is meant by a petition to the Court of Session for a judicial review and to exercise the Court of Session’s judicial review function.

CHAPTER 7 — POWERS AND ENFORCEMENT

Section 41 - Venue for hearings

54. This section provides that the Tax Tribunals can sit where and when the President of the Tax Tribunals decides.

Section 42 - Conduct of cases

55. This section provides that the Tax Tribunals’ powers, authority, rights and privileges in relation to the things set out in subsection (3) will be set out in tribunal rules and may reference any authority exercisable by a sheriff or the Court of Session.

Section 43 - Enforcement of decisions

56. This section provides that a decision of the Tax Tribunals will be enforceable by provisions laid out in the tribunal rules, by making reference to the means of enforcing an order from a sheriff or the Court of Session.
Section 44 - Award of expenses

57. This section sets out that the Tax Tribunals may award expenses as laid out in the Tribunal rules.

Section 45 - Additional powers

58. This section provides that the Scottish Ministers may, by regulations, confer on the Tax Tribunals additional powers necessary or expedient for the exercise of their functions.

CHAPTER 8 — PRACTICE AND PROCEDURE

Tribunal rules: general

Section 46 - Tribunal rules

59. This section provides for rules regulating the practice and procedure for both tiers of the Scottish Tax Tribunal to be established (subsection (1)), to be known as Scottish Tax Tribunal Rules (subsection (2)). Tribunal rules are to be made by the Court of Session by Act of Sederunt, as prescribed in subsection (3).

Section 47 - Exercise of functions

60. This section provides that tribunal rules may state, in relation to functions exercised by members of the Tax Tribunals, how and by whom a function is to be exercised. They may provide for something to require further authorisation, permit something to be done on a person’s behalf and allow specified persons to make certain decisions.

Section 48 - Extent of rule-making

61. This section provides that tribunal rules may apply to both tribunals or specifically to one or other tribunal. They may make particular provision for different types of proceedings or purposes.

Particular matters

Section 49 - Proceedings and steps

62. This section sets out that tribunal rules may make provision for proceedings of a case before the tax tribunal. In particular, they may detail how a case is to brought, allow for the withdrawal of a case, set time limits for applications and taking particular steps and specify when the tribunals may act on their own initiative.

Section 50 - Hearings in cases

63. This section sets out that tribunal rules may provide for when matters can be dealt with without a hearing, in a private hearing or at a public hearing. They will also detail when notice of a hearing has to be given, who may appear on behalf of a party in a case and who may attend to provide support to a party in a case or as a witness in a case. Tribunal rules will also detail when particular persons may appear or be represented at a hearing, and specify when a hearing may go ahead without notice in the absence of a particular member. Tribunal rules may also cover when a case may be adjourned to allow the parties to try and resolve the dispute by
alternative dispute resolution methods. The tribunal rules will also set out when reporting restrictions may be imposed.

Section 51 - Evidence and decisions

64. This section sets out that tribunal rules will cover giving evidence and administering oaths. Tribunal rules will also provide for the payment of expenses to persons in certain defined circumstances. Rules might, for example, state that a document which had been posted to a person would be presumed to have been duly served on that person, unless the contrary was proved.

Issuing directions

Section 52 - Practice directions

65. This section sets out that the President of the Tribunals may issue directions relating to practice and procedure in both the First-tier and Upper Tribunal. Directions may include guidance and instruction on decision making, may revoke earlier directions and may make different provision for different purposes. Such directions may be published in a way the President thinks appropriate.

CHAPTER 9 — ADMINISTRATION

Section 53 - Administrative support

66. This section sets out the Scottish Ministers duty to provide for the property, services and personnel the Tribunals require to carry out their function. The Scottish Ministers must have regard to any representations from the President of the Tax Tribunals on matter concerning administrative support.

Section 54 - Guidance

67. This section sets out that the President of the Tax Tribunals may issue such guidance relating to the administration of the Tax Tribunals as the President of the Tax Tribunals sees fit.

Section 55 - Annual reporting

68. This section provides that the President must produce an annual report and provides details of what the annual report must cover. The report must be given to the Scottish Ministers at the end of each financial year. The Scottish Ministers have a duty to lay a copy of the report before the Parliament prior to publishing it.

CHAPTER 10 — INTERPRETATION

Section 56 - Interpretation

69. This section defines various expressions used in this Part, including “judicial member” and the “Lord President”.
PART 5 – THE GENERAL ANTI-AVOIDANCE RULE

Introductory

Section 57 - The general anti-avoidance rule: introductory

70. This section sets out the overall purpose of this Part of the Bill – to enable Revenue Scotland to counteract tax advantages in relation to the devolved taxes that arise from tax avoidance schemes that are artificial. Subsection (2) provides that the sections in this Part, taken together, are to be known as the general anti-avoidance rule (GAAR). Under UK legislation set out in the Finance Act 2013, provision is made for a general anti-abuse rule. Although the terms “avoidance” and “abuse” do not have exact definitions, avoidance generally refers to a spectrum of activities designed to reduce tax liability, while abuse is often used to describe highly contrived schemes. Subsection (3) defines an “authorised officer” as a person or category of persons authorised by Revenue Scotland to undertake work in connection with administering the GAAR. Subsequent sections in Part 5 define the terms used and provide more detail about how the provisions as a whole are to work. The GAAR is intended to operate in tandem with Targeted Anti-Avoidance Rules (TAARs) and the “Ramsay principle” of purposive statutory interpretation applied by the Scottish courts and tribunals.

Artificial tax avoidance arrangements

Section 58 - Tax avoidance arrangements

71. This section sets out the definition of a “tax avoidance arrangement”. Subsection (2) gives a broad definition of an “arrangement”, which includes transactions, schemes, agreements etc., either individually or combined in parts and stages. This definition is kept broad so that a wide range of arrangements can be considered to determine whether they are tax avoidance arrangements.

72. Subsection (1) defines a “tax avoidance arrangement” as an arrangement (defined in subsection (2)) which appears to have as its main purpose or one of its main purposes the obtaining of a “tax advantage”. The test for determining whether or not an arrangement has such a purpose is that it would be reasonable in all the circumstances to conclude that it did. Later sections define a tax advantage.

Section 59 - Meaning of “artificial”

73. This section sets out the definition of “artificial” in the context set out in section 57 – that the purpose of this Part of the Bill is to give power to counteract “tax avoidance schemes that are artificial”.

74. The section sets out two tests for deciding whether a tax avoidance scheme is artificial. An arrangement is artificial if it satisfies either test. The first test is set out in subsection (2). It is that the arrangement under consideration is artificial if, in all the circumstances, it is not a reasonable course of action in relation to the tax legislation in question. Subsections (2)(a) and (2)(b) make further provision to assist in determining the question, by reference to the substantive results of the arrangement. Subsection (2)(a) provides that if the substantive results of the arrangement are consistent with any principles on which the tax legislation in question is known to be based, and the results are consistent with the policy objectives of the legislation, this
would be a relevant factor in deciding that the course of action is reasonable in all the circumstances and, therefore, not artificial.

75. Subsection (2)(b) adds a further ground for determining reasonableness: whether the arrangement is intended to exploit any shortcomings in the tax legislation in question. Another way of describing this would be exploiting a ‘loophole’ or ‘loopholes’ in tax legislation. If an arrangement is intended to exploit shortcomings, the force of subsection (2)(b) is that such an arrangement would not be a reasonable course of action in all the circumstances and so is likely to be artificial.

76. The grounds for determining reasonableness set out in subsection (2) are not exhaustive, meaning that Revenue Scotland can take account of other factors in determining whether entering into a tax avoidance arrangement was a reasonable course of action or not.

77. The second test is set out in subsection (3). It is that a tax avoidance arrangement is artificial if the arrangement lacks commercial substance.

78. Subsection (4) then provides examples of characteristics of a tax avoidance arrangement that could indicate that an arrangement lacks commercial substance. These are where:
   - the manner of carrying out the arrangement would not normally be employed in reasonable business conduct
   - the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole
   - elements in the arrangement effectively offset each other or cancel each other out
   - the transactions are circular in nature.

79. These characteristics are not exhaustive but illustrative. They are intended to be helpful to taxpayers and to Revenue Scotland in determining under subsection (3) whether a tax avoidance arrangement is artificial.

80. Subsection (5) provides an example of characteristics of a tax avoidance arrangement that could indicate that the arrangement is not artificial. The example given is where:
   - A tax avoidance arrangement accords with established practice and at the time the it was entered into, Revenue Scotland had indicated that it accepted this practice

81. As in subsection (4), this example is not exhaustive but illustrative. This subsection is only applicable where both conditions are fulfilled – that is, that a tax avoidance arrangement accords with established practice, and that Revenue Scotland had indicated its acceptance of that practice at the time it was entered into. It is expected that once Revenue Scotland is established, it will over time publish guidance about acceptance of established practice, either at its own initiative or in response to requests from taxpayers or agents.

82. Finally, subsection (7) provides that, where a tax avoidance arrangement forms part of any other arrangements, then in determining whether it is artificial or not these other arrangements must be considered.
Section 60 - Meaning of “tax advantage”

83. This section sets out the criteria for determining whether a tax advantage exists or not. A tax advantage could consist of:

- Relief or increased relief from tax
- Repayment or increased repayment of tax
- Avoidance or reduction of a charge to tax or an assessment to tax
- Avoidance of a possible assessment to tax
- Deferral of payment of tax or advancement of a repayment of tax.

84. These criteria are not exhaustive.

85. Subsection (2) provides that in determining whether a tax avoidance arrangement has resulted in a tax advantage, Revenue Scotland may take account of the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

Section 61 - Counteracting tax advantages

86. This section provides Revenue Scotland with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes. Subsection (1) provides that Revenue Scotland may make any adjustments that it considers to be just and reasonable in order to counteract a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the tax in relation to which a tax advantage has been gained, or in respect of any other tax.

87. Subsection (3) makes clear that the adjustments made to counteract a tax liability include adjustments that impose or increase a tax liability, and that tax is to be charged in accordance with the adjustment. Subsection (4) provides that the adjustment made to counteract a tax advantage may take the form of a tax assessment, a modification to an existing assessment, an amendment, or the disallowance of a claim (for a relief or reduction in tax).

88. Subsection (5) requires that in counteracting a tax advantage, Revenue Scotland is obliged to adhere to the procedures and steps set out in later sections in this Part of the Bill.

Section 62 - Proceedings in connection with the general anti-avoidance rule

89. This section makes provision in relation to court actions arising from the operation of the GAAR in relation to the devolved taxes. Subsection (1) provides that, where Revenue Scotland makes adjustments to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.

90. Subsection (2) provides that, in determining any issues in connection with the GAAR, a court or tribunal is obliged to take account of guidance published by Revenue Scotland about the GAAR which was extant when the tax avoidance arrangement in question was entered into.
91. Subsection (3) provides that a court or tribunal may also take account of guidance, statements or other material in the public domain at the time the tax avoidance arrangement in question was entered into, and may also take account of evidence of established practice at that time.

Section 63 - Notice to taxpayer of proposed counteraction of tax advantage

92. This section sets out Revenue Scotland’s responsibility for notifying a taxpayer when it is intending to counteract a tax advantage in relation to the devolved taxes.

93. Subsection (1) provides that if a member of staff in Revenue Scotland who is designated to deal with GAAR issues (“an authorised officer”) considers that a tax advantage has arisen from a tax avoidance arrangement that is artificial, and that the tax advantage should be counteracted, the authorised officer must notify the taxpayer in writing.

94. Subsection (2) specifies that a notification must include a statement of the tax avoidance arrangement and the tax advantage; an explanation of why the authorised officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial; a statement of the counteraction that Revenue Scotland intends to take; and a statement of the period of time that the taxpayer has for making representations (45 days under subsection (4)).

95. Subsection (3) provides that a notice to a taxpayer may also describe the steps that the taxpayer can take to avoid the proposed counteraction.

96. Subsection (4) provides that when a taxpayer receives a notice under this section, they have 45 days in which to respond to the notice by making written representations. Subsection (5) gives the authorised officer power to increase the number of days within which written representations may be made to more than 45 days, if the taxpayer makes a written request. Subsection (6) provides that the authorised officer must take account of any representations made by the taxpayer in response to the notification given under subsection (1) and (2).

Section 64 - Final notice to taxpayer of counteraction of tax advantage

97. This section provides that where a taxpayer has been sent a notice under section 63(1), after the period for making representations about the notice has expired, the authorised officer must provide the taxpayer with another written notice setting out whether or not the tax advantage arising from the tax avoidance arrangement is to be counteracted as proposed in the earlier notice.

98. Subsection (2) stipulates that if the tax advantage is to be counteracted, the notice must explain the adjustments required to give effect to the counteraction, and any steps required of the taxpayer in this regard.

Section 65 - Assumption of tax advantage

99. This section gives an authorised officer power to give a taxpayer a notice under section 63 and under section 64 where the authorised officer thinks that a tax advantage in relation to the devolved taxes might have arisen to the taxpayer. Subsection (2) makes clear that this enables an
authorised officer to send a notification to a taxpayer on the assumption that a tax advantage does arise.

General anti-avoidance rule: commencement and transitional provision

Section 66 - General anti-avoidance rule: commencement and transitional provision

100. This section makes provision relating to when the GAAR comes into effect and for transitional arrangements. Subsection (1) provides that the GAAR has effect in relation to a tax avoidance arrangement entered into on or after the date that the GAAR provisions come into force. Subsection (2) provides that where the tax avoidance arrangement forms part of another arrangement that was entered into before the GAAR came into force, this other arrangement is to be ignored for the purposes of section 59(7) (which provides that all parts of an arrangement of which a tax avoidance arrangement forms part are to be considered in deciding if a tax avoidance arrangement is artificial). Subsection (3) provides that the earlier arrangements should be taken into account, if, as a result of taking them into account, the tax avoidance arrangement would not be artificial.

PART 6 – TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1 — OVERVIEW

Section 67 - Overview

101. This section provides an overview of the matters that are dealt with in this Part of the Bill, namely the assessment of devolved tax.

CHAPTER 2 — TAXPAYER DUTIES

General taxpayer duties

Section 68 - Taxpayer duties

102. This section sets out the general duties of a taxpayer to keep adequate records and take reasonable care in self-assessing and paying their devolved tax liabilities. As these general duties are set out in more detail elsewhere in this Bill and other enactments, this provision also states that this general outline does not prejudice any of the specific detail that is provided for elsewhere.

Duty to keep records

Section 69 - Duty to keep and preserve records

103. This section sets out the duty of a person who is required to deliver a return in relation to devolved taxes to keep and preserve records that are needed to complete that return. It lists the types of records that generally need to be kept and sets out the maximum time period for which records need to be kept whilst permitting Revenue Scotland to specify an earlier date in writing.

104. It allows the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved. The regulations may make reference to things
specification in a notice published and not withdrawn by Revenue Scotland. Examples are given of documents that may be included in the term “supporting documents”.

Section 70 - Preservation of information etc.

105. This section provides for the preservation of information instead of original records. It permits records to be kept in an alternative form (such as microfiche or an electronic facsimile) as long as the information they contain is preserved.

Section 71 - Penalty for failure to keep and preserve records

106. This section provides for a penalty of a maximum of £3,000 for failure to keep and preserve records, with the exception that no penalty is incurred if the required facts which would have been demonstrated by the records are provided to Revenue Scotland by other documentary evidence.

Section 72 - Further provision: land and buildings transaction tax

107. This section relates to LBTT and sets out that the Scottish Ministers may make regulations to specify records and supporting documents that a buyer must keep and preserve in relation to land transactions that do not have to be notified. A land transaction may not initially be notifiable under the 2013 Act. But it can become notifiable later, for instance where a lease continues after the end of its original term.

108. Regulations under this section may apply the provisions concerning a taxpayer’s duty to keep and preserve records, that are set out in the previous sections 69 to 71, to a buyer in a land transaction that is not notifiable. Any expressions used in this section and in the Land and Buildings Transaction Tax (Scotland) Act 2013 have the meaning given in that Act.

CHAPTER 3 — TAX RETURNS

Filing dates

Section 73 - Dates by which tax returns must be made

109. This section provides a definition of “filing date”, being the date on which tax returns for the devolved taxes are due. It also provides that the Scottish Ministers may make regulations about the dates on which returns must be made to Revenue Scotland. These regulations may make different provisions for the different devolved taxes (by virtue of section 218(5)) and may modify any enactments.

Amendment and correction of returns

Section 74 - Amendment of return by taxpayer

110. This section provides for the amendment of a tax return by the taxpayer and allows Revenue Scotland to specify the form and content of any notice of such an amendment. It sets out that the taxpayer must make an amendment within 12 months of either the filing date (which is defined) or any other dates that the Scottish Ministers may prescribe (and different provision may be made for different devolved taxes).
Section 75 - Correction of return by Revenue Scotland

111. This section provides that Revenue Scotland may correct returns for obvious errors or omissions by notice to the taxpayer. The correction must be within three years from the date the return or amended return is delivered. The taxpayer may amend the return to reject the correction during the amendment period of 12 months from the filing date. However, if that period has expired, the taxpayer can amend the return within three months from the notice of correction from Revenue Scotland.

CHAPTER 4 — REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

Section 76 - Notice of enquiry

112. This section sets out that a designated officer (defined in section 216) may enquire into a tax return, provided that notice of intention to carry out an enquiry is given to the taxpayer or the person who submitted the return on their behalf within the period set out. It also limits the number of notices of enquiry that may be made in relation to any particular tax return.

Section 77 - Scope of enquiry

113. This section sets out the scope of an enquiry into a tax return and limits the scope of a subsequent enquiry on a return to amendments made after the completion of that enquiry, if that prior enquiry had been completed before the expiry of the initial twelve month period in which the taxpayer can make amendments to their return.

Amendment of return during enquiry

Section 78 - Amendment of self-assessment during enquiry to prevent loss of tax

114. This section provides for the amendment of a tax return by a designated officer during the course of an enquiry to prevent loss of tax where the amount stated in the self-assessment contained in the return is insufficient. Where an enquiry is made into an amended return, it limits this to matters which are amended or affected by the amended return. The period in which an enquiry is in progress is defined for the purposes of this section and the following section 79.

Referral during enquiry

Section 79 - Referral of questions to appropriate tribunal during enquiry

115. This section provides for the referral of questions to the appropriate tribunal (defined in section 83) during an enquiry. It requires notice of the referral to be given jointly by the relevant person and the designated officer.

Section 80 - Withdrawal of notice of referral

116. This section provides for the withdrawal of a notice made under section 79 by a designated officer or the relevant person.
Section 81 - Effect of referral on enquiry

117. This section sets out the effect of referral under section 79 on an enquiry. It provides that a closure notice or an application for a closure notice cannot be made while proceedings under section 79 are in progress and defines what “in progress” means in this context.

Section 82 - Effect of determination

118. This section provides that the determination of any question by the appropriate tribunal under section 79 is binding on the parties. It requires the designated officer to take the determination into account when making any amendments to the return and limits the question determined from being reopened.

Section 83 - “Appropriate tribunal”

119. This section sets out which are the relevant tribunals for the referral of questions under section 79.

Completion of enquiry

Section 84 - Completion of enquiry

120. This section provides for completion of an enquiry. It requires a designated officer to issue a closure notice at the completion of an enquiry. A closure notice must state whether or not an amendment is required and make any amendment necessary. It also limits the period within which a closure notice must be issued.

Section 85 - Direction to complete enquiry

121. This section provides for the person who made the return to seek from a tribunal a direction that Revenue Scotland should issue a closure notice.

CHAPTER 5 — REVENUE SCOTLAND DETERMINATIONS

Section 86 - Determination of tax chargeable if no return made

122. This section sets out that, in the circumstances where a designated officer has reason to believe a person is liable for a tax charge, and that person has not filed a tax return with Revenue Scotland by the required date, Revenue Scotland may make a determination of the amount of tax to be charged. Notice of the determination must be given to the person believed to be liable for the chargeable tax, including a statement of the date on which the notice was issued. A determination cannot be made more than five years after the date on which a tax return should have been filed with Revenue Scotland.

Section 87 - Determination to have effect as a self-assessment

123. This section provides that a determination by Revenue Scotland has the same effect for enforcement purposes (i.e. the collection and recovery of tax as provided for in Part 11 of this Bill) as if it were a self-assessment made by the person liable for the chargeable tax. Under these provisions, a determination by Revenue Scotland does not affect a person’s liability to a penalty for failure to make a tax return.
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 88 - Determination superseded by actual self-assessment

124. This section provides that, where a person makes a tax return after Revenue Scotland has made a determination of chargeable tax, the self-assessed tax return will supersede Revenue Scotland’s determination. This provision does not apply when a person makes a tax return more than five years after the power to make the determination was first exercisable by Revenue Scotland, or more than three months after the date on which the determination was issued, whichever is the later. In instances where proceedings have commenced for the recovery of tax following a Revenue Scotland determination, and during those proceedings Revenue Scotland receives a self-assessment that supersedes its determination, the proceedings may continue as if they were for the recovery of so much of the self-assessed tax which remains due and not yet paid.

CHAPTER 6 — REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayments

Section 89 - Assessment where loss of tax

125. This section provides a designated officer with the power to make an assessment to make good a loss of tax where an amount that should have been assessed has not been, an amount assessed is less than it should be or relief that has been given is or has become excessive.

Section 90 - Assessment to recover excessive repayment of tax

126. This section provides for an assessment to be made to recover an excessive repayment of tax including any interest that may have been paid.

Section 91 - References to “Revenue Scotland assessment”

127. This section provides for references to “Revenue Scotland assessment” in the Bill to mean assessments made under section 89 or 90.

Section 92 - References to the “taxpayer”

128. This section provides that, in section 93, references to the “taxpayer” in relation to an assessment under section 89 mean the chargeable person and, in relation to an assessment under section 90, mean the person to whom the excessive repayment of tax was made.

Conditions for making Revenue Scotland assessments

Section 93 - Conditions for making Revenue Scotland assessments

129. This section limits the circumstances in which a Revenue Scotland assessment can be made under section 89 or 90 to situations which arose because of careless or deliberate behaviour by the taxpayer, a person acting on behalf of the taxpayer or a person who was a partner of the taxpayer at the relevant time. It also prohibits a “Revenue Scotland assessment” under those provisions if the situation was attributable to a mistake in the calculation of the tax liability that was in accordance with generally prevailing practice at the time the return was made.
Section 94 - Time limits for Revenue Scotland assessments
130. This section provides the time limits for Revenue Scotland assessments. The general time limit is five years from the “relevant” date. This time limit is extended to 20 years where the loss of tax is attributable to deliberate behaviour by the taxpayer or a “related person”. A Revenue Scotland assessment to recover excessive repayment of tax is not late if it is made within 12 months of that repayment. If a taxpayer has died, a Revenue Scotland assessment may be made on a taxpayer’s personal representatives within three years of death and is limited to “relevant dates” within five years of the death. It also sets out how any objection to a Revenue Scotland assessment on the basis of the time limits can be made and defines “relevant date” and “related person”.

Section 95 - Losses brought about carelessly or deliberately
131. This section provides the definition of a loss of tax or situation brought about carelessly or deliberately by or on behalf of a person for the purposes of sections 93 and 94.

Notice of assessment and other procedure

Section 96 - Assessment procedure
132. This section provides the procedure for making an assessment on a taxpayer and the required contents of a notice of assessment.

CHAPTER 7 — RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

Section 97 - Relief in case of double assessment
133. This section provides that a taxpayer can make a claim to Revenue Scotland for relief if they believe they have been assessed more than once for the same matter.

Overpaid tax etc.

Section 98 - Claim for relief for overpaid tax etc.
134. This section provides that a taxpayer may make a claim to Revenue Scotland for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax to be discharged.

Order changing tax basis not approved

Section 99 - Claim for repayment if order changing tax basis not approved
135. This section relates to situations where an order intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within 28 days of it being laid.
136. When such an order is made, the changes to the tax basis set out in it (which might be changes to tax rates or bands, and in the case of Scottish Landfill Tax, changes to the definition of a disposal to landfill, changes to the definition of landfill site activities, or changes to the types of qualifying materials, the disposal of which is taxable) can apply immediately, so taxpayers’ liability will change as soon as the order is made. If the proposed changes are not approved by Parliament within 28 days, then the Order falls. This section provides that in such a situation, a taxpayer can make a claim for repayment of the amount of additional tax paid during the period when the Order was in force.

137. Subsection (2) allows a taxpayer to make a claim to Revenue Scotland for the amount of additional tax paid because of the Order that fell, and any related penalty or interest. Subsection (3) sets out which Orders are relevant to this section. Subsection (5) provides that any claim must be made within two years of the ‘relevant date’ which is defined in subsection (6).

Defence of unjustified enrichment

Section 100 - Defence to certain claims for relief under section 98 or 99

138. This section provides that Revenue Scotland can reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. This would happen if the taxpayer was not the person who ultimately bore the cost of the tax. For example, for SLfT, while the tax is paid by the landfill site operator it is ultimately borne by those charged for depositing waste at the site.

Section 101 - Unjustified enrichment: further provision

139. This section explains circumstances in which a repayment would constitute unjustified enrichment where the payment of tax was made by someone other than the taxpayer. Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched. The taxpayer may show that a certain amount would be appropriate compensation for the loss or damage resulting from the mistaken assumption and this may be taken into account.

Section 102 - Unjustified enrichment: reimbursement arrangements

140. This section provides that the Scottish Ministers may make regulations under which certain reimbursement arrangements may count for the purposes of section 100 (and so do not allow Revenue Scotland to defend the claim for repayment on the ground of unjust enrichment). The regulations may also provide for the conditions that such reimbursement arrangements must comply with, and for other reimbursement arrangements to be disregarded for the purpose of section 100 (so that the fact that the person claiming a repayment may be reimbursing others does not stop Revenue Scotland using the unjust enrichment defence). Subsection (2) defines “reimbursement arrangements” as arrangements made by the person claiming under which the repaid tax is passed on to the persons who actually bore the cost of paying the tax in the first place. For example, if a landfill site operator had overpaid tax, having collected that tax from the person who disposed of the waste, then to return an overpayment of tax to the landfill site operator may lead to the operator being unjustly enriched (if the person who disposed of the waste cannot be found to be reimbursed).

24
Subsection (3) sets out the elements of reimbursement arrangements which may be required by the regulations provided for in subsection (1). These arrangements include setting a period for reimbursement to take place, repayment to Revenue Scotland if reimbursement does not take place and requires interest paid by Revenue Scotland on a repayment to be treated in the same way as the repayment, as well as records to be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out.

**Section 103 - Reimbursement arrangements: penalties**

This section provides that regulations made under section 102 may make provision for penalties to be imposed where an obligation by virtue of subsection 102(4) is breached. Regulations may set out circumstances in which a penalty is payable, the amounts payable, and other arrangements for penalties, which may be different for different taxes. The regulations may not create criminal offences.

**Other defences to claims**

**Section 104 - Cases in which Revenue Scotland need not give effect to a claim**

This section provides a list of situations (other than unjust enrichment) in which Revenue Scotland does not need to make a repayment or discharge an assessment or determination. The situations are: where a mistake is made in a claim, or where a claim is made or not made by mistake; where other provisions in the Bill provide means of seeking relief; where a claimant could have sought relief under other provisions in the Bill but time limits on those provisions have expired; where the same matter has been put to a court or tribunal by the claimant, has been withdrawn from a court or tribunal, or time limits for putting it to a court or tribunal have passed; where the amount paid is the result of enforcement action or agreement between Revenue Scotland and the claimant; and where the amount paid is excessive but was calculated following normal procedures at the time, unless the tax charged was contrary to EU law.

**Procedure for making claims**

**Section 105 - Procedure for making claims etc.**

This section sets out that schedule 3 applies in relation to claims made under sections 97, 98 and 99.

**Section 106 – Time-limit for making claims**

This section provides that claims for relief from double assessment or overpayment of tax made under section 97 or 98 must be made within five years of the date the tax return was required and must be made separately from any tax return made to Revenue Scotland.

**Section 107 - The claimant: partnerships**

This section provides that, where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax if it had been correct.
Section 108 - Assessment of claimant in connection with claim

147. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for Revenue Scotland to make an assessment on the claimant in respect of the tax, then Revenue Scotland can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is final (e.g. following the result of a review or appeal).

Contract settlements

Section 109 - Contract settlements

148. This section makes provision for the effect of contract settlements (defined in subsection (8)). The effect of subsection (1) is that an overpayment of tax can still be reclaimed under section 98 or 99 even though it was paid under a contract settlement. Subsection (3) to (7) apply to situations where tax was paid by someone under a contract settlement but that person who was not the person from whom it was due. In this circumstance a claim for relief from overpayment can be made by the person who paid the amount. In such a case, however, the way some of the defences available to Revenue Scotland under section 104 operate is modified, as is section 108. And where such a claim is made, Revenue Scotland can set any amount repaid to the person who paid against any amount payable by the taxpayer.

PART 7 – INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1 — INVESTIGATORY POWERS: INTRODUCTORY

Overview

Section 110 - Investigatory powers of Revenue Scotland: overview

149. This section sets out an overview of Part 7 of the Bill.

Interpretation

Section 111 – Designated investigation officers

150. This section sets out the definition of “designated investigation officers” who are staff of Revenue Scotland who are designated for the purposes of carrying out investigatory functions in this Part. This means that Revenue Scotland can designate that functions described in this Part should only be carried out by people in posts with the appropriate designation.

Section 112 - Meaning of “tax position”

151. This section sets out the definition of a “tax position” as referred to throughout this Part of the Bill. A tax position can include a person’s past, present and future liability to pay any devolved tax or associated penalties and also includes any claims, elections, applications and notices in connection with the liability to pay any devolved tax.
Section 113 – Meaning of “carrying on a business”

152. This section sets out the definition of a “carrying on a business” as referred to throughout this Part of the Bill. A business includes the letting of property, the activities of a charity, the activities of a local authority and also any other public authority. The section also confers powers on the Scottish Ministers to make further provision by regulations regarding what is or is not to be treated as carrying on a business in this Part of the Bill.

Section 114 – Meaning of “statutory records”

153. This section sets out the definition of “statutory records” as referred to throughout this Part of the Bill.

CHAPTER 2 — INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

Section 115 - Power to obtain information and documents from taxpayer

154. This section provides that where a designated officer reasonably requires a document or information to check a taxpayer’s position and considers it reasonable that the taxpayer should provide the document or information, the designated officer can write to a taxpayer and ask for that. Such a request is known as a ‘taxpayer notice’.

Section 116 - Power to obtain information and documents from third party, Section 117 - Approval of taxpayer notices and third party notices and Section 118 - Copying third party notice to taxpayer

155. These three sections provide that where the designated officer knows the identity of a taxpayer and wants to check that taxpayer’s tax position, the designated officer can issue a written notice to a third party requiring that party to provide information or document(s) for the purpose of checking the tax position of the taxpayer. Such a written notice is a “third party notice”. The taxpayer would have to agree to the third party notice or a tribunal would need to approve it, subject to certain conditions being met. The tribunal may also approve a third party notice that does not name the taxpayer if the tribunal accepts that having the taxpayer’s name in the third party notice might negatively affect tax assessment or collection. The designated officer would give a copy of the third party notice to the relevant taxpayer unless the tribunal decides that it is not required; this might be because it would negatively affect tax assessment or collection.

Section 119 - Power to obtain information and documents about persons whose identity is not known

156. This section provides that where a designated investigation officer wants to check the tax position of a taxpayer, but does not know the taxpayer’s identity, the officer may give a notice requiring a person to produce a document or require information. If a designated officer wants to give such a notice that officer could ask the tribunal to approve a request in writing for information or documents, where the request meets certain conditions.

Section 120 – Third party notices and notices under section 119: groups of undertakings

157. This section provides for arrangements for third party notices or notices under section 119 where the tax authority wishes to check the tax position of either a parent undertaking or a subsidiary undertaking (for example either a parent company or a subsidiary company of the
parent company). Subsection (2) provides that such notices need only state the purpose of the notice, the name of the taxpayer and the name of the parent undertaking.

158. Subsection (4) provides that a third party notice given to a parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking need only state that purpose and the name of the taxpayer. Subsections (5) and (6) clarify how the provisions of other related sections apply to such notices.

159. Subsection (7) provides that the meanings of parent and subsidiary undertakings reflect those set out in sections 1161-1162 and Schedule 7 of the Companies Act 2006.

Section 121 – Third party notices and notices under section 119: partnerships

160. This section provides for arrangements for third party notices or notices under section 119 where the tax authority wishes to check the tax position of one or more persons in a business partnership.

Section 122 - Power to obtain information about persons whose identity can be ascertained

161. This section allows a designated investigation officer of Revenue Scotland to issue a written notice to someone requiring them to provide information about a taxpayer in order to establish the taxpayer’s identity. Subsections (2) to (6) set out the conditions that must be met for this section to apply. Under this section, the designated investigation officer may obtain a name, and/or last known address, and/or date of birth from someone else who obtained the information from the course of their business.

Section 123 - Notices

162. This section sets out the definition of an information notice as a notice which is issued under sections 115, 116, 119 and 122 of this Bill. An information notice may specify or describe the information or documents to be provided and must state the notice has been issued with the approval of a tribunal where this is the case.

Section 124 - Complying with information notices

163. This section sets out that a person issued with an information notice must provide the required information or documents at a time or location as specified in the information notice.

Section 125 - Producing copies of documents

164. This section provides that where an information notice requires the person to produce a document, the person may be able to submit a copy of the document (unless the notice specifically requests the original document) subject to conditions set out in regulations made by the Scottish Ministers which are subject to the negative procedure.

Section 126 - Further provision about powers relating to information notices

165. This section provides the Scottish Ministers with a power to make regulations regarding the form and content of information notices and the manner and time period for complying with such notices. Such regulations are subject to the negative procedure.
CHAPTER 3 — RESTRICTIONS ON POWERS IN CHAPTER 2

Section 127 - Information notices: general restrictions

166. This section provides for some general restrictions on information notices, including that a person is required to produce a document only if it is in their possession or power. Furthermore, unless a designated investigation officer has given their approval, an information notice may not require a person to produce a document if the whole of it originates more than five years before the date of the notice. An information notice issued to check the tax position of someone who has died cannot be given more than four years after the death.

Section 128 - Types of information

167. This section sets out provision on types of information that an information notice cannot require, including journalistic material, information that relates to the conduct of a pending review or appeal in relation to tax and also information contained in certain types of personal records. Information in personal records covered by this exclusion provision relates to a person’s health and/or different types of counselling or assistance given to that person.

Section 129 - Taxpayer notices following a tax return

168. This section sets out restrictions on when taxpayer notices may be given. A taxpayer notice cannot be given in relation to a transaction or an accounting period (to check the tax position for those) where a person has made a tax return in relation to that transaction or accounting period. However, a taxpayer notice could be given where a notice of enquiry had been given and the enquiry was not completed or where a designated officer suspected an issue with the assessed tax liability (including any reliefs) for the transaction or accounting period.

Section 130 - Protection for privileged communications between legal advisers and clients

169. This section provides that information notices (a term defined in section 123) do not require a person to provide privileged information or parts of documents that are privileged. This refers to information or documents that benefit from the confidentiality that arises in information or documents between a professional legal adviser and a client. The section gives the Scottish Ministers a power to make provision by regulations for the tribunal to resolve disputes as to whether or not information or documents are privileged. Such regulations are subject to the negative procedure.

Section 131 - Protection for auditors

170. This section provides that an information notice does not require an auditor to provide any information held or to produce documents where that information or those documents relate to the function or role of an auditor.

Section 132 - Auditors: supplementary

171. This section sets out the circumstances in which an information notice to an auditor would apply. Subsection (1) requires the auditor to comply with an information notice where information explaining any information or document given to any client in the role of tax accountant has assisted the client in preparing for, or delivering a document to, Revenue Scotland. Subsection (2) requires the auditor to comply with a notice under section 119 requiring the auditor to provide information or document about the identity or address of a taxpayer.
Subsection (3) allows the auditor not to comply with subsections (1) and (2) if the information or documents have already been provided to a designated officer.

CHAPTER 4 — INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises

Section 133 - Power to inspect business premises

172. This section provides that a designated officer can enter a business premises and inspect the premises (including buildings, structures, land and transport), assets and documents where it is reasonable to do so to check a person’s tax position. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling.

Section 134 - Powers to inspect business premises of involved third parties

173. This section provides that a designated officer can enter a business premises of an involved third party and inspect the premises, assets and documents where it is reasonable to do so to check a position in regard to a devolved tax, whether the person’s identity was known or not. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling.

Section 135 - Carrying out inspections under section 133 or 134

174. This section sets out conditions for inspections on business premises as provided for under sections 133 and 134. Subsections (1) and (2) provide that such inspections may only be carried out at a time agreed with the occupier of the premises or at any reasonable time if the occupier of the premises is given seven days’ notice of the time of inspection or the inspection is carried out by or with the agreement of a designated investigation officer of Revenue Scotland.

175. Subsection (3) provides that where an inspection is to be carried out by, or with the agreement of a designated investigation officer, a written notice must be provided to the occupier or someone else who appears to be in charge of the premises at the time. If no one is present at the time, the notice must be left in a prominent place on the premises. Subsection (4) provides that such a notice must state the possible consequences of obstructing the designated officer from exercising the power to carry out the inspection (see section 167).

Inspection for valuation etc.

Section 136 - Power to inspect property for valuation etc. and Section 137 - Carrying out of inspections under section 136

176. These sections provide that a designated officer may enter and inspect premises for the purpose of valuing the premises if it is reasonably required to check a person’s tax position. Section 137 sets out the conditions under which such an inspection can be carried out.
Approval of tribunal for premises inspections

Section 138 - Approval of tribunal for premises inspections

177. This section provides that a designated officer make ask the tribunal to approve an inspection under sections 133, 134 or 136 (as long as the application is made by a designated investigation officer and the tribunal is satisfied the inspection is justified). This application to the tribunal can be made without notice, subject to some conditions as set out in the section.

Other powers in relation to premises

Section 139 - Power to mark assets and to record information

178. This section provides that while inspecting premises, assets or documents (for valuation and/or for checking a tax position), assets can be marked to show that they have been inspected and relevant information can be obtained and recorded.

Section 140 - Power to take samples

179. This section provides for a designated officer to be able to enter premises and take samples of material on the premises if they have reason to believe that it is reasonably required to allow the person’s tax position to be checked.

Restriction on inspection of documents

Section 141 - Restriction on inspection of documents

180. This section sets out that a designated officer may not inspect a document if an information notice given at the time of the inspection could not require the occupier to produce the document (for example, if the document is legally privileged).

CHAPTER 5 — FURTHER INVESTIGATORY POWERS

Section 142 - Power to copy and remove documents

181. Section 142 provides a power to a designated officer to copy, make extracts and remove documents. The officer may also retain the document for a reasonable period of time. Subsection (3) allows the person who produced the document to request a receipt for it and a copy of it. Subsection (4) clarifies that the designated officer may not charge for providing either the receipt of the copy.

182. Subsection (6) provides that where a document that has been removed is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

Section 143 - Computer records

183. This section applies to any provision of this Part of the Bill or Part 8 that relates to the production of documents or the inspection, copying or removal of documents. Subsection (3) allows a designated officer at a reasonable time to obtain access to, inspect, and check the operation of any computer or other equipment used in connection with a relevant document. Subsection (4) clarifies that a relevant document is a document that someone is required to
produce or which may be inspected, copied or removed by a designated officer. Subsection (5) allows the designated officer to require the person in charge of the computer to provide help to fulfil the requirements of subsection (3). Subsection (6) provides that if someone obstructs the officer or does not assist the officer within a reasonable time, then that person may have to pay a financial penalty of £300.

CHAPTER 6 — REVIEWS AND APPEALS AGAINST INFORMATION NOTICES

Section 144 - Review or appeal against information notices

184. This section provides for the taxpayer to have a right to request a review or an appeal against a taxpayer notice but that taxpayer cannot appeal against providing information or documents that would be part of the taxpayer’s statutory record. A taxpayer also cannot appeal if the taxpayer notice had been approved by a tribunal. A person can appeal against a third party notice only on the grounds that it would be unduly onerous to comply with the notice. A notice of review or appeal can be given in any circumstances if it is issued under sections 120(4) (third party notice given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking), 120(6) (a notice given under section 119 to the parent undertaking for the purpose of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice), 121(5) (a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners) or 121(6) (a notice given under section 119 to one of the partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice) of this Bill.

Section 145 – Disposal of reviews and appeals in relation to information notices

185. This section provides that a person who has requested a review or an appeal in relation to a decision arising from an information notice must comply, where the information notice is upheld or varied, with the conclusion or requirements of the review or appeal.

CHAPTER 7 — OFFENCES RELATING TO INFORMATION NOTICES

Section 146 (Offence of concealing etc. documents following information notice) and Section 147 (Offence of concealing etc. documents following information notification)

186. These two sections provide for the creation of offences relating to concealing, destroying or otherwise disposing of documents required by an information notice and approved by the tribunal, or likely to be required by an information notice and there is an intention to seek the tribunal’s approval for a notice. If a person is convicted of an offence in this chapter then that person would be liable to a fine not exceeding the statutory maximum on summary conviction, or being imprisoned for up to two years and/or a fine on conviction on indictment.
PART 8 – PENALTIES

CHAPTER 1 — PENALTIES: INTRODUCTORY

Overview

Section 148 - Penalties: overview
187. This section provides an overview of the structure of Part 8 of the Bill.

Double jeopardy

Section 149 - Double jeopardy
188. This section provides that a person is not liable to pay any penalty outlined in Part 8 of the Bill if the person has already been convicted of an offence relating to the matter which triggered the penalty.

CHAPTER 2 — PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

Section 150 - Penalty for failure to make returns and Section 151 - Penalty for failure to pay tax
189. These two sections provide that a person is liable to pay a penalty where they have failed to submit a tax return on or before the filing date and/or have failed to pay any or all tax due before the date the payment was due.

190. The two sections also confer powers on the Scottish Ministers to make regulations setting out the following: the circumstances in which a penalty is payable; the penalty amounts; whether a penalty is fixed, daily or proportionate (i.e. calculated by reference to the amount of tax due or outstanding) in nature; the penalty-issuing process; appeal of penalties; and enforcement of penalties. Such regulations cannot create criminal offences. The regulations are subject to the affirmative procedure.

Section 152 - Interaction of penalties under section 150 with other penalties and Section 153 - Interaction of penalties under section 151 with other penalties
191. These two sections provide that any penalty applied as a result of either section 150 or 151 is reduced by the amount of any other penalty applied and determined by the same tax liability and which is not covered under section 150 or 151 (i.e. any other penalty which is not due to either a failure to make a return or to pay tax).

Section 154 - Reduction in penalty under section 150 for disclosure
192. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to make a return. This applies only where a person discloses information to Revenue Scotland which has been previously withheld by the failure to submit a tax return. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.
Section 155 - Suspension of penalty under section 151 during currency of agreement for deferred payment

193. This section sets out that a person who has failed to pay tax by the due date can make a request to Revenue Scotland to have the payment deferred and Revenue Scotland can then choose whether or not to agree to the deferral of payment for a specified period as well as specifying any conditions of that deferral.

194. If payment is deferred, any penalty the person might have incurred during the specified period for failing to pay tax is not applied. If the person breaks the agreement (by either failing to pay the tax due when the deferral period ends or failing to comply with any condition of that deferral) the person becomes liable for any penalty that Revenue Scotland issues a notice to the person about. If the deferral agreement is further varied the agreement applies until the end of the new agreement.

Section 156 - Special reduction in penalty under sections 150 and 151

195. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied due to either a failure to make a tax return or a failure to pay tax on or before the due date. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer’s ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a judgement of a court in relation to the penalty.

Section 157 - Reasonable excuse for failure to make return or pay tax

196. This section provides that if a person satisfies Revenue Scotland or the tribunal that there is reasonable excuse on the person’s behalf for a failure to either make a return or make a payment, then the person is not liable to pay a penalty arising from that failure. The section also clarifies some circumstances in which reasonable excuse does not apply.

Section 158 - Assessment of penalties under sections 150 and 151

197. Subsection (1) provides that where a person becomes liable for a penalty due to a failure to make a return or pay tax, Revenue Scotland must assess the penalty, notify the person that a penalty has been incurred, and state in the notice the period or transaction against which the penalty is assessed. Subsection (2) provides that the penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification. Subsection (3) provides that the assessment of the penalty is to be treated for enforcement purposes as an assessment of tax and may be combined with an existing assessment to tax. Subsections (4) and (5) make provision for a supplementary and replacement assessments to be made in respect of a penalty applied under this sections 150 and 151 if the penalty was calculated in reference to the amount of tax the person was liable to pay or failed to pay and it subsequently becomes clear that this amount was an over or under estimate.
Section 159 - Time limit for assessment of penalties under sections 150 and 151

198. This section provides that assessment of a penalty due to a failure to make a return or pay tax must be made on or before the later of one of these two dates:

a) two years from the filing date (in the case of a failure to make a return) or the last date on which payment may be made without paying a penalty (in the case of failing to pay tax); or

b) for a failure to make a tax return:
   - 12 months from either the end of the appeal period or if there is no such assessment, 12 months from the date on which that liability is ascertained or that it is ascertained the liability is nil.

   for a failure to pay tax:
   - 12 months from either the end of the appeal period or if there is no such assessment, 12 months from the date on which the amount of tax was ascertained.

CHAPTER 3 — PENALTIES RELATING TO ERRORS

Section 160 - Penalty for error in taxpayer document

199. This section provides that a penalty is payable by a person for taxpayer document error(s) submitted to Revenue Scotland, subject to two conditions being met. The first condition is that the error amounts or leads to either an understatement of the tax liability, a false or inflated statement of a loss or a false or inflated claim for relief or repayment of tax. The second condition is that in Revenue Scotland’s judgement the error is either careless or deliberate on the person’s behalf. A penalty is payable for each error. The section also provides the Scottish Ministers with the power to make by regulations further provision about penalties due to taxpayer document error(s). Such regulations are subject to the affirmative procedure.

Section 161 - Suspension of penalty for careless inaccuracy under section 160

200. This section provides that Revenue Scotland may, by means of a written notice, suspend all or part of a penalty which is applied where a taxpayer submits a document to Revenue Scotland containing an error and which is due to careless behaviour by the taxpayer. Subsection (2) requires that a notice served by Revenue Scotland must specify what part of the penalty is being suspended, a period not exceeding two years and the conditions of suspension with which the taxpayer must comply. Subsection (3) allows Revenue Scotland to suspend all or part of a penalty only if it meant that if a taxpayer complied with the condition of suspension the taxpayer would avoid liability to further penalties incurred under section 160 for careless inaccuracy.

Section 162 - Penalty for error in taxpayer document attributable to another person

201. This section provides that a penalty is payable where a person submits a document to Revenue Scotland containing an error attributable to another person either deliberately supplying the first person with false information or deliberately withholding information from them with the intention of creating the error(s). Where this happens and there is either an understatement in the tax liability or a false/inflated claim for loss or repayment of tax, the person attributable for the error is liable to pay a penalty. The section also provides the Scottish Ministers with the power to make by regulations further provision about penalties applying to errors in taxpayer
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

documents attributable to another person. Such regulations are subject to the affirmative procedure.

Section 163 - Under-assessment by Revenue Scotland

202. This section provides that a penalty is payable by a person where an assessment issued by Revenue Scotland understates the tax liability and the person has failed to take reasonable steps to inform Revenue Scotland within 30 days of receiving the understatement. Revenue Scotland must consider whether the person knew or should reasonably have known about the under-assessment. The section also provides the Scottish Ministers with the power to make by regulations further provision about penalties due to an under-assessment by Revenue Scotland. Such regulations are subject to the affirmative procedure.

Section 164 - Special reduction in penalty under sections 160, 162 and 163

203. This section provides that Revenue Scotland may reduce a penalty (including any interest applied) if it thinks it reasonable to do so because of special circumstances and the penalty is applied under sections 160, 162 and 163. A person’s ability to pay tax or the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment of another are not reasons under which the penalty can be reduced.

Section 165 - Reduction in penalty under sections 160, 162 and 163 for disclosure

204. This section provides for Revenue Scotland to be able to reduce a penalty applied due to sections 160, 162 and 163. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

Section 166 - Assessment of penalties under sections 160, 162 and 163

205. This section provides that where a person becomes liable for a penalty under sections 160, 162 and 163, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.

206. The assessment of a penalty due to an error in a taxpayer document attributable to either the taxpayer or another person must be made within 12 months of either the end of the appeal period for the decision correcting the inaccuracy or the date on which the inaccuracy is corrected, whichever applies. The assessment of a penalty due to an under-assessment of tax by Revenue Scotland must be made within 12 months of either the end of the appeal period for the assessment of tax which corrected the under-statement or the date on which the understatement is corrected, whichever applies.
CHAPTER 4 — PENALTIES RELATING TO INVESTIGATIONS

Section 167 - Penalties for failure to comply or obstruction

207. This section provides that a person is liable to pay a fixed penalty for either failing to comply with an information notice or deliberately obstructing a designated officer in the course of an inspection approved by the tribunal. Failing to comply with an information notice includes concealing, destroying or disposing of a document in breach of the provisions under sections 171 and 172.

Section 168 - Daily default penalties for failure to comply or obstruction

208. This section provides that a person is liable to a further fixed penalty for each subsequent day they continue to fail to comply with an information notice or deliberately obstructs a designated officer in the course of an inspection approved by the tribunal.

Section 169 - Penalties for inaccurate information or documents

209. This section provides that a person is liable in certain circumstances to pay a fixed penalty if, in the course of complying with an information notice, they submit a document which contains an error. The circumstances in which the penalty is payable are: if the error is due to careless or deliberate behaviour; if the person is aware of the error at the time of submitting the document but fails to tell Revenue Scotland; or if the person discovers the error after submitting the document but fails to take reasonable steps to inform Revenue Scotland. Where there is more than one error in a document, a fixed penalty is payable for each error.

Section 170 - Power to change amount of penalties under sections 167, 168 and 169

210. This section confers on the Scottish Ministers the power to change by order the amounts of the penalties applying in sections 167, 168 and 169 where it appears to Ministers that there has been a change in the value of money since either this section came into force or the relevant penalty was last changed. Such orders are subject to the affirmative procedure.

Section 171 - Concealing, destroying etc. documents following information notice

211. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document that is the subject of an information notice addressed to them, unless particular circumstances apply as set out in subsections 2 and 3.

Section 172 - Concealing, destroying etc. documents following information notification

212. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document if a designated officer has informed the person that the document is, or is likely to be, the subject of an information notice addressed to that person. This section does not apply if the person acts after either at least six months since the person received the last such notification from an officer or if an information notice has been issued.

Section 173 - Failure to comply with time limit

213. This section provides that a penalty is not payable by a person failing to comply with an information notice or obstructing an officer during an investigation if a designated officer allows them further limited time to correct the failure and the person then does so.
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 174 - Reasonable excuse for failure to comply or obstruction

214. This section provides for a person not being liable to a fixed or daily penalty for failure to comply with an information notice or obstructing an officer during an inspection, if the person satisfies Revenue Scotland or the tribunal that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.

Section 175 - Assessment of penalties under sections 167, 168 and 169

215. This section provides that where a person becomes liable for a penalty under section 167, 168 or 169, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of a fixed or daily penalty arising from a failure to comply with an information notice or obstructing an officer during an inspection must be made within 12 months of the person becoming liable to the penalty. An assessment of a penalty due to an error in a taxpayer document submitted following an information notice must be made within 12 months on the date that the error first came to the attention of a designated officer and within six years of the date on which the person became liable to the penalty.

Section 176 - Enforcement of penalties under sections 167, 168 and 169

216. This section provides that a penalty under section 167, 168 or 169 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review is given against the penalty, the penalty must be paid within 30 days of the review being concluded. If mediation is entered into following a review, the penalty must be paid within 30 days of the person or Revenue Scotland giving notice of withdrawal from mediation (where this is the case). If notice of an appeal against the penalty is given, the penalty must be paid within 30 days of the appeal being determined or withdrawn.

Section 177 - Increased daily default penalty

217. This section provides that where a person continues to fail to comply with an information notice or obstructs an inspection and the daily default penalty has been applied for more than 30 days, a designated officer may make an application to the tribunal for an increase in the daily penalty. The tribunal may approve an increased amount up to a maximum of £1,000 for each applicable day and must have regard to factors including the likely cost of complying with the notice and the benefits to the person or anyone else arising from the non-compliance. If the tribunal approves the request, the increased daily penalty would then apply from the date of the tribunal’s decision until such time as the person complies with the information notice or inspection.

Section 178 - Enforcement of increased daily default penalty

218. This section provides that an increased daily default penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

Section 179 - Tax-related penalty

219. This section provides that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 167; the person continues to fail to comply with an information notice or continues to obstruct an investigation; a designated officer believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been
if they had complied; a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so. In determining the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties already applied as a result of a continued failure to comply with an information notice or obstruction to an officer carrying out an inspection.

Section 180 - Enforcement of tax-related penalty

220. This section provides that a penalty applied under section 179 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

CHAPTER 5 — OTHER ADMINISTRATIVE PENALTIES

Section 181 - Penalty for failure to register for tax

221. This section provides that a penalty is payable where a person fails to register for Scottish Landfill Tax as required by section 22 or 23 of the primary legislation for Scottish Landfill Tax. The section also confers powers on the Scottish Ministers to make further provision by regulations about a penalty applied under this section. Such regulations are subject to the affirmative procedure.

PART 9 – INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

Section 182 - Interest on unpaid tax

222. This section provides that interest is payable by the taxpayer on unpaid tax. Interest is payable from the end of the period of 30 days after the date for payment of the tax until the tax is paid. Subsection (2) confers a power on the Scottish Ministers to make, by regulations, further provision to specify the date for payment of the devolved tax. Such regulations are subject to the negative procedure. If the taxpayer lodges an amount of money with Revenue Scotland in respect of the tax payable then the amount on which interest is payable is reduced by the amount lodged. Regulations made by the Scottish Ministers under section 185 will specify the rate at which interest will be calculated.

Section 183 - Interest on penalties

223. This section provides that interest is payable by the taxpayer on unpaid penalties. If penalties are not paid on the date they are due, then interest is payable from that date until the penalty is paid. Regulations made by the Scottish Ministers under section 185 will specify the rate at which interest will be calculated.

Section 184 - Interest on repayment of tax overpaid etc.

224. This section provides that interest is payable by Revenue Scotland to the taxpayer on any repayment of tax, repayment on penalties or repayment of interest (on either tax or penalties). Interest also applies to repayment of any amount lodged with Revenue Scotland by the taxpayer in respect of the tax payable. Regulations made under section 185 will set out the rate at which interest on repayment will be calculated.
Section 185 - Rates of interest

225. This section provides that Ministers will specify the rate of interest to be paid in sections 182, 183 and 184 in regulations subject to the affirmative procedure. Different rates may be set for different taxes or different penalties.

PART 10 – ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1 — ENFORCEMENT: GENERAL

Issue of tax demands and receipts

Section 186 - Issue of tax demands and receipts

226. This section provides Revenue Scotland with a power to demand a sum of tax that is due and payable from a taxpayer. If the taxpayer requests a receipt in relation to the payment of tax, Revenue Scotland must provide one.

Fees for payment

Section 187 - Fees for payment

227. This section provides the Scottish Ministers with a power to make regulations specifying any fee associated with particular methods of payment (such as credit cards). Such regulations are subject to the negative procedure. The fee charged to the person making the payment must not exceed what is reasonable to do so with regards to the costs incurred by Revenue Scotland (or a person authorised by it) in accepting or processing the payment.

Certificates of debt

Section 188 - Certificates of debt

228. This section provides for certificates of debt which are statements prepared by a designated officer that there is an outstanding debt owed to Revenue Scotland by a taxpayer. Their purpose is to provide evidence to the court in support of any debt Revenue Scotland administers, avoiding the need for lengthy documentation. The decision whether to accept such evidence is for the court.

Court proceedings

Section 189 - Court proceedings

229. This section provides that a taxpayer may be sued in order to recover tax that is due and payable.

Summary warrant

Section 190 - Summary warrant

230. This section provides that a designated officer may apply to the sheriff for a summary warrant where a person does not pay an amount due. The application to the sheriff must include a certificate which states that the sum due has been requested and has remained unpaid for at least 14 days. The sheriff must then issue the summary warrant which authorises the recovery of
the sum payable by the means set out in subsection (6). In addition to the sum of tax due, the sheriff officers’ fees and expenses reasonably incurred are also chargeable against the taxpayer.

Recovery of penalties and interest

Section 191 - Recovery of penalties and interest
231. This section provides that any penalty or interest payable is to be treated as though it was an amount of unpaid tax.

CHAPTER 2 — ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

Section 192 - Requirement for contact details for debtor
232. This section provides that sections 193, 194 and 195 apply where Revenue Scotland is owed money by a debtor but has no contact details and an authorised officer reasonably believes that a third party (which must be a company or local authority and cannot be a charity or an organisation operating on behalf of a charity) holds the contact details.

Section 193 - Power to obtain details
233. This section provides an authorised officer of Revenue Scotland with a power, by means of a written notice, to require the third party to provide the contact details of the debtor outlined in section 192. The notice must name the debtor. The third party is obliged to provide contact details of the debtor in accordance with the timescale and in the form set out in the notice.

Section 194 – Reviews and appeals against notices or requirements
234. This section provides the third party with a right of review or appeal against the notice but only on the basis that it would be unduly onerous to comply.

Section 195 - Penalty and Section 196 - Power to change amount of penalty under section 195
235. These two sections provide that in the event that the third party fails to comply with the notice, a £300 penalty would apply. Section 196 confers the Scottish Ministers with a power to change the amount of the penalty by order if it appears to Ministers that there has been a change in the value of money since the last relevant date (either when this section came into force or on previous dates when this penalty has been changed). Such orders are subject to the affirmative procedure.

PART 11 – REVIEWS AND APPEALS

CHAPTER 1 — INTRODUCTORY

Overview

Section 197 - Overview
236. This section sets out an overview of the provisions of this Part of the Bill relating to the review and appeal of certain decisions of Revenue Scotland.
Appealable decisions

Section 198 - Appealable decisions

237. This section sets out the types of decision by Revenue Scotland which can be reviewed and appealed, and types of decision which cannot. It also states that the Scottish Ministers may, by order, add, change or remove a type of decision from either of the lists in subsections (1) and (4).

CHAPTER 2 — REVIEWS

Review of appealable decisions

Section 199 - Right to request review

238. This section provides a right to a taxpayer to request that Revenue Scotland should review a decision. It states that no steps of a review will be undertaken until the end of any existing enquiry process.

Section 200 - Notice of review

239. This section provides for giving notice of review. Someone who wishes to ask Revenue Scotland to review a decision must do so within 30 days of being told about that decision. The notice should be in writing to Revenue Scotland and must state the grounds of the review.

Section 201 - Late notice of review

240. This section provides the rules for a review requested outside the time limits. Notice of review may be given after the time limit if Revenue Scotland agrees or where the tribunal gives permission for the late notice. Subsection (3) requires Revenue Scotland to agree to the notice of review being given outside the time limit if the notice is in writing and Revenue Scotland agrees that there was a reasonable excuse for the notice of review being late and that there had been no unreasonable delay to the issue of the notice. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

Section 202 - Duty of Revenue Scotland to carry out review

241. This section sets out the duties of Revenue Scotland to initiate a review by giving the appellant notice within 30 days, or within a reasonable period where 30 days is insufficient, of its view on the matter in question. Subsection (2) disapplies subsection (1) if the appellant has already given a notice of review in relation to the same matter or if Revenue Scotland has concluded a review of the matter already.

Section 203 - Nature of review etc.

242. This section provides for the carrying out of reviews by Revenue Scotland. Revenue Scotland will take into account any steps taken before in deciding the matter in question, and any evidence provided by the taxpayer at a reasonable stage. The review may determine that Revenue Scotland’s view of the matter in question is upheld, varied or cancelled.
Section 204 - Notification of conclusions of review

243. This section requires Revenue Scotland to notify the appellant of the result of the review within 45 days (or within another agreed period) of the appellant being notified under section 202 of Revenue Scotland’s view on the matter in question. Subsection (3) provides that, where Revenue Scotland does not give notice of its conclusion about the review within the required time period, the review is treated as having concluded that Revenue Scotland’s view (given under section 202) is upheld. Subsection (4) provides that in such circumstances, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

Section 205 - Effect of conclusions of review

244. This section sets out that the conclusion of the review has the effect of a settlement agreement unless the taxpayer enters into mediation with Revenue Scotland or gives notice of appeal to the tribunal.

CHAPTER 3 — APPEALS

Section 206 - Right of appeal

245. This section provides a right of appeal to the tribunal, and states that an appellant may not appeal to the tribunal if a review is ongoing, an enquiry is in progress, or the appellant has entered into a settlement agreement with Revenue Scotland.

Section 207 - Notice of appeal

246. This section sets out the way in which an appeal can be raised. An appellant must give notice in writing to Revenue Scotland within 30 days of the completion of an enquiry, of being notified of the decision they wish to appeal, of the conclusion of a review, of a decision to withdraw from mediation, or of a decision to withdraw from a settlement agreement.

Section 208 - Late notice of appeal

247. This section applies where no notice of appeal has been given before the relevant time limit. Notice of appeal may be given after the time limit if Revenue Scotland agrees or where the tribunal may give permission for the late notice. Subsection (3) requires Revenue Scotland to agree to the notice of appeal being given outside the time limit if the notice is in writing and Revenue Scotland agrees that there was a reasonable excuse for the notice of appeal being late and that there had been no unreasonable delay to the issue of the notice. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

Section 209 - Disposal of appeal

248. This section provides that the tribunal should determine in an appeal whether Revenue Scotland’s view of the matter being appealed should be upheld, varied, or cancelled. Part 4 of the Bill contains further provision about appeals to the tribunal, and about appeals from the tribunal to the Court of Session.
CHAPTER 4 — SUPPLEMENTARY

Section 210 – Reviews and appeals not to postpone recovery of tax

249. Subsection (1) provides that where a review or appeal takes place, any tax charged or interest or penalty continues to apply and remains payable as if there had been no review or appeal. Subsection (2) gives the Scottish Ministers a power to make regulations for the postponement of any tax, penalty or interest pending reviews or appeals. Regulations may include provision about: applications by appellants to postpone amounts of tax, penalties and interest; the effect of any determination by Revenue Scotland on such applications; agreements between appellants and Revenue Scotland about the postponement of amounts of tax, penalties and interest; applications to the tribunal for such postponement; and appeals against determinations by Revenue Scotland and decisions by the tribunal on such applications. Such regulations are subject to the affirmative procedure.

Section 211 - Settling matters in question by agreement

250. This section sets out the rules by which reviews, mediation and appeals can be settled by agreement between the appellant and Revenue Scotland, including the time limit for the appellant to withdraw from such an agreement. Subsection (1) defines what is meant by a ‘settlement agreement’. Subsection (2) provides that the consequences of a settlement agreement are to be the same as if the tribunal had determined the outcome of an appeal, unless the appellant notifies Revenue Scotland within 30 days that the appellant wishes to withdraw from the agreement (subsection (3)). Subsection (4)(a) provides that where the settlement agreement is not in writing, subsection (2) does not apply unless the fact that the agreement was reached is confirmed in writing by Revenue Scotland to the appellant or by the appellant to Revenue Scotland. Subsection (4)(b) provides that if the agreement is not in writing, then the date that the confirmation notice was given is to be taken as the date of the agreement between Revenue Scotland and the appellant.

Section 212 - Application of this Part to joint buyers

251. This section provides for situations when one or some (but not all) the buyers in a land transaction seek a review, mediation or appeal of a tax assessment in relation to LBTT. In this situation, in accordance with subsection (2), Revenue Scotland must notify all the buyers whose identity is known of the review, mediation or appeal; any of the buyers may participate in the review, mediation or appeal; and the agreement of all the buyers is required before Revenue Scotland can enter into a settlement agreement. Subsection (4)(e) provides that in the case of an appeal relating to the transaction, the tribunal’s decision binds all of the buyers.

Section 213 - Application of this Part to trustees

252. This section provides for situations when the buyer in relation to LBTT is a trust, and where one or some (but not all) of the trustees seek a review, mediation or appeal of a tax assessment. In a review or mediation, Revenue Scotland must notify all the trustees whose identity is known of the review or mediation; any of the trustees may participate in the review or mediation; and the agreement of all the trustees is required before Revenue Scotland can enter into a settlement agreement. In an appeal, the trustee bringing the appeal must inform the other trustees, all trustees may take part in the appeal, and the decision of the tribunal is binding on all trustees.
Section 214 - References to the “tribunal”
253. This section sets out the definition of the term “the tribunal” for the purposes of this Part of the Bill to mean the First-tier Tribunal or the Upper Tribunal (where determined by tribunal rules).

Section 215 - Interpretation
254. This section defines expressions used in this Part of the Bill and makes other interpretative provision, including about the meaning of the term “matter in question”. It also makes clear that a reference to a notification means a notification in writing and that a reference to an appellant includes a person acting on behalf of the appellant except in certain circumstances.

PART 12 – FINAL PROVISIONS

Interpretation

Section 216 – General Interpretation
255. This section provides a list and explanation of general terms which are used throughout the Bill.

Section 217 – Index of defined expressions
256. This section introduces schedule 5 which contains an index of the main expressions defined or explained in the Bill.

Subordinate legislation

Section 218 – Subordinate legislation
257. This section sets out the parliamentary procedure to which the various delegated powers will be subject.

Ancillary provision

Section 219 – Ancillary provision
258. This section provides a power for the Scottish Ministers to make ancillary provision in relation to the Bill.

Modifications of enactments

Section 220 – Minor and consequential modifications of enactments
259. This section introduces schedule 4 which sets out minor and consequential amendments and repeals of enactments made as a result of the provisions in the Bill.
Crown application

Section 221 – Crown application: criminal offences

260. The Bill applies to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). In line with usual practice for Acts of the Scottish Parliament, section 221 has effect that the Crown cannot be found criminally liable in terms of the offences created by the Bill, such as those set out in sections 146 (offence of concealing etc. documents following information notice) and 147 (offence of concealing etc. documents following information notification). However, through the mechanism in subsection (2) any unlawful conduct on the part of Crown bodies can be declared unlawful. Subsection (3) clarifies that section 221 does not exempt civil servants from criminal prosecution; this has particular relevance to the offence in section 17 (wrongful disclosure of protected taxpayer information).

Section 222 – Crown application: powers of entry

261. This section provides that power of entry in relation to Crown land can be granted only with the consent of the appropriate authority. The section sets out a table defining for the purposes of this Bill what is considered “Crown land” and who the relevant authority is.

Section 223 – Crown application: Her Majesty

262. This section provides that nothing in this Bill affects Her Majesty in Her private capacity.

Commencement and short title

Section 224 – Commencement

263. This section sets out those sections which will come into force on the day after Royal Assent and states that the other provisions come into force at a time specified in order(s) made by the Scottish Ministers.

Section 225 – Short title

264. This section provides that the short title of the Bill, once passed, would be the Revenue Scotland and Tax Powers Act 2014.

SCHEDULE 1 – REVENUE SCOTLAND

265. This schedule is introduced by section 2 and makes further provisions on the membership, procedures and staffing of Revenue Scotland.

Revenue Scotland

Membership

266. Paragraph 1 sets out provisions for the membership of Revenue Scotland. No fewer than five and no more than nine members are to be appointed by the Scottish Ministers, one of whom is to be appointed to the role of Chair. The minimum and maximum number of members may be amended by an order made by Ministers. Ministers will determine the period and terms of appointment of members of Revenue Scotland, and may reappoint those who already are or may
have been members. A member may resign from Revenue Scotland by giving written notice to Ministers.

Disqualification

267. Paragraph 2 sets out those persons to be disqualified from becoming members or holding membership of Revenue Scotland. These persons are defined as Ministers, elected members of the Scottish, UK and European Parliaments, local authority councillors, officers of the Crown and civil servants. A person would also be disqualified if they are or have been insolvent, disqualified as a company director under the Company Directors Disqualification Act 1986 (c.46), or disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Removal of members

268. Paragraph 3 provides that the Scottish Ministers can remove a member should that member become disqualified as described above. Ministers may also remove a member if that member has been absent from meetings of Revenue Scotland for a period longer than six months without permission from Revenue Scotland, or Ministers consider that the member is otherwise unfit to be a member or is unable to carry out their functions as a member. Ministers are required to give a member written notice of their removal from Revenue Scotland.

Remuneration and expenses

269. Paragraph 4 makes provision for Revenue Scotland, with the approval of Ministers, to determine the remuneration of its members and members of its committees, and for the reimbursement of expenses incurred by those members when carrying out their functions.

Committees

270. Paragraph 5 makes provision for Revenue Scotland to establish committees for any purpose relating to its functions. Revenue Scotland may also determine the composition of its committees and appoint persons to those committees who are not members of Revenue Scotland. Persons appointed as a member of a committee, but who are not members of Revenue Scotland, are not entitled to a vote at the meetings of the committee.

Procedure

271. Paragraph 6 sets out that Revenue Scotland may regulate its own procedures and that of its committees. The validity of proceedings set by Revenue Scotland and its committees is not affected by any membership vacancy, any defect in the appointment of a member or the subsequent disqualification of a member after appointment.

Internal delegation by Revenue Scotland

272. Paragraph 7 provides that Revenue Scotland may authorise a member, a committee, the chief executive or any other member of staff to exercise its functions. Internal delegation of authority does not affect Revenue Scotland’s responsibility for the exercise of those functions. “External” delegation of functions is provided for in section 4 of the Bill.
Chief Executive and other staff

273. Paragraph 8 provides for Revenue Scotland to employ a chief executive and that the person holding this position may not be a member of Revenue Scotland. The Scottish Ministers may appoint the first chief executive of Revenue Scotland through consultation with the Chair (should a person hold that position at the time of appointment of the chief executive). Each subsequent chief executive may be appointed by Revenue Scotland, with approval of Ministers, on such terms as it may determine. Revenue Scotland may also, again with approval of Ministers, appoint other members of staff on such terms as it may determine.

Powers

274. Paragraph 9 provides Revenue Scotland with powers to do what it considers necessary or expedient in connection with the exercise of its functions, or incidental or conducive to the exercise of those functions.

SCHEDULE 2 – THE SCOTTISH TAX TRIBUNALS

Part 1 – Appointment of members

President of the Tax Tribunals: eligibility for appointment

275. Paragraph 1 sets out that a person, to be appointed as President of the Tax Tribunals, must satisfy the Scottish Ministers that their experience and training is appropriate. An individual must have been practising for 10 years as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland.

First-tier Tribunal: ordinary members

276. Paragraph 2 provides that the Scottish Ministers must appoint ordinary members of the First-tier Tribunal and will, by regulations, define the experience, qualifications and training required to be appointed as an ordinary member of the First-tier Tribunal.

First-tier Tribunal: legal members

277. Paragraphs 3 and 4 provide that the Scottish Ministers must appoint legal members of the First-tier Tribunal. To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate, be practising and have at least five years’ experience as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland. A person meets the criteria set out in subparagraphs (3) and (4) if the person meets a description to be specified by the Scottish Ministers in regulations.

Upper Tribunal: legal members

278. Paragraphs 5 and 6 provide that the Scottish Ministers must appoint legal members of the Upper Tribunal. To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate, be practising and have at least 10 years’ experience as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland. A person meets the criteria set out in subparagraphs (5) and (6) if the person meets a description to be specified by the Scottish Ministers in regulations.
Disqualification from office
279. Paragraph 7 lists positions that would disqualify a person from being President or a member of the Tax Tribunals.

Eligibility under regulations
280. Paragraphs 8 and 9 provide further detail about the content of the regulations that can be made under paragraphs 4(2) and 6(2)

Part 2 – Conditions of membership etc.

Application of this Part
281. Paragraph 10 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Initial period of office
282. Paragraph 11 allows that a person appointed to the Tax Tribunals holds the position for five years.

Reappointment
283. Paragraphs 12, 13 and 14 allow for the re appointment of members of the Tax Tribunal for a period of five years and sets out the exceptions that would prevent reappointment.

Termination of appointment
284. Paragraph 15 sets out the three ways a member of the Tax Tribunals can cease to hold the position.

Pensions etc.
285. Paragraph 16 provides for the Scottish Ministers to make arrangements in relation to pensions, allowances and gratuities.

Oaths
286. Paragraph 17 sets out that all Members of the Tax Tribunals must swear an oath in the presence of the President of the Tax Tribunals

Other conditions
287. Paragraph 18 provided that Scottish Minister may set the terms and conditions on which members of the Tax Tribunal hold the position.
Part 3 - Conduct and discipline

Application of this Part

288. Paragraph 19 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Conduct rules

289. Paragraphs 20, 21 and 22 set out the Scottish Ministers’ responsibility for the conduct of members of the Tax Tribunals, provides for the power for Ministers to make regulations regarding the conduct and details what these regulations may contain.

Reprimand etc.

290. Paragraphs 23 and 24 provide for disciplinary action to be taken against members of the Tax Tribunal by the President of the Tax Tribunals.

Suspension of membership

291. Paragraphs 25 and 26 provide for the suspension of members of the Tax Tribunal by the President of the Tax Tribunals.

Judicial Complaints Reviewer

292. Paragraphs 27 and 28 set out the role of the Judicial Complaints Reviewer, established under the Judiciary and Courts (Scotland) Act 2008 (asp 6), in relation to the Tax Tribunals.

Part 4 – Fitness and removal

Application of this Part

293. Paragraph 29 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Constitution and procedure

294. Paragraphs 30 and 31 set out the arrangements that relate to a fitness assessment tribunal. The purpose of the fitness assessment tribunal is to determine whether a member of the Tax Tribunal is fit to hold the position of member of the tribunals, as set out in subparagraph 30(3).

Composition and remuneration

295. Paragraphs 32 and 33 provide for who will sit on a fitness assessment tribunal and their remuneration.

Proceedings before fitness assessment tribunal

296. Paragraphs 34 and 35 provide for the proceedings a fitness assessment tribunal will follow.
Suspension during investigation

297. Paragraphs 36, 37 and 38 provide for the suspension of a member of the Tax Tribunals at any time before a fitness assessment tribunal reports.

Report and removal

298. Paragraphs 39 and 40 set out the reporting arrangements of a fitness assessment panel and allow for the removal of a member of the Tax Tribunals if the member is found to be unfit.

Application of this Part to the President of the Tax Tribunals

299. Paragraph 41 sets out which paragraphs of Part 4 of Schedule 1 apply to the President of the Tax Tribunals.

Interpretation

300. Paragraph 42 sets out how unfitness to hold a position as a member of the Tax Tribunals should be interpreted.

SCHEDULE 3 – CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

Introduction

301. As set out in paragraph 1, this schedule applies to a claim under section 97, 98 or 99 of this Bill.

Making of claims

302. Paragraph 2 provides for the process by which someone may make a claim for relief for overpayment. Revenue Scotland may determine the form by which a claim must be made. Making a claim requires evidence that the tax has been paid.

Duty to keep and preserve records

303. Paragraph 3 provides that records must be kept to support a claim for relief for overpayment, and describes the requirements for preserving those records.

Preservation of information etc.

304. Paragraph 4 provides that records may be kept in any form, but that Revenue Scotland may specify conditions or exceptions.

Penalty for failure to keep and preserve records

305. Paragraph 5 provides that there is a penalty for failing to keep records, but that the penalty is not incurred if other documentary evidence can show the same information.

Amendment of claim by claimant

306. Paragraph 6 provides that a claimant can amend their claim within 12 months, unless Revenue Scotland gives notice during that period that it is carrying out an enquiry.
Correction of claim by Revenue Scotland

307. Paragraph 7 provides that Revenue Scotland may correct obvious errors or omissions in a claim, within nine months of the claim being made. The claimant may reject this correction within three months.

Giving effect to claims and amendments

308. Paragraph 8 provides that Revenue Scotland should make repayment or discharge a determination as soon as practicable after a claim is made. Revenue Scotland may give effect to this on a provisional basis.

Notice of enquiry

309. Paragraph 9 provides that Revenue Scotland may enquire into a claim or amendment of a claim. Revenue Scotland must give the claimant notice that it is going to carry out an enquiry within three years of the claim being made or amended. A claim or amendment may only be subject to one notice of enquiry.

Completion of enquiry

310. Paragraph 10 provides that Revenue Scotland will notify a claimant when its enquiries have been completed and state the conclusions of the enquiry. The closure notice must be issued within three years of the date of the claim and must state either that no amendment is required, or that the claim is insufficient or excessive and amend it to reflect this.

Direction to complete enquiry

311. Paragraph 11 provides that a claimant may apply to the tribunal for a direction that Revenue Scotland issue a closure notice, and completes its enquiry, within a specified period. The tribunal must give a direction unless there are reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 10

312. Paragraph 12 provides that, once a closure notice has been issued, Revenue Scotland must carry out an assessment, make a repayment or discharge a determination within 30 days.

Appeals against amendments under paragraph 10

313. Paragraph 13 provides that a claimant may appeal against a closure notice, and sets out the procedure by which that appeal must be made.

SCHEDULE 4 – MINOR AND CONSEQUENTIAL MODIFICATIONS

314. Schedule 4 makes consequential amendments to listed Acts of the Scottish Parliament. One of the effects is that Revenue Scotland is made subject to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) and the other Acts generally applicable to devolved public bodies\(^3\). Further, the legislation for LBTT and SLfT is amended in consequence of the

\(^3\) Some such requirements apply automatically to Scottish Administration bodies.
provisions of the Bill, for example to repeal the provisions relating to reviews and appeals made there.

**SCHEDULE 5 – INDEX OF DEFINED EXPRESSIONS**

315. Schedule 5 provides an index to definitions used in the Bill.
FINANCIAL MEMORANDUM

BACKGROUND

1. The Bill is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. The Bill follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 that received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Bill which is currently being considered by the Scottish Parliament.

2. The Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as a new non-ministerial department which will be the tax authority responsible for collecting Scotland’s devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes; and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

3. The estimated costs set out in this Financial Memorandum are for the existing devolved taxes. If any further taxes are devolved in the future, then those would require additional primary legislation. The additional costs associated with collecting those further taxes would be set out in Financial Memoranda for that legislation.

I. Costs to the Scottish Government of establishing and running Revenue Scotland

4. The Scottish Government will meet the costs of establishing and running Revenue Scotland, including those incurred by the Keeper of the Registers of Scotland (RoS) and the Scottish Environment Protection Agency (SEPA) in the administration of the two devolved taxes.

5. The estimated costs of establishing Revenue Scotland and of administering the two devolved taxes have been referenced in:
   - the Cabinet Secretary for Finance, Employment and Sustainable Growth’s statement to the Scottish Parliament of 7 June 2012⁴;
   - the Financial Memorandum to the LBTT Bill which formed part of the Explanatory Notes⁵; and
   - the Policy Memorandum to the SLfT Bill⁶ and the Financial Memorandum which formed part of the Explanatory Notes⁷.

⁴ Available at: [http://www.scotland.gov.uk/News/Speeches/taxation07062012](http://www.scotland.gov.uk/News/Speeches/taxation07062012)
⁶ Available at: [http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_Bill/b28s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_Bill/b28s4-introd-pm.pdf)
⁷ Available at: [http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_Bill/b28s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_Bill/b28s4-introd-en.pdf)
6. The estimated costs were provided to the Scottish Parliament in June 2012 and placed in the Scottish Parliament Information Centre (SPICe). The estimated costs set out in those previous statements came to a total of **£16.7m** for the period from July 2013 to March 2020. These costs were based upon information available at the time and related specifically to the basic set-up and operational running costs for the collection and management of the devolved taxes.

7. This £16.7m included:
   - estimated costs for staff in Revenue Scotland, RoS and SEPA to manage the set-up phase between July 2013 and March 2015;
   - estimated costs of IT development between July 2013 and March 2015 for front-end systems in RoS and SEPA to enable taxpayers to submit tax returns and make payments;
   - estimated costs for non-staff expenditure in Revenue Scotland, RoS and SEPA between July 2013 and March 2015, including communications activity and staff training;
   - estimated annual running costs for staff in Revenue Scotland, RoS and SEPA from April 2015 to March 2020; and
   - estimated costs for non-staff running costs in Revenue Scotland, RoS and SEPA from April 2015 to March 2020, including communications activity, staff training, IT maintenance, and legal advice and other costs associated with debt management and appeals.

8. HMRC provided a high-level estimate of **£22.3m**, covering the same period, to administer ‘like for like’ taxes to the two UK taxes (Stamp Duty Land Tax (SDLT) and UK Landfill Tax (LfT)) on behalf of the Scottish Ministers. This £22.3m covered similar activity to the fields of cost set out above – set-up and annual running costs for staff and non-staff expenditure.

9. The Scottish Government’s estimate of the basic set-up and running costs of administering the devolved taxes in Scotland was 25% less than HMRC’s estimated costs. The creation of Revenue Scotland as the Tax Authority for the collection and management of the devolved taxes also provided scope to set distinctively Scottish policy directions for the administration of the devolved taxes, which would not have been possible were HMRC to have administered ‘like for like taxes’ within the costs they estimated.

10. As understanding has increased of the legislative requirements and the additional benefits to be derived from developing a distinctively Scottish system of tax administration, the initial estimates of the costs of establishing and running the devolved taxes have been reviewed and revised. As was indicated during the Finance Committee’s consideration of the LBTT Bill, any revised costs were to be presented in the Financial Memorandum to the Revenue Scotland and Tax Powers Bill.

11. There has been some revision to the composition of the previously estimated costs – for example, changes in the estimates of staffing costs in Revenue Scotland during the set-up phase, and changes to the expectations of the grading and team structure that is most appropriate within
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Revenue Scotland from April 2015 onwards. The total for the areas of cost set out at paragraph 7 above remains £16.7m. The revised costs are directly comparable with HMRC’s estimate for administering two ‘like for like’ taxes to SDLT and LfT and continue to reflect the 25% saving originally identified by the Scottish Government.

12. Alongside those revisions to previously estimated costs, additional costs have been identified in relation to three areas not included in previous cost estimates, and outwith the scope of HMRC’s comparable estimate:

- Increased investigation and compliance activity gives scope to identify additional tax liability and increase revenue. Experience in other tax authorities has shown that a modest increase in investment in compliance activity can lead to significant increases in revenue, more than offsetting the additional cost. This Financial Memorandum describes initial investment of £230k from April 2015 to March 2016. The impact of this investment will be reviewed in light of success in generating additional tax revenue to inform the Scottish Ministers’ decisions about any further investment;

- Some IT development within Revenue Scotland, to allow taxpayer data to be held securely and to sustain the administration of a distinct Scottish approach to taxation. This Financial Memorandum sets out initial investment of £1m between December 2013 and March 2015, and a corresponding estimated IT maintenance cost of £100k per year from April 2015 to March 2020 – totalling £1.5m; and

- Other costs associated with policy development in the course of preparing the three pieces of tax legislation, including this Bill. These costs include the establishment of Scottish Tax Tribunals to hear formal dispute cases on the devolved taxes, and costs to SEPA of processing and administering the tax liability which arises from illegal dumping of waste materials. This Financial Memorandum sets out initial investment of £120k to set up the Scottish Tax Tribunal between December 2013 and March 2015, and £135k per year annual running costs, totalling £730k as explained in Table 12. Annual running costs to SEPA associated with compliance arising from the illegal dumping of waste are estimated at £210k, totalling £1.05m as explained in Table 13.

13. The costs of increased investigation and compliance activity, of developing IT capacity within Revenue Scotland, of establishing Scottish Tax Tribunals and of processing tax liability arising from illegal dumping are described in more detail under section II of this Memorandum. These costs fall outside of the scope of the original HMRC and Scottish Government estimate costs for setting up and running the devolved taxes which were on a ‘like for like’ basis in connection with a more limited proposition.

14. These estimated costs are based on the assumption that the number of transactions made will remain broadly similar to those made for the existing UK taxes. While SLfT has a small and relatively stable tax base, LBTT is more volatile, and the numbers of returns would be expected to vary from year to year mirroring the performance of the property market. This has limited impact on the staffing resource estimated below. The majority of cases will be straightforward and dealt with electronically, so an increase in numbers of cases would not have a significant impact on staff resources. Staff resources will be focused on investigation, compliance, and non-standard cases. This work will be targeted at complex or high-value cases; in the first instance, increases in number of cases would be addressed by prioritisation within existing resources.
15. Table 1 below gives a summary of the costs set out in this Financial Memorandum, and shows that the total costs which correspond to previous estimates in the Financial Memoranda for the Land and Buildings Transaction Tax Bill and the Scottish Landfill Tax Bill remain at £16.7m. It also summarises the estimated costs of additional activity not included in previous estimates nor in HMRC’s comparable estimate of £22.3m.

Table 1 - Summary of costs

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Total cost over period July 2013-March 2020 (£000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Scotland staff set-up</td>
<td>1,810</td>
</tr>
<tr>
<td>Revenue Scotland non-staff set-up</td>
<td>455</td>
</tr>
<tr>
<td>Revenue Scotland staff running costs</td>
<td>6,550</td>
</tr>
<tr>
<td>Revenue Scotland non-staff running costs</td>
<td>3,700</td>
</tr>
<tr>
<td>RoS staff set-up</td>
<td>250</td>
</tr>
<tr>
<td>RoS non-staff set-up</td>
<td>85</td>
</tr>
<tr>
<td>RoS staff running costs</td>
<td>1,200</td>
</tr>
<tr>
<td>RoS non-staff running costs</td>
<td>425</td>
</tr>
<tr>
<td>SEPA set-up</td>
<td>625</td>
</tr>
<tr>
<td>SEPA running costs</td>
<td>1,600</td>
</tr>
<tr>
<td><strong>Total for revisions of costs previously estimated for LBTT and SLfT</strong></td>
<td><strong>16,700</strong></td>
</tr>
</tbody>
</table>

**ESTIMATES FOR NEW ACTIVITY**

- Additional compliance activity in FY 2015-16 230
- IT investment in Revenue Scotland 1,500
- Set-up and running of Scottish Tax Tribunals 730
- Costs to SEPA of processing and administering SLfT from illegal dumping 1,050

**Total estimate for new activity** 3,510

**Total** 20,210

Revenue Scotland set-up costs

16. The estimated set-up costs for Revenue Scotland cover the period from July 2013 to March 2015 and are categorised as staff and non-staff costs. Staff costs are based on average costs for Scottish Government staff for 2013 and include average basic salary for the grades concerned, Accruing Superannuation Liability Charge, Earnings-Related National Insurance Contribution and any non-consolidated pay awards.

17. Staff set-up costs have been re-profiled from previous estimates and now reflect the recruitment of additional staff required for the set-up phase from October 2013 to March 2015 and the appointment of permanent staff for Revenue Scotland from October 2014 to facilitate training and familiarisation on the legislation and operational systems, processes and procedures prior to the commencement date for the collection of the devolved taxes.
18. Non-staff set-up costs now reflect an additional set-up charge from the Scottish Government’s Information Technology service provider for the provision of Revenue Scotland’s standard desktop IT equipment and telephony.

19. The total estimated set-up costs incurred for Revenue Scotland functions are summarised in Tables 2 and 3.

Table 2 - Revenue Scotland estimated staff set-up costs (Scottish Government pay grades)

<table>
<thead>
<tr>
<th>Function</th>
<th>Cost per year (£000)</th>
<th>Period</th>
<th>Total cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>130</td>
<td>July 2013 to March 2015</td>
<td>230</td>
<td>Head of Revenue Scotland (0.3 fte SCS Pay Band 2), Chief Operating Officer (SCS Pay Band 1)</td>
</tr>
<tr>
<td>Tax Administration Programme</td>
<td>115</td>
<td>July 2013 to March 2015</td>
<td>200</td>
<td>Programme Manager (Band C) and Programme Officer (Band B)</td>
</tr>
<tr>
<td>Revenue Scotland Development</td>
<td>370</td>
<td>July 2013 to March 2015</td>
<td>645</td>
<td>2 Band C and 7 Band B, developing internal systems, procedures, policies, capacity and communications</td>
</tr>
<tr>
<td>Administrative Support</td>
<td>20</td>
<td>July 2013 to March 2015</td>
<td>40</td>
<td>1 Band A</td>
</tr>
<tr>
<td>Revenue Scotland Appeals, Disputes, Compliance and Corporate Support</td>
<td></td>
<td>October 2014 to March 2015</td>
<td>405</td>
<td>Recruitment of Revenue Scotland staff for training and familiarisation prior to operational live date – 20 staff consisting of 5 Band C, 12 Band B and 3 Band A</td>
</tr>
<tr>
<td>Band C Change Managers</td>
<td></td>
<td>April to June 2015</td>
<td>60</td>
<td>3 Band C to provide continuity from set-up through to live operation</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>1,810</strong></td>
<td>VAT non-chargeable</td>
</tr>
</tbody>
</table>
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Table 3 - Revenue Scotland estimated non-staff set-up costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>80</td>
<td>Includes establishing the website and providing basic IT systems. Central database development is discussed below.</td>
</tr>
<tr>
<td>Communications and branding</td>
<td>75</td>
<td>Need to promote awareness of Revenue Scotland and devolved taxes.</td>
</tr>
<tr>
<td>Standard running costs for unit from June 2013 to 31 March 2015</td>
<td>200</td>
<td>Training, travel and subsistence and accommodation costs for staff.</td>
</tr>
<tr>
<td>IT Desktop and Telephony Set-up costs</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>455</strong></td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable</td>
</tr>
</tbody>
</table>

Revenue Scotland running costs

20. Staff running costs have been revised to reflect an updated operating model and organisational design for Revenue Scotland, with some adjustments to post grading and staff numbers.

21. Original cost estimates for non-staff running costs included basic allowances for corporate functions, including estates and IT, but not a comprehensive re-charge from Scottish Government to Revenue Scotland for the provision of corporate support services. Estimates of these costs including standard IT and telephony systems, Human Resource functions, payroll, accounting systems and estates services under Shared Service Arrangements are included in the revised estimates. Total estimated annual running costs incurred from April 2015 onwards for all Revenue Scotland functions are listed in the Tables 4 and 5.

Table 4 - Revenue Scotland estimated staff running costs (Scottish Government Pay Grades)

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>90</td>
<td>Chief executive Officer SCS Pay Band 1.</td>
</tr>
<tr>
<td>Compliance and debt management</td>
<td>390</td>
<td>Team of 9 staff, assume 1 Band C, 8 Band B.</td>
</tr>
<tr>
<td>Disputes and Appeals</td>
<td>200</td>
<td>Team of 6 staff, assume 4 Band B and 2 Band A.</td>
</tr>
<tr>
<td>Operational Policy</td>
<td>200</td>
<td>Team of 5 staff, assume 1 Band C and 4 Band B.</td>
</tr>
<tr>
<td>Corporate and Business Services</td>
<td>430</td>
<td>Team of 9 staff, assume 3 Band C, 4 Band B and 2 Band A to cover corporate and business planning, financial management, legal advice, web and print communications, limited helpline and complaints, business planning and reporting.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,310</strong></td>
<td>VAT non-chargeable</td>
</tr>
<tr>
<td><strong>Total from April 2015 to March 2020</strong></td>
<td><strong>6,550</strong></td>
<td></td>
</tr>
</tbody>
</table>
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Table 5 - Revenue Scotland estimated non-staff running costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shared Services</td>
<td>230</td>
<td>Provision of accommodation, desktop IT support and telephony, HR services</td>
</tr>
<tr>
<td>Professional Services</td>
<td>220</td>
<td>Provision of legal fees, mediation services, debt recovery, valuations and external audit.</td>
</tr>
<tr>
<td>Administration</td>
<td>115</td>
<td>To meet Board member fees, travel and subsistence costs and general administration outgoings and materials.</td>
</tr>
<tr>
<td>Communications and branding</td>
<td>75</td>
<td>To promote awareness of Revenue Scotland and devolved taxes</td>
</tr>
<tr>
<td>IT systems support</td>
<td>50</td>
<td>Assume that receipts will be remitted direct to Scottish Government by collection agents; basic systems required for case management, appeals administration, performance management of contracts</td>
</tr>
<tr>
<td>Website maintenance and production and updating of on-line guidance</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>740</strong></td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable</td>
</tr>
<tr>
<td><strong>Total from April 2015 to March 2020</strong></td>
<td><strong>3,700</strong></td>
<td></td>
</tr>
</tbody>
</table>

Costs to the Scottish Government of RoS collecting LBTT

22. It is the Scottish Government’s announced intention that Revenue Scotland will delegate operational responsibility for the collection of LBTT to RoS. RoS currently collects a proportion of SDLT on behalf of HMRC under a service level agreement.

23. RoS costs, like those for Revenue Scotland, have been broken down under two headings, set-up costs incurred in the period July 2013 to March 2015 and running costs (i.e. the costs of collecting LBTT from 1 April 2015). The costs identified by RoS have been prepared on the following assumptions:

- that it will have a basic compliance role, with the bulk of responsibility for compliance resting with Revenue Scotland (work continues to be carried out by Revenue Scotland and RoS to map out compliance activity and define respective roles in detail);
- that the tax will be introduced as planned in 2015 and as currently legislated for; and
- that at least 90% of LBTT will be processed online.

24. Changes that affect these assumptions may lead to lower or greater actual costs. RoS operates as a Trading Fund and is self-financing from the income it receives for the services it provides. It, therefore, requires to cover the costs it incurs in respect of the LBTT service it will
provide. These estimated costs will be agreed with and met by the Scottish Government and are summarised estimates in Tables 6 and 7 below.

**Table 6 - RoS estimated set-up costs**

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Costs (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff costs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs of planning, overseeing, and implementing changes prior to April 2015</td>
<td>250</td>
<td>1.5 Grade 7 (C1 equivalent), 1 SEO (B3 equivalent), 1 HEO (B2 equivalent) and 0.3 EO (B1 equivalent)</td>
<td>Includes system preparation, project planning and management costs, and covers work-package effort for legislation and policy, IT, Finance, Registration and implementation. It does not include costs for preparing for compliance and enforcement work - assumed under Revenue Scotland</td>
</tr>
<tr>
<td>Total</td>
<td>250</td>
<td></td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable Excluding VAT</td>
</tr>
<tr>
<td>Non-staff costs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Familiarisation of solicitors with new systems</td>
<td>10</td>
<td></td>
<td>Training and publicity for solicitors and other users to ensure full and effective take up</td>
</tr>
<tr>
<td>Build cost of new LBTT system</td>
<td>75</td>
<td></td>
<td>This represents the capital costs of building the system</td>
</tr>
<tr>
<td>Total</td>
<td>85</td>
<td></td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable Excluding VAT</td>
</tr>
</tbody>
</table>

**Table 7 - RoS estimated running costs**

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff costs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e-Services Helpdesk</td>
<td>130</td>
<td>1 EO (B1 equivalent) and 3 x AOs (A4 equivalent)</td>
<td>Estimate is based on providing administrative advice (but not tax advice) to 100 calls per day.</td>
</tr>
<tr>
<td>Provision of complex enquiry helpdesk</td>
<td>60</td>
<td>1 SEO (B3 equivalent)</td>
<td>Referral point from e-Services Helpdesk for complex cases.</td>
</tr>
<tr>
<td>Additional costs associated with system support and new chargeable transactions</td>
<td>20</td>
<td>0.5 HEO (B2 equivalent)</td>
<td>Figure is an estimate to cover system support and possible tax changes.</td>
</tr>
</tbody>
</table>
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intake process cost</td>
<td>30</td>
<td>1.3 AA (A3 equivalent)</td>
<td>Cost of intake processes in respect of paper applications</td>
</tr>
<tr>
<td>Total</td>
<td>240</td>
<td></td>
<td>Excluding VAT: chargeable and recoverable.</td>
</tr>
<tr>
<td><strong>Total from April 2015 to March 2020</strong></td>
<td>1200</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Non-staff costs**

<table>
<thead>
<tr>
<th>Additional IT maintenance and support costs</th>
<th>20</th>
<th>Costs associated with IT and e-Services support.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual cost of providing data to HMRC</td>
<td>15</td>
<td>UK Government requirement.</td>
</tr>
<tr>
<td>Additional costs associated with new chargeable transactions</td>
<td>50</td>
<td>Figure is an estimate to cover possible changes.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>85</td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable</td>
</tr>
<tr>
<td><strong>Total from April 2015 to March 2020</strong></td>
<td>425</td>
<td></td>
</tr>
</tbody>
</table>

25. These costs have been estimated on the basis that major system changes are being introduced as a result of the Land Registration etc. (Scotland) Act 2012, and that the costs of these changes are unavoidable. By building in LBTT requirements from the outset in designing the new systems, the additional cost in respect of LBTT has been minimised. As a result, the set-up and running costs for RoS, including in relation to IT developments for LBTT, are lower than would otherwise have been the case. RoS already undertakes processing and collection of SDLT on behalf of HMRC, and consequently has considerable knowledge and experience of requirements.

**Costs to the Scottish Government of SEPA collecting SLfT**

26. The intention is for Revenue Scotland to delegate operational responsibility for the collection of Scottish Landfill Tax to SEPA. Estimated costs for SEPA, like those for Revenue Scotland, have been broken down under two headings, set-up costs (incurred between July 2013 and March 2015) and running costs (i.e. the costs of collecting SLfT from 1 April 2015). The costs identified by SEPA have been prepared on the following assumptions:
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

- that it will have a collection and compliance role (work continues to be carried out by Revenue Scotland and SEPA to map out detailed systems and processes and agree their respective roles in relation to collection and compliance activity);
- that the tax will be introduced as planned in 2015 without significant change to the legislative scheme set out in the Bill introduced in April 2013.

27. SEPA is partially self-financing from the income it receives from the environmental protection services it provides. The additional costs of administering SLfT will be agreed with and met by the Scottish Government. Tables 8 and 9 set out the estimated set-up and running costs (incurred from 1 April 2015 onwards) for SEPA.

### Table 8 - SEPA estimated set-up costs (SEPA Grades)

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Development, Business Development, Operational Guidance</td>
<td>55</td>
<td>Band C - Input to policy discussions, legislative assessment, consultation, guidance and codes of practise.</td>
</tr>
<tr>
<td>SLfT Management Band B</td>
<td>40</td>
<td>SLfT Project Management input. Attending Tax Administration Programme Board, informing SEPA Agency Board and developing relationships with Revenue Scotland, HMRC and Industry</td>
</tr>
<tr>
<td>SLfT Specialist</td>
<td>55</td>
<td>Band D - Technical landfill and waste management industry advice. Input to policy discussions, legislative assessment, consultation, guidance and codes of practise.</td>
</tr>
<tr>
<td>Project Management</td>
<td>90</td>
<td>Band D - Ensuring managed delivery of project across SEPA.</td>
</tr>
<tr>
<td>Information Systems</td>
<td>350</td>
<td>Full time Business Analyst, systems analysis, specification and design. System and software development including testing, hardware, integration with SEPA financial system</td>
</tr>
<tr>
<td>Training</td>
<td>15</td>
<td>Internal Online Training, SLfT Staff Development and possible HMRC work shadowing. External Operator Workshops</td>
</tr>
<tr>
<td>Corporate Legal Support</td>
<td>20</td>
<td>0.5 Band B - Privacy Impact Assessment, Data Sharing Agreement/MOUs, legal advice on competence, Data Processing Notice/Terms and Conditions for web service/data processing</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>625</strong></td>
<td>Excluding VAT - assumed to be non-chargeable or recoverable.</td>
</tr>
</tbody>
</table>
Table 9 - SEPA estimated running costs (SEPA Grades)

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly waste data SLfT tax return processing and initial sense check</td>
<td>30</td>
<td>1 FTE Assistant Scientist Band F</td>
</tr>
<tr>
<td>Finance/Payment issues/reconciliation</td>
<td>0</td>
<td>Assumes no debt management and use of current accounting system</td>
</tr>
<tr>
<td>Enquiries, Registration, Compliance checking. Checking correct use of two rates, waste types and exemption claims.</td>
<td>35</td>
<td>1 FTE Scientist Band E</td>
</tr>
<tr>
<td>Staff management. Managing liaison with Revenue Scotland and HMRC.</td>
<td>30</td>
<td>0.5 FTE Band C</td>
</tr>
<tr>
<td>Management liaison with Revenue Scotland and HMRC at senior level</td>
<td>35</td>
<td>0.5 FTE Band B</td>
</tr>
<tr>
<td>Training and Development (team and SEPA wide)</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Administrative Officer, Office support to entire team</td>
<td>25</td>
<td>1 FTE Band G</td>
</tr>
<tr>
<td>IS costs ongoing, licensing, software development and hardware maintenance/upgrading</td>
<td>60</td>
<td>1 IS FTE</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>320</strong></td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable.</td>
</tr>
<tr>
<td><strong>Total from April 2015 to March 2020</strong></td>
<td><strong>1600</strong></td>
<td></td>
</tr>
</tbody>
</table>

28. By drawing on SEPA's existing knowledge and expertise in managing permits for landfill sites, this approach to administration will afford opportunities to deliver significant efficiencies and other operational benefits. For instance, SEPA will be able to draw on existing enforcement staff and site visits to streamline processes and reduce administrative burdens on landfill
operators. Furthermore, SEPA plan to build a tax return and collection system that links in with its existing permit and data returns systems.

29. There will be potential for enhanced support to taxpayers by SEPA during the transition to the Scottish tax system as SEPA has contact with taxpayers through its existing environment work. Revenue Scotland and SEPA will undertake extra awareness raising and engagement work in the period leading up to the tax going live, to help taxpayers familiarise themselves with the new system.

II. Scope to increase tax revenue through additional investment in compliance and investigation

30. The costs set out by HM RC at £22.3m, and the corresponding estimate of £16.7m costs for a Scottish approach to tax collection, are based on a system which is designed to allow the large majority of taxpayers – those who understand their liability and wish to comply – to do so. Those costs also include some investment in compliance and investigation activity, some of which is focused on identifying tax liability which has not been declared or disputing the level of liability.

31. Experience in HMRC and in other countries has shown that a modest increase in resources focused on tax compliance and investigation can generate significant increases in tax revenue, more than offsetting the increased investment.

32. These extra resources would be focused on identifying and pursuing the ‘tax gap’. A tax gap is the difference between the maximum amount of tax that could, in theory, be due, and the amount that is actually collected. A tax gap can arise from many causes, including criminal activity, non-payment of tax due, deliberate (and illegal) evasion, the use of schemes designed to avoid tax, error and lack of care by taxpayers in completing their tax returns as well as different interpretations of the tax effects of complex transactions.

Potential tax gap for LBTT

33. The most recent published estimate of the UK tax gap for SDLT in 2011/12 is £200m. (However, it is important to note that whilst these figures are HMRC’s best estimates based on the information available, there are many sources of uncertainty and potential error.) HMRC has recently estimated that Scottish SDLT receipts represent about 4.5% of the UK total. If the tax gap proportion in Scotland is at the same level as in the UK, this would suggest a potential annual tax gap of £9m if SDLT were to have been retained in Scotland.

34. Some of the SDLT tax gap is due to features of the design of SDLT which have been addressed in the development of LBTT – such as the absence of a sub-sale rule and other improvements designed to reduce risks of non-collection. These policy changes are likely to reduce the tax gap as they reduce the scope for non-compliant behaviour. Assuming that the policy differences between LBTT and SDLT reduce that tax gap by 50%, a conservative estimate of the remaining tax gap for LBTT could be in the region of £4.5m a year.
Potential for additional revenue from SLfT

35. SEPA currently uses some resource in identifying illegal waste sites. This activity is funded through its core Grant in Aid and is subject to prioritisation due to various demands on SEPA resources across its full range of environmental duties. As an illustrative example – not intended as a forecast of future impact – two of the larger-scale investigations that SEPA has carried out in recent years would have given rise to cumulative SLfT liability – if it had been chargeable at the time – of over £20m.

36. There are some resource implications arising from the assessment and processing of the tax liability arising from illegal waste sites; these are explored in section IV below. However, additional resources directed at investigation could identify additional illegal waste sites and therefore additional tax liability.

37. While additional investigation would of course support SEPA’s broader environmental interests, a focus on illegal sites would allow additional tax liability to be established and additional tax revenue to be collected.

Additional compliance activity

38. Modest additional investment in compliance activity – tax analysis and investigation which leads to the identification and collection of additional tax – can generate significant increases in revenue.

39. Proposed additional investment in compliance and investigatory staff are summarised in Table 10 below. This investment would be made with a target for Revenue Scotland and SEPA of collecting tax due to at least offset the additional cost.

40. Performance will be readily tracked against this additional investment as it will be clear when additional liability has been identified as a result of compliance activity, and when additional revenue has been collected. This will need to be tracked across more than one year at a time, as in some cases there will be a substantial time lag between identifying potential additional tax due and receiving any money. Revenue Scotland will carry out an annual review to compare additional tax collected as a result of compliance activity with the additional administrative cost, and will publish details of this in its annual report. This investment is expected to be reviewed on an annual basis so this Financial Memorandum contains only the cost committed in FY 2015-16. No further investment will be made unless the Scottish Ministers are satisfied that additional revenue is generated as expected.

41. Scottish Government will be able to agree with Revenue Scotland and SEPA to scale up or down the investment in additional compliance work in light of performance in collecting additional tax due.
Table 10 - Estimated costs of proposed additional compliance activity

<table>
<thead>
<tr>
<th>Function</th>
<th>Annual running Costs (£000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Scotland compliance Staff</td>
<td>150</td>
</tr>
<tr>
<td>SEPA investigations Staff</td>
<td>80</td>
</tr>
<tr>
<td><strong>Total Cost (Excluding VAT - assumed non-chargeable or recoverable)</strong></td>
<td><strong>230</strong></td>
</tr>
</tbody>
</table>

III. Costs of IT investment in Revenue Scotland

42. The original estimates assumed that IT development would be limited to basic functionality to develop systems to receive online tax returns and electronic payments by RoS and SEPA, linked to their existing interactions with taxpayers and their agents, with no proposals for any IT development in Revenue Scotland. The Financial Memoranda for the LBTT Act and the SLfT Bill noted that the costs set out therein did not include IT development costs in Revenue Scotland, and that a different design might be chosen and costs only known following detailed design and procurement.

43. It is proposed that Revenue Scotland will develop a central IT system which will include a data repository and case management system to hold taxpayer information drawn from RoS and SEPA. This is driven primarily by the need for a robust approach to tackling tax avoidance, by points raised by both stakeholders and the Scottish Parliament Finance Committee on standards of service to taxpayers and by the need to provide for features of LBTT and SLfT that differ from SDLT and LfT.

Tackling tax avoidance

44. The Cabinet Secretary for Finance, Employment and Sustainable Growth has indicated his strong intention – echoed by key stakeholders, including the Tax Consultation Forum, and supported by members of the Finance Committee in previous discussion – to combat tax avoidance – through, for example, the proposed Scottish general anti-avoidance rule (GAAR). The extent to which Revenue Scotland can tackle tax avoidance will depend on the analysis of robust information about complex transactions.

45. As well as consideration of particular tax returns, Revenue Scotland will need the capability to consider wider patterns of behaviour across similar transactions. While some transactions for the devolved taxes will be relatively straightforward and one-off, Revenue Scotland will require (particularly for LBTT) capacity to carry out some complex analysis, where transactions are linked over time and where different taxpayers are linked to one another. The data to be analysed will need to be kept secure at all times. It is the Scottish Government’s view that this analysis can most effectively and securely be done by developing a central IT system within Revenue Scotland itself.
Service standards

46. In working with RoS and SEPA, Revenue Scotland is committed to convenience for the taxpayer and efficiency in the tax collection system. This is partly dependent on a robust approach to taxpayer contact – through the agreed roles of each organisation, initial contact through the online systems that will allow taxpayers to make tax returns, contact centres and other forms of direct support and help.

47. It has become apparent, through discussion with stakeholders, that ensuring taxpayers and their agents are able to speak to someone with the appropriate technical knowledge to answer more difficult questions is a key concern. Inability to do this has been commonly cited as a cause of frustration with the existing UK taxes and something that the Finance Committee has rightly focused on in its consideration of LBTT and SLfT.

48. Investing in a case management system within Revenue Scotland will allow a seamless transmission of data across Revenue Scotland, SEPA and RoS – so that if a member of staff on a helpline needs to transfer a call elsewhere to answer a more technical or unusual question, the next person to speak to the taxpayer or agent can easily have access to all the necessary information, including copies of any relevant correspondence. It also means that long term record of data submitted by taxpayers using RoS or SEPA’s online systems can be held together in one secure location.

Tax policy development

49. A key principle underpinning the development of the devolved taxes has been to provide certainty to the taxpayer. One of the examples of this approach is the simplification of the devolved taxes in comparison to the equivalent UK taxes, such as stripping out many of the complexities of SDLT to create a simpler and clearer LBTT. However, during the development of that approach, representations by stakeholders made it clear that there were some areas where the most appropriate approach involved some additional administrative effort to achieve a better outcome for the taxpayer.

50. The Scottish Government’s approach to LBTT with regard to commercial leases is an example of this, where – in contrast to the UK approach – the tax liability will be reviewed on every third anniversary of the lease. This policy had not yet been developed when the original costings were developed, but the complexity of the transactions involved and the time periods over which they require to be monitored requires IT capacity to support the analysis. The Scottish Government considers that this IT capacity could most effectively be developed within a central Revenue Scotland system.

Central IT system

51. The estimated additional investment in information technology and associated services (such as scanning) required to support enhanced investigative and compliance activity (countering both evasion and avoidance), provide a more effective service to taxpayers and their agents and provide additional capability to support new features of Scottish taxes is set out in the table below. This financial memorandum also proposes some changes to previous assumptions on staffing numbers to release resources to support this IT investment, including an IT project manager, within the base set up and operating costs described above.
Table 11 – Revenue Scotland IT costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up costs (£000)</th>
<th>Annual running Costs (£000)</th>
<th>Total costs April 2015 to March 2020 (£000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Scotland IT</td>
<td>1,000</td>
<td>0</td>
<td>1,000</td>
</tr>
<tr>
<td>Development</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue Scotland IT</td>
<td>0</td>
<td>100</td>
<td>500</td>
</tr>
<tr>
<td>maintenance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>1,500</td>
</tr>
</tbody>
</table>

IV. Additional costs arising from policy development

52. The estimate of £22.3m given by HMRC covered HMRC’s costs to set up ‘like for like’ Scottish equivalents of SDLT and LfT and operate them for five years. Under any arrangement with HMRC, there would have been some additional costs of operating a Scottish tax system. These include the cost of Scottish Tax Tribunals to deal with disputes arising from the devolved taxes. They also include any additional administrative costs which would have fallen to HMRC due to fundamental differences between LBTT and SLfT compared to SDLT and LfT respectively. The key costs which fall in the latter category for consideration of this Bill are SEPA’s administration costs arising from the proposal to charge to tax the illegal dumping of waste materials. There is no equivalent power for HMRC to recover LfT from those involved in illegal dumping, so there was no allowance for this additional task within HMRC’s original cost estimate.

Scottish Tax Tribunal

53. The estimated costs of setting up and running Scottish Tax Tribunals are summarised in Table 12. The Scottish Tax Tribunals (First-tier and Upper) will be administered by the Scottish Tribunal Service and will make use of their existing premises. The tax tribunals will not charge a fee for an appeal to be heard. The administrative costs and legal fees incurred by Revenue Scotland in relation to appeals to the tax tribunals are detailed in Tables 2 and 4.

54. The costs summarised in table 12 are based upon the following assumptions:

- The set-up costs include £18k for IT costs, including costs for a case management system and a website. Recruitment and training of members will cost £30k. The salaries of administrative staff during the set up phase will cost £26k, based on one B1 and A3 members of staff working on the set-up of the tax tribunals for six months;

- The numbers of SDLT and LfT cases heard by the UK tribunals is small. Given that the two devolved taxes are new taxes and are different to the existing UK taxes, although a significant increase in the number of appeals is not anticipated, it does not follow that there will be the same small number of appeals;

- Although the size and composition of panels will be a matter for tribunal rules and the President of the tax tribunals the cost estimate is based on both tiers of the
These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Tribunal having one legal member and with the first tier also having two ordinary members;

- The daily fees members attract are based on the current rates members of the UK Tax Tribunals receive. As such a legal member sitting in the upper tribunal will receive a daily rate of £569 and £549 if sitting in the first-tier tribunal. An ordinary member will receive a daily rate of £265.
- As the taxes are new, it is not expected that any cases will reach formal appeals during the first six months of 2015-16. Costs for 2015-16 are therefore estimated at 50% of the proposed annual cost;
- In steady state, both first-tier and second-tier Tribunals will sit for two days per month;
- Two days per month will be sufficient time to hear the number of cases to be considered; and
- Costs do not include any staff costs incurred through considering further policy issues arising from setting up the proposed Tribunal.

Table 12 - Scottish Tax Tribunals estimated cost

<table>
<thead>
<tr>
<th>Function</th>
<th>Estimated Cost (£000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set-up of Tribunals</td>
<td>120</td>
</tr>
<tr>
<td>Annual running costs at steady state</td>
<td>135</td>
</tr>
<tr>
<td>Total running costs to March 2020 (some reduced costs in 2015-16, given lead-in time before cases begin)</td>
<td>610</td>
</tr>
<tr>
<td><strong>Total Costs</strong> (set-up and running costs to March 2020)</td>
<td><strong>730</strong></td>
</tr>
</tbody>
</table>

55. Were the UK Tax Tribunals to take on jurisdiction for hearing appeals against decisions taken in respect of the devolved taxes, some set-up costs would be incurred and the running costs would be broadly similar to those to be incurred by Scottish Tax Tribunals as proposed in this Bill. Consequently, there is unlikely to be a material difference between the cost to the Scottish Government of establishing and running separate devolved Scottish Tax Tribunals compared to jurisdiction resting with the existing UK Tribunals.

Collection of tax from illegal disposals

56. SEPA currently deploys resource, funded through its grant in aid allocation, towards the identification of illegal waste sites and illegal disposals generally.

57. It is intended that illegal disposals of waste will also be liable to SLfT. Administering, pursuing and reporting on the collection of tax from illegal waste sites presents additional work to that which SEPA is currently doing on the identification and investigation of such sites. The estimated costs of collecting tax revenue from the illegal dumping of waste materials are summarised in Table 13.
Table 13 - SEPA estimated administration and reporting costs for tax on illegal waste sites

<table>
<thead>
<tr>
<th>Function</th>
<th>Annual running costs</th>
<th>Running costs April 2015 to March 2020 (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation and reporting</td>
<td>90</td>
<td>450</td>
<td>2 FTE Band D - Illegal landfill site initial investigation and reporting for the purposes of Scottish Landfill Tax.</td>
</tr>
<tr>
<td>Site returns and subsequent investigation and reporting</td>
<td>90</td>
<td>450</td>
<td>2 FTE Band D - Checking registered Paragraph 9 and 19 Waste Management Exempt sites against site returns and subsequent investigation and reporting. Also, initial investigation and reporting of illegal landfill site for the purposes of landfill tax.</td>
</tr>
<tr>
<td>Unit Manager</td>
<td>30</td>
<td>150</td>
<td>0.5 FTE Band C</td>
</tr>
<tr>
<td>Total annual running costs</td>
<td>210</td>
<td>1,050</td>
<td>Excluding VAT – assumed to be non-chargeable or recoverable.</td>
</tr>
</tbody>
</table>

V. COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

58. The only costs which the Scottish Government has identified for local authorities are those costs associated with the role of local authorities as taxpayers. There are no additional responsibilities or duties for local authorities that would result in additional cost.

59. Local authorities will be subject to the two devolved taxes and the Financial Memoranda for the two relevant bills explain in detail how the amount of tax paid by local authorities might be affected.

60. The Scottish Government does not expect local authorities to incur any additional administrative costs in complying with the new system. Specific costs that may be attributed to the Bill include any additional costs incurred as a result of complying with a new tax system, and possible costs for those operating across the UK or complying with two separate tax systems. However, the Scottish Government does not expect that there will be a material change in administrative costs as a result of having to comply with the new tax system instead of the existing UK system. Revenue Scotland, SEPA and RoS are consulting with end-users of the new system to design an efficient system with an easy to use online system that will help to minimise administrative costs.

VI. COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

61. Costs to businesses are also examined in the Business and Regulatory Impact Assessment (“BRIA”) which will be published shortly. Individuals and businesses affected would include anyone with an interest in land and property purchase, and anyone impacted by the change from LfT to SLfT.
62. Costs to other bodies, individuals and businesses will mainly be incurred as a result of complying with the specific devolved taxes. As with local authorities, specific costs that may be attributed to the Bill include any additional costs incurred as a result of complying with a new tax system, and possible costs for those operating across the UK or complying with two separate tax systems. However, the Scottish Government does not expect that there will be a material change in administrative costs as a result of having to comply with the new tax system instead of the existing UK system.

63. The Bill makes provision for taxpayers (and third parties in certain circumstances) to be liable for civil penalties for non-compliance in relation to the devolved taxes. Some of the financial penalty amounts are outlined in the Bill and others will be included in secondary legislation to be set by the Scottish Ministers in due course. Interest rates will be applicable to tax or penalties owed to Revenue Scotland and also to tax, penalties or interest (on tax or penalties) which is repaid by Revenue Scotland. The different interest rates are not outlined in the Bill and will similarly be set by the Scottish Ministers in secondary legislation in due course. The interest rate(s) applying to repayment of money by Revenue Scotland is expected to be set at a level which discourages taxpayers lodging money with Revenue Scotland in order to get more favourable rates than can be obtained in the marketplace. In the UK this is currently the Bank of England base rate. In relation to the application of civil penalties and interest on sums owed to Revenue Scotland it is not possible to provide an estimate on either the impact on individuals or as to how much money will be generated. This will largely be determined by the behaviour and compliance levels of taxpayers with the system of collection and management for the devolved taxes.

64. The Bill includes a power for the Scottish Ministers to make regulations for Revenue Scotland to charge a fee to the taxpayer in connection with certain forms of payment. The costs may not exceed what is reasonable having regard to the costs incurred by Revenue Scotland, or a person authorised by it, in paying the fee or charge. The costs to taxpayers will depend on the number of occasions that these forms of payment are used but it is not expected that they will be significantly different to those associated with the equivalent UK taxes. Revenue Scotland, SEPA and RoS are consulting with end-users of the new system to design an efficient system with an easy to use online system that will help to minimise administrative costs.

65. The Financial Memorandum for the LBTT Bill identified individuals and businesses affected by the tax, including anyone with an interest in land and property purchase and leases. The Scottish Government does not expect that there will be a material change in administrative costs as a result of having to comply with LBTT instead of the existing SDLT. However, the amount of tax payable by individuals or businesses will be dependent on the rates and bands set for LBTT, which have not yet been set.

66. The Financial Memorandum for the Landfill Tax (Scotland) Bill identified the persons affected by SLfT. It explained that the Scottish Government does not expect SLfT to create any significant additional administrative costs for landfill operators that could be passed on to waste producers.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 12 December 2013, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Revenue Scotland and Tax Powers Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 12 December 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Revenue Scotland and Tax Powers Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Revenue Scotland and Tax Powers Bill introduced in the Scottish Parliament on 12 December 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 43–EN.

POLICY OBJECTIVES OF THE BILL

Overview

2. The Revenue Scotland and Tax Powers Bill (“the Bill”) is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. The Bill follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 that received Royal Assent on 31 July 2013, and the Landfill Tax (Scotland) Bill which is currently being considered by the Scottish Parliament.

3. The provisions of the Scotland Act 2012 give the Scottish Parliament legislative competence over devolved areas of taxation and define these as being taxes on transfers of interests in land and taxes on disposals to landfill. The existing Stamp Duty Land Tax (SDLT) and United Kingdom (UK) Landfill Tax (LfT) will be disapplied in Scotland by a Treasury Order in the UK Parliament and the UK Government’s policy is that this will take place from 1 April 2015.

4. The two devolved taxes that will replace them, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), ‘the devolved taxes’, will come into effect in Scotland from 1 April 2015. The details of each tax are set out in each of the tax-specific Bills. Further taxes may be devolved or introduced in Scotland in the future without the need for primary legislation at Westminster subject to the agreement of the UK and Scottish Parliaments. The UK Government will make a reduction to the Scottish block grant to offset the expected income from the two devolved taxes.

5. The Bill makes provisions for a Scottish tax system to enable the collection and management of LBTT and SLfT. It establishes Revenue Scotland as the tax authority responsible for collection and management of Scotland’s two devolved taxes from 1 April 2015.
Revenue Scotland currently exists as an administrative function within the Scottish Government. The Bill will put Revenue Scotland on a statutory footing and establish it as a non-ministerial department which is accountable to the Scottish Parliament.

6. Some of the operational functions of Revenue Scotland with respect to the devolved taxes will be delegated to two other public bodies – Registers of Scotland (RoS) in the case of LBTT and the Scottish Environment Protection Agency (SEPA) in the case of SLfT. Revenue Scotland will retain overall responsibility for the collection and management of the two devolved taxes.

7. The Bill puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties. In a statement to the Parliament on 7 June 2012\(^1\), the Cabinet Secretary for Finance, Employment and Sustainable Growth set out his approach for a tax system for Scotland based on Adam Smith’s four maxims with regards to taxes: certainty, convenience, efficiency and proportionate to the ability to pay. The Bill has been prepared to reflect these maxims.

8. The tax system, consisting of the provisions in the tax-specific legislation and in this Bill, will deliver certainty because it has been designed to be as simple as possible, with a common approach to tax assessments, applying penalties, promoting compliance and resolving tax disputes. It will deliver convenience because collection will be supported by a modern electronic payments system in line with the ambitions set out in Scotland’s Digital Future: A Strategy for Scotland.\(^2\) It will deliver efficiency because LBTT and SLfT will be collected by Revenue Scotland through RoS and SEPA respectively, drawing on all of their existing relevant knowledge and expertise. It will be proportionate to the ability to pay, for example, by introducing a progressive rate structure to LBTT so that the amount of tax paid will relate more directly to the value of the property acquired compared to SDLT.

9. Taxpayers will be required to submit a self-assessed tax return (a ‘self-assessment’) where there is a liability to pay tax. Both taxpayers and Revenue Scotland will have the power to amend tax assessments after they have been submitted. Revenue Scotland will also have the power to issue its own tax assessment in certain circumstances, or to amend a self-assessment made by a taxpayer. A standard set of time limits for all devolved taxes will apply in relation to the taxpayer’s ability to amend a self-assessment or for Revenue Scotland to issue a new assessment or amend the taxpayer’s self-assessment.

10. Revenue Scotland, or a delegated public body, will have the power to issue penalty notices to taxpayers or to their agents for non-compliant behaviour with respect to the devolved taxes. It will also have the power to apply discretion with respect to reducing or waiving penalties in certain circumstances and must issue guidance on how discretion will be exercised. The Bill specifies the non-compliant behaviour that should be subject to penalties, including, for example, late or non-payment of tax, errors in documents submitted or not submitting

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\(^1\) The Scottish Government’s Approach to Taxation, Statement to the Scottish Parliament by the Cabinet Secretary for Finance, Employment and Sustainable Growth, 7 June 2012, available at: http://www.scotland.gov.uk/News/Speeches/taxation07062012

This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

information requested by Revenue Scotland or by another public body to which Revenue Scotland has delegated some of its powers. There will be three kinds of financial penalties for non-compliant behaviour – fixed penalties, daily penalties, and percentage-based penalties, where the penalty is linked to the potential loss in tax revenues. Revenue Scotland will also have the power to inspect records, enter business premises to carry out investigations in relation to tax activity and to seek a summary warrant from the sheriff court to collect unpaid taxes and/or penalties owed.

11. The provisions in the Bill include measures to counteract tax avoidance through the introduction of a Scottish general anti-avoidance rule (GAAR). The purpose of the GAAR is to give Revenue Scotland the power to counteract tax advantages arising from tax avoidance arrangements that are artificial. The Scottish GAAR would enable Revenue Scotland to take counteraction in a wider range of circumstances than the existing UK GAAR (which deals with tax abuse rather than tax avoidance). This is a result of the criteria used in the Scottish GAAR to define what constitutes a tax avoidance arrangement that is artificial. Revenue Scotland will need to demonstrate that obtaining a tax advantage is one of the purposes of a tax arrangement, and that the arrangement is artificial. Artificiality will be determined by reference to a set of tests set out in the Bill, including commercial substance.

12. The Bill sets out a structure for resolving tax disputes by providing that the taxpayer can require Revenue Scotland to carry out an internal review. Revenue Scotland may also offer to enter into mediation with the taxpayer. If a dispute is not resolved by an internal review or if mediation is entered into and an agreement is not reached the taxpayer will still have recourse to the new Scottish Tax Tribunals which will be established by the Bill. A taxpayer who wishes may lodge an appeal with the Scottish Tax Tribunals without first asking for an internal review or may refuse to enter into mediation. A further appeal on a point of law against a decision taken by the Scottish Tax Tribunals could be made to the Court of Session.

ALTERNATIVE APPROACHES

13. The first alternative option is to do nothing – i.e. not to collect the replacement taxes for SDLT and LfT when they are disapplied in Scotland at the end of March 2015. This would mean that from April 2015 taxpayers would no longer need to pay tax on land transactions or on disposals to landfill. However, there would still be a reduction in the Scottish block grant payment to reflect the fact that responsibility for SDLT and LfT has been devolved to the Scottish Parliament. This would represent a material reduction in the block grant and damage public services in Scotland. The Parliament has already effectively rejected this approach in passing the LBTT Bill in June 2013.

14. The second alternative option is for Revenue Scotland to remain as an administrative function within the Scottish Government from 1 April 2015, rather than establishing it as a non-ministerial department. Such an option would not provide Revenue Scotland with independence from Ministerial control, could call into question the impartiality of decisions made in the operation of its function, and would not be consistent with best practice internationally.

15. The third alternative option is to use statutory powers to place responsibility on Her Majesty’s Revenue and Customs (HMRC) to administer the devolved taxes as an agent of the
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Scottish Government. HMRC indicated that it was willing to administer the devolved taxes on a like-for-like basis with the current SDLT and LfT. Under such an arrangement, the Scottish Government and the Scottish Parliament would have been constrained in the design of the devolved taxes. For example, it would not have been possible to replace the slab structure of SDLT with a progressive structure for LBTT. This would also have prevented the Scottish Government adopting a system for collection and management of the devolved taxes which best meets the needs of people in Scotland. Furthermore, as outlined in the Financial Memorandum, over the period to 2020 the costs for setting up and running Revenue Scotland to collect ‘like for like’ taxes to SDLT and LfT are estimated to be 25 per cent lower than if HMRC had collected them on behalf of the Scottish Government.

16. The fourth alternative option would be to use RoS and SEPA to collect LBTT and SLfT respectively on behalf of the Scottish Government. This would leave Scotland without a single tax authority responsible for administering the devolved taxes. Effectively, RoS and SEPA would become tax authorities, with full powers over enforcement and compliance. This option would raise issues of accountability and efficiency, since the separate bodies would need at least to some extent to duplicate tax administration, policy and accounting functions.

CONSULTATION

17. As mentioned above, discussion and debate on the provisions of this Bill began with the publication of a consultation document, A Consultation on Tax Management, on 10 December 2012. The consultation document included 38 questions, as follows:

- Questions 1-5 sought views on the proposed functions, duties, governance and method of engagement of Revenue Scotland with taxpayers and their agents.
- Questions 6-10 sought views on the proposed powers of Revenue Scotland, including powers for requesting information, inspections and investigations. The questions also sought views on the obligations on taxpayers, including requirements and time limits for submitting self-assessments or amended tax returns to Revenue Scotland.
- Questions 11-16 sought views on ensuring compliance within the tax system for the devolved taxes, including how to make it as easy as possible for taxpayers to comply with their obligations, whether the list of proposed non-compliant behaviours was comprehensive enough and also views on the level of discretion Revenue Scotland would have to determine the level of sanctions issued to a taxpayer.
- Questions 17-23 sought views on the proposed approaches to tax avoidance, including the provision for a Scottish GAAR, prior clearances and on arrangements for appeals against a Revenue Scotland decision that a tax avoidance arrangement is artificial and unacceptable.
- Questions 24-30 sought views on resolving tax disputes, including ways to avoid disputes arising in the first instance and also on the proposed three avenues available to taxpayers who dispute a decision by the tax authority – internal review, mediation and referral to a Scottish Tax Tribunal.
- Questions 31-34 sought views on treatment of taxpayer information, including the proposed statutory provision forbidding disclosure of taxpayer information held by Revenue Scotland except in specific circumstances such as prevention of crime or
meeting EU and international obligations. Views were also sought on exemption from Freedom of Information legislation in order to prevent disclosure of information that could identify a taxpayer.

- Question 35 sought views on the proposals for an accelerated tax changes regime, to cover potential circumstances where tax changes need to be made quickly. The UK approach is for a provisional collection of taxes regime where tax changes (e.g. to rates or bands) can be swiftly implemented with parliamentary scrutiny following.

- Questions 36-38 sought views on the draft Equalities Impact Assessment and Business and Regulatory Impact Assessment published alongside the consultation, as well as on any other aspects of the proposals not covered elsewhere in the questions.

18. Copies of the responses (other than those where respondents asked for their comments to be kept confidential) can be accessed through the Scottish Government’s website or Library (0131 244 4565).

19. The consultation allowed a wide range of people and representative bodies with an interest in and experience of tax matters to comment. In view of the range of topics for consideration, the normal consultation period was extended to four months. A total of 28 responses were received from individuals and organisations. The largest category of respondent was tax accountants and professional tax bodies, comprising 32 per cent of all respondents. Other respondents were public bodies, legal professional bodies, local authority bodies, businesses and one individual.

20. The Scottish Government also commissioned The Research Shop to undertake an analysis of the responses received to the consultation and its report has been published on the Scottish Government’s website.

21. The Scottish Government worked with a range of organisations, bodies and groups to develop the proposals contained in the Bill. During the consultation period, public discussion group events were held in Aberdeen, Perth, Galashiels, Edinburgh and Glasgow to enable stakeholders with an interest in this matter to communicate their views. Meetings were also held with representative bodies including the Law Society of Scotland, the Chartered Institute of Taxation, the Institute of Chartered Accountants of Scotland, the Low Income Tax Reform Group and Young Scot.

22. The Scottish Government is grateful to all who contributed their time, input and assistance to the consultation process which was very helpful in shaping the content of the Bill.

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3 Non-confidential responses to the consultation paper are available on the Scottish Government website at: http://www.scotland.gov.uk/Publications/2013/05/2816/0

This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Summary of responses

23. Issues raised during the consultation that are relevant to specific measures in the Bill are discussed under the relevant headings in the ‘Bill Contents’ section below, including the alternative approaches that were considered.

24. Of the 28 responses received, some reflected the balance of views across a wider membership or audience. A summary of responses to the consultation is set out below:

- There was broad support in favour of Revenue Scotland’s proposed function, ‘to ensure the efficient and effective care and management of the devolved taxes and that tax receipts are paid to the Scottish Consolidated Fund’.

- All but one of the respondents were in support of Revenue Scotland being established as a non-ministerial department and being accountable to the Scottish Parliament.

- The Scottish Government’s preferred option for Revenue Scotland’s leadership and governance (made up entirely of non-executive members to whom the chief executive would report) was supported by half of the respondents who provided a view. The option given most support, however, was for a Board comprising of both executive and non-executive members, along with a non-executive Chair. A common view was that transparency will be essential in making appointments to the Board and the chief executive position.

- Whilst there was much support for a ‘Digital by Default’ approach to providing information, on the grounds of wide reach and enabling access, a recurring theme was that this should not inadvertently exclude those without internet access or IT knowledge.

- The proposed framework for tax collection was considered in general to be reasonable, with the emphasis on consistency and proportionality particularly welcomed.

- There was general agreement that the proposed powers for Revenue Scotland to require information and carry out inspections were essential, although many recommended they should not be too broadly framed so as to allow their application in a disproportionate manner.

- The vast majority of those who provided a view on sanctions and penalties supported the proposal that Revenue Scotland should have discretion to determine the level of sanctions, subject to legislation and guidance. The two factors most frequently mentioned by respondents to take into account in exercising discretion were intent (whether deliberate or a genuine error) and the taxpayer’s history of compliance.

- There was general agreement that the measures proposed for tackling tax avoidance were appropriate. The majority of those who provided a view on the GAAR supported a narrowly-targeted rule, citing the benefits in providing greater certainty for businesses and maintaining Scotland’s attractiveness as a location for business and employment.

- The proposals for avoiding and resolving disputes were considered to be broadly appropriate. There was cross-sector support for the proposed arrangements for an
internal review generally taking place as the first stage of resolving a dispute. The majority of those who expressed a view on mediation supported its application as a potentially cost-effective, fair and proportionate mechanism for resolving disputes and minimising the number of cases going to a tribunal. The vast majority of those who provided a view on tribunals were in favour of the UK Tax Tribunal taking on tax appeals until such time as it was appropriate to move it to the Scottish Tribunal System.

25. As a result of the consultation, the Bill makes provision to establish Revenue Scotland as a non-ministerial department, with proposed functions broadly as consulted on. In the Bill, ‘collection and management’ has been used rather than ‘care and management’ reflecting current statutory language. The Bill proposes that Revenue Scotland should consist of only non-executive members with clear lines of governance and accountability for executive staff including the chief executive. Revenue Scotland’s tax collection powers, including those for requiring information and carrying out inspections, have been tightly framed to help ensure that they are applied in a controlled and proportionate manner. The penalties regime included in the Bill proposes that Revenue Scotland should have some discretion to reduce penalties, within a statutory framework setting maximum amounts, in line with comments received in the consultation.

26. The Bill includes an anti-avoidance rule, which is broader in its reach than, for example, the UK’s anti-abuse rule. The reasons for this approach are given in the relevant paragraphs below. Finally as regards dispute resolution, the Bill makes provision for internal review, enables Revenue Scotland to enter into mediation and makes provision for a new Scottish Tax Tribunal. This new Scottish Tribunal will share many features of the existing UK arrangements but which it is intended will be transferred as soon as practicable into the Scottish tribunals system being established by the Tribunals (Scotland) Bill which is currently before the Parliament.

BILL CONTENTS

27. The Bill makes substantive provision across twelve areas:

- **PART 1** provides an overview of the Bill’s structure in relation to the different Parts and schedules.
- **PART 2** sets out the establishment and constitution of Revenue Scotland as a non-ministerial department and its membership, including the position of chief executive, is set out in schedule 1.
- **PART 3** details how Revenue Scotland will use and ensure protection of taxpayer information.
- **PART 4** sets out in detail the composition and operational arrangements of the new two-tier Scottish Tax Tribunal.
- **PART 5** outlines the GAAR applying to avoidance of the two devolved taxes.
- **PART 6** sets out the powers and duties of taxpayers and Revenue Scotland, outlines the arrangements and time limits for taxpayer self-assessments and Revenue
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Scotland assessments, and also arrangements for handling double payment or overpayment of tax.

- **PART 7** outlines the investigatory powers of Revenue Scotland.
- **PART 8** sets out the process for issuing and collecting penalties in respect of non-compliant behaviour by taxpayers.
- **PART 9** deals with interest on payments due to or by Revenue Scotland.
- **PART 10** provides for the enforcement powers Revenue Scotland will have in the collection and management of the devolved taxes.
- **PART 11** sets out the system for the review and appeal of Revenue Scotland decisions.
- **PART 12** outlines final provisions including an index of defined expressions, subordinate legislation and ancillary powers.

28. A number of policy decisions will be set out in subordinate legislation. The purpose of each of the subordinate legislation provisions in the Bill and the reasons for seeking the proposed powers are set out in the Delegated Powers Memorandum.

PART 1 – OVERVIEW OF ACT

29. Part 1 of the Bill introduces the 11 other Parts of the Bill.

PART 2 – REVENUE SCOTLAND

Overview of policy objectives

30. The Bill will establish Revenue Scotland as the Tax Authority with responsibility for the collection and management of devolved taxes in Scotland. At present Revenue Scotland has been set up administratively within the Scottish Government. However, in line with international best practice, the Bill makes provision to establish Revenue Scotland on a statutory basis. As such, by April 2015 Revenue Scotland will be established as a body corporate, a non-ministerial department of the Scottish Administration, but not part of the Scottish Government. Revenue Scotland will be accountable to the Scottish Parliament. It will not be accountable to the Scottish Ministers for its operational activities, although its operating budget will be set by Ministers.

31. As well as the general function for the collection and management of devolved taxes, Revenue Scotland will have the following particular functions:

- providing information, advice and assistance to the Scottish Ministers relating to tax;
- providing information, advice and assistance to other persons relating to compliance with the devolved taxes;
- efficiently resolving disputes relating to compliance with the devolved taxes; and
- protecting the revenue against tax fraud (that is to say, tax evasion) and tax avoidance.
32. Revenue Scotland will be operationally independent of the Scottish Ministers. The Bill specifically prevents the Scottish Ministers from giving directions to, or otherwise trying to control, the way Revenue Scotland exercises its functions. Ministers will, however, be able to provide guidance to Revenue Scotland on how it exercises its functions. Revenue Scotland will be required to have regard to such guidance and will have a duty to provide information or advice relating to its functions as the Scottish Ministers may request from time to time.

33. Revenue Scotland will be required to produce a corporate plan which, when approved by the Scottish Ministers, must be published and laid before the Scottish Parliament. As soon as practicable after the end of each financial year, Revenue Scotland must produce an annual report, send a copy to Ministers and lay a copy before the Scottish Parliament.

34. Revenue Scotland will have five to nine members appointed by the Scottish Ministers. One of the members will be appointed as the Chair of Revenue Scotland. These appointments will be public appointments, will be subject to the Public Appointment and Public Bodies etc. (Scotland) Act 2003 and as such will be overseen by the Commissioner for Ethical Standards in Public Life in Scotland.

35. Revenue Scotland will employ a chief executive who will not be a member of Revenue Scotland. The first chief executive will be appointed by the Scottish Ministers. Subsequent chief executives will be appointed by the members of Revenue Scotland. Revenue Scotland will be able to appoint other members of staff on terms and conditions approved by the Scottish Ministers.

Alternative approaches

36. The main alternative considered was to ask HMRC to administer the devolved taxes on behalf of the Scottish Ministers. HMRC provided an estimate of £22.3m to administer ‘like for like’ Scottish taxes to replace the two devolved UK taxes (SDLT and LfT) on behalf of the Scottish Ministers. This, however, would have constrained the Scottish Ministers to simply maintain the two devolved taxes as they currently apply. Setting up Revenue Scotland to collect and manage devolved taxes allows the Scottish Ministers the opportunity to set different policy directions for the administration of the devolved taxes, which would not have been possible for the costs HMRC had estimated. It also opens the way for the Scottish Parliament to agree legislation that makes provisions in relation to the design and administration of devolved taxes that are different from those in place for the existing taxes.

Consultation

37. The proposal to create Revenue Scotland as a non-ministerial department met with almost universal support. The main arguments in favour of this approach were that it was important that Revenue Scotland was independent of the Scottish Ministers but remained part of the Scottish Administration. Those who responded also appreciated that Revenue Scotland would be accountable to the Scottish Parliament, and added that the concept of a non-ministerial department was well understood in the Scottish public bodies landscape.
38. The proposed governance arrangements for Revenue Scotland were subject to a range of different views from consultees. In general there was support for non-executives being present on the board and for a non-executive chair. Opinions differed about executive representation on the board, with the preferred option being for a board made up of non-executives and executives. The option of an exclusively non-executive board to which the chief executive reported also received support.

PART 3 - INFORMATION

Overview of policy objectives

39. Revenue Scotland will handle taxpayer information with care, and any disclosure will have to be authorised. Taxpayer information will be protected and only shared in clearly defined circumstances. Protected taxpayer information means any information that is held by Revenue Scotland in connection with a function of Revenue Scotland by which a person may be identified.

40. The Bill provides that a Revenue Scotland official must not disclose information unless legally permitted to.

41. The Bill defines when a disclosure of taxpayer information would be permitted. A disclosure of protected taxpayer information is permitted:
   - if it is made with the consent of each person to whom the information relates;
   - if it is made in accordance with any provision made by or under this Act or any other enactment requiring or permitting the disclosure;
   - if it is made for the purposes of civil proceedings;
   - if it is made for the purposes of criminal investigations or criminal proceedings or for the purposes of the prevention or detection of crime;
   - if it is made in pursuance of an order of court or tribunal;
   - if it is made to a delegate of Revenue Scotland or another person exercising functions on behalf of Revenue Scotland; or
   - if it is made to HMRC (reflecting that in certain circumstances HMRC may disclose taxpayer information to the Scottish Ministers).

42. The Bill will create an offence of wrongful disclosure of taxpayer information held by Revenue Scotland in relation to the collection and management of devolved taxes.

Alternative approaches

43. The existing UK legal framework is based on the principle that taxpayer information is confidential. This principle is, however, not universally accepted. During the preparation of A Consultation on Tax Management the systems that operate in other countries were examined. In Ireland, those people who have not paid tax within the prescribed period can have their names published. In Norway and Sweden, the tax returns of individual taxpayers are either published or...
are available on request. In these countries such measures are believed to promote tax compliance. Such an approach would, however, cut across the Scottish Government’s published policy on personal information, *Identity Management and Privacy Principles*.

Whilst keen to promote compliance and tackle avoidance, the Scottish Government does not believe that publishing taxpayer information would enhance compliance.

**Consultation**

44. The proposal that there should be a statutory provision forbidding the wrongful disclosure of taxpayer information was widely welcomed. The proposition that Revenue Scotland should be able to share information with other public bodies for specific purposes was also welcomed with the proviso that there should be safeguards, including the publication of formal agreements between Revenue Scotland and any bodies with which it proposed to share information, providing details of what information could be legitimately shared and how the information would be used. This is provided for in section 4(4) of the Bill and will be set out in more detail in a Memorandum of Understanding between Revenue Scotland and any delegated body.

**PART 4 – THE SCOTTISH TAX TRIBUNALS**

**Overview of policy objectives**

45. As stressed in *A Consultation on Tax Management*, avoiding tax disputes by ‘getting it right first time’ and providing clear information to taxpayers and their agents will be a key priority for Revenue Scotland. Where disputes do occur, and where internal review and if appropriate mediation (see Part 11 ‘Review and Appeal’) fail to resolve the matter in question, then taxpayers will have recourse to the independent Scottish Tax Tribunals.

46. The Scottish Government intends that the arrangements to hear appeals relating to the devolved taxes will be separate from existing UK arrangements, and will be transferred into the new Scottish Tribunals structure being established by the Tribunals (Scotland) Bill which is currently before the Parliament. The Tribunals (Scotland) Bill makes provision for the transfer of existing devolved tribunals into the new arrangements. It is expected that the Scottish Tax Tribunals, established by the Revenue Scotland and Tax Powers Bill from 2015, will transfer into the new arrangements from mid-2016.

47. The Bill will establish a First-tier Tax Tribunal for Scotland and an Upper Tax Tribunal for Scotland. The Scottish Ministers will be responsible for appointing an appropriately qualified person as the President of the Tax Tribunals. The President will be responsible for ensuring arrangements are in place for the effective and efficient disposal of the Tribunals’ business.

48. The First-tier Tribunal will consist of ordinary and legal members. Criteria for eligibility for appointment as an Ordinary Member of the First-tier Tribunal will be prescribed in regulations to be brought forward by the Scottish Ministers. Legal Members of the First-tier Tribunal will be a solicitor or advocate in Scotland or a solicitor or barrister in England, Wales or Northern Ireland of at least five years’ standing. The Upper Tribunal will consist of legal

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http://www.scotland.gov.uk/Publications/2010/12/PrivacyPrinciples
members only, including Court of Session judges. Legal members of the Upper Tribunal will be a solicitor or advocate in Scotland or a solicitor or barrister in England, Wales or Northern Ireland of at least 10 years’ standing.

49. The First-tier Tribunal’s consideration of any case before it will be carried out by a panel of two or more members including one legal member or by a panel made up of a single legal member. The President of the Tribunals will have responsibility for setting the size of panels and who sits on them. The President may select him or herself. The President’s responsibilities in this respect are subject to regulations that the Scottish Ministers may make about the composition of the First-tier Tribunal.

50. The Upper Tribunal’s consideration of any case before it will be carried out by a panel of a single legal member. The President is responsible for selecting members to sit on any panel and may select him or herself. The President’s responsibilities in this respect are subject to regulations that the Scottish Ministers may make about the composition of the Upper Tribunal.

51. A decision of the First-tier Tribunal may be appealed to the Upper Tribunal by a party in the case on a point of law only. Such an appeal will require the permission of the First-tier Tribunal or, if the First-tier Tribunal refuses, permission of the Upper Tribunal. The Upper Tribunal may uphold or quash the decision. If the Upper Tribunal quashes the decision it may remake the decision or remit the case to the First-tier Tribunal. In remitting the case to the First-tier Tribunal, the Upper Tribunal may give directions for the First-tier Tribunal’s reconsideration of the case.

52. A decision of the Upper Tribunal may be appealed to the Court of Session by a party in the case on a point of law only. Such an appeal will require the permission of the Upper Tribunal or, if the Upper Tribunal refuses, permission of the Court of Session. The Court of Session may uphold or quash the decision. If the Court of Session quashes the decision it may remake the decision or remit the case to the Upper Tribunal. In remitting the case to the Upper Tribunal, the Court of Session may give directions for the Upper Tribunal’s reconsideration of the case.

53. Rules regulating the practice and procedure of the Scottish Tax Tribunals will be made by the Scottish Ministers.

Alternative approaches

54. At the time of the publication of A Consultation on Tax Management in December 2012, three other options were considered, namely to:

- invite the UK Tax Chambers to hear appeals against devolved taxes until such time as the jurisdiction could be moved into the Scottish Tribunal System;
- refer appeals against the devolved taxes to an existing devolved tribunal;
- refer appeals against the devolved taxes to the Scottish court system.
55. Of these options, the second and third were seen as being inadequate. There was a wish to avoid adding to the workload of the Scottish Courts and, of the existing devolved tribunals, none had a particular focus on tax. The first option was preferred as it had several advantages; it was a route for appeals that taxpayers and agents were familiar with and drew on the expertise of existing members of the Scottish panel of the UK First-tier Tribunal (Tax).

56. After the publication of *A Consultation on Tax Management*, it became apparent that Scottish Government tribunal policy was moving in a different direction from that set out in the first option above. The Tribunals (Scotland) Bill makes provision for two unified Tribunals into which the existing devolved Tribunals will be transferred in due course. There is, however, no mechanism for transferring reserved UK Tribunals or jurisdictions bestowed upon UK Tribunals into the new structure. It has, therefore, been decided to establish the Scottish Tax Tribunals as stand-alone devolved tribunals that will transfer into the proposed new tribunal arrangements in due course. This is what is reflected in the Revenue Scotland and Tax Powers Bill.

**Consultation**

57. At the time of *A Consultation on Tax Management*, the overwhelming majority of responses supported continued use of the UK Chambers. This was, however, overtaken by developments elsewhere as explained above.

**PART 5 – THE GENERAL ANTI-AVOIDANCE RULE**

**Overview of policy objectives**

58. Part 5 of the Bill establishes the Scottish GAAR. The GAAR gives Revenue Scotland powers to counteract tax advantages in relation to the devolved taxes achieved through tax avoidance schemes that are artificial. This Part sets out the criteria for determining whether a tax arrangement is artificial, and whether a tax advantage has been obtained. It also sets out the process by which Revenue Scotland may counteract a tax advantage, including taxpayers’ rights to receive adequate notice of Revenue Scotland’s intentions under the GAAR.

59. Tax fraud or tax evasion is the illegal evasion of taxes (such as deliberately misrepresenting or withholding taxpayer information). Fraud is a common law offence in Scots law for which the sanction can be an unlimited fine and/or an unlimited term of imprisonment. Accordingly, it is unnecessary to enact any new offences of tax fraud or tax evasion. By contrast, tax avoidance takes place where a taxpayer seeks to reduce, delay or avoid the tax liability by taking action which the taxpayer believes is legal, but which the tax authorities regard as not in keeping with the spirit of or the intention behind the relevant tax legislation. Tax avoidance often involves artificial mechanisms for which the sole or main reason, or one of the main reasons, is to reduce the tax due. Tackling tax avoidance is important because:

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6The Scottish Government broadly endorses the definition of tax avoidance, “The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his tax liability. (Dicta of Lord Nolan in Inland Revenue Commissioners v Willoughby [1997] 4 All E.R. 65).
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

- tax avoidance reduces public revenues, and so will lead either to lower spending on vital public services or to an increase in tax rates generally, which must be paid by other taxpayers, to recoup tax avoided;
- there is a risk to the tax base if other taxpayers behave in a similar way;
- there may be perceived unfairness to compliant taxpayers who continue to meet their liabilities as intended by the law; and
- tax avoidance can undermine public confidence in the tax system and lead to reduced rates of compliance.

60. The Bill provides for a Scottish GAAR by setting out rules enabling Revenue Scotland to counter-act tax avoidance arrangements in relation to the devolved taxes that it determines are artificial. In developing the Scottish GAAR, the Scottish Government has drawn on the basic concepts of the existing General Anti-Abuse Rule legislation in the UK (sections 206-215 of the Finance Act 2013) and European Union (EU) (Commission Recommendation of 6 December 2012 - 2012/772/EU).

61. The objective of the UK General Anti-Abuse Rule is to target highly abusive, contrived and artificial tax avoidance schemes. It is therefore narrow in scope. Under the EU General Anti-Abuse Rule, which is provided as advice to Member States and does not have the force of law, a tax arrangement can be classified as tax avoidance, and therefore counteracted, if obtaining a tax advantage is the sole or main purpose of the arrangement. The Scottish GAAR will take a wider and therefore more rigorous approach to tackling tax avoidance by wider criteria for determining whether arrangements are to be classed as tax avoidance arrangements that are artificial and can therefore be counteracted. At the same time, the criteria are such that arrangements that might be characterised as legitimate tax planning or mitigation would not be open to counter-action. A taxpayer will of course also be able to appeal against decisions of the tax authority to counteract a tax advantage under the GAAR. The Scottish GAAR is intended to operate in tandem with tax-specific Targeted Anti-Avoidance Rules (TAARs) and the ‘Ramsay principle’ of purposive statutory interpretation applied by the Scottish courts and tribunals.

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7 An example of a distinctive TAAR applicable to devolved taxes is found in paragraph 3 of schedule 1 to the LBTT Act. Because generally a lease of residential property over 20 years in duration may not be granted in Scotland, this provision exempts from charge to LBTT leases that would be unlikely, because of their short duration, to attract tax. Certain long residential leases, known as ‘qualifying leases’, will convert to the right of ownership on 28 November 2015 by virtue of the Long Leases (Scotland) Act 2012. Had these qualifying leases not been excluded from the exemption in paragraph 3 of schedule 1, there would be an incentive for tenants to opt out of conversion to ownership, with a view to the avoidance of LBTT.

8 “[A question of statutory interpretation] must be considered in the light of the line of authority that has followed the decision in WT Ramsay Ltd v IRC, [1982] AC 300; 54 TC 101; [1981] S TC 174. Two fundamental principles emerge from those cases. First, revenue statutes should be interpreted in accordance with the normal principles of statutory interpretation; the court is not confined to a literal interpretation, and the words used in the statute should be considered in the context of the relevant statutory provisions taken as a whole, including the purpose of those provisions. Secondly, the court must ascertain the legal nature of any transaction to which it is sought to attach tax consequences, and if that involves considering a series of transactions, it is the whole series that must be considered...” (Lord Drummond Young in Aberdeen Asset Management v HMRC [2013] CSIH 84; His Lordship cited with approval the Hong Kong case of Collector of Stamp Revenue v Arrowtown Assets Ltd [2003] HKCFA 46, demonstrating that the Scottish courts will draw from international anti-avoidance jurisprudence where appropriate.)
62. The Scottish GAAR defines an arrangement as a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement. Compared to the UK and EU approaches, Revenue Scotland will not need to prove that obtaining a tax advantage is the sole or main purpose of the arrangement, simply that it is one of the main purposes. A feature of some tax avoidance schemes in the UK until now is that they have had apparently legitimate commercial or other purposes and taxpayers have sought to argue that the tax advantage obtained was secondary.

63. The Scottish GAAR defines a tax avoidance arrangement as being artificial if it satisfies one or both of two conditions. The first condition is that the entering into or carrying out of the arrangement in question is not a reasonable course of action in relation to the relevant tax provisions. This includes whether the substantive results of the arrangement are consistent with the policy objectives or with any principles on which the tax provisions are based (including implied principles). The second condition is met if the arrangement lacks commercial substance. If either condition is satisfied, the arrangement is artificial and - provided the arrangement also confers a tax advantage on the taxpayer – Revenue Scotland can move to counteract the tax advantage. This is stricter from the point of view of the taxpayer than the UK approach where, in effect, HMRC can act only if both such conditions are satisfied.

64. The provisions in the Bill will enable Revenue Scotland, if it is satisfied that a tax advantage in relation to the devolved taxes has arisen as a result of a tax avoidance arrangement that is artificial, to charge the taxpayer to tax as though the tax avoidance arrangement did not exist. Where Revenue Scotland determines that an arrangement is artificial it must give written notice to the taxpayer outlining why the arrangement is considered to be artificial and what the tax advantage is, what counteraction is proposed and what action the taxpayer can take to avoid the counteraction. The notice to the taxpayer must also set out the period which the taxpayer has in which to send a written representation to Revenue Scotland in response to the notice. Any such written representations must be taken into account by Revenue Scotland. If Revenue Scotland decides to go ahead with the counteraction by seeking to collect additional tax due, a taxpayer will be able to appeal against that decision. Tax due as a result of counteraction by Revenue Scotland would become payable in the same way as tax due as a result of a self-assessment or an assessment amended by Revenue Scotland.

**Alternative approaches**

65. As outlined above, the UK and EU General Anti-Abuse Rules, and other international examples, were considered in the development of the Scottish GAAR. Some existing GAARs were considered to be too wide in their scope, giving considerable discretion to the tax authority and insufficient certainty to the taxpayer. Other existing GAARs were considered too narrow, restricting unduly the ability of the tax authority to counteract effectively tax avoidance arrangements that were artificial.

66. An additional way to tackle tax avoidance is through use of prior notification schemes to enable the tax authority to quickly identify tax avoidance schemes, and also any potential shortcomings in tax legislation that might allow taxpayers to use such schemes. The UK Government operates a Disclosure of Tax Avoidance Schemes (DOTAS) regime which applies to SDLT (although not to LfT). The Scottish Government does not think that a DOTAS
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arrangement is necessary in relation to SLfT due to the nature of the tax (tax evasion is the main issue rather than tax avoidance). Further consideration is being given to a DOTAS-type regime in relation to LBTT. Work is continuing to explore this further. It may be decided to bring forward such a scheme by way of amendments to the Bill at Stage 2.

67. The Bill does not provide explicitly for pre-clearance arrangements because it is not felt they are necessary for the two devolved taxes and because of the significant additional administrative burdens that would be placed on Revenue Scotland. There would, however, be nothing to prevent a taxpayer from approaching Revenue Scotland for an opinion on whether an arrangement in contemplation constituted an artificial tax avoidance arrangement as defined in the GAAR. Were Revenue Scotland to indicate that in its view such an arrangement would be liable to counteraction, a taxpayer could of course go ahead to enter into such an arrangement and challenge Revenue Scotland’s position through the appeals process.

68. It is important to note that the Scottish Government’s commitment to counteracting tax avoidance is not limited to the Scottish GAAR. As mentioned, the GAAR is intended to operate in tandem with TAARs and the ‘Ramsay doctrine’ of purposive statutory interpretation. It can also be the case that avoidance schemes do not actually produce the end results that their promoters claim that they do, after plain application of the statutory taxing provisions; this might particularly be the case where Scots law does not give legal effect to “equitable” or “beneficial” interests. Furthermore, section 3(2)(d) of the Bill imposes a statutory requirement on Revenue Scotland to protect the revenue from tax avoidance. Revenue Scotland will do this through robust but proportionate compliance activity, in partnership with RoS, SEPA and, where appropriate, HMRC and other public bodies. Non-compliance where there is neither fraud/evasion nor avoidance – for example where a taxpayer innocently neglects to make a return or pay tax within the statutory time period – may lead to the imposition of a civil financial penalty (see the commentary on Part 8 of the Bill below).

Consultation

69. There was general agreement amongst respondents to the consultation paper that the range of measures proposed for tackling tax avoidance were appropriate. In particular, there was support for promoting a culture of compliance.

70. The majority (72 per cent) of those who provided a view on whether there should be a Scottish GAAR supported a narrowly-targeted Scottish GAAR similar to the UK General Anti-Abuse Rule now enacted in the Finance Act 2013. There was no support expressed for a more widely-drawn provision. The main attractions of the narrow focus were greater certainty for businesses and maintaining Scotland’s attractiveness as a location for business and employment. The Scottish Government notes the views of those in favour of a more narrowly-focused Scottish GAAR. However, it considers that the provisions set out in the Bill provide an appropriate balance between the interests of taxpayers generally and of the public in Revenue Scotland’s ability successfully to counteract tax avoidance arrangements that are artificial, and the interests

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9 For example, in the insolvency case of Joint Administrators of Rangers Football Club Plc, Noters [2012] CSOH 55, rights in connection with season tickets had a more limited propriety effect in Scots law than they would have had in English law.
of individual taxpayers in obtaining certainty about their tax affairs and in undertaking legitimate tax planning.

**PART 6 – TAX RETURNS, ENQUIRIES AND ASSESSMENTS**

**Overview of policy objectives**

71. Part 6 of the Bill makes provision regarding: assessment of the devolved taxes, powers of enquiry by Revenue Scotland into taxpayer self-assessments, powers and duties for amendment and correction by taxpayers and Revenue Scotland and claims for relief from double assessment and overpayment of tax.

**Taxpayer duties**

72. Taxpayers will have seven general duties in relation to the devolved taxes:

- to self-assess tax due;
- to notify Revenue Scotland of any taxable activities undertaken by them;
- to inform Revenue Scotland if tax is due;
- to send a tax return on time;
- to take reasonable care to ensure that the information in a tax return is accurate;
- to pay any tax due; and
- to keep adequate records relating to tax.

73. With regard to the duty to keep adequate records relating to tax, records must be kept for a period of five years from the date of the original or amended tax return (whichever is later). The tax record must be in a form that can be inspected by Revenue Scotland or a delegated public body and have sufficient detail to confirm that the right amount of tax has been paid.

**Tax returns**

74. Revenue Scotland (and its delegates) will operate the devolved taxes based on self-assessments completed by the taxpayer and tax will be paid on the basis of these self-assessments. The deadline for the taxpayer making the first self-assessment return will be specific to each tax and so is not set out in this Bill, but may be set in regulations made by the Scottish Ministers.

75. Following the submission of the original self-assessment, the taxpayer will be able to submit an amended self-assessment within the 12-month amendment period, running from the filing date. If necessary, more than one amended assessment may be submitted – for example, in light of new information available to the taxpayer, or to correct an error.

76. Revenue Scotland or its delegate will have the power to issue a corrected assessment within three years of the original or amended self-assessment return (whichever is later) to correct an obvious error or omission. The taxpayer may reject this correction by either amending
the Revenue Scotland return or, if outside the amendment period, by giving formal notice rejecting the revised assessment within three months of the date of issue of the correction.

Revenue Scotland enquiries and determinations

77. Revenue Scotland will have the power to carry out enquiries in relation to taxpayer returns where there is a question as to whether the relevant person is liable to pay tax or about the amount of tax that is chargeable. If the investigating officer, upon carrying out an enquiry, forms the view that: a) the amount of tax payable in the self-assessment is insufficient; and b) is likely to be lost unless the assessment is immediately amended, the investigating officer may issue an amended assessment to the taxpayer making good the deficiency. A designated officer must give notice of the intention to make an enquiry to the relevant person. During the period when the enquiry is in progress, any question arising from the tax return in question may be referred to the appropriate tribunal for determination.

78. Where Revenue Scotland or a delegated public body has reason to believe that a person should have paid tax but failed to provide a return, and it is within five years of the date when the return should have been provided, it can issue a determination of the tax owed to the person in question. Such a determination is treated in the same way for enforcement purposes as if it were a self-assessment made by the person.

79. A Revenue Scotland enquiry is completed when a designated officer from Revenue Scotland informs the relevant person (typically the taxpayer) in writing in the form of a closure notice. The closure notice must state that the enquiry is complete, state clearly the conclusions reached in the enquiry and be issued no later than three years after the filing date or the date on which the tax return was made, whichever is later. The person who is the subject of a Revenue Scotland enquiry may apply to the tribunal for a closure notice to be given to the enquiry. The tribunal, upon receiving such an application, must direct Revenue Scotland to issue a closure notice unless it feels there are reasonable grounds for not doing so.

Revenue Scotland assessments and extended time limits

80. Revenue Scotland or a designated public body will have five years from the date of receipt of the original tax return or an amended return (whichever is later) during which it can investigate the tax return and issue a revised Revenue Scotland assessment. This power can be exercised to make good a loss of tax where Revenue Scotland or a designated public body comes to the view that:

- tax which ought to have been assessed as chargeable has not been assessed;
- an assessment of the tax chargeable is or has become insufficient; or
- relief has been claimed that is or has become excessive.

81. Revenue Scotland has power to issue or amend assessments in instances of careless or deliberate behaviour by the taxpayer or a related person such as an agent.

82. In cases where a loss of tax occurs due to careless behaviour by the taxpayer, Revenue Scotland may issue an assessment up to five years after the tax became payable. In cases where a loss of tax occurs due to deliberate behaviour by the taxpayer, Revenue Scotland may issue an
assessment up to 20 years after the tax became payable. Careless behaviour relates to innocent mistakes or negligence relating to a tax return provided to Revenue Scotland which has led to a tax loss, either in completing the return accurately or in failing to notify Revenue Scotland about inaccuracies. Deliberate behaviour relates to a loss of tax brought about as a result of a deliberate inaccuracy or omission in a document given to Revenue Scotland.

Double payment and overpayment of tax

83. A taxpayer who believes that tax has been assessed more than once in respect of the same matter may make a claim to Revenue Scotland for relief against any double charge. This claim is subject to the adjustment period of one year from Revenue Scotland receiving the claim and to a three-year period if notice of enquiry is given.

84. Taxpayers must make a claim for overpayment to Revenue Scotland within two years of an order changing tax rates falling. For other overpayments the taxpayer may make a claim within five years of the relevant date as defined in the Bill. The exception to this is where the cost of the overpaid tax has not actually been borne by the taxable person and Revenue Scotland believes that to make any repayment would result in unjust enrichment (or a windfall) to the taxable person. Revenue Scotland may apply discretion to repay overpaid tax after the time limit has expired except where to do so would cause unjustified enrichment or where the sum of overpayment is less than the likely costs of the repayment process.

Alternative approaches

85. The current UK tax code includes a mixture of time limits in relation to reserved taxes, setting out: a) how long HMRC has to start an examination of a tax return after it has been submitted; b) in what circumstances HMRC can issue a “discovery assessment” after this initial period for examining a return; c) how long both HMRC and the taxpayer have to amend a tax return already submitted; and d) the time limits for assessing a taxpayer where there is evidence of fraudulent tax evasion.

86. This approach is prone to legal dispute concerning the appropriateness of compliance action, rather than tax liability itself, with resulting difficulties for the tax authority and for taxpayers. The provisions of this Bill are, therefore, based on fixed time limits applying to all devolved taxes, on the basis that these will offer simplicity and certainty to taxpayers and Revenue Scotland.

Consultation

87. There was general support amongst respondents to the consultation with regard to the obligations proposed for taxpayers. Some felt it important to highlight that taxpayers also have rights and that Revenue Scotland has both rights and obligations. The obligation which attracted most comment was the proposal that taxpayers who wish to contest any assessment by Revenue Scotland through review and appeal would be required to pay the tax assessed as due within the designated period as if a request for review and/or appeal had not been made. The proposal set out in the consultation paper was that, if the taxpayer’s appeal was successful, any overpayment would be reimbursed by Revenue Scotland with the addition of interest at a set rate. Forty-five
per cent of those who provided a view expressed concern that this requirement to pay tax, whether or not an appeal was made, could contribute to hardship for some businesses.

88. Seventy-eight per cent of respondents who provided a view supported the proposed four-year limit in the consultation paper for Revenue Scotland to amend tax returns where there is no evidence of fraud. The remaining respondents argued that allowing this period of time would lead to taxpayer uncertainty. A recurring theme amongst views expressed was that there was inequity between the proposed four year power for Revenue Scotland to amend returns and the one year period in which it was proposed that taxpayers could amend returns. Following further policy consideration and taking on board the views expressed by some stakeholders, the Bill provides for a period of three years in which Revenue Scotland may modify a self-assessment or require a taxpayer to submit a revised assessment.

PART 7 – INVESTIGATORY POWERS OF REVENUE SCOTLAND

Overview of policy objectives

Power to require information

89. Part 7 of the Bill provides for Revenue Scotland to have powers, in particular circumstances, to require information from the taxpayer, a third party or others who may have information about the taxpayer that is key to a devolved tax investigation. In particular, Revenue Scotland staff, or the staff of bodies to which relevant powers have been delegated, will be able to issue:

- an information notice requiring a taxpayer to provide information or documents that it considers necessary to check that the taxpayer has paid the correct amount of tax;
- an information notice requiring a third party to provide information or documents that are necessary to check the tax position of a specified taxpayer; or
- an information notice requiring a third party to provide information or documents considered necessary to confirm the identity of a taxpayer whose identity cannot be ascertained otherwise.

90. The Bill also sets out a list of restrictions to the above powers, including protection in some circumstances for particular groups of people such as auditors and legal advisers and also preventing certain types of document (e.g. journalistic or personal health records) from being the subject of an information notice.

91. Scottish Ministers will have power by way of regulations to prescribe the circumstances in which the powers can be used, the form and content of the relevant notices, the time periods for complying with information notices and how the use of the powers would be authorised by Revenue Scotland or the bodies to which powers have been delegated.

Power of entry to business premises

92. Revenue Scotland staff or the staff of bodies to which relevant powers have been delegated will have a power of entry to business premises in certain circumstances and subject to strict conditions which are outlined in Part 7 of the Bill.
Further powers

93. Revenue Scotland will also have further powers in certain circumstances to copy documents, to remove documents and to mark and record information. Part 7 of the Bill sets out these powers in more detail.

Offences relating to information notices

94. A criminal offence applies where a person conceals, destroys or otherwise disposes of a document or set of documents which the person has been required to provide by an information notice from Revenue Scotland or a delegated public body in relation to a devolved tax investigation.

95. This offence also applies where the person has been informed in writing that a document will, or is likely to, be the subject of an information notice in relation to a tax investigation and that document is then concealed, destroyed or disposed of. Depending on the nature of the conviction, the penalty for this offence can either be a fine or imprisonment not exceeding a term of two years. Part 8 of the Bill (Penalties) sets out the circumstances where liability to these offences does not apply.

Reviews or appeals against information notices

96. A person can request a review or an appeal against information notices, with some restrictions which are outlined in section 144 of the Bill.

Alternative approaches

97. The UK legislation provides for the protection of certain communications or documents between a taxpayer and a tax adviser having to be provided to the investigating authority upon notice to either the taxpayer or tax adviser. This has not been provided for in the Bill in relation to the devolved taxes because on balance it is felt that it would unduly hinder efforts to tackle tax avoidance if such communications or documents were protected.

98. The option for Revenue Scotland to have the power to inspect domestic premises (as well as business premises) was considered but not included in the Bill on the grounds that such a power did not strike a fair balance between the rights of the individual and the rights of the tax authority. The Bill states that the power to inspect business premises does not include the power to enter or inspect any part of the business premises that is used solely as a dwelling.

Consultation

99. In responses to the consultation paper, the proposed powers for Revenue Scotland or delegated public bodies to require information and carry out inspections were considered essential although many respondents recommended that the powers should not be too broadly framed and should be used in a proportionate manner. The Bill gives such powers to Revenue Scotland, within a framework which it is believed will provide an appropriate balance between safeguards, including rights of appeal, and effective tax collection and compliance activity.
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100. Whilst the majority of respondents agreed that legal professional privilege should be maintained in relation to information communicated between a taxpayer and a legal advisor, professional tax advisory respondents also called for a similar privilege to be provided between taxpayers and providers of professional advice on tax. The Bill does not except such communications and related information from disclosure when Revenue Scotland seeks such disclosure through an information notice, since – as noted above – this might hinder legitimate efforts to tackle tax avoidance.

101. There were mixed views and no overall consensus as to whether the power to inspect businesses without giving advance notice following the issue of a warrant by a sheriff should be exercised only by Revenue Scotland or whether the power could be delegated. The Bill enables Revenue Scotland to delegate this power, since its use may be important in investigating tax evasion or avoidance, and adequate protection is offered to taxpayers through the involvement of a sheriff.

PART 8 – PENALTIES

102. Part 8 of the Bill makes provision for Revenue Scotland or a delegated public body to apply penalties to taxpayers. The purpose is to promote compliance and deter non-compliance.

Non-compliant behaviours

103. Revenue Scotland will be able to charge penalties for a range of non-compliant behaviours by taxpayers and, in certain circumstances, third parties. Many of the penalties will be levied on a ‘strict liability’ basis. The non-compliant behaviours are as follows:

- failure to provide a tax return, or to deliver any other document on or before the filing date;
- failure to make a tax payment on time (including failure to pay any tax due);
- errors in taxpayer documents (attributable to either the taxpayer or another person);
- failure to take reasonable steps to notify Revenue Scotland of an assessment issued by Revenue Scotland which understates a person’s liability to tax;
- failure to produce accurate documents or information in complying with an information notice;
- failure to comply with an information notice from Revenue Scotland or deliberately obstructing an officer during an inspection;
- failure to keep proper records;
- failure to provide contact details of a debtor following a notice from Revenue Scotland; and
- failure to register for tax or notify chargeability.

Financial penalties

104. There are three types of financial penalties which will apply to devolved taxes in respect of non-compliant behaviour by the taxpayer:
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- Fixed penalties;
- Daily penalties, chargeable at a particular sum per day over a fixed period but with different daily rates possible for different periods; and
- Percentage-based penalties (calculated by reference to the amount of the tax liability) for continued failure to comply with an information notice or continued obstruction of an officer carrying out an inspection. This is where the penalty is linked to the potential loss to Revenue Scotland by non-payment of tax, underassessment or inflated claim of refund by the taxpayer.

105. The penalties will be triggered by non-compliant behaviour for a certain length of time and the details of how the penalties would work in respect of each devolved tax will be set in regulations by the Scottish Ministers. The penalties will be able to be made cumulative, for example the same non-compliant behaviour could be subject to both the fixed penalty and a daily penalty. The expectation is that the different types of penalties will form a hierarchy, with the mildest being the fixed penalties and the most serious being penalties based on a percentage of the tax calculated as being due.

**Criminal offences**

106. As outlined in Part 7 of the Bill (‘Investigatory Powers of Revenue Scotland’), a person commits a criminal offence by concealing, destroying or disposing of a document which is required to be produced by an information notice. The person also commits an offence by concealing, destroying or disposing of a document after being informed in writing that it is, or is likely to be, the subject of an information notice. Part 8 of the Bill sets out where liability to these offences does not apply (e.g. if the person acts more than 6 months after the document in question was produced to Revenue Scotland or a delegated body).

**Penalties – warning letters**

107. The Bill does not contain provision for warning letters from Revenue Scotland to the taxpayer in relation to penalties, but as set out in sections 150-151, 160, 162-163 and 181 of the Bill, the Scottish Ministers will have regulation-making powers to make further arrangements for penalties (including provision for warning letters for example).

**Penalties - discretion**

108. Revenue Scotland will be permitted to use its discretion to reduce or waive some penalties in certain circumstances. Revenue Scotland will be expected to issue guidance on how this discretion will be exercised. This may form part of the guidance issued on penalties. In addition, penalties may be waived when the taxpayer has a reasonable excuse. Revenue Scotland will include in its guidance further information regarding what it will accept as a reasonable excuse.

**Penalties – time limits**

109. The Bill makes provision for penalties to be paid within 30 days of the penalty notification being issued. Sections 159, 166 and 175 of the Bill provide further information as to the time limits under which a penalty is assessed.
Alternative approaches

110. An alternative approach would be to adopt identical penalty amounts, timescales and processes for all the devolved taxes. Although such an approach would provide an element of simplicity and uniformity, it would not allow the degree of differentiation between the devolved taxes essential to maximising opportunities for encouraging compliance and deterring non-compliance. The Bill sets out instead a broad statutory framework for the application of penalties with respect to the devolved taxes but importantly allows the Scottish Ministers, subject to parliamentary agreement, to bring forward regulations providing for differentiation where appropriate in relation to the nature, amounts and timescales of penalties for each devolved tax.

Consultation

111. The list of non-compliant behaviours set out in the consultation paper appeared to be reasonable to the majority of those who provided a view, although some requested that greater distinction in terms of penalties should be made between tax evasion and legitimate tax planning and also between careless mistakes and deliberate mis-statements and concealment.

112. Eighty-eight per cent of those who provided a view supported the proposal that Revenue Scotland should have discretion to determine the level of sanctions, subject to legislation and guidance. Respondents felt particularly strongly that the two most important factors in exercising discretion ought to be intent and the taxpayer’s history of compliance.

113. On balance the overall consensus was that the proposed sanctions and their possible uses were reasonable but that flat-rate penalties should be applied with care and that use should be proportionate.

PART 9 – INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

Overview of policy objectives

114. This Part of the Bill sets out the provisions dealing with interest on payments due to or by Revenue Scotland. Interest is to compensate Revenue Scotland or the taxpayer for the loss of the use of money, and is not to be viewed as a penalty or other sanction.

115. Revenue Scotland will be able to charge interest on late payment of tax or penalties with respect to the devolved taxes. This includes a partial late payment due to an initial underpayment of tax. The interest on late payment of tax will be calculated and applied from 30 days after the date the tax was due to be paid (specified in regulations), until such time as the tax is paid. The interest on late payment of penalties and the dates from which any interest on a penalty becomes payable will be determined in regulations made by the Scottish Ministers, subject to parliamentary approval by the affirmative procedure.

116. Interest must also be paid on money owed by Revenue Scotland to the taxpayer, whether involving repayment of tax paid, repayment of a penalty or repayment of interest (whether on tax or penalty). The interest on money owed to the taxpayer will be calculated and applied for the
period between the date the payment of the tax or penalty to Revenue Scotland or a delegated public body was made and the date when the repayment was issued.

117. Different interest rates may be applied to different devolved taxes and for different penalties. In all cases, interest rates will be determined in regulations made by the Scottish Ministers subject to parliamentary approval using the affirmative procedure.

**Alternative approaches**

118. An alternative approach would have been to set in primary legislation identical interest rates for payments due to Revenue Scotland by the taxpayer and for payments due to the taxpayer by Revenue Scotland. This would create simplicity for both the taxpayer and the tax authority but is not an attractive approach because it could create an incentive for taxpayers to deliberately ‘park’ money through overpayment of tax with Revenue Scotland to give taxpayers a more favourable rate than could be obtained in the market place. This was the case in the UK until September 2009, since when the rate payable for underpayment of all main taxes has been set at a discernibly higher rate (currently the Bank of England base rate plus 2.5%) than compared to the rate for overpayments to the taxpayer (currently the Bank of England base rate). Instead, interest rates will be set by regulations, with flexibility to set different rates for different purposes.

**Consultation**

119. There were no substantive or major issues identified during the consultation period. One respondent recommended that the same rate of interest should apply to both late payment of tax by the taxpayer and for repayments of tax from Revenue Scotland to the taxpayer. As outlined above, this has not been included on the face of the Bill. Interest rates will be set by regulations.

**PART 10 – ENFORCEMENT OF PAYMENT OF TAX**

**Overview of policy objectives**

**Collection of unpaid tax**

120. If taxpayers do not pay the tax due as a result of a self-assessment or as a result of a Revenue Scotland assessment, Revenue Scotland will be able to seek a summary warrant from the sheriff court (or the Court of Session for larger sums of tax or penalties due) to collect unpaid taxes and/or penalties owed. Revenue Scotland will be expected, however, to make use of other means available to seek taxpayer compliance before seeking a summary warrant.

121. Where Revenue Scotland is owed money in relation to the devolved taxes and it requires the contact details of the debtor from a third party to collect the money owed, Revenue Scotland has the power to issue a written notice requiring the third party to provide it with these contact details. If the third party fails to comply with this notice, a fixed financial penalty is applicable (which can be changed in an order by the Scottish Ministers at a later date if it appears there has been a change in the value of money). The third party has the right to request a review or appeal against this notice only on the grounds that it would be unduly onerous to comply with the notice or requirements set out in it.
Alternative approaches

122. An alternative approach to the enforcement provisions in the Bill is to not allow the tax authority to take enforcement action against a person (in relation to the devolved taxes) by means of an application to the sheriff court or the Court of Session. This approach was not pursued as an option because it would not provide the tax authority with sufficient means of collecting sums of money due to it from a taxpayer or third party.

Consultation

123. There was broad support for the proposal for Revenue Scotland to be able to seek a summary warrant from the sheriff court to collect money owed to the tax authority, as long as the application of the power was fair and consistent. It was considered that the general powers proposed were consistent with those currently available to HMRC, with one respondent in particular emphasising that different approaches should not be developed for devolved and non-devolved taxes. The Bill includes provisions that would deliver these objectives.

PART 11 – REVIEWS AND APPEALS

Overview of policy objectives

124. As explained in Part 4 above, one of Revenue Scotland’s key priorities is to avoid tax disputes by ‘getting it right first time’ by providing clear information to taxpayers and taxpayer agents. Where disputes do occur, Revenue Scotland will aim to resolve the dispute as efficiently as possible. A taxpayer who is unhappy with a Revenue Scotland decision can request a review, which will be carried out by a member of Revenue Scotland’s staff who was not involved in the initial decision. If requested, such a review must be carried out by Revenue Scotland. If the review fails to resolve the dispute, Revenue Scotland may offer to enter into mediation with the taxpayer. The mediator will be an independent third party appointed by Revenue Scotland. The taxpayer may decide to take up the offer of mediation or not. If mediation fails to resolve the case, or if Revenue Scotland does not offer to enter into mediation, or if the taxpayer does not wish to take up an offer of mediation, the taxpayer will have recourse to the independent Scottish Tax Tribunal (see Part 4 above).

125. Appealable decisions are laid out at section 198 of the Bill. For any appealable decision the aggrieved person may seek a review. The taxpayer must give notice of review to Revenue Scotland within 30 days of the date the decision in question was notified to the taxpayer. The notice must specify the grounds for the review. If a taxpayer submits a late notice of review, Revenue Scotland must agree to carry out the review if there is a reasonable excuse for the notice being late and it has been made without unreasonable delay.

126. Within 30 days of receipt of a notice of review, Revenue Scotland must notify the taxpayer of its view of the matter in question. The nature of the review will depend on the matter in question. Revenue Scotland will however have regard to steps it has already taken in reaching the decision and steps taken by any person trying to resolve the dispute. The review must take account of any representations made by the taxpayer, if they are made in a timely manner. The review may conclude that Revenue Scotland’s view of the matter in question should be upheld, varied or cancelled. Revenue Scotland must notify the outcome of the review
to the taxpayer within 45 days of notifying the taxpayer of its initial view of the matter in question.

127. If a review concludes with Revenue Scotland upholding its view or varying its view of the matter in question, then Revenue Scotland may offer to enter into mediation.

128. It is, however, recognised that not all tax disputes will be appropriate for mediation. For example, a dispute involving a point of law is unlikely to be settled by mediation. Where Revenue Scotland does not offer mediation, or mediation does not result in an agreement, the taxpayer will be able to appeal to the independent Scottish Tax Tribunal.

129. Where there is a review or appeal, the tax, penalties or interest due still remain payable. The Scottish Ministers can, by regulations, provide for the postponement of payment of tax, penalties or interest while a review or appeal is pending. It is the Scottish Government’s intention that for cases involving LBTT the taxpayer will be able to apply to have payment of tax, penalties or interest postponed while a review or an appeal proceeds. For SLfT, where the taxpayer has already collected the tax from a third party, the Scottish Government intends that the taxpayer should have to pay the amount assessed prior to a review or appeal proceeding.

Alternative approaches

130. Mediation is offered by HMRC at present, and carried out by HMRC members of staff. If mediation was to be offered by Revenue Scotland, the option of having appropriately-trained Revenue Scotland staff act as the mediator was considered. However, it was felt that it would be difficult to provide appropriately qualified mediators that would be demonstrably independent from the decision in question.

Consultation

131. Respondents to A Consultation on Tax Management considered the proposals for avoiding tax disputes to be broadly appropriate. “Getting it right first time” was welcomed, although ultimately it was felt that clear, well-drafted tax legislation and accessible plain English guidance would have the greatest impact in helping to avoid disputes.

132. The proposals for review were also widely welcomed. It was recognised that internal review had the potential to minimise the time spent in dispute, gave Revenue Scotland a chance to reconsider their position and gave a relatively cheap option for the taxpayer to resolve a tax dispute.

133. Respondents expressed general support for Revenue Scotland being able to enter into mediation as long as mediation remained a voluntary step for the taxpayer. Mediation was seen as being a low-cost option that offered the potential of resolving tax disputes in an efficient and fair way. Some respondents sounded a note of caution, pointing out that not all types of tax disputes would be appropriate for mediation.
PART 12 – FINAL PROVISIONS

134. Part 12 of the Bill contains general and final provisions which include an interpretation section, an index of defined expressions, the order-making and regulatory powers and their procedures, ancillary provisions, reference to minor and consequential modifications of enactments and set out how the provisions of the Bill apply to the Crown. It also includes sections on the commencement of the Bill and its short title.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

135. A draft partial Equalities Impact Assessment was included in the consultation document A Consultation on Tax Management published in December 2012. A final Equalities Impact Assessment will be published separately by the Scottish Government in due course.

136. The Scottish Government considers that the Bill does not have an adverse impact on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. Any adverse impacts owing to statutory instruments, prescribed forms, guidance or systems relating to the Bill – for example accessibility to disabled and older persons - will be considered in a subsequent Equalities Impact Assessment in due course.

Human rights

137. The Bill complies with the European Convention on Human Rights (ECHR). Taxation is concerned with the public nature of the relationship between the taxpayer and tax authority and not with civil property rights (see Ferrazzini v. Italy [GC] 2001-VII, paras. 24-31), and hence ECHR is generally not engaged. As regards civil penalties, article 6 of the ECHR (right to a fair trial) may be engaged and accordingly the Bill provides for appeals to independent and impartial Scottish Tax Tribunals against decisions of Revenue Scotland in respect of tax, interest and penalties. Investigatory powers such as information notices may engage both article 6 and article 8 of the ECHR (right to respect for private and family life) and therefore they contain safeguards and are proportionate having regard to the compelling public interest in the tax laws enacted by the Scottish Parliament being complied with.

Island communities

138. The Bill is expected to have no disproportionate effect on island communities. The Scottish Government is keen to promote a ‘digital first’ approach to the submission of tax returns by electronic means but is aware that some remote island communities may not have appropriate access. This and other similar considerations have led the Scottish Government not to propose mandatory submission of tax returns by electronic means.
Local government

139. The Bill has no disproportionate effect on local government in Scotland. The only costs which the Scottish Government has identified for local authorities are those associated with the role of local authorities as taxpayers. There are no additional responsibilities or duties for local authorities as a result of the devolved taxes that would result in additional cost. Local authorities are also not expected to incur any additional administrative costs in complying with the two devolved taxes compared to the current UK taxes (SDLT and LfT). The Financial Memoranda for the two devolved tax Bills explain how the amount of tax paid by local authorities might be affected.

Sustainable development

140. The Bill will have no impact on sustainable development.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

REVENUE SCOTLAND AND TAX POWERS BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Revenue Scotland and Tax Powers Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Revenue Scotland and Tax Powers Bill is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11). It follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 which received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Bill which is being considered by the Scottish Parliament in the current session.

4. The Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as a new non-Ministerial Department which will be the tax authority responsible for collecting Scotland's devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

APPROACH TO USE OF DELEGATED POWERS

5. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike a balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example changing market conditions);

- the need to make proper use of valuable Parliamentary time; and
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament (for example tax avoidance).

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 11(7)(a) - Power to set the period of Revenue Scotland’s first Corporate Plan

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

7. The provision allows Scottish Ministers to set the period that Revenue Scotland’s first corporate plan will cover. The corporate plan will set out Revenue Scotland’s main objectives, the outcomes that would demonstrate achievement of these objectives and the activities Revenue Scotland expects to undertake.

Reason for taking power

8. Revenue Scotland will be responsible for the collection and management of devolved taxes from 1 April 2015. The board of Revenue Scotland will need time to consult on the corporate plan so it is unlikely to be in place from 1 April 2015. As such Scottish Ministers may need to specify that the corporate plan will cover less than the three year periods that subsequent plans will cover.

Choice of procedure

9. Negative procedure is considered appropriate for what is essentially an administrative matter. The Bill sets out a planning period of three years. It is intended that plans will run from the first of April of the relevant three year period, however Revenue Scotland’s first plan will not be in place by the 1st April 2015. This power will allow Scottish Ministers to specify that the first corporate plan could cover a period less than three years. As such the subsequent plan would start from 1 April 2018.

Section 11(8) - Power to allow Scottish Ministers to vary the length of time Revenue Scotland’s Corporate Plans cover

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure
10. The provision allows Scottish Ministers to vary the period that any of Revenue Scotland’s corporate plans cover after the first corporate plan from the standard three years set out on the face of the Bill.

11. It is anticipated that Revenue Scotland’s corporate plans, following the first corporate plan, will cover a three period. Scottish Ministers however recognise that if changes to Revenue Scotland’s functions were anticipated three years may be too long a period for the corporate plan to cover and may wish to change the planning period.

12. Negative procedure is considered appropriate for what is essentially an administrative matter. The planning period for Revenue Scotland’s corporate plans after the first corporate plan is set out on the face of the Bill. The power would allow Scottish Ministers to vary this planning period in the light of current business conditions.

Section 30(1) - Power for Scottish Ministers to make regulations for determining the composition of the First-tier Tribunal and the Upper Tribunal

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

13. The provision allows Scottish Ministers to determine the composition of a panel convened to hear a case in the Tax Tribunals, both the First-tier and Upper Tribunal when a case falls within the Tax Tribunals jurisdiction. The regulations may provide for the determination of the number of members who are to hear a particular type of case as well as the types of member (whether ordinary of legal). It will be a matter for the President of the Tax Tribunals to choose the actual members, but this choice must be exercised in accordance with these regulations. The regulations may treat separately the Tribunals decision making functions at first instance and on appeal.

14. To allow Scottish Ministers to determine the appropriate composition of panels sitting in the First-tier Tribunal or Upper Tribunal to hear specific types of cases. The aim of the policy is to ensure that when convened to hear a case, the First-tier Tribunal and Upper Tribunal will be composed of an appropriate number of members with the appropriate level of experience and expertise. This will facilitate an effective and efficient use of the members of the Tax Tribunals
and allow flexibility to ensure that the composition of the Tax Tribunals can vary in relation to the types of case they will hear.

Choice of procedure

15. The determination of the composition of the Tax Tribunals is important in ensuring that when convened to exercise its functions the Tax Tribunal does so in an appropriate manner. Therefore affirmative procedure is considered appropriate. The regulations would also limit the President of the Tax Tribunal’s discretion in choosing members to sit on a panel as provided for in sections 27(2) and 27(3). The President of the Tax Tribunals is the senior member of the Tax Tribunals.

Section 36(1) - Power for Scottish Ministers to set a time limit for appellants to seek permission for an onward appeal.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

16. The provision allows Scottish Ministers to set a time limit for an appellant to seek permission for an onward appeal. For a case originally heard in the First-tier Tribunal, permission for an onward appeal has to be sought from the First-tier Tribunal and, if that is not forthcoming, from the Upper Tribunal. For a case heard in the Upper Tribunal, permission for an onward appeal has to be sought from the Upper Tribunal and, if that is not forthcoming, from the Court of Session.

Reason for taking power

17. The time limit for applying for permission to appeal is a procedural matter and it is, therefore, considered, to be more appropriate to set out the requirements in subordinate legislation rather than on the face of the Bill. It is, however, considered to be of such importance that it should be set out in regulations made by the Scottish Ministers rather than left to Tribunals rules.

Choice of procedure

18. Negative procedure is considered appropriate for what is essentially a procedural matter. The provision does not allow for the amendment of the Bill or other primary legislation.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 37(4) - Power to specify categories of petition for judicial review that the Court of Session can remit to the Upper Tribunal by an Act of Sederunt.

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

Provision

19. Section 37 makes provision so that the Court of Session may, by order of the Court, remit a petition for judicial review to the Upper Tribunal for determination. Under subsection (4) a petition may only be remitted if it falls within a category specified by an Act of Sederunt made by the Court of Session. Section 37(4), therefore, confers a power on the Court of Session, by Act of Sederunt, to specify the category of petitions for judicial review which are appropriate to be remitted to the Upper Tribunal for determination.

Reason for taking power

20. The membership of the Upper Tribunal and the expertise which it is expected to acquire in relation to the matters which fall within its jurisdiction may make it an appropriate body to determine petitions for judicial review. It is considered that the Court of Session will be in the best position to assess which categories of petition will be suitable to be remitted to the Upper Tribunal and which categories of petition the Upper Tribunal will have the expertise to determine.

Choice of procedure

22. An Act of Sederunt made by the Court of Session is subject to the default laying requirement in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 39(2) – Additional Matters

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

23. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).
Section 42(1) – Conduct of cases

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

24. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 43(1) – Enforcement of decisions

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

25. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 44(1) – Award of expenses

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies) laid no procedure

26. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 45(1) - Power for Scottish Ministers to confer additional powers on the First-tier Tribunal and Upper Tribunal as are necessary or expedient for the proper exercise of their functions.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

27. Section 45(1) confers a power on the Scottish Ministers, by regulations, to confer such additional powers on the Tax Tribunals as are necessary or expedient for the proper exercise of their functions.
Reason for taking power

28. The purpose behind this regulation-making power is to ensure that the Tax Tribunals will have all the powers and functions which are necessary or expedient in order to properly exercise the functions of the Tax Tribunals. The regulation-making power may only be exercised so as to confer those additional powers on the Tax Tribunals which are necessary or expedient for the proper exercise of their functions. The regulations may provide for the application of rules of court made by the Court of Session by Act of Sederunt in relation to the Scottish Tribunals. In so doing, the regulations may make provision so that the process for making the Act of Sederunt should follow the procedure for making Tribunal Rules.

Choice of procedure

29. Affirmative procedure is considered appropriate as the regulations would add to the powers of the Scottish Tax Tribunals as set out in Part 4 of this Bill.

Section 46(3) - Power for Tribunal rules.

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

Provision

30. Section 46 confers a power on the Court of Session, by Act of Sederunt, to make rules (to be known as the Scottish Tribunal Rules) regulating the practice and procedure to be followed in proceedings in the Tax Tribunals.

31. Sections 47 and 48 make further provision about the extent to which Tribunal Rules may make provision regulating the practice and procedure to be followed in proceedings in the Tax Tribunals. Section 47 provides that Tribunal Rules may make provision as to the exercise of functions by the members of the Tax Tribunals as well relying on the effect of practice directions issued under section 52. Section 48 provides that Tribunal Rules may make different provision for different purposes including different provision for the First-tier and the Upper Tribunal. It also provides that the generality of section 62(1) is not limited by sections 49 to 51 or any other provisions in the Bill which set out the matters for which Tribunal Rules may make provision.

32. The following provisions make specific provision as to the matters for which Tribunal Rules may make provision:

- section 39(2) enables Tribunal Rules to make further provision about the exercise by the Upper Tribunal of any functions it has in relation to a petition for judicial review remitted to it under section 37(2);
- section 42(1) enables Tribunal Rules to make further provision in respect of the conduct of cases before the Tax Tribunals so as to ensure that the Tax Tribunals have the necessary powers, rights, privileges and authority regarding such things as the
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

...attendance or examination of witnesses, the production of evidence and the preparation of reports;

- section 43(1) enables Tribunal Rules to provide for the means by which an order of the Scottish Tribunals giving effect to a decision is to be enforced;

- section 44(1) provides that the Scottish Tribunals may only award expenses in a case where this is provided for in Tribunal Rules;

- section 49(1) enables Tribunal Rules to make provision for the purpose of proceedings in a case before the Tax Tribunals including as to the form and manner in which a case is to be brought, the withdrawal of a case, and time limits for making a referral;

- section 50(1) enables Tribunal Rules to make provision about hearings including as to when matters can be dealt without a hearing, whether a hearing is to be held in private or public, appearance and representation at hearings, notice of hearing, adjournment with a view to resolution and the imposition of reporting restrictions;

- section 51(1) enables Tribunal Rules to make provision about evidence given before the Scottish Tribunals including as to the administering of oaths and presumptions to apply and about their decisions (for example, how they are recorded and published).

Reason for taking power

33. The aim of the Bill is for the rules governing the practice and procedure to be followed in proceedings in the Tax Tribunals to be framed independently of the executive. It is, therefore, considered that it is appropriate for the Tribunal Rules to be made by the Court of Session (thereby ensuring independence from the executive) by Act of Sederunt (thereby ensuring transparency).

Choice of procedure

34. An Act of Sederunt made by the Court of Session is subject to the default laying requirement in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 47(1) – Exercise of functions

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

35. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 48(1) – Extent of rule-making

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

36. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 49(1) – Proceedings and steps

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

37. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 50(1) – Hearings in cases

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

38. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 51(1) – Evidence and decisions

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

39. See the commentary on the subordinate legislation-making powers contained in section 46 (3) (Tribunal Rules).

Section 69(6) - Power for Scottish Minsters to specify records that do or do not require to be preserved under this section and to require supporting documents that need to be kept under this section.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Provision

40. Section 69 sets out the duty of a person who is required to deliver a return in relation to devolved taxes to keep and preserve records that are needed to complete that return. It lists the types of records and supporting documents that generally need to be kept and sets out the maximum time period for which records need to be kept. Section 69(6) provides for Scottish Ministers to make regulations specifying records that do or do not have to be preserved under section 69. The regulations can also specify supporting documents that are required to be kept under section 69.

Reason for taking power

41. Scottish Ministers recognise that a wide range of records and supporting documents could be used to make a return. Rather than attempt to provide a definitive list in the Bill the power would allow Scottish Ministers to be able to provide greater detail of the types of records or supporting documents that have to be preserved or do not need to be preserved to comply with section 69.

Choice of procedure

42. Negative procedure is considered appropriate for what is essentially an administrative matter relating to the records and supporting documents that may underpin a tax return. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 72(2) - Power for Scottish Ministers to make regulations that make provision for keeping and preserving records that relate to transactions that are not notifiable for LBTT.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

43. The provision allows Scottish Ministers to make regulations that provide for the keeping and preservation of records in relation to LBTT land transactions that are not notifiable. The regulations may apply sections 69 to 71 to buyers where the transaction does not need to be notified, with or without modification. Section 69 deals with the duty keep and preserve records, section 70 deals with how information may be preserved and section sets out the penalty that relates to the failure to preserve records.

Reason for taking power

44. This section relates to LBTT and sets out that Scottish Ministers may make regulations to specify records and supporting documents that a buyer must keep and preserve in relation to land transactions that do not have to be notified. A land transaction may not initially be notifiable under the 2013 Act. But it can become notifiable later, for instance where a lease continues after the end of its original term. Regulations under this section may apply the provisions concerning
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

a taxpayer’s duty to keep and preserve records that are set out in the previous sections 69 to 71, to a buyer in a land transaction that is not notifiable. Any expressions used in this section and in the Land and Buildings Transaction Tax (Scotland) Act 2013 have the meaning given in that Act.

45. Schedule 1 of the LBTT Act provides for a power to amend the list of exempt (non – notifiable) transactions. If the list of exempt (non-notifiable) transactions was added to Scottish Ministers may wish to make further provision for the related records or supporting documents to be preserved. To allow this flexibility it is considered appropriate to do this by regulations rather than on the face of the Bill.

Choice of procedure

46. Affirmative procedure is considered appropriate because the regulation could have the effect of applying sections 69 to 71 to LBTT transaction that are not initially notifiable but may become notifiable at a later date. As such the regulations would impose an additional duty to keep records and a penalty if records were not preserved.

Section 73(1) - Power for Scottish Ministers to make regulations about the date by which tax returns must be made to Revenue Scotland.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

47. The provision allows Scottish Ministers to make regulations about the date by which tax returns must be made to Revenue Scotland. Regulations may modify this Bill or any other enactment.

Reason for taking power

48. Scottish Ministers recognise that different taxes may require different dates by which returns must be made to Revenue Scotland. As such it is considered appropriate to set out these dates in subordinate legislation rather than provide this level of detail in the Bill.

Choice of procedure

49. Affirmative procedure is considered appropriate because the date by which a tax return has to be made is significant for taxpayers, but is also the “filing date” which is key part of the provisions detailing when tax returns can be amended by both the taxpayer and Revenue Scotland and the time limits for requesting review or making an appeal.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 74(4)(b) - Power to prescribe the relevant date by order from which the taxpayer will have one year to amend a tax return.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

50. Section 74 provides that a taxpayer may amend a return within 12 months of the filing date, which is defined in section 73(3) as the date by which the return has to be made or such other date as the Scottish Ministers prescribe by order.

Reason for taking power

51. In some circumstances it may be desirable to change the date the 12 month amendment period runs from for all tax returns or a certain class of tax return. The power would, for example, allow Scottish Ministers the flexibility to have the 12 month amendment period run from the actual date a tax return was made rather than the filing date.

Choice of procedure

52. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 83(2)(c) - Power to refer a case to any other court or tribunal.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

53. Section 79 provides that at any time during an enquiry any question arising may be referred to the appropriate tribunal. Section 83 details that the appropriate tribunal may be the Lands Tribunal for Scotland, the First-tier Tribunal, the Upper Tribunal or any other court or tribunal specified by the Scottish Ministers by order.

Reason for taking power

54. To provide that Scottish Ministers have the power to ensure that a question raised during an enquiry is heard by the most appropriate court or tribunal.

Choice of procedure

55. Negative procedure is considered appropriate because the provision aims to allow the flexibility to ensure that questions raised during enquiries can be determined as effectively and...
efficiently as possible. As such it is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 86(6)(b) - Power to prescribe the “relevant date” referred to in section 86.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

56. Section 86 provides for Revenue Scotland to make a determination of tax due where a person has failed to make a tax return by the required filing date. No Revenue Scotland determination can be made five years after the relevant date, which is the filing date or such other date that the Scottish Ministers may by order prescribe.

Reason for taking power

57. In certain circumstances it may be appropriate for the five year period to run from a date other than the filing date. The power would allow Scottish Ministers the flexibility to, for example, set a new relevant date for all taxes or a specific tax.

Choice of procedure

58. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 102(1) - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure if amending primary legislation, otherwise negative procedure

Provision

59. The provision allows Scottish Ministers to make regulations that prevent any reimbursement for the purposes of a defence of unjust enrichment. Unjust enrichment may occur where a repayment of tax is made to a taxpayer, but the taxpayer has not ultimately borne the cost of the tax. For example, if landfill tax is repaid to the landfill site operator who has paid the tax, the operator could be unjustly enriched as it is those paying to deposit waste at the site that will have ultimately borne the cost of the tax. Section 100 provides that unjust enrichment would be a defence against a claim for repayment of tax. Section 103 provides that the regulations may make provision for penalties that breaches regulations under section 102.
60. Section 103 provides that regulations made under section 102 may contain provision for penalties to be applied to a person breaches any obligations imposed in regulations under section 102.

Reason for taking power

61. To ensure that Scottish Ministers have the power to prevent a repayment of tax unjustly enriching a claimant. A repayment of tax could proceed if the arrangements to reimburse the persons who ultimately paid the tax comply with the regulations. These arrangements include setting a period for reimbursement to take place, repayment to Revenue Scotland if reimbursement does not take place and requires interest paid by Revenue Scotland on a repayment to be treated in the same way as the repayment. Records must be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out. Given the importance of ensuring that any repayment of tax is reimbursed to the persons who ultimately paid the tax, penalties could also apply for non-compliance with obligations set out in the regulations.

Choice of procedure

62. Negative procedure is considered appropriate for what is essentially an administrative matter. If, however, the reimbursement arrangements laid out in the regulation require the amendment of the Bill or other primary legislation then the procedure is affirmative.

Section 113(2) – Power to specify activities and persons in relation to references to ‘carrying on of a business’ in Part 7 of the Bill.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

63. The provision allows Scottish Ministers to set out activities or persons which are (and are not) to be treated for the purposes of Part 7 of the Bill as being involved in the carrying on of a business. Part 7 of the Bill sets out the overall investigatory powers of Revenue Scotland, including powers in relation to information and documents and inspections of premises and other property.

Reason for taking power

64. This power is required to allow Scottish Ministers to set out further activities, other than those specified in the Bill, which are or are not to be treated as the carrying on of a business for the purposes of Part 7 of the Bill. After the Bill gains Royal Assent, Scottish Ministers may wish, for example, to legislate for new activities or practices to be treated for the purposes of Revenue Scotland’s investigatory powers as a business, or to put beyond doubt the applicability of an existing activity or practice in relation to the investigatory powers.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Choice of procedure

65. Negative procedure is considered appropriate for a technical and largely administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 125(1) – Power to set conditions and exceptions about producing copies of documents

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<tr>
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<td>regulations made by Scottish statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
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Provision

66. The provision allows Scottish Ministers to set out conditions or exceptions applying to a situation where a person required by an information notice to produce a document wishes to comply with the notice by producing a copy of the document. An information notice is a notice issued in writing by a designated officer to either a taxpayer or third party requiring information or document(s) to be provided in order to check a person’s tax position in relation to the devolved taxes.

Reason for taking power

67. This power is required to ensure that Scottish Ministers can set conditions and where a person who is the subject of an information notice would otherwise be able to comply with the notice by producing a copy of the document rather than the original. There may be situations where it would neither be reasonable nor helpful for the purposes of an investigation for a copy of the document to be provided. The conditions and exceptions may be tax-specific and technical, and may indeed need to be changed over time, therefore it is considered to be more appropriate to set out these conditions and exceptions in subordinate legislation rather than on the face of the Bill.

Choice of procedure

68. Negative procedure is considered appropriate for a technical and largely administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 126 – Power to make further provision about information notices

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<td>negative procedure</td>
</tr>
</tbody>
</table>
Provision

69. The provision allows Scottish Ministers to make further provision about powers relating to information notices, including their form and content and the time periods and manner of complying with such notices.

Reason for taking power

70. This power is required to enable Scottish Ministers to provide greater detail about information notices other than those already set out in the Bill. As the form and content of information notices are likely to be detailed and tax-specific, and will likely need to be changed over time, it is considered to be more appropriate to set out these conditions and exceptions in subordinate legislation rather than on the face of the Bill.

Choice of procedure

71. Negative procedure is considered appropriate for a technical and largely administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 130(3) – Power to provide for resolution of disputes as to whether information or a document exchanged between legal adviser and clients is privileged

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

72. The provision allows Scottish Ministers to make provision in relation to information notices for the resolution by the tribunal of disputes as to whether any information or document is privileged in connection with communications between legal advisers and clients. The regulations are able to make provision as to the custody of a document while its status is being decided.

Reason for taking power

73. It is foreseeable that there will be disputes as to whether a document or part of a document benefits from confidentiality of communications (sometimes known as “legal professional privilege”). Such disputes are likely to end up at the tribunal so this power allows Scottish Ministers to set further provision about the process and criteria or conditions for resolving these disputes at tribunal. Given there is likely to be a need to make changes to such provision over time, it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.
Choice of procedure

74. Negative procedure is considered appropriate for a technical and largely administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 134(3) – Power to specify third parties in relation to inspections of business premises

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

75. The provision allows for Scottish Ministers to specify persons or categories of persons to be treated as third parties where an inspection of their business premises is considered necessary by the tax authority in order to check the tax position of another person. The designated officer will have the power to inspect the overall premises and any business assets or relevant documents on the premises that are relevant to the investigation. The designated officer cannot enter or inspect any part of the business premises that is used solely as a dwelling.

Reason for taking power

76. This power is required to enable Scottish Ministers to provide greater detail about persons or categories of persons that should be treated as a third party where an inspection of their business premises is considered necessary in order to check the tax position of another person. Given the specification of third parties is likely to be different for each devolved tax, and will likely need to be updated over time, it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Choice of procedure

77. Negative procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 150(2) – Power to make further provision about penalties for failure to make a tax return

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

78. The provision allows Scottish Ministers to make further provision about penalties for a failure to make a tax return on or before the filing date, as defined in section 73(3) of the Bill.
Further provision can include the circumstances in which such a penalty is payable, penalty amounts and types and also arrangements for issuing, appealing and enforcing such a penalty. The regulations under this section cannot create criminal offences but can make changes to primary legislation.

**Reason for taking power**

79. This power is required to enable Scottish Ministers to provide greater detail about a penalty a person is liable for where they fail to make a tax return on or before the filing date in relation to the devolved taxes. The arrangements for such a penalty may be different for each devolved tax so it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

**Choice of procedure**

80. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

**Section 151(2) – Power to make further provision about penalties for failure to pay tax on or before the due date**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by Scottish statutory instrument  
*Parliamentary procedure:* affirmative procedure

**Provision**

81. The provision allows Scottish Ministers to make further provision about penalties for a failure to pay tax on or before the date payment was due, including the circumstances in which such a penalty is payable, penalty amounts and types and also arrangements for issuing, appealing and enforcing such a penalty. The regulations under this section cannot create criminal offences but can make changes to primary legislation.

**Reason for taking power**

82. This power is required to enable Scottish Ministers to provide greater detail about a penalty a person is liable for where they fail to pay tax on or before the due date in relation to the devolved taxes. The arrangements for such a penalty may be different for each devolved tax so it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

**Choice of procedure**

83. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 160(7) – Power to make further provision about penalties for errors in taxpayer documents

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

84. The provision allows Scottish Ministers to make further provision about penalties applicable when a person submits a relevant document containing one or more errors which understates the tax liability or provides a false or inflated claim for relief. The penalty can only be applied where the error is due to careless or deliberate behaviour on behalf of the person submitting the document. A penalty is payable for each error or inaccuracy in the document. Scottish Ministers can make further provision specifying what relevant documents are for the purposes of this penalty, the penalty amounts and also arrangements for issuing, appealing and enforcing such a penalty. The regulations under this section cannot create criminal offences but can make changes to primary legislation.

Reason for taking power

85. This power is required to enable Scottish Ministers to provide greater detail about a penalty a person is liable for where they submit a taxpayer document (in relation to the devolved taxes) which contains one or more errors. The arrangements for such a penalty may be different for each devolved tax so it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Choice of procedure

86. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 162(4) – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

87. The provision allows Scottish Ministers to make further provision about penalties applicable when a person submits a relevant document containing one or more errors which understates the tax liability or provides a false or inflated claim for relief and where the error is attributable to another person. In such cases, a penalty is payable by the other person who the error is attributable to, where they have deliberately supplied false information or withheld information from the person who submitted the document. Scottish Ministers can make further
provision specifying what relevant documents are for the purposes of this penalty, the penalty amounts and also arrangements for issuing, appealing and enforcing such a penalty. The regulations under this section cannot create criminal offences but can make changes to primary legislation.

Reason for taking power

88. This power is required to enable Scottish Ministers to provide greater detail about a penalty a third party is liable for where one or more errors in a taxpayer document submitted by the taxpayer are attributable to them. The arrangements for such a penalty may be different for each devolved tax so it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Choice of procedure

89. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 163(3) – Power to make further provision about penalties for failure to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

90. The provision allows Scottish Ministers to make further provision about penalties applicable when a person fails to take reasonable steps to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability. Scottish Ministers can make further provision specifying what relevant taxes are for the purposes of this penalty, the penalty amounts and also arrangements for issuing, appealing and enforcing such a penalty. The regulations under this section cannot create criminal offences but can make changes to primary legislation.

Reason for taking power

91. This power is required to enable Scottish Ministers to provide greater detail about a penalty a person is liable for where they fail to take reasonable steps to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability. The arrangements for such a penalty may be different for each devolved tax so it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Choice of procedure

92. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.
Section 170(1) – Power to change the amount of penalties relating to failure to comply with an information notice, obstruction of an officer during an inspection or providing inaccurate information or documents as a result of an information notice. Section 177(6) applies this power to the increased daily default penalty amount in 177(4)

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

93. The provision in section 170(1) allows Scottish Ministers to change the penalty amounts applicable when a person fails to comply with an information notice (£300), provides inaccurate information or documents in complying with an information notice (£3000) or if they obstruct an officer carrying out an inspection (£300). Scottish Ministers can only change the penalty amounts if it appears to them that there has been a change in the value of money since the amount was last set.

94. The provision in section 177(6) applies the order-making power in section 170(1) to the increased daily default penalty in section 177(4) so that the Scottish Ministers can change the penalty amount where it appears to them that the value of money has changed since the penalty amount was last set. Where the lower daily default penalty has been applied for more than 30 days and the person continues to fail to comply with the tax authority the increased daily default penalty can be applied with the approval of the tribunal.

Reason for taking power

95. This power is required to enable Scottish Ministers to change the penalty amount in sections 167, 168, 169 and 177 where it is felt by Ministers that the value of money has changed since the penalty amount was last set. Due to inflation (or deflation where that occurs), it is likely that over time Ministers will wish to change the amounts originally set. It is considered to be more appropriate to set out this provision in subordinate legislation as opposed to amending primary legislation each time Ministers wish to change one of the penalty amounts.

Choice of procedure

96. Affirmative procedure is considered to be appropriate because any power in relation to setting or changing the provision about civil financial penalties would benefit from the additional scrutiny of Parliament.

Section 181(2) - Power to make further provision about penalties for failure to register for tax

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Provision

97. The provision allows Scottish Ministers to make further provision about penalties for a failure to register for SLfT imposed by virtue of sections 22 or 23 of the Landfill Tax (Scotland) Bill. It is not expected that such a penalty would apply to LBTT because there is no registration involved with RoS prior to making a tax return in relation to LBTT, whereas a landfill site operator will need to register with SEPA. Scottish Ministers can make further provision specifying the penalty amounts and also arrangements for issuing, appealing and enforcing such a penalty. The regulations under this section cannot create criminal offences but can make changes to primary legislation.

Reason for taking power

98. This power is required to enable Scottish Ministers to provide greater detail about a penalty a person is liable for where they fail to register for tax. The arrangements for such a penalty may be different for each devolved tax so it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Choice of procedure

99. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 182(2) – Power to specify the date from which interest is payable

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

100. The provision allows Scottish Ministers to specify a relevant date, 30 days after which interest begins to be payable on the amount of any unpaid tax. The interest rate charged is set out in regulations made under section 185(1) and interest continues to be charged until such time as the tax is paid.

Reason for taking power

101. This power is required to enable Scottish Ministers to specify a date, 30 days after which interest on unpaid tax is payable. As Scottish Ministers may wish to change the definition of this date at any point, it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.
Choice of procedure

102. Negative procedure is considered appropriate for a technical and largely administrative matter such as defining a date. The provision does not allow for the amendment of the Bill or other primary legislation.

Section 185(1) – Power to specify rates of interest

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

103. The provision allows Scottish Ministers to specify the rates of interest applying to unpaid tax (section 182) or penalties (section 183) owed to Revenue Scotland or to any repayment of tax, penalties or interest owed by Revenue Scotland to the taxpayer (section 184). Different interest rates can be set for different devolved taxes and different penalties.

Reason for taking power

104. This power is required to enable Scottish Ministers to set and change the interest rates applying to unpaid tax or penalties owed to Revenue Scotland or to any repayment of tax, penalties or interest owed by Revenue Scotland to the taxpayer. As such interest rates may need to be changed over time to reflect changes, for example in market conditions, it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Choice of procedure

105. Affirmative procedure is considered to be appropriate to allow an appropriately strong level of scrutiny by the Parliament of this power to set interest rates.

Section 187(1) – Power to specify the time and manner of fees for payment

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

106. The provision allows Scottish Ministers to specify details of a fee that must be paid when a person makes a payment to Revenue Scotland (or a person authorised by Revenue Scotland) using a method of payment set in regulations by Scottish Ministers (e.g. credit card). The details of the fee that can be specified include the time and manner of the fee and whether it applies generally or for specified purposes. The fee that can be charged by Revenue Scotland must be
limited to the cost of recovery regarding the fee it is charged itself for accepting payment by the method in question.

Reason for taking power

107. This power is required to enable Scottish Ministers to set and change the details (amount, time and manner for example) a fee which must be paid when a person makes a payment to Revenue Scotland (or a person authorised by Revenue Scotland) using a particular method of payment (e.g. credit card). The fee that can be charged by Revenue Scotland must be limited to the cost of recovery it is either charged or incurs itself by accepting payment via the method in question i.e. fees cannot be set at a level which generates additional revenue above that of the cost involved.

Choice of procedure

108. Negative procedure is considered appropriate for a technical and administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation. As the fees or time limits that apply may need to be changed over time to reflect changing circumstances, for example market conditions or costs incurred by Revenue Scotland, it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill.

Section 190(5) – Power to prescribe the form of a summary warrant granted by the sheriff court

Power conferred on: the Court of Session
Power exercisable by: Act of Sederunt made by Scottish statutory instrument
Parliamentary procedure: laid no procedure (Act of Sederunt applies)

Provision

109. The provision allows the form of a summary warrant granted by the sheriff court to be set by Act of Sederunt. A summary warrant can only be issued following an application to the sheriff court from a designated officer in relation to a sum of money payable by a person to Revenue Scotland.

Reason for taking power

110. This power is required to allow further detail to be set regarding the form of a summary warrant granted by the sheriff court in relation to the devolved taxes. As the form of the summary warrant may need to be changed over time, it is considered to be more appropriate to set out this provision in subordinate legislation rather than on the face of the Bill. Specifying the form of court and court-related documents is normally done by Act of Sederunt.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Choice of procedure

111. This power is set by Act of Sederunt because it relates to the functioning of civil procedure in the sheriff court.

Section 196(1) – Power to change the amount of a penalty arising from a third party failing to comply with a notice to supply contact details of a debtor

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

112. The provision allows Scottish Ministers to change the amount of a penalty (as set out in section 195) that a third party is liable to pay following a failure to comply with a Revenue Scotland notice to supply contact details of a debtor. Scottish Ministers can only change the penalty amount where it appears to them that there has been a change in the value of money since either the provision in this enactment came into effect or since this power was last exercised, whichever is later.

Reason for taking power

113. This power is required because due to inflation (or deflation where that occurs), it is likely that over time Ministers will wish to change the amount of the penalty set in section 195 (£300). It is considered to be more appropriate to set out this provision in subordinate legislation as opposed to amending primary legislation each time Ministers wish to change the penalty amount.

Choice of procedure

114. Affirmative procedure is considered to be appropriate because any power in relation to setting or changing the provision about civil financial penalties would benefit from the additional scrutiny of Parliament.

Section 198(6) - Power to amend the list of appealable and non-appealable decisions

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

115. Section 198 sets out the decisions that are appealable at 198(1). Those decisions that are not appealable are laid out at 198(4). Section 198(6) allows Scottish Ministers to amend the list of appealable and non-appealable decisions by adding a decision, varying the description of a decision to remove a description from either subsection.
**Reason for taking power**

116. Scottish Ministers consider it important that decisions that are appealable or not appealable are set out on the face of the Bill, but would like to ensure that they have the flexibility to amend either list to reflect future circumstances.

**Choice of procedure**

117. Affirmative procedure is considered appropriate as the order would amend sections 198(1) and 198(4) of this Bill and as such impact on a taxpayer’s ability to appeal to the Scottish Tax Tribunals or seek a review of a decision from Revenue Scotland.

**Section 210(2) - Power to allow the postponement of payment of tax, penalties and interest while a review or appeal is pending**

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**Provision**

118. Section 210 provides that where there is a review or appeal any tax, penalty or interest due will remain payable as if there was no review or appeal. Section 210(2) allows Scottish Ministers to make regulations that may include provision for: applications by appellants to postpone amounts of tax, penalties and interest; and set out the effect of any determination by Revenue Scotland on such applications; agreements between appellants and Revenue Scotland about the postponement of amounts of tax, penalties and interest; applications to the Tax Tribunal for such postponement; and appeals against determinations by Revenue Scotland and decisions by the Tax Tribunal on such applications.

**Reason for taking power**

119. The payment of tax, penalties and interest prior to an appeal would be appropriate in some cases, for example where the taxpayer has already collected the tax from a third party. For example a landfill site operator who wishes to appeal may have already collected the tax from those depositing waste at the landfill site. On the other hand, where the taxpayer is the person who ultimately pays the tax, having to pay tax, penalties or interest prior to being able to appeal or seek a review is likely to act as a major deterrent to pursuing a dispute with Revenue Scotland. As such Scottish Ministers would have the power to make provision for the postponement of tax, penalties or interest with a review or appeal is on-going.

**Choice of procedure**

120. Given the regulations would postpone the payment of potentially significant amounts of tax, penalties and interest it is consider that affirmative procedure is appropriate.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 218(1) – Powers relating to subordinate legislation

Power conferred on: N/A
Power exercisable by: N/A
Parliamentary procedure: N/A

Provision

121. Although not a free standing power in itself the provision does allow that orders and regulations may make different provision for different purposes including for different devolved taxes. Orders and regulations may contain incidental, supplementary, consequential, transitional, transitory or saving provision, although not in relation the power contained at 219(1).

Reason for taking power

122. To ensure that Scottish Ministers have the power to make provisions that are different for different purposes and contain incidental, supplementary, consequential, transitional, transitory or saving provisions.

Choice of procedure

123. This depends on the procedure associated with the relevant order or regulation making power.

Section 219(1) - Power to make ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure if amending primary legislation, otherwise negative

Provision

124. This provision enables Scottish Ministers to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, this Bill or any provision made under it.

Reason for taking power

125. As with any new body of law, the Bill may give rise to a need for a range of ancillary provisions. The ancillary provision is needed to ensure that the policy intentions of the Bill are achieved if further changes are found to be necessary as a result of provision in the Bill. The
ancillary power is wide-ranging because it is vital that collection and management of the devolved taxes is able to be delivered effectively and efficiently.

126. The power will also allow the Scottish Ministers to make further changes should there be any unforeseen issues. Without this power, it may be necessary to make further primary legislation to deal with a matter which is clearly within the policy intentions of the Bill. The Scottish Government considers that this would not be an effective use of resources by the Parliament or the Scottish Government.

127. The power, whilst potentially wide, is limited to the extent that it can only be exercised if the Scottish Ministers consider it necessary or expedient for the purposes of, or in connection with, or for giving full effect to any provision of the Bill.

Choice of procedure

128. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. These procedures are typical for ancillary powers.

Section 224(2) – Power to commence Bill

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: no procedure

Provision

129. This provision allows Scottish Ministers to commence provisions in this Bill (other than sections 218-223 and 225) on such day as they appoint by order. Such an order can include transitional, transitory or saving provision.

Reason for taking power

130. It is standard for Scottish Ministers to have control over the commencement of a Bill.

Choice of procedure

131. No procedure is provided, which is typical for commencement powers.

Schedule 1 paragraph 1(3) - Power to vary the minimum and maximum number of members of Revenue Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Provision

132. The provision allows Scottish Ministers to specify a different minimum and maximum number of members of Revenue Scotland.

Reason for taking power

133. Schedule 1 paragraph 1(1) provides that there will be no fewer than five and no more than nine members of Revenue Scotland. The reason for taking the order making power is to allow Scottish Ministers to alter the minimum and maximum number of members without recourse to primary legislation. This would provide flexibility to ensure that the number of members are sufficient to effectively exercise Revenue Scotland’s functions. For example if further taxes are devolved in the future (as is envisaged by the Scotland Act 2012) it may be necessary to increase the number of members of Revenue Scotland.

Choice of procedure

134. Negative procedure is considered appropriate for what is essentially an administrative matter, even though the power allows for the Bill to be amended in a very limited way.

Schedule 2 paragraph 2(2) - Power to set criteria for eligibility to serve as an ordinary member of the First-tier Tribunal

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

135. The provision allows Scottish Ministers to prescribe the criteria in terms of qualifications, experience and training that a person needs to be eligible for appointment as an ordinary member of the First-tier Tribunal.

Reason for taking power

136. The First-tier Tribunal will require ordinary members with a range of different professional qualifications, experience and training. It is considered preferable to set out the detail of the qualifications, experience and training necessary to be an ordinary member of the First-tier Tribunal in regulations rather than on the face of the Bill for reasons of flexibility.

Choice of procedure

137. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Schedule 2 paragraph 4(2) - Power to set criteria for eligibility to serve as a legal member of the First-tier Tribunal

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

138. Paragraph 4(2) of schedule 2 confers a power on the Scottish Ministers, by regulations to specify further criteria beyond that set out in paragraph 4(1) of that schedule which will enable a person to qualify as a legal member of the First-tier Tribunal. Further details about eligibility are dealt with at paragraph 8, sub-paragraphs (3) and (5) and (6) (see below).

Reason for taking power

139. The Scottish Government considers that it is appropriate to set out the core eligibility criteria by which a person will qualify to be appointed as a legal member of the First-tier Tribunal on the face of the Bill. That is, through practising as a solicitor or advocate in Scotland or as a solicitor or barrister in England and Wales or Northern Ireland and having practised as such for a period of not less than five years.

140. The Scottish Government recognises, however, that it may be, or may become, appropriate for persons who have formerly practised as solicitors, advocates or barristers and who have subsequently engaged in another legal activity or for persons who are not solicitors, advocates or barristers but have engaged in another legal activity to be eligible for appointment as legal members of the First-tier Tribunal.

Choice of procedure

141. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Schedule 2 paragraph 6(2) - Power to set criteria for eligibility to serve as a legal member of the Upper Tribunal

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

142. Paragraph 6(2) of schedule 2 confers a power on the Scottish Ministers, by regulations to specify further criteria beyond that set out in paragraph 5(1) of that schedule which will enable a person to qualify as a legal member of the Upper Tribunal. Further details about eligibility are dealt with at paragraph 8, sub-paragraphs (4) and (5) and (6) (see below).
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Reason for taking power

143. The Scottish Government considers that it is appropriate to set out the core eligibility criteria by which a person will qualify to be appointed as a legal member of the Upper Tribunal on the face of the Bill. That is, through practising as a solicitor or advocate in Scotland or as a solicitor or barrister in England and Wales or Northern Ireland and having practised as such for a period of not less than 10 years.

144. The Scottish Government recognises, however, that it may be, or may become, appropriate for persons who have formerly practised as solicitors, advocates or barristers and who have subsequently engaged in another legal activity or for persons who are not solicitors, advocates or barristers but have engaged in another legal activity to be eligible for appointment as legal members of the Upper Tribunal.

Choice of procedure

145. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Schedule 2 paragraph 8 – Supplementary criteria applying to regulations made under paragraphs 4(2) and 6(2) of schedule 2

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations made by Scottish statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
</tr>
</tbody>
</table>

Provision

146. This provision sets out supplementary eligibility criteria applying to regulations made under paragraphs 4(2) and 6(2) of schedule 2 which set out criteria for the appointment of legal members to the First-tier Tribunal and Upper Tribunal.

Reason for taking power

147. The Scottish Government considers that it is appropriate to set out the core eligibility criteria by which a person will qualify to be appointed as a legal member of the First-tier Tribunal or Upper Tribunal on the face of the Bill. That is, through practising as a solicitor or advocate in Scotland or as a solicitor or barrister in England and Wales or Northern Ireland and having practised as such for a period of not less than five years or 10 years respectively.

148. The Scottish Government recognises, however, that it may be, or may become, appropriate for persons who have formerly practised as solicitors, advocates or barristers and who have subsequently engaged in another legal activity or for persons who are not solicitors, advocates or barristers but have engaged in another legal activity to be eligible for appointment as legal members of the Tax Tribunals. The regulation-making power in paragraphs 4(2) and 6(2) of schedule 2 would enable the Scottish Ministers to make regulations enabling such persons to be eligible for appointment. It, therefore, gives a degree of flexibility so that the
eligibility criteria can be adjusted to recognise legal qualifications and experience other than that gained by solicitors, advocates and barristers. The power is not, however, unlimited and is informed by paragraphs 8 and 9 of that schedule which set out the various matters on which those regulations may make provision. The regulation-making power in paragraph 4(2) and 6(2) of schedule 2 is, itself, augmented by the regulation-making powers contained in paragraph 9(1) and (2).

Choice of procedure

149. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Schedule 2 paragraph 9(1) - Power to make provisions relating the five and ten year qualifying periods that apply to legal members of both the First-tier and Upper Tribunal

Power conferred on: the Scottish Ministers  
Power exercisable by: regulations made by Scottish statutory instrument  
Parliamentary procedure: negative procedure

Provision

150. The Scottish Ministers may by regulations make provisions relating to the calculation of the five year period mentioned in schedule 2 paragraphs 4(1) and 8(3)(a) or the ten year period mentioned in schedule 2 paragraphs 6(1) and 8(4)(a). The regulations may, for example, make reference to recent or continuous time. The regulations may include provision relating to, for example, debarment from practice during the five or ten year periods mentioned above and make further provision relating to the criteria for suitability and the nature of experience required.

Reason for taking power

151. Paragraph 9(1) of schedule 2 confers a power on the Scottish Ministers, by regulations to make more particular provision as regards the eligibility criteria to be appointed as a legal member of the Tax Tribunals including the calculation of the five or 10 year qualification period, the effect of debarment from practice and the criteria and nature of other experiences in law.

Choice of procedure

152. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Schedule 2 paragraph 9(2) - Power to vary the list of activities to which regulations relating to eligibility to serve as a legal member of the First-tier or Upper Tribunal may refer

Power conferred on: the Scottish Ministers  
Power exercisable by: regulations made by Scottish statutory instrument  
Parliamentary procedure: negative procedure
Provision

153. The provision allows Scottish Ministers to modify the list of activities that relate to the eligibility of a person to serve as a legal member or either the First-tier or the Upper Tribunal. The list of activities are set out in schedule 2 paragraph 8(5) and apply to the regulation making powers set out paragraphs (4)(2) and (6)(2b).

Reason for taking power

154. The Scottish Ministers recognises, however, that it may be, or may become, appropriate for persons who have formerly practised as solicitors, advocates or barristers and who have subsequently engaged in another legal activity or for persons who are not solicitors, advocates or barristers but have engaged in another legal activity to be eligible for appointment as legal members of the Tax Tribunals. Paragraph 8(5) provides details of the activities that may qualify a person to serve as a legal member of the Tax Tribunals. The regulation-making power in paragraph 9(2) allows Scottish Ministers the flexibility in the future to modify the list of activities. If for example further taxes were devolved then other activities currently not listed in paragraph 8(5) may be relevant.

Choice of procedure

155. It is considered that the negative procedure gives the appropriate degree of scrutiny. Even though paragraph 9(2) of schedule 2 enables the modification of the list of activities set out in paragraph 8(5) of that schedule, the fact that those activities must amount to a suitably attributable experience in law restricts the extent of the power and it is considered that the negative procedure will, therefore, give the appropriate degree of scrutiny.

Schedule 2 paragraph 21(1) Rules for the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals and the review of such a determination.

Power conferred on: the Scottish Ministers
Power exercisable by: rules made by the Scottish Ministers
Parliamentary procedure: not laid no procedure

Provision

156. Paragraph 21(1) of schedule 2 confers a power on the Scottish Ministers, by rules, to make provision for the purposes of, or in connection with, the investigation and determination of any matter concerning the conduct of the members of the Tax Tribunals and the review of any such determination.

157. Paragraph 21(2) makes provision about what the rules may cover in particular. Paragraph 22(a) provides that the Scottish Ministers may make different provision for different purposes while paragraph 22(b) provides that the rules are to be published in such manner as the Scottish Ministers may determine.
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Reason for taking power

158. Scottish Ministers will have responsibility for making and maintaining appropriate arrangements about the conduct of the members of the Tax Tribunals. How those arrangements will operate will be detailed and procedural and it is not considered appropriate for these matters to be set out on the face of the Bill. The Scottish Ministers power will enable them to set out the arrangements in rules which may be readily modified and updated to reflect best practice and changing circumstances.

Choice of procedure

159. No parliamentary procedure has been applied. The responsibility for making and maintaining arrangements for the conduct of members of the Scottish Tribunals will rest with the Scottish Ministers.

Schedule 2 paragraph 31 Rules for the procedures to be followed at a fitness assessment tribunal.

Power conferred on: the Scottish Ministers
Power exercisable by: rules made by the Scottish Ministers
Parliamentary procedure: not laid no procedure

Provision

160. A power for Scottish Ministers, by rules, to make provision for the purposes of procedures to be followed at a fitness assessment tribunal.

Reason for taking power

161. Scottish Ministers will have responsibility for constituting a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals. The function of a fitness assessment tribunal is to assess whether a member is fit to hold a position of member of the Tax Tribunals.

Choice of procedure

162. No parliamentary procedure has been applied. The responsibility for making and maintaining arrangements for the conduct of members of the Scottish Tribunals will rest with the Scottish Ministers.

Schedule 3 paragraph 3(3) - Power to define the records and supporting documents that need to be preserved to support a claim for relief from double assessment or overpayment of tax

Power conferred on: the Scottish Ministers
This document relates to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

163. Sections 97, 98 and 99 allow taxpayers to make a claim for relief from double assessment or overpayment of tax. Schedule 3 paragraph 3 requires such taxpayers to keep records to enable them to make a correct and complete claim for relief. The provision in schedule 3 paragraph 3(3) allows Scottish Ministers to specify in regulations those records and supporting documents that must be kept.

Reason for taking power

164. Scottish Ministers recognise that a wide range of records and supporting documents could be used to make a claim for relief. Rather than attempt to provide a definitive list in the Bill the power would allow Scottish Ministers to be able to provide greater detail of the types of records or supporting documents that have to be preserved or do not need to be preserved to comply with paragraph 3 of schedule 3.

Choice of procedure

165. Negative procedure is considered appropriate for what is essentially an administrative matter. The provision does not allow for the amendment of the Bill or other primary legislation.

Schedule 4 paragraph 7(8) - Power to amend provisions relating to subordinate legislation in section 68 of the Land and Buildings Transaction Tax (Scotland) Act 2013.

166. The amendments made by this paragraph remove the reference in section 68(2) to section 54(2), since that provision is being repealed by paragraph 7(5) of schedule 4, remove the reference in section 68(3) to section 56(1), since section 56 is being repealed by paragraph 7(7) of schedule 4, and insert a new subsection (6A) into section 68.

167. That new subsection provides that, where an order under section 24(1) or paragraph 3 of schedule 19 (setting rates and bands of tax) is not approved by the parliament within 28 days of it being made and so ceases to have effect, anything previously done under the order is still valid despite the order falling. In addition, the order having fallen does not stop the Scottish Ministers bringing forward new orders under section 24 or paragraph 3.

168. New subsection (6A) brings section 68 into line with section 41(6) of the Landfill Tax (Scotland) Bill. But it does not alter either how the powers in section 24 and paragraph 3 of schedule 19 can be used or the parliamentary procedure applicable to them. It is included in this memorandum, however, for the sake of completeness as it does alter what happens if orders under those two provisions are not approved by the parliament.
Remit and membership

Report 1

Introduction 1
  Bill Purpose 1
  Structure of the Report 2
TAX AVOIDANCE AND THE GENERAL ANTI AVOIDANCE RULE 2
  Tax avoidance arrangements - broad or narrow definition 3
  Additional Certainty 8
  Priority of the GAAR 11
PENALTIES 12
  Primary versus secondary legislation 12
  Penalty collection 14
THE CHARTER 14
REVENUE SCOTLAND - MEMBERSHIP AND POWERS 16
  Membership of RS Board 16
  Ministerial Guidance 17
  Delegation of powers 18
  Reporting 19
TRIBUNALS AND MEDIATION 20
  Tribunals 20
  Mediation and the Ombudsman 23
PROFESSIONAL PRIVILEGE 24
FINANCIAL MEMORANDUM 26
CONCLUSION 27

Annexe A: Reports from other committees
Annexe B: Index of oral evidence sessions
Annexe C: Index of written evidence
Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, "public expenditure" means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.

*(Standing Orders of the Scottish Parliament, Rule 6.6)*

Membership:

Gavin Brown
Malcolm Chisholm
Kenneth Gibson (Convener)
Jamie Hepburn
John Mason (Deputy Convener)
Michael McMahon
Jean Urquhart

Committee Clerking Team:

Clerk to the Committee
Jim Johnston

Senior Assistant Clerk
Catherine Fergusson

Assistant Clerk
Alan Hunter

Committee Assistant
Thomas Williams
INTRODUCTION

1. The Revenue Scotland and Tax Powers Bill ("the Bill") was introduced on 12 December 2013 by John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth (CSFESG). The Finance Committee ("the Committee") was designated lead committee by the Parliamentary Bureau. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill.

2. The Committee issued a general call for evidence on 17 December 2013 and all submissions received are available on the Committee’s web pages on the Scottish Parliament website.¹ The Committee also heard oral evidence at its meetings over eight meetings between February and April 2014. The Committee is grateful to all those who provided evidence to the inquiry.

3. The Committee also received a report from the Delegated Powers and Law Reform (DPLR) Committee on the delegated powers provisions within the Bill and some of its findings are considered below.

4. The Committee was supported in its consideration of the Bill by its adviser, Professor Gavin McEwen. Professor McEwen² and the Scottish Parliament Information Centre (SPICe)³ both prepared written briefings to inform the Committee’s scrutiny of the Bill.

Bill Purpose

5. The Policy Memorandum (PM) states that the Bill “puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship

between the tax authority and taxpayers in Scotland, including the relevant rights, powers and duties”.

6. This Bill is the final of three pieces of legislation arising from the Scotland Act 2012. The two previous pieces of legislation, the Land and Buildings Transaction (Scotland) Act 2013 [LBTTA 2013] and the Landfill Tax (Scotland) Act 2014 [LFTA 2014], were considered by the Committee in 2012 and 2013.

Structure of the Report

7. A number of key issues emerged during Stage 1 scrutiny and each of these is considered in turn below:

- General anti avoidance rule (GAAR)
- Penalties
- Charter
- Revenue Scotland (RS) - Membership and Powers
- Tribunals and appeals
- Professional privilege for advisors

8. The Committee also considers a number of issues in relation to the PM and the Financial Memorandum (FM) throughout the report.

TAX AVOIDANCE AND THE GENERAL ANTI AVOIDANCE RULE

9. The Bill contains a General Anti-Avoidance Rule (the GAAR) which will apply to counter avoidance of all taxes administered by Revenue Scotland (RS). Paragraph 11 of the PM states that the Scottish Government intends this to be a broader measure than the UK General Anti Abuse Rule (UK GAAR) introduced by the Finance Act 2013:

"The Scottish GAAR would enable Revenue Scotland to take counteraction in a wider range of circumstances than the existing UK GAAR (which deals with tax abuse rather than tax avoidance). This is a result of the criteria used in the Scottish GAAR to define what constitutes a tax avoidance arrangement that is artificial. Revenue Scotland will need to demonstrate that obtaining a tax advantage is one of the purposes of a tax arrangement, and that the arrangement is artificial. Artificality will be determined by reference to a set of tests set out in the Bill, including commercial substance."

10. Paragraph 59 of the PM states that the Scottish Government considers it important to tackle tax avoidance because:

- "tax avoidance reduces public revenues, and so will lead either to lower spending on vital public services or to an increase in tax rates generally, which must be paid by other taxpayers, to recoup tax avoided;
- there is a risk to the tax base if other taxpayers behave in a similar way;

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4 Policy Memorandum, paragraph 7
5 Policy Memorandum, paragraph 11
• there may be perceived unfairness to compliant taxpayers who continue to meet their liabilities as intended by the law; and
• tax avoidance can undermine public confidence in the tax system and lead to reduced rates of compliance."

11. Tax fraud and tax evasion can be tackled under common law but the Scottish Government considers that specific measures to counter tax avoidance are necessary. The PM states that tax avoidance arises:

"where a taxpayer seeks to reduce, delay or avoid the tax liability by taking action which the taxpayer believes is legal, but which the tax authorities regard as not in keeping with the spirit of or the intention behind the relevant tax legislation."\(^6\)

12. The Scottish Government links this definition of tax avoidance to that given by Lord Nolan in the case \textit{IRC v Willoughby}. However, it is notable that the Scottish Government's definition is grounded on the tax authorities' views on whether the taxpayer's actions are in accordance with the spirit or intention behind the legislation. Lord Nolan on the other hand grounds his definition on a neutral judgment as to Parliament's intentions:

"The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his tax liability."\(^7\)

13. The question by whom and from whose perspective tax avoidance should be judged recurred throughout the evidence put before the Committee.

14. \textbf{The Committee welcomes the approach to tax avoidance in the Bill.}

\textbf{Tax avoidance arrangements - broad or narrow definition}

15. The Bill provides for the counteraction of tax advantages arising from tax avoidance arrangements that are artificial. Tax advantages are widely defined, as are tax avoidance arrangements. The latter are defined as arrangements where obtaining a tax advantage may reasonably be concluded to have been the main purpose, or one of the main purposes, of the arrangement. Before a tax avoidance arrangement can be counteracted, it must be determined to be artificial and a non-exhaustive set of tests of artificiality or otherwise is provided.

16. However, the professional bodies who provided evidence were strongly of the view that the "broad" Scottish GAAR created uncertainty for taxpayers. For example, ICAS argue in written evidence that there is "no certainty at the moment on the real impact of the GAAR, thus failing that maxim."

17. Much was made in evidence of the inclusion of the phrase, \textit{or one of the main purposes}, in the definition of a tax avoidance arrangement. The Scottish

\(^6\) Policy Memorandum, paragraph 59
\(^7\) Dicta of Lord Nolan in Inland Revenue Commissioners v Willoughby [1997] 4 All E.R. 65
Government suggests in the PM that some non-tax purpose could be attributed to arrangements that were essentially artificial tax avoidance:

“A feature of some tax avoidance schemes in the UK until now is that they have had apparently legitimate commercial or other purposes and taxpayers have sought to argue that the tax advantage obtained was secondary.”

18. The professional bodies argued on the other hand that tax costs and savings were factored into many perfectly innocent transactions and the phrase consequently created uncertainty for taxpayers by extending the scope of the GAAR more widely than necessary. The CIOT provided the following example:

"If I was going to say to you, convener, that you should operate as a company because of certain circumstances or as a sole trader because of other circumstances, I would want to be sure that there would be no risk of the authorities saying under the general anti-avoidance rule, 'There was a tax benefit in you going one route rather than another.'"

19. Witnesses also suggested that a lack of certainty may affect investment decisions. ICAS, referring to their committee examining Scottish taxes, said:

"Generally, their concerns are that, if more certainty is not given, businesses that are looking at property development or transactions or which are considering an investment might, in the absence of certainty, take their business south of the border rather than invest in Scotland."

20. The professional bodies suggested narrowing the GAAR through, for example, restricting the definition of tax avoidance to cases where a tax advantage was the sole or main purpose of an arrangement. Alternatively, there was a desire to restrict the GAAR to cases of abuse as defined in the UK GAAR. The CIOT state in written evidence:

"We are concerned that the use of the phrase 'one of the main purposes' means that there is a very low threshold for deciding that a transaction is concerned with avoidance and so within the ambit of the GAAR. We can see that the link to 'artificial' in s59 is helpful but would have preferred the test to be phrased in terms of 'sole or main purpose [being avoidance]'..

21. However, the Committee’s Adviser points out in his briefing on the Bill that the exact same phrase is found in the UK GAAR:

"the initial difference between the UK GAAR and section 58 seems purely terminological in that the UK legislation refers to tax arrangements and section 58 to tax avoidance arrangements. Both apply where the main purpose, or one of the main purposes, of the arrangement is obtaining a tax advantage. The differences between the UK and the Scottish provisions arise, first, in the contrast between the definition of abusive in the UK rule
and artificial in the Scottish rule, and, second, in the absence of an advisory panel in the Scottish legislation."

22. Essentially the first stage, or gateway, test in both the UK GAAR and the Scottish GAAR is the same, the sole difference being the insertion of the word, avoidance, where the UK GAAR uses the neutral term, tax arrangement. Dr Heidi Poon points out in written evidence that: "The legislative structure...of the Scottish GAAR has much in common with the UK GAAR, notwithstanding the crucial difference in focus of the Scottish GAAR being on 'avoidance' to give it a wider scope than the construction of 'abuse' under the UK GAAR."

23. Dr Poon challenges the view that a widely drawn GAAR may be inherently less certain than a narrow one:

"My experience from sitting on the tax tribunal...is that however widely or narrowly drawn a GAAR is, the process of constructing what the law is trying to say and applying it to the facts of the case must still be gone through. A higher or lower degree of certainty is not conferred by whether the GAAR is widely or narrowly drawn—certainty is not created at that level"10

24. She suggests that legislation which is based on rules such as in the UK "allows people to find loopholes."11 In her view a "higher or lower degree of certainty is not conferred by whether the GAAR is widely or narrowly drawn—certainty is not created at that level. A more principles-based approach would give more certainty than drawing a GAAR widely or narrowly."12

25. She went on to explain what she meant by a principles based approach thus:

"If you start with rules, you end up with more rules in order to close the loopholes, but a more principles-based approach allows more scope for a GAAR to interpret the legislation on the basis of the principles that are its starting point. That will impinge on how other areas of tax are going to be legislated on."13

26. This view was supported by Justine Riccomini who suggested that the Bill "should be fit for purpose for Scotland and not just copied and pasted from the UK legislation."14

27. The CSFESG informed the Committee that the approach to the Scottish GAAR is a principles based one:

"It is possible to be very specific and prescriptive about what is in and what is out, but the danger of such an approach is that it creates the incentive to find ways of operating at the margins. The principles-based approach that is

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enshrined in the bill is designed to signal very clearly that that type of practice will be unacceptable.\textsuperscript{15}

28. He also emphasised:

"I have made it clear that we intend to take the toughest possible line on tax avoidance—I mean “avoidance” and not just the most extreme cases of abuse. With that in mind, the bill provides, in a general anti-avoidance rule, power for revenue Scotland to take robust action against artificial tax avoidance schemes. We chose to provide two definitions of artificiality to ensure that our approach is as comprehensive as possible."\textsuperscript{16}

29. The Committee supports the provisions within the Bill for a more broadly drawn GAAR and is not of the view that a more narrowly drawn GAAR would create more certainty for tax payers.

30. The Committee also notes that part of the certainty that may be provided by a more widely drawn GAAR is a reduction in the need for additional targeted anti-avoidance rules (TAARs) on the basis, as noted by Dr Poon, that “If you start with rules, you end up with more rules in order to close the loopholes”.

31. The Committee would welcome clarification from the Scottish Government as to whether the GAAR as drafted, together with principles based drafting of any future Scottish taxes, will mitigate the need for TAARs in respect of those taxes.

\textit{Artificial Tax Avoidance - Condition A}

32. The greater breadth of the Scottish GAAR lies in the introduction of the tests for artificiality as opposed to the narrower test for abuse in the UK GAAR. The first test of artificiality in the Scottish GAAR, condition A, is a simplified version of the definition of an abusive tax arrangement. The core of the test is whether the arrangement is a reasonable course of action in relation to the relevant tax provisions. The UK legislation requires that it could not reasonably be regarded as a reasonable course of action, a principle known as the double reasonableness test. However, the Bill Team pointed out that the Scottish Government deliberately moved away from the double reasonableness test:

"We have consciously stepped away from the UK double reasonableness test simply because it seems to be unnecessarily complicated. I am not entirely sure what a double reasonableness test adds, or in whose eyes the reasonableness is."\textsuperscript{17}

33. The Committee suggests that in keeping condition A in the Scottish GAAR simple, it is important that the requirement for an objective view of what is reasonable is protected and invites the Scottish Government to respond to this point.

\textsuperscript{17} Scottish Parliament Finance Committee. \textit{Official Report}, 19 February 2014, Col 3649/50
Artificial Tax Avoidance - Condition B

34. Even if a tax avoidance arrangement meets the test of being a reasonable course of action in relation to the relevant tax provision, it has also to clear the hurdle of commercial substance set out in condition B in section 59(3). Subsection (4) sets out four examples which might indicate lack of commercial substance. These can be paraphrased as not reasonable business conduct, form inconsistent with the substance, elements of the transaction offset one another, and circular transactions. These four are all recognisable characteristics of tax avoidance schemes which have been the subject of litigation in the past.

35. The Law Society of Scotland raise some concerns in respect of the use of the terms commercial substance and business conduct in condition B. A taxpayer's personal affairs may well include matters falling with the definition of tax avoidance arrangement which may be neither commercial nor a business matter without being artificial or contrived:

"A very good and simple example would be where an individual taxpayer intends to make a gift; such a 'transaction' obviously has no 'commercial substance' but may nevertheless be an entirely reasonable thing to do. It should not be affected (on its own) by any interpretation of a general anti-avoidance GAAR."\(^{18}\)

36. The CSFESG was questioned about the example of incorporation of a business as an everyday circumstance where a reduction in tax may well be one of the main purposes of the transaction but would not in most cases be thought to be unacceptable behaviour. He responded that the tests of artificiality and commercial substance (conditions A and B) are sufficient to distinguish the acceptable from the unacceptable in such a case:

"We have put in two essential factors to specify the approach on the general anti-avoidance rule. One is artificiality, which is not very relevant to the example that John Whiting cited. The other is commercial substance, which will be closely connected to incorporation as a consideration."\(^{19}\)

37. He concluded, therefore, that incorporation of a business will not generally be an unreasonable course of action with respect to the relevant tax provisions, nor will it generally lack commercial substance and hence should not fall foul of the GAAR.

38. The Committee recommends that the references to commercial substance in subsection (3) & (4) of section 59 need to be broadened to cover non-commercial transactions that have real economic consequences for the taxpayer and the reference to reasonable business conduct in subsection (4)(a) extended to include personal conduct.

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\(^{18}\) The Law Society of Scotland, Written submission paragraph 26

Additional Certainty

39. As noted above, one of the main issues raised by witnesses was the need for additional certainty in relation to the GAAR. Four specific mechanisms were identified as potentially supporting more certainty for the taxpayer:

- Advisory Panel;
- RS Guidance;
- Disclosure of Tax Avoidance Schemes (DOTAS);
- Pre-clearance of transactions.

Advisory Panel

40. A number of witnesses supported the introduction of an advisory panel similar to the UK GAAR. For example, the CIOT state in written evidence that:

“We note that the UK GAAR has an Advisory Panel and we think that this should be emulated in Scotland. The aim would be to help RS develop guidance, ensure the Scottish GAAR is applied with commercial experience and generally build confidence in its application among taxpayers.”

41. In particular, the professional bodies expressed concern that the application of condition B requires judgement as to commercial substance and reasonable business conduct. This is in addition to the requirement to judge what is a reasonable course of action in relation to tax provisions in condition A. Not only will Officers of Revenue Scotland make these judgements in the first instance but, if the taxpayer challenges those judgements, the ultimate decision will be made by members of the Tribunals or Court of Session and, under section 62(2), the court must take into account any guidance published by RS. In the UK GAAR, provision is made for an advisory panel to provide both commercial experience and an external perspective when making such judgements. The Law Society of Scotland:

“support a more independent view of what is reasonable in the circumstances. That is why we recommend having an expert panel of some description to give advice on what is available. That would not necessarily lead to any change in the bill. The guidance around it is particularly important.”

42. The CIOT were asked how the role of the UK advisory panel fitted with the requirement for objective reasonableness. The CIOT responded:

"I make it clear that the advisory panel has not formally pronounced on the UK general anti-abuse rule—as far as I know, no cases have gone before it. However, in principle, the intention is to ensure that—as you put it well—reasonableness is judged reasonably, to keep peddling that word.”

43. The Low Income Tax Reform Group (LITRG) which represents tax payers who cannot afford professional advice also support the introduction of an advisory

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20 Chartered Institute of Taxation, Written submission paragraph 20
panel but emphasise the need for panel Members to have commercial experience. The Committee’s Adviser supports this view:

“the introduction of an advisory panel of independent persons with relevant financial and commercial experience would help ensure that Conditions A and B are judged in an unbiased way.”

44. He suggests that whether a course of action is reasonable in relation to a tax provision requires knowledge and experience of the relevant areas of commerce and business as well as knowledge of the legislation and the principles behind it.

45. However, both UNISON and the STUC suggest that the panel membership should be more wide ranging. The STUC state that:

"we believe that any advisory panel should, as Unison says, be not only created 'in a transparent way' but drawn from a broad enough range of people to ensure that the public can have faith that all considerations are being taken into account.”

46. The LITRG also stressed the advisory nature of the panel:

"At the end of the day, revenue Scotland will draw up the guidance and decide what the GAAR will and will not cover; an advisory panel is there to advise."

47. The CSFESG suggested that such a measure would send the wrong message to the public:

"If we are discussing solutions such as having an independent review panel, it feels as if we are trying to devise a mechanism to undermine the principle that we are all trying to develop, which is to attack tax avoidance—we are almost trying to approve of, condone or find a way of accepting tax avoidance initiatives."

48. He considered that the appeal provisions were sufficient protection for a taxpayer who believed that RS had come to the wrong decision.

49. The Committee recognises the need for additional protection for taxpayers and considers the issue further in the section below on RS guidance. However, the Committee does not support the introduction of an advisory panel.

RS Guidance
50. The importance of good and regularly updated guidance on the application of the GAAR, with or without the benefit of an advisory panel, was emphasised by a

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27 Gavin Brown MSP dissented from this sentence.
number of witnesses. ICAS explained the impact of guidance issued by HMRC on the UK GAAR and the role of the advisory panel in that process:

"That guidance was universally welcomed by practitioners, because it described succinctly what the rule is intended to do—it is game changing, to use that expression. The guidance also went into detailed worked examples to show why the law would be considered to apply in particular circumstances." 28

51. ICAS would support the introduction of similar guidance in Scotland. The Law Society of Scotland state that “it is essential that extensive guidance is produced in advance by Revenue Scotland as to the circumstances in which they consider artificial tax avoidance arrangements would exist.”

52. The LITRG, indicated that unrepresented taxpayers could be protected from uncertainty by “ensuring that the guidance is extremely good and kept up to date.” 29

53. The Committee, in recognising the need for additional protection for taxpayers, recommends that RS is required to consult widely on a draft of its guidance on the application of the GAAR prior to its initial publication and on subsequent substantive revisions.

Disclosure of tax avoidance schemes (DOTAS)

54. The UK Government introduced rules in 2004, nine years before introducing the GAAR, requiring promoters of tax avoidance arrangements to disclose these in advance to HMRC. While not eliminating tax avoidance schemes, it greatly speeded up the identification of such schemes allowing quicker counteraction.

55. The PM states that the Scottish Government “does not think that a DOTAS arrangement is necessary” for Scottish Landfill Tax due to the nature of the tax and that further consideration is being given to “a DOTAS-type regime” in relation to Land and Buildings Transaction Tax (LBTT). The PM indicates that Ministers may bring forward amendments at Stage 2 to “bring forward such a scheme”.

56. Both Unison and the STUC are in favour of the introduction of DOTAS into the Bill while Dr Poon views a DOTAS regime as a natural partner of a GAAR:

"If they know that something is there, they can take a look at it. If they do that sooner, less time is spent on it, and it is better for the authority because, if the scheme is discovered years later, time bars may apply. For multiple reasons, the GAAR and DOTA schemes should go hand-in-hand." 30

57. The CSFESG stated in evidence to the Committee that while he does “not want to put in place mechanisms that undermine what is in the Bill” there is a

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“specific issue” in relation to LBTT. To address this the Government are considering a “prior clearance approach.”

Pre-clearance of transactions

58. Another method of providing more certainty for the taxpayer is a system of advance clearance on whether RS would seek to apply the GAAR or not. This approach was supported by a number of witnesses. For example, the CIOT stated in written evidence that “a clearance system for taxpayers concerned about the applicability of the GAAR would clearly be helpful and welcome.” The Law Society of Scotland have a similar view: “We have advocated a formal pre-transaction clearance procedure and regret to note that this has not been adopted.”

59. The PM states that the Bill does not include a statutory clearance scheme as it is not viewed as being necessary for the devolved taxes and due to the additional administrative burden which would be placed on RS. However, taxpayers will be able to ask RS for an opinion on whether a proposed arrangement would fall foul of the GAAR.

60. The CSFESG told the Committee that he is “not sympathetic to the suggestion for a pre-clearance arrangement” on the same basis as his reasoning against an advisory panel. He went on to explain that the Bill is “also about signalling a change in culture” and therefore he would “not want to put in place mechanisms that undermine what is in the Bill.”

61. The Committee notes that the PM refers to a DOTAS-type regime for LBTT but that the CSFESG refers to a prior clearance approach. The Committee would welcome further clarification in relation to the planned approach to LBTT.

Priority of the GAAR

62. Dr Poon informed the Committee that, while the format of Part 5 of Bill follows the UK GAAR quite closely, there is no provision similar to section 212 of the Finance Act 2013. There are a number of rules in the UK legislation which take priority over other tax rules. In addition, the provisions of international double tax arrangements take priority over domestic tax rules. Section 212 provides that the UK GAAR takes priority over any other priority rules in the legislation including the one which gives priority to double tax arrangements. This prevents such priority rules being employed in abusive arrangements to circumvent the GAAR. Dr Poon told the Committee

"if a scheme has managed to deploy a priority rule in income tax but the [UK] GAAR has judged it to be abusive, the GAAR can override the scope of the priority rule that has allowed the scheme to be legal. If the Scottish GAAR does not have that priority rule, and a similar situation arises, how will you resolve it?"
63. **Even if there are currently no priority rules in devolved tax legislation, and no international agreements covering the devolved taxes, the Committee recommends that the CSFESG consider introducing a rule to give the GAAR priority over any other legislative measures and international double tax arrangements. This would reinforce the overriding importance of the anti-avoidance measure.**

**PENALTIES**

64. The PM states that the Scottish Government’s intention in providing for penalties in the Bill is to promote compliance and deter non-compliance. Three types of financial penalty apply to listed non-compliant behaviours. The types of penalties, in order of seriousness, are fixed, daily and percentage based. Criminal offences are also created in respect of concealing, destroying or disposing of a document required to be produced by an information notice or after notification that an information notice is likely to be issued. While an alternative approach would be to adopt identical penalty amounts, timescales and processes for all devolved taxes, the Government has decided to allow for differentiation. The intention is to provide a broad statutory framework in the Bill and to bring forward regulations to provide the nature, amounts and timescale of penalties for each tax.

**Primary versus secondary legislation**

65. The main concern of witnesses in relation to the Bill’s penalty provisions concerned achieving an appropriate balance between primary and secondary legislation. For example, the CIOT stated:

"Our concern is that the real rules should be in primary legislation and, in that respect, we home in on certain aspects of the penalty provisions. Penalties are a key part of legislation, and taxpayers should know when they are going to be penalised."  

66. They accepted that secondary legislation is subject to parliamentary scrutiny, but considered that penalties were sufficiently important to appear in the primary legislation:

"Secondary legislation can cover how the penalties will be applied mechanically, but the circumstances of the penalties should be in primary legislation together with the welcome powers on how they can be mitigated and when they can be suspended."

67. This view is fully supported by ICAS:

"The circumstances in which a penalty is payable should be on the face of the bill, and the amounts should be on the face of the bill, too. To me, the only things that should be in regulations are the procedure and the administrative side. Everything else should be in the bill."

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68. Asked what specific matters relating to penalties, other than the amounts, should be in primary legislation, LITRG said:

"We would like, for example, provision for the amounts of reduction to be included, making clear the circumstances in which a penalty might be reduced, by what proportion the penalty would be reduced and any conditions for such a reduction. That would give the taxpayer a sense of consistency, fairness and certainty."  

69. LITRG also considered that primary legislation should include the factors to be taken into account in determining a penalty, such as whether a failure is deliberate or negligent, the amount of tax involved, whether a time limit has been missed and if so the reason for and the length of any delay.

70. The Bill Team reported that the issue of whether more should be in primary legislation would be considered further:

"We accept that we need to look at that again in the light of points that have been made... The ideal would be to provide clarity in the bill so that everyone can see the four corners of the penalties and the amounts from 1 April next year, and also to provide flexibility for adjustment in the light of experience, which is where the order-making powers come in."  

71. This was confirmed by the CSFESG:

"We have come to the conclusion that the provisions in the bill on penalties are not as clear and consistent as they could be. We will look further at that question in the light of the committee’s report."  

72. The Delegated Powers and Law Reform Committee (DPLRC) state in their report on the Bill that Ministers “will bring forward amendments at Stage 2 specifying all initial penalty amounts on the face of the Bill.” Any subsequent changes to penalty amounts will be set out in secondary legislation, subject to the affirmative procedure.

73. The Committee welcomes the commitment from the CSFESG to bring forward amendments at Stage 2 to include more detail and greater consistency in relation to penalties on the face of the Bill including specifying all penalty amounts. In doing so the Committee invites the Cabinet Secretary to consider the views of the LITRG that “the principles of penalties should be contained in primary legislation.” This should include the circumstances that can lead to a penalty, the amounts of penalties, when taxpayers can appeal and enforcement.

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Penalty collection

74. The Committee also heard concerns, based on HMRC’s experience, against a too rigorous imposition of small fixed penalties. Several witnesses cautioned against too swift and automatic penalties, particularly for first time offenders or where there was no tax at stake. The Law Society of Scotland referred to penalties for late returns where there is, in fact, no tax payable:

“No system can operate without the tax authority seeing things where there is no tax payable, but it is extremely galling, to say the least, that in situations where, for example, a return is made late but there is no tax payable, a penalty is then levied on a non-existent tax for an administrative error.”

75. The Law Society’s view was that, where no tax was involved, penalties for administrative failure should only arise on a second or subsequent occasion. They went on to point out that there is no effective redress in the case of small penalties where the taxpayer considers that there is reasonable excuse for the offence. The effort and cost of challenging a £100 penalty are simply not worth it.

76. Justine Riccomini made the point that the issuing of penalties can be automated but human input is needed when people appeal against them or submit reasons why they cannot pay. If penalties are levied for one-day lateness and payment expected within 30 days, there is a risk that RS may have to expend considerable effort in seeking to collect small amounts of money. She suggests the “time period should be extended to 60 or 90 days. We are talking about the payment of a penalty rather than payment of the tax itself.”

77. Dr Heidi Poon informed the Committee that penalty cases are consuming considerable amount of administrative and tribunal time. She pointed out that the administrative cost of penalties can be disproportionate to the amount that might end up being collected, when we consider the time and human effort that would be needed.

78. The Committee recommends that the penalty regime should encourage people to pay on a timely basis but should be proportionate and avoid creating an unnecessary administrative burden for RS.

THE CHARTER

79. Section 10 of the Bill requires RS to prepare a Charter which must include standards of behaviour and values for RS and the taxpayer respectively. The provision for a Charter was widely welcomed amongst witnesses but there were two areas suggested for improvement. The first is the lack of reciprocity between RS who are simply to aspire to the standards of behaviour and values while taxpayers are expected to aspire to them. The second is in respect of the lack of rigour in the obligation to publish the Charter as RS considers appropriate, to

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review it from time to time, and to revise it when it considers it appropriate to do so.

Reciprocity of obligation

80. The wording of section 10(2) gives the impression that more is expected under the charter of the people of Scotland than is expected of RS. As the Bill team put it:

"The language has given an impression that we did not intend it to give. On the one hand it says, 'Here is what revenue Scotland will hope to do,' and on the other, it says, 'Here is what revenue Scotland expects the taxpayer to do.'"\(^45\)

81. Witnesses noted that the charter will be an important document in communicating with taxpayers who are unlikely to read legislation. As the LITRG put it:

"... the charter is to set out and frame the relationship between the taxpayer and revenue Scotland, so we think that there should be expectations on both sides and that it should provide a balance, showing what the taxpayers’ rights and responsibilities are and what revenue Scotland’s rights and responsibilities are."\(^46\)

82. The CSFESG confirmed that the obligations of RS and the taxpayer with respect to standards of behaviour and values will be made equivalent.\(^47\)

83. The Committee welcomes the commitment of the CSFESG to bring forward amendments at Stage 2 to ensure a reciprocity of obligation within the charter.

Publication

84. As it stands complete discretion is given to RS in the matter of publishing the Charter, reviewing it and revising it. As our adviser put it:

"There is no requirement in section 10 for RS to consult with stakeholders in preparing or revising its charter. Given the importance of such a charter in regulating the relationship between RS and the public, the committee may wish to consider whether a statutory duty to consult would be appropriate."\(^48\)

85. While in a changing world it may be inappropriate to specify precisely how the charter should be published, the requirement should be to make it readily available to all taxpayers and not simply to publish as RS considers appropriate.

86. Setting standards is of little value unless performance against the standards is reviewed. As John Whiting of the CIOT said:

"The charter should regularly be reported on, with an obligation for revenue Scotland—probably signed off by the members of revenue Scotland—to lay a report before the Parliament on how the charter is going. There should be observations on how the tax authority is operating and how taxpayers are responding to it."\(^{49}\)

**87. The Committee welcomes the commitment from the CSFESG to bring forward amendments at Stage 2 to oblige RS to consult on preparing and updating the Charter.**

**REVENUE SCOTLAND - MEMBERSHIP AND POWERS**

88. Concerns around RS and its powers focussed on four areas - membership of RS, independence, delegation of powers, and reporting. There was no disagreement with the establishment of RS as a non-ministerial department.

**Membership of RS Board**

89. A number of witnesses suggested that there would be advantage in the chief executive of RS, and perhaps some other executives, in being members of RS contrary to Schedule 1, paragraph 8(2). The Bill Team explained the Scottish Government’s thinking behind this provision:

"If the chief executive and other members of the executive team were members of the board, there is a danger that it would become much more difficult for the board to hold the chief executive to account."\(^{50}\)

90. While some witnesses were happy with the proposed structure and others were indifferent, the CIOT and ICAS, for example, were strongly in favour of the Chief Executive being a member of RS. The presence of the Chief Executive, and perhaps his or her deputy, on the Board was viewed as ensuring that the Board is fully engaged in the operations of RS and that the executive and non-executive members of the Board work as a team. It was suggested that in commercial companies it is normal for key members of the executive team to be on the board and John Whiting, as a non-executive member of the Board of HMRC, spoke of the benefits of executives and non-executives working together on that Board:

"The CIOT thinks that it is much better to have the chief executive and, potentially, the chief operating officer—the senior members of the executive, if you like—of Revenue Scotland as part of the governing body. In the terminology of schedule 1, they should be members...... From my experience of being a board member at HMRC, that structure works. We are trying to take a regular team approach, with people who know, trust, and deal with one another regularly. That does not stop us challenging."\(^{51}\)

91. ICAS concurred:


"Revenue Scotland is going to be primarily operational and, if it is to have a proper handle on how operations are running, the chief executive needs to be on the board of Revenue Scotland as a member of Revenue Scotland. It would all pull together much better if the board had that mixture of executive and non-executive members. That is what most businesses do. A complete board of non-executives is often at one remove, which does not seem to make sense."

92. Eleanor Emberson considered that either structure would be effective provided it was understood by the parties concerned:

"I think that it can be made to work either way. I was previously the chief executive of a non-ministerial department and was a member of the board of that organisation, but I have also seen models work well in which the board holds the chief executive to account."

93. The CSFESG explained the thinking behind the structure in the Bill:

"... members of the executive being part of the board might create difficulties just through proximity and board members feeling that they are very much part of the same team as the chief executive, which might mean that the element of challenge that is required is eroded."

94. While noting that the proposed structure gave the board the ability - without any discomfort - to have discussions that did not involve the chief executive, the CSFESG was of the view that either structure could work. The important issue for the Scottish Government is that:

"board members are able to properly and fully exercise their responsibility to challenge executive recommendation and practice, and to take the appropriate decisions at board level about the operation of revenue Scotland."

Ministerial Guidance

95. The fact that Ministers may not give directions to nor otherwise seek to control RS was welcomed. Some witnesses queried whether a clear distinction could be made between direction and guidance to which RS must have regard. The safeguard in the Bill is that guidance must be published unless Ministers decide that publication would be prejudicial to RS in exercising its functions.

96. The ICAEW proposed that where guidance is not published there should be independent verification, perhaps by the President of the Tax Tribunals, to ensure that it does not amount to a direction. The CIOT asked for examples of when guidance by Ministers should not be published. Justine Riccomini considered that

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there was no justification for any exemption from publication as we are dealing with a taxation system, not national security:

"There should be complete openness and freedom of information in all aspects of revenue Scotland’s work, and HMRC’s work, for that matter. I cannot see that there is anything that presents some sort of national security issue."56

97. The CSFESG assured the Committee that publication of Ministerial guidance would be the default option but wished to retain the power to give confidential guidance, for example, in relation to operational matters and avoidance measures.

98. **The Committee recommends that where guidance is not published that the CSFESG writes to the Committee explaining the reasons for this.**

Delegation of powers

99. Witnesses recognised the good sense of delegation of powers to Registers of Scotland and SEPA, but some expressed concerns that such delegation should not extend to all powers. The Faculty of Advocates stated:

"Certain powers are inherently the powers of a taxing authority, such as the power to levy a penalty, to make an assessment and the like, and we may have to be careful about permitting a taxing authority carte blanche, as it were, to delegate whatever it likes to somebody else."57

100. Some witnesses suggested that in the exercise of delegated powers, RoS and SEPA should be explicitly bound to act within the limitations of RS's powers and the Charter. For example, the LITRG stated:

"The concern, based on experience elsewhere, is that when functions are delegated to another organisation, that organisation might not act in a way that Revenue Scotland would deem appropriate."58

101. They appreciated that it was implicit that other organisations, such as SEPA and Registers of Scotland to whom these powers will be delegated, would not be able to exceed the powers. But in setting up the framework for RS there is the opportunity to make the limitation explicit.

102. The STUC also had concerns over potential conflict between the other statutory responsibilities of SEPA and RoS and their delegated powers:

"As you will see from our submission, we are not against the idea of delegating authority to SEPA and to Registers of Scotland, but some care has to be taken in relation to the overall guidance and objectives of those organisations."59

103. Eleanor Emberson considered that a non-statutory formal scheme of delegation would be sufficient to meet concerns. Such schemes for SEPA and Registers of Scotland will be laid before the committee before the commencement of live operations. Independently of the detail of such schemes, the responsibility for the exercise of the powers remains with RS who may be held to account. She stated:

"I am therefore comfortable with the way in which the bill is drafted. It gives us room to set down, outwith the legislation, a formal scheme of delegation that we can share both with the committee and publicly to ensure that people know its terms."^60

104. The Committee notes that the Delegated Powers and Law Reform Committee had no comment on the delegation of functions by RS. The Committee will consider the non-statutory formal scheme when it is introduced.

Reporting

105. The importance of reporting on performance to Parliament and the public was emphasised by a number of witnesses. ICAS state in written evidence that:

"The Bill is silent on the requirements and processes under which Revenue Scotland will, or may be, accountable to the Scottish Parliament and it might be expected that appropriate provisions would be included in the Bill."^61

106. Reporting to the public in the form of guidance on procedures and interpretation of tax law is equally important as stated by LITRG in written evidence:

"For the unrepresented taxpayer, RS guidance will explain the tax system and the approach of RS – they are unlikely to read the legislation behind the guidance. It is essential that RS guidance is written with the unrepresented taxpayer in mind as its audience."^62

107. Guidance must be easy to understand but it must not simplify the law to the extent that is misleading or incorrect. Taxpayers should be able to rely on RS guidance, provided they have acted in good faith. LITRG also emphasized in written evidence the importance of broad based access; a website alone is insufficient: "It is essential that RS considers properly how to ensure that unrepresented taxpayers in particular can obtain RS guidance easily."

108. Audit Scotland pointed out in written evidence that the obligation to prepare accounts and be subject to audit derived from RS’s proposed status as an office holder in the Scottish Administration. Consequently, it is important that, subject to Parliamentary approval of the Bill, the appropriate order under the Scotland Act

^61 Institute of Chartered Accountants, written submission, paragraph 14
^62 Low Incomes Tax Reform Group, written submission, paragraph 27
1998 should be made with effect from the date of commencement of the RSTP Act.

TRIBUNALS AND MEDIATION

Tribunals

109. The Bill provides for two tribunals, a first-tier tax tribunal (FTT) and an upper tax tribunal (UTT) to hear appeals against decisions of RS in respect of devolved taxes. The PM explains the Government's intention that these be transferred into the Scottish Tribunals structure when it is ready in mid-2016. The Bill provides for the tribunals' establishment and operation in the period from the commencement of the devolved taxes on 1 April 2015 until transfer is possible.63

Members sitting in the UTT

110. The Bill provides in section 28 that decisions of the UTT will be made by a single member. This is in contrast with the FTT where there may commonly be up to three members sitting. The Faculty of Advocates queried whether it was appropriate to limit the UTT to a single member where the decision appealed against was made by a panel, whose members may have had a range of expertise relevant to the case:

".....the committee might wish to consider whether it would be appropriate to allow the upper tribunal to sit with more than one member. Otherwise, one will have the odd situation in which a decision by three people will be subject, on appeal, to a decision by a single individual."64

111. The Law Society of Scotland shared this concern:

"There is something that just smells a little wrong about perhaps going from two or three experts to one person—someone who is no doubt highly qualified but not necessarily an expert in the area—as a mechanism for appeal."65

112. The CSFESG indicated willingness to consider the matter further:

"whether or not the tribunal had sufficient breadth of overview and whether more members were required, that is a point of detail that I am happy to consider in the light of the evidence that the committee has heard."66

113. The Committee welcomes the commitment from the Cabinet Secretary to examine this issue further and asks that he reconsider the number of members sitting in the UTT.

Appeals from the UTT to the Court of Session

114. As is customary in tax appeals, an appeal from the UTT to the Court of Session (sitting as the Court of Exchequer) (CoS) may only be made on a point of

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63 Policy memorandum, paragraph 46
law. In addition, subsection 33(4)(b) requires that permission for such an appeal can only be made where the appeal would raise an important issue of principle or practice or there is some other compelling reason for such permission. The Faculty of Advocates expressed concern that the requirement for the issue to be of general importance would prevent a litigant with a good case on a matter of importance to him from appealing to Scotland's supreme court:

"It is important for the committee to understand that the test that will be applied will deliberately exclude a well-founded appeal—even a well-founded appeal in which it is reasonably clear that there is a seriously good point to be argued."\(^{67}\)

115. They suggest that this restriction on appeals going to the CoS is not required on grounds of potential overload. Across the whole range of taxes, the Faculty of Advocates suggested that the number of cases going to the UK First-tier Tax Tribunal is 50 to 60 per annum of which very few would relate to Stamp Duty Land Tax or Landfill Tax. They state:

"Broadening the possibility to appeal to the Court of Session would not open any floodgates in a way that would have a material impact on the inner house workload."\(^{68}\)

116. In response to questioning from the Committee on this point the CSFESG accepted “unreservedly that the appeal mechanism must be fair and must be seen to be fair, in the interests of taxpayers as well as revenue Scotland.”\(^{69}\)

117. The Committee recommends that vigorous approach to tax avoidance must be balanced by a fair appeal system and invites the CSFESG to reconsider the restrictive rule governing appeals to the CoS.

Judicial review
118. Chapter 6 of the Bill provides that the CoS, on receipt of a petition for judicial review, may remit it to the UTT. A petition for judicial review is a request that the court exercise its supervisory jurisdiction. In tax matters, judicial review is the remedy where the revenue authority has acted in an unreasonable way or has exceeded its powers but has made no decision which is appealable under the tax legislation.

119. LITRG explained the importance of judicial review and illustrated this with reference to recent consultations with the UK Ministry of Justice and negotiations with HMRC.\(^{70}\) Under the Bill, judicial review is only available on petition to the CoS, although it may then be remitted to the UTT. On the grounds of keeping the cost of judicial review as low as possible, LITRG would like individuals to have access to judicial review at the level of the tax tribunals:

"We would like judicial review to be extended so that cases can be heard in the lower courts and in tribunals—for example, the tax tribunals, which

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would be less costly. At the moment, it is very costly for an individual to take a case to judicial review."

120. The Committee asks whether any consideration has been given to allow taxpayers to have access to judicial review at the level of tax tribunals.

**Names of the Tribunals**

121. Section 19 establishes the tribunals with the names the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland. The Faculty of Advocates expressed concern that these names are too similar to the names of the existing UK tribunals, the First-tier Tribunal and the Upper Tribunal. They suggested that it was inevitable that some taxpayer, perhaps unrepresented, will start proceedings in the wrong jurisdiction:

"It will simply create a procedural mess if an appeal is started in the wrong jurisdiction and the forms sent to the wrong address. It will have to be sorted out in one way or another. To avoid that confusion, I wondered whether different names might be chosen......"

122. A similar point arises with potential confusion over references to the Acts providing for devolved taxes. The two current Acts are designated the 2013 Act and the 2014 Act by section 216 of the Bill. The Faculty of Advocates point out:

"...that, if further taxes come within the competence of the Scottish Parliament, there is likely to be more than one act per year that concerns a tax."

123. They suggest adopting the convention used for UK tax legislation of the initials of the act followed by the year, e.g. ITTOIA 2005.

124. In response to questioning from the Committee on these points the CSFESG agreed to consider bringing forward amendments at Stage 2 to avoid any confusion.

**Costs of the Tribunals**

126. Dr Poon, who is a member of the UK First-tier Tribunal, queried the estimate of £135,000 annual running costs in the financial memorandum for the tribunals. She considers that the estimate of an average of two days sitting per month over four years for both tribunals was reasonable but she wonders whether sufficient allowance has been made for associated fees and expenses. The general guideline for writing up decisions is one day for every day of hearing. In complex cases, additional time for pre case reading and one and a half days writing up time per day of hearing may be claimed. Depending on where the hearing is held, travel, subsistence and accommodation costs may be payable to the members. Her concern is:

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"whether the costing of £135k annual running costs have covered all the necessary constituent elements, especially in respect of the variable component for the time incurred by the presiding member at the pre-hearing and post-hearing stages that will be translated into fees."\(^74\)

127. The Committee asks whether the estimated costs within the FM cover associated fees and expenses.

Mediation and the Ombudsman

Mediation

128. The PM states that where a review by RS staff fails to settle a disputed matter to the satisfaction of a taxpayer, RS may offer mediation by an independent third party in appropriate cases, as an alternative to recourse to the tribunal. If mediation is offered and fails to resolve the case, the case may still proceed to the tribunal. The alternative of training RS staff to act as mediators was considered. HMRC currently offer such in-house mediation. The Government concluded that it would be difficult to provide appropriately qualified mediators that were demonstrably independent of the decision making process.

129. The option for mediation was generally welcomed, for example, by COSLA and ICAS. The Bill provides for mediation but does not specify how a mediator is to be appointed or how the mediation is to be governed or conducted. The PM indicates that the mediator will be an independent third party appointed by RS.

130. Dr Poon points out in her written submission that “mediation can be much more cost-effective than settling the dispute through the tribunal route, and should be encouraged and properly supported.” However, she also states that “for the mediation process to work effectively, the independence of the mediator from Revenue Scotland is paramount.” She suggests that:

"More details on how the independence of the mediator (eligibility, criteria of selection, terms of service) is assured will give this important policy direction more weight and facilitate its promotion to the public."

131. The In-Court Adviser and Mediation Service at Edinburgh Sheriff Court may be able to provide support in the development of a mediation service for RS.

132. The Committee invites the Scottish Government to provide further details in relation to the appointment process for mediators and how the independence of mediators from RS will be assured.

The Ombudsman

133. In addition to the right to request a review, mediation or make an appeal, RS's status as a non-ministerial department brings it within the ambit of the Scottish Public Service Ombudsman (SPSO), providing members of the public with an independent complaints procedure. RoS and SEPA are already within the scope of the SPSO.

\(^74\) Dr Heidi Poon, written submission, paragraph 25
134. The SPSO state in written evidence that clear guidance for the public will be needed to help them decide whether a complaint to the SPSO or an appeal under the Bill's provisions is appropriate. They also point out that although they do not anticipate a significant number of complaints arising from the actions of RS, given the availability of review, mediation and appeal, there is no provision in the FM for any additional costs to the SPSO.  

135. **The Committee asks whether any consideration has been given to potential additional costs for the SPSO.**

**PROFESSIONAL PRIVILEGE**

136. Section 116 of the Bill provides RS with investigative powers including the power to request information from third parties by means of an information notice. Paragraph 90 of the PM notes that the Bill restricts this power in some circumstances for auditors and legal advisers. The PM refers to the fact that UK legislation extends this privilege to communications between a tax adviser and his client but rejects this approach on the grounds that it would unduly hinder efforts to tackle tax avoidance. There is general acceptance of the protection in the Bill for the working papers of an auditor but the Committee has received divergent views on the protection provided in section 130 for privileged communications between legal advisers and clients.

137. ICAS, ICAEW and the CIOT all argue that the protection provided to communications between a legal adviser and clients should be extended to communications between tax advisers and clients, at least to the extent that tax advisers are members of professional bodies who regulate their conduct and require their members to be qualified. The essential argument they put forward is that a legal practitioner and an accountant or tax adviser providing tax advice to a client are performing exactly the same function. If there are good grounds to protect the communications in the case of legal practitioners, there are equally good grounds to protect the communications of other professional tax advisers. CIOT argue:

"We therefore think that, if there is an argument for some form of privilege, it should attach to certain circumstances and to anyone who is properly qualified and who gives advice in that area."  

138. If some tax advisers are privileged and some are not, there will not be a level playing field and that may ultimately restrict the availability of good advice for taxpayers. As CIOT explained:

"Are we arguing that privilege ought to be extended to everyone? No, we are not. We are trying to highlight the fact that there is an unlevel playing field and that it is in everybody’s interests that, in the same way as if they want an expert plumber, if people want tax advice they should get somebody who is properly qualified and regulated."  

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75 Scottish Public Services Ombudsman, written submission  
139. In discussion, both ICAS and CIOT were clear that they were not seeking legal professional privilege across the board but simply parity in the area of tax advice. ICAS noted:

"We are looking at the powers in relation to certain information notices only. We are talking about accountants and tax advisers coming up in a fairly contained area... I suspect that lawyers apply legal privilege to things other than tax advice that do not cause a particular concern, but we are considering tax, so it is a lifting up but in a fairly defined and narrow area."\(^78\)

140. The Faculty of Advocates and the Law Society of Scotland had a different perspective on this. They saw no reason to extend legal professional privilege beyond its current boundaries and disputed the suggestion that the legal profession was benefitting from an unfair advantage. The Faculty noted:

"If the intrinsic nature of the privilege is that it is legal professional privilege, the logic is that it is a privilege that attaches to advice sought and taken from regulated legal professionals."\(^79\)

141. The Law Society of Scotland claimed that most clients are not seeking aggressive tax advice and will not differentiate between a lawyer and an accountant on the basis of privilege. They were not aware of a competitive advantage for lawyers:

"We are not aware of people flooding to lawyers’ offices rather than accountants’ offices to take tax advice because legal privilege exists. Accountants get more than their fair share of tax advisory work."\(^80\)

142. Both sides considered that the recent Prudential case before the Supreme Court [SC [2013] UKSC 1] supported their viewpoint. The Faculty of Advocates referred to it as a case in which the court decided not to extend the scope of legal professional privilege to accountants.\(^81\) ICAS and CIOT pointed out that the court concluded that the court should not extend legal privilege to other tax advisers but that parliament should consider whether to do so.

143. The CSFESG has explained his concerns that it may be difficult to draw a line between unqualified tax advisers who do not belong to a professional body and those who are qualified members of professional bodies. He would not want to extend privilege to the former. He stated that:

"However, we will consider whether there is a way of making progress on that question, although I fear that it might be administratively demanding. We have tried to strike a fair balance by recognising legal professional privilege, which is a well-established principle, but I think that it would go

too far to extend privilege to anyone who presents themselves as a tax adviser.”

144. The Bill Team stated that they could go back and “see whether it was possible to narrow the scope of the protection that solicitors are accorded” and “we could delineate where the privilege did or did not apply.” The Committee welcomes the Government’s undertaking to look at this issue further.

FINANCIAL MEMORANDUM

145. The FM sets out the estimated costs for the establishment of RS and the administration of the devolved taxes to a total of £20.2 million, comprising £16.7 million estimate that was initially provided to the Parliament in June 2012 (and was also been referenced in the FMs for both LBTT and LfT) and £3.5 million estimated for new activity.

146. The new activity is described in the FM as being increased investigation and compliance activity, IT development, the establishment of the Scottish Tax Tribunals and running costs to SEPA associated with compliance activity from illegal dumping. Asked about the reasons for the inclusion of these additional costs, Revenue Scotland stated—

“we would argue that it would be worthwhile to invest some more money in improving our compliance effort both at revenue Scotland and, as you will have seen from the figures, at SEPA. That investment should more than pay for itself in the extra tax receipts that we would get.”

147. In terms of additional compliance activity costs for SEPA, the FM sets out costs to SEPA of £210,000 per year for the processing and administering of SLfT from illegal dumping. The FM links this additional investment to the potential for reducing the ‘tax gap’ in relation to SLfT collection, noting that “additional resources directed at investigation could identify additional illegal waste sites and therefore additional tax liability.” The Committee asked SEPA whether it would be possible to quantify what level of additional revenue might be achieved as a result of the additional investment. In response SEPA explained—

“It is very difficult to say, but I can give you an idea of the potential scale. We are dealing with individual sites that might each have a seven-figure liability. It is very difficult to quantify, and it has not been quantified before because there has been no liability. However, we believe that we are talking about a multimillion-pound figure.”

148. In its Stage 1 report on the Landfill Tax (Scotland) Bill, the Committee asked the Government for clarification as to whether the resources allocated to Revenue

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86 Financial Memorandum, paragraph 35
Scotland, i.e. the £16.7 million figure, included additional resources for SEPA to identify and deal with illegal sites. In response to that question, the Government stated that—

“…Revenue Scotland expects to allocate some of the funding available for compliance activity to SEPA to support its work… Identifying and dealing with illegal landfill sites is currently part of SEPA’s current environmental activities, for which they receive, grant funding, and in future will be part of their tax compliance activity.”

149. The Committee asks the Scottish Government to explain why the additional compliance costs to SEPA of £210,000 were not included in the FM for the Landfill Tax (Scotland) Bill.

CONCLUSION

150. The Committee supports the general principles of the Bill and emphasises that it will continue to monitor closely the establishment of Revenue Scotland and the implementation and delivery of the devolved taxes.

88 Scottish Government response to the stage 1 report
Delegated Powers and Law Reform Committee

25th Report, 2014 (Session 4)

Revenue Scotland and Tax Powers Bill

Published by the Scottish Parliament on 19 March 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
      (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
      (ii) [deleted]
      (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

25th Report, 2014 (Session 4)

Revenue Scotland and Tax Powers Bill

The Committee reports to the Parliament as follows—

1. At its meetings on 4 February and 11 and 18 March, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Revenue Scotland and Tax Powers Bill at stage 1 (“the Bill”)¹. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”)².

OVERVIEW OF BILL

3. This Bill was introduced by the Scottish Government on 23 May 2013. The Finance Committee is the lead Committee.

4. In broadest outline, the Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax and Scottish Landfill Tax - “the devolved taxes”. It establishes Revenue Scotland as a new authority which will be the tax authority responsible for collecting Scotland's devolved taxes from 1 April 2015.

5. The Bill puts in place a statutory framework which will apply to the devolved taxes, and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

6. Revenue Scotland is referred to in this report as “RS”.

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DELEGATED POWERS PROVISIONS

7. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

Section 4 – Delegation of functions by Revenue Scotland

Section 11(8) - Power to allow Scottish Ministers to vary the period which Revenue Scotland’s Corporate Plans cover

Section 30 - Power for Scottish Ministers to make regulations for determining the composition of the First-tier Tribunal and the Upper Tribunal

Section 36(1) - Power for Scottish Ministers to set a time limit for appellants to seek permission for an onward appeal

Section 37(4) - Power to specify categories of petition for judicial review that the Court of Session can remit to the Upper Tax Tribunal by an Act of Sederunt

Sections 39(2), 42 to 44, 46 to 51, 83(2)(b), 85(3)(b), 214(b), and paragraph 11(2) of schedule 3 - Tribunal rules

Section 52 – Practice directions

Section 62- Guidance in connection with the general anti-avoidance rule

Section 69(6) – Duty to keep and preserve records

Section 72(2) – Further provision: land and buildings transaction tax

Section 73(1) - Dates by which tax returns must be made

Section 74(4)(b) – Amendment of return by taxpayer

Section 83(2)(c) - Power to refer questions to any other court or tribunal

Section 86(6)(b) – Determination of tax chargeable if no return made

Section 113(2) – Meaning of “carrying on a business”

Section 125(1) – Producing copies of documents

Section 126 – Further provision about powers relating to information notices

Section 130(3) – Power to provide for resolution by the tribunal of disputes as to whether any information or a document is privileged

Section 134(3) – Power to specify certain matters in relation to inspection of business premises
Sections 170(1) and 177(6) – Powers to change the amount of penalties under sections 167, 168 and 169

Section 182(2) – Power to specify the date from which interest is payable

Section 185(1) – Power to specify rates of interest

Section 187(1) – Fees for payment

Section 190(5) – Form of summary warrant

Section 196(1) – Power to change amount of penalty under section 195

Section 198(6) - Power to amend the list of appealable and non-appealable decisions

Section 210(2) - Power to allow the postponement of payment of tax, penalties and interest while a review or appeal is pending

Section 219 - Power to make ancillary provision

Section 224(2) – Commencement

Schedule 1 paragraph 1(3) - Power to vary the minimum and maximum number of members of Revenue Scotland

Schedule 2 paragraph 2(2) - Criteria for eligibility to serve as an ordinary member of the First-tier Tribunal

Schedule 2 paragraph 4(2) - Criteria for eligibility to serve as a legal member of the First-tier Tribunal

Schedule 2 paragraph 6(2) - Power to set criteria for eligibility to serve as a legal member of the Upper Tribunal

Schedule 2, paragraph 9(1) - Power to make provision relating to the 5 and 10 year qualifying periods which apply to legal members of the First-tier and Upper Tribunal

Schedule 2 paragraph 9(2) - Power to modify the list of activities in paragraph 8(5) of the schedule

Schedule 3 paragraph 3(3) – Duty to keep and preserve records

8. At its meeting of 4 February, the Committee agreed to write to Scottish Government officials to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the Annex.

9. In light of the written responses received, the Committee agreed that it was content with the following delegated powers and did not need to comment on them further:

Section 45(1) – Additional powers - the Tax Tribunals
Section 69(3)(b)- Duty to keep and preserve records

Paragraph 21(1) of schedule 2- Rules for the procedures at a fitness assessment tribunal.

10. The Committee’s comments, and where appropriate, recommendations on the remaining delegated powers in the Bill are detailed below.

Section 8 – Ministerial guidance

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Guidance</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>None (but guidance published)</td>
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</table>

11. This section sets out that the Ministers may give guidance to RS about the exercise of its functions, and the body must have regard to it. The guidance provided must be published as considered appropriate by Ministers, unless they consider that to do so would impact on the ability to carry out the functions effectively (section 8(4)).

12. The power should be read with section 7, which provides for the independence of RS from the direction or other control by the Scottish Ministers of the exercise of the functions of the proposed new authority.

13. In its written response to the Committee, the Scottish Government accepted that a copy of the guidance should be laid before the Parliament as a matter of course, subject to the terms of the proviso in section 8(4).

14. The Committee notes therefore that the Scottish Government will bring forward an amendment at Stage 2 to provide that a copy of the guidance issued in terms of section 8(1) shall be laid before the Parliament. The Committee is otherwise content with the power to issue guidance in section 8.

Section 11(7)(a) - Power to set the period of Revenue Scotland’s first Corporate Plan

<table>
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<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
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15. This power allows the Scottish Ministers to set the period that RS’s first corporate plan will cover. The corporate plan will set out RS’s main objectives, the outcomes that would demonstrate achievement of these objectives, and the activities that RS expects to undertake.

16. The Delegated Powers Memorandum states that the Scottish Government requires the power to specify a first planning period for the corporate plan, and that it is intended that the planning period of the second plan would start from 1 April 2018. However the scope of the power allows any first planning period to be specified by order, whether less or more than 3 years.
17. The Scottish Government in its written response to the Committee explains that a 3 year planning period is standard practice for public body corporate plans. However it has not been explained to the Committee why the power requires to be drawn to allow any first planning period of more than 3 years.

18. In relation to the power in section 11(7)(a) which permits any period to be specified in an order as the first planning period of Revenue Scotland’s corporate plan, the Committee accepts that a first planning period of 3 years is intended and that that period might need to be less. However it considers that the Scottish Government should provide a good reason why the power requires to be drawn to allow any period of more than 3 years to be specified, or otherwise the power should be limited to an appropriate maximum period.

Section 41 – Venue for hearings of the Tax Tribunals

Power conferred on: The President of the Tax Tribunals
Power exercisable by: Determination
Parliamentary procedure: None

19. Section 41 provides that the Tax Tribunals are to sit at such times and in such places as the President of the Tax Tribunals may determine. (The President is appointed by the Scottish Ministers after consultation with the Lord President of the Court of Session. He or she must be eligible for appointment as set out in Schedule 2 of the Bill.) The Committee queried whether there was consistency between this provision and the provision for other tribunals made in the Tribunals (Scotland) Bill (now the Tribunals (Scotland) Act).

20. The Committee notes that the Scottish Government will bring forward an amendment of section 41 at Stage 2, to bring it in line with the corresponding provision in section 56 of the Tribunals (Scotland) Act. That section provides that each of the First-tier Tribunal and the Upper Tribunal may be convened at any place in Scotland to hear or decide a case, or for any other purpose relating to its functions. That is subject to any provision made by tribunal rules, as to the question where in Scotland the Scottish Tribunals are to be convened.

21. The Committee will consider the section as amended after Stage 2.

Section 54 – Guidance

Power conferred on: The President of the Tax Tribunals
Power exercisable by: Guidance
Parliamentary procedure: None (no provision to publish)

22. Section 54 provides that the President of the Tax Tribunals may issue guidance about the administration of the Tax Tribunals as appears necessary or expedient to secure that the functions of the tribunals are exercised efficiently and effectively.
23. The Committee asked why there is no provision to publish the guidance (unlike for instance, section 52(4) on the publication of practice directions), nor for laying a copy before Parliament upon issue. It also asked why though it is specified in the section that the guidance has the purpose of securing that the functions of the Tax Tribunals are exercised efficiently and effectively, there is no provision that any specified persons have a requirement to have regard to it.

24. The Committee accepts, as far as a requirement to lay a copy of this guidance in the Parliament is concerned, that a distinction might be made between this guidance on administrative matters, and directions as to the practice and procedures of the proposed new Tax Tribunals. Administrative guidance on the functioning of the Tax Tribunals might be less likely to have effects on persons’ rights and obligations in particular cases coming before the Tax Tribunals.

25. However the Committee considers that the Scottish Government’s written response to it has not satisfactorily explained why there should not be a requirement to publish this guidance, even if the requirement was to be subject to exceptions. It is clear from section 54 that the guidance must be considered necessary or expedient to secure that the Tax Tribunals’ functions are exercised efficiently and effectively.

26. The guidance could be expected, therefore, to have significance for the effective functioning of the Tax Tribunals system even though it will deal with administrative matters. The provision can be contrasted with the Ministerial guidance proposed to be issued to RS under section 8, where there is a requirement to publish, but not where Ministers consider that publication would prejudice the effective exercise by RS of its functions.

27. The Committee considers that there should be provision that the guidance under section 54 should be published on issue. The section provides that the guidance must be considered by the President of the Tax Tribunals to be necessary or expedient to secure that the Tax Tribunals’ functions are exercised efficiently and effectively. The guidance could be expected therefore to have significance for the effective functioning of the Tax Tribunals system, even though it will deal with administrative matters.

28. It would presumably be possible to provide for an exception to publication where this is appropriate. For instance, in circumstances where this would prejudice the effective functioning of the Scottish Tax Tribunals (cf. section 8(4) of the Bill).

29. The Committee also notes the Scottish Government will bring forward an amendment at Stage 2. This would amend section 54 to provide that the members and the administrative staff of the Scottish Tax Tribunals will be required to have regard to the guidance.
Section 70(b) – Preservation of information, etc.

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Revenue Scotland</th>
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<tr>
<td>Power exercisable by:</td>
<td>Specification in writing</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>None (no provision for publication)</td>
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30. Section 69 provides for the duty of a person who is required to make a tax return for a devolved tax, to keep any records needed to enable the person to make a correct and complete return, and to preserve those records.

31. The duty under section 69 to preserve records may be satisfied by preserving them in any form and by any means. Section 70(b) provides that the duty may also be satisfied by preserving the information contained in the records in any form, and by any means. Section 70(b) states that this is subject to any conditions or exceptions that may be specified in writing by RS. This enables RS to specify the form or means by which information contained in tax records may require to be kept.

32. The Committee queried that it may be more appropriate for the power in section 70(b) to be exercisable by a form of subordinate legislation which would be subject to scrutiny by Parliamentary procedure, rather than by an informal written specification which is not subject to procedure. The Scottish Government has acknowledged in response that as this power amounts to enabling RS to put a general gloss on a statutory duty which would be imposed by the Parliament, the power should be exercisable by regulations made by the Scottish Ministers which could be subject to the negative procedure.

33. The Committee notes the Scottish Government will bring forward an amendment at Stage 2. This would amend the power in section 70(b) so that it would be exercisable by the Scottish Ministers by regulations rather than by Revenue Scotland by written specification. The regulations would be subject to the negative procedure.

34. The Committee will consider the section as amended after Stage 2.

Section 102 - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant

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<th>Power conferred on:</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure if textually amending primary legislation, otherwise negative procedure</td>
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35. Section 100 provides for the circumstances in which unjust enrichment may be a defence against a claim for repayment of tax. Section 102 enables regulations to be made under which certain reimbursement arrangements may count for the purposes of section 100 - so do not allow Revenue Scotland to defend a repayment claim on the ground of unjust enrichment.
36. These regulations may provide for the conditions the reimbursement arrangements must comply with, and for other arrangements to be disregarded for the purposes of section 100. Section 103 provides that the regulations may make provision for penalties for breach of regulations under section 102.

37. The Committee queried, given the proposed significance or width of this power (in particular to make further provision for penalties) whether the affirmative procedure could be a more suitable level of scrutiny of the regulations, than the negative procedure. The Scottish Government has acknowledged in response that scrutiny by the affirmative procedure would be more appropriate.

38. The Committee notes that the Scottish Government has undertaken to bring forward an amendment at Stage 2, so that the power in section 102 would be subject to the affirmative procedure. The Committee will consider the section as amended after Stage 2.

Powers to make provision about penalties

39. The following powers are drawn together, as the Committee raised the same issue in respect of each with the Scottish Government in the written correspondence. In general terms, the Committee asked whether these powers to make further provision for penalties to enforce requirements specified in the Bill could be drawn more narrowly, to provide initially for suitable maximum penalty amounts.

40. For some powers, it was asked whether in specifying a suitable initial maximum amount, the Bill could specify the circumstances in which a penalty is payable (such as where a person fails to make a tax return by the filing date, in respect of the 2 separate devolved taxes).

41. The Committee takes the view that the appropriate maximum amounts of penalty should initially be set by the Parliament, and that any subsequent changes to those amounts should be subject to the higher level of scrutiny which the affirmative procedure affords.

Section 103(2) - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant- power to provide for penalties

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<td>Parliamentary procedure:</td>
<td>Affirmative procedure if textually amending primary legislation, otherwise negative procedure</td>
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Section (2) – Power to make further provision about penalties for failure to make a tax return

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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
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Section 151(2) – Power to make further provision about penalties for failure to pay tax on or before the due date

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Section 160(7) – Power to make further provision about penalties for errors in taxpayer documents

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Section 162(4) – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Section 163(3) – Power to make further provision about penalties for failure to notify Revenue Scotland about an assessment which understates the tax liability

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Section 181(2) – Power to make further provision about penalties for failure to register for tax

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

42. The Scottish Government has confirmed that, having consulted further with stakeholders, it will bring forward amendments at Stage 2 specifying all initial penalty amounts on the face of the Bill. Following Royal Assent and commencement, any subsequent changes to penalty amounts will be set out in secondary legislation, subject to the affirmative procedure.

43. The Committee notes therefore that the Scottish Government has undertaken to bring forward various amendments at Stage 2 in relation to the following provisions, so that all initial penalty amounts would be specified on the face of the Bill. This relates to the powers in sections 103(2), 150(2), 151(2), 160(7), 162(4), 163(3), and 181(2).

44. The Committee asks the Scottish Government, when it responds to this report, to provide further information as to the initial penalty amounts which are proposed, if it is in a position to do so at this stage.
45. The Committee will also consider the various amendments after Stage 2.

Schedule 2 paragraph 31- Rules for the procedures at a fitness assessment tribunal

Power conferred on: The Scottish Ministers
Power exercisable by: Rules
Parliamentary procedure: Laid, no further procedure

46. The power at Schedule 2 paragraph 21(1) will enable provisions in connection with the investigation and determination of any matter concerning the conduct of the members of the Tax Tribunals, and the review of any such determination.

47. A similar power at Schedule 2 paragraph 31 enables the procedures to be followed at a fitness assessment tribunal to be set out in rules. The Scottish Ministers will have responsibility for constituting a fitness assessment tribunal, when requested to do so by the President of the Tax Tribunals.

48. The Committee sought clarification as to the intended procedure for scrutiny of the exercise of these powers. The Delegated Powers Memorandum states that the intended procedure applying to these rules is “not laid, no procedure”. However, the default position provided for by section 27 and 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 is that rules made by the Scottish Ministers under an enactment are made as a Scottish statutory instrument, which is laid before the Parliament.

49. The Scottish Government’s written response to the Committee has clarified that the rules will be laid in the Parliament and published, but not subject to further Parliamentary procedure. In respect of the Scottish Tax Tribunals this rule-making power is proposed to be conferred on the Scottish Ministers for an interim period, until the jurisdiction for devolved tax appeals is intended to be transferred to the proposed new Tribunals for Scotland.

50. The Committee notes that the Scottish Government will bring forward an amendment to paragraph 31 of schedule 2, so that there is provision for the publication of the rules made under that paragraph. This would be consistent with the provision for the rules under paragraph 21 of that schedule. The Committee will consider the provision as amended after Stage 2.
ANNEX

Correspondence with the Scottish Government

On 4 February, the Committee wrote to the Scottish Government as follows:

Section 8 – Ministerial guidance

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Guidance</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>None (but guidance published)</td>
</tr>
</tbody>
</table>

1. Section 8 of the Bill sets out that Ministers may give guidance to Revenue Scotland about the exercise of its functions, and the body must have regard to it. The guidance provided must be published as considered appropriate by Ministers, unless they consider that to do so would impact on the ability to carry out the functions effectively.

2. The Committee asks the Scottish Government:

   • What the purposes of this power are and how the power could be exercised?

   • Why the section provides for the publication of the guidance, but does not provide for a copy of it to be laid before the Parliament?

Section 11(7)(a) - Power to set the period of Revenue Scotland’s first Corporate Plan

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
</tr>
</tbody>
</table>

3. Section 11(7)(a) allows Scottish Ministers to set the period that Revenue Scotland’s first corporate plan will cover.

4. The Delegated Powers Memorandum states that the power is required to specify a planning period to which the corporate plan of Revenue Scotland will relate, of less than 3 years, and that it is intended the planning period of the second plan would start from 1 April 2018. However the scope of the power allows any first planning period to be specified by order, whether less or more than 3 years.

5. The Committee therefore asks the Scottish Government why this power should not be drawn more narrowly, to permit a first planning period of 3 years or less to be specified?
Section 41 – Venue for hearings of the Tax Tribunals
Power conferred on: The President of the Tax Tribunals
Power exercisable by: Determination
Parliamentary procedure: None

6. Section 41 provides that the Tax Tribunals are to sit at such times and in such places as the President of the Tax Tribunals may determine.

7. The Committee notes that a different approach is taken in the Tribunals (Scotland) Bill. Section 56 of that Bill provides that each of the First-tier Tribunal and the Upper Tribunal may be convened at any place in Scotland to hear or decide a case or for any other purpose relating to its functions. That is also subject to any provision made by tribunal rules, as to the question of where in Scotland the Scottish Tribunals are to be convened.

8. The Committee asks the Scottish Government:
   - Why the power in section 41 is proposed?
   - Why the power is formulated differently, as compared to the power in section 56 of the Tribunals (Scotland) Bill to determine the venue and timing of hearings of the First-tier Tribunal and the Upper Tribunal for Scotland?

Section 45(1) – Additional powers- the Tax Tribunals
Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

9. Section 45(1) confers a power on the Scottish Ministers to confer such additional powers on the Tax Tribunals as are necessary or expedient for the proper exercise of their functions.

10. Subparagraph 2(b) provides that the regulations can include provision causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to apply to the making of a relevant Act of Sederunt, as it does to the making of tribunal rules under the Bill. Part 1 established the Scottish Civil Justice Council. The Court of Session must consider any draft civil procedure rules submitted to it by the Council.

11. The Committee asks the Scottish Government:
   - What the purpose of the provision is?
   - Why it is appropriate to be included in regulations under subsection (1), rather than conferring a power to make an Act of Sederunt in relation to the Tax Tribunals to which that Part 1 could be applied, and
   - What “a relevant Act of Sederunt” refers to, as the section does not define this term?
Section 54 – Guidance

Power conferred on: the President of the Tax Tribunals
Power exercisable by: Guidance
Parliamentary procedure: None (no provision to publish)

12. Section 54 provides that the President of the Tax Tribunals may issue guidance about the administration of the Tax Tribunals as appears necessary or expedient to secure that the functions of the tribunals are exercised efficiently and effectively.

13. The Committee asks the Scottish Government:

- Why there is no provision for the publication of the guidance (unlike for instance, section 52(4) on the publication of practice directions) nor for laying a copy before Parliament upon issue, and
- Why, though it is specified in the section that the guidance has the purpose of securing that the functions of the Tax Tribunals are exercised efficiently and effectively, there is no provision that any specified persons have a requirement to have regard to it?

Section 69(3) – Duty to keep and preserve records
Section 70(b) – Preservation of information, etc.

Power conferred on: Revenue Scotland
Power exercisable by: Specification in writing
Parliamentary procedure: None (no provision for publication)

14. Section 69 provides for the duty of a person who is required to make a tax return for a devolved tax, to keep any records needed to enable the person to make a correct and complete return, and to preserve those records. Section 69(2) provides the records must be preserved until the end of the later of the “relevant day” and the date on which an enquiry into the return is completed, or a designated officer no longer has power to enquire into the return.

15. Section 69(3) states that the “relevant day” is the 5th anniversary of the day the return is made or a notice of amendment of the return is given; or any earlier day that may be specified in writing by Revenue Scotland.

16. The duty under section 69 to preserve records may be satisfied by preserving them in any form and by any means. Section 70(b) provides that the duty may also be satisfied by preserving the information contained in the records in any form and by any means. Section 70(b) states that that is subject to any conditions or exceptions that may be specified in writing by Revenue Scotland. This enables Revenue Scotland to specify the form or means by which information contained in tax records may require to be kept.
17. In relation to both sections 69(3) and 70(b) therefore, the Committee asks the Scottish Government:

- Why these powers are appropriate in principle and why they should be exercisable by Revenue Scotland (rather than the Scottish Ministers),
- Why the powers should be exercisable by informal written specification which is not subject to Parliamentary procedure, rather than a form of subordinate legislation, and
- Why there is no provision for appropriate publication of the written specifications?

Section 102 - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure if textually amending primary legislation, otherwise negative procedure

18. Section 100 provides that unjust enrichment would be a defence against a claim for repayment of tax. Section 102 enables regulations to be made under which certain reimbursement arrangements may count for the purposes of section 100 - so do not allow Revenue Scotland to defend a repayment claim on the ground of unjust enrichment.

19. These regulations may provide for the conditions the reimbursement arrangements must comply with, and for other arrangements to be disregarded for the purposes of section 100.

20. Section 103 provides that the regulations may make provision for penalties for breach of regulations under section 102.

21. The Committee asks the Scottish Government:

- Why the power in section 103(2) enables any amount of penalty (including daily penalties) to be imposed by regulation; and so why the power could not be drawn more narrowly, to provide for suitable maximum penalties;
- Given the width of the power in that respect, whether the affirmative procedure could be a more suitable level of scrutiny of the regulations than the negative procedure? (It is noted in comparison that, for example, the powers to change fixed amounts of penalty in section 170(1) are subject to the affirmative procedure).
Section 150(2) – Power to make further provision about penalties for failure to make a tax return

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

22. The power at Section 150(2) allows the Ministers to make further provision about penalties for a failure to make a tax return on or before the filing date (as defined in section 73(3) of the Bill).

23. The Committee asks the Scottish Government:

- Why the provision enables any amount of penalty (including fixed or daily penalties) to be imposed by regulation; and so why the power could not be drawn more narrowly to provide initially for suitable maximum penalty amounts, in relation to the 2 taxes which are currently devolved;

- Why, similarly, the Bill could not specify initially the circumstances in which a penalty is payable, where a person fails to make a tax return by the filing date, in respect of the 2 devolved taxes.

Section 151(2) – Power to make further provision about penalties for failure to pay tax on or before the due date

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

24. The power at Section 151(2) enables the Ministers to make further provision about penalties for a failure to pay tax on or before the due date, including the circumstances in which such a penalty is payable, penalty amounts and types and also arrangements for issuing, appealing and enforcing such a penalty.

25. The Committee asks the Scottish Government:

- Why, as with the previously discussed power at Section 150(2), the provision enables any amount of penalty (including fixed or daily penalties) to be imposed by regulation; and so why the power could not be drawn more narrowly to provide initially for suitable maximum penalty amounts, in relation to the 2 taxes which are currently devolved;

- Why, again, the Bill could not specify initially the circumstances in which a penalty is payable, where a person fails to pay tax by the due date, in respect of the 2 devolved taxes?
Section 160(7) – Power to make further provision about penalties for errors in taxpayer documents

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

Section 162(4) – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

26. Section 160(7) allows the Ministers to make further provision about penalties applicable when a person submits a “relevant document” containing one or more errors, which amounts to, or leads to, an understated tax liability, or a false or inflated claim for relief. The error must be careless or deliberate.

27. Scottish Ministers have power to make further provision, specifying what “relevant documents” are, the penalty amounts and also arrangements for issuing, appealing and enforcing such a penalty. Similarly, Section 162(4) allows the Ministers to make further provision about penalties applicable when a person submits a “relevant document” containing one or more errors which understate the tax liability, or provide a false or inflated claim for relief - but where the error is attributable to another person. A penalty is payable by that other person, where they have deliberately supplied false information or withheld information from the person who submitted the document.

28. With regard to both sections 160(7) and 162(4) the Committee asks the Scottish Government:

- Why the provisions enable any amount of penalty to be imposed by regulation; and so why the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts;

- Why the power is appropriate to specify “relevant documents” which amount or lead to the circumstances set out in sections 160(2) or 162(1) arising, and how this power could be exercised?

Section 163(3) – Power to make further provision about penalties for failure to notify Revenue Scotland about an assessment which understates the tax liability

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative procedure

29. Section 163(3) allows the Ministers to make further provision about penalties applicable when a person fails to take reasonable steps to notify Revenue
Scotland about a Revenue Scotland assessment which understates the tax liability.

30. The Committee asks the Scottish Government why the power enables any amount of penalty to be imposed by regulation; and so why the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Section 181(2) - Power to make further provision about penalties for failure to register for tax

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
</tr>
</tbody>
</table>

31. Section 181(2) allows the Ministers to make further provision about penalties for a failure to register for the Scottish landfill tax. The Ministers can make further provision specifying the penalty amounts, and the arrangements for issuing, appealing and enforcing such a penalty.

32. The Committee asks the Scottish Government why this power enables any amount of penalty to be imposed by regulation; and so why the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Schedule 2 paragraph 21(1)- Conduct rules for the members of the Tax Tribunals

<table>
<thead>
<tr>
<th>Power conferred on:</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>rules</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Laid- no procedure (suggested for clarification)</td>
</tr>
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</table>

Schedule 2 paragraph 31- Rules for the procedures at a fitness assessment tribunal

<table>
<thead>
<tr>
<th>Power conferred on:</th>
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</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>rules</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Laid, no procedure (suggested for clarification)</td>
</tr>
</tbody>
</table>

33. The power at Schedule 2 paragraph 21(1) will enable provisions in connection with the investigation and determination of any matter concerning the conduct of the members of the Tax Tribunals, and the review of any such determination.

34. A similar power at Schedule 2 paragraph 31 enables the procedures to be followed at a fitness assessment tribunal to be set out in rules. The Ministers will have responsibility for constituting a fitness assessment tribunal, when requested to do so by the President of the Tax Tribunals.
35. The Delegated Powers Memorandum states that the intended procedure applying to these rules is “not laid, no procedure”. However, the default position provided for by section 27 and 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 is that rules made by the Scottish Ministers under an enactment are made as a Scottish statutory instrument, which is laid before the Parliament.

36. With regard to both Schedule 2 paragraph 21(1) and Schedule 2 paragraph 31 the Committee asks the Scottish Government:

- For clarification of the Parliamentary procedure intended to apply to these rules, and whether the provisions achieve that procedure.
- If it is proposed that the rules are not to be laid, why is that more appropriate than the rules being laid (and made by Scottish statutory instrument)?
- Why is there provision for publication of the rules under paragraph 21, but not it appears under paragraph 31?

On 14 February, the Scottish Government responded as follows:

Section 8 – Ministerial guidance

The Committee asked the Scottish Government:

- What the purposes of this power are and how the power could be exercised?
- Why the section provides for the publication of the guidance, but does not provide for a copy of it to be laid before the Parliament?

Scottish Government response: The arrangements set out in Part 2 of the Bill are designed to provide appropriate checks and balances as between Revenue Scotland, the Scottish Parliament and Scottish Ministers. These include providing for the independence of Revenue Scotland (section 7) and establishing it as an office-holder in the Scottish Administration which is accountable to Parliament rather than Ministers (which will be achieved by means of a section 104 order under the Scotland Act 1998). The power for Scottish Ministers to issue guidance to Revenue Scotland reflects the critical relationship between Revenue Scotland’s functions in respect of the collection and management of devolved taxes and the Scottish Government’s responsibility for public finances. The power to issue guidance could be exercised in respect of either Revenue Scotland’s general or particular functions as set out in sections 3(1) and 3(2), which include for example protecting the revenue against tax fraud and tax avoidance in respect of which Scottish Ministers have an obvious interest. Guidance under section 8 is not binding on Revenue Scotland.

Given the importance of Revenue Scotland’s role in relation to the collection and management of the devolved taxes, the Government accepts that a copy of any guidance issued by Scottish Ministers to Revenue Scotland should be laid before Parliament as a matter of course, subject to the proviso set out in section 8(4).
The Government will therefore bring forward an amendment to that effect at Stage 2.

Section 11(7)(a) – Power to set the period of Revenue Scotland’s first Corporate Plan

The Committee asked the Scottish Government why this power should not be drawn more narrowly, to permit a first planning period of 3 years or less to be specified?

Scottish Government response: A 3 year planning period is standard practice for public body corporate plans, and the Government considers that that is therefore appropriate for Revenue Scotland’s first corporate plan. As set out in section 11(5), that does not of course preclude Revenue Scotland from revising the corporate plan during the period to which the plan relates if it so wishes.

Section 41 – Venue for hearings of the Tax Tribunals

The Committee asked the Scottish Government:

- Why the power in section 41 is proposed?
- Why the power is formulated differently, as compared to the power in section 56 of the Tribunals (Scotland) Bill to determine the venue and timing of hearings of the First-tier Tribunal and the Upper Tribunal for Scotland?

Scottish Government response: The Government’s intention is to align the relevant provisions of the Revenue Scotland and Tax Powers Bill ("the Bill") which establish the Scottish Tax Tribunals as closely as possible to the corresponding provisions of the Tribunals (Scotland) Bill. The Government therefore proposes to amend section 41 of the Bill to bring it into line with the corresponding provision to which the Committee has drawn attention in section 56 of the Tribunals (Scotland) Bill.

Section 45(1) – Additional powers- the Tax Tribunals

The Committee asked the Scottish Government:

- What the purpose of the provision is?
- Why it is appropriate to be included in regulations under subsection (1), rather than conferring a power to make an Act of Sederunt in relation to the Tax Tribunals to which that Part 1 could be applied, and
- What “a relevant Act of Sederunt” refers to, as the section does not define this term?
Scottish Government response: The purpose of section 45 is to ensure that the Scottish Tax Tribunals have all the necessary powers and functions for the proper exercise of their functions, and consequently to provide the flexibility to confer additional powers on the Tribunals by regulations should that prove to be necessary. The provisions in section 45(2) of the Bill are identical to the corresponding provisions in section 60(2) of the Tribunals (Scotland) Bill which has now completed Stage 2 scrutiny by the Parliament.

Section 54 – Guidance

The Committee asked the Scottish Government:

- Why there is no provision for the publication of the guidance (unlike for instance, section 52(4) on the publication of practice directions) nor for laying a copy before Parliament upon issue, and

- Why, though it is specified in the section that the guidance has the purpose of securing that the functions of the Tax Tribunals are exercised efficiently and effectively, there is no provision that any specified persons have a requirement to have regard to it?

Scottish Government response: The guidance provided for by section 54 relates to the administration of the Tax Tribunals rather than the practice and procedures of the Tax Tribunals, which are provided for in section 52. While it is appropriate that directions relating to practice and procedures should be published, the Government does not consider it necessary that guidance issued by the President of the Tax Tribunals relating to purely administrative matters should be published and laid before Parliament. However the Government accepts the Committee’s suggestion that section 54 of the Bill should be amended to make it clear that members and administrative staff of the Scottish Tax Tribunals should have to have regard to any such guidance.

Section 69(3) – Duty to keep and preserve records

Section 70(b) – Preservation of information, etc.

The Committee asked the Scottish Government:

- Why these powers are appropriate in principle and why they should be exercisable by Revenue Scotland (rather than the Scottish Ministers),

- Why the powers should be exercisable by informal written specification which is not subject to Parliamentary procedure, rather than a form of subordinate legislation, and

- Why there is no provision for appropriate publication of the written specifications?
Scottish Government response: The power in section 69(3) is designed to allow Revenue Scotland, in particular cases, to accede to requests from the taxpayer that it is not necessary to keep records for the full period of 5 years specified in section 69(2)(a), for example if the records are voluminous and the case has been satisfactorily resolved. Since this power is in the nature of a discretion for Revenue Scotland to exercise flexibility in the taxpayer’s favour in particular cases, or categories of cases, the Government does not consider it to be necessary or appropriate for the power either to be exercisable by Ministers or subject to Parliamentary procedure.

As the power in section 70(b) amounts to enabling Revenue Scotland to put a general gloss on a statutory duty imposed by Parliament, the Government agrees that this power, which is designed to provide flexibility in the light of experience, should be exercisable by regulations made by Scottish Ministers subject to negative procedure. An amendment to that effect will therefore be brought forward at Stage 2.

Section 102 - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant

The Committee asked the Scottish Government:

- Given the width of the power in that respect, whether the affirmative procedure could be a more suitable level of scrutiny of the regulations than the negative procedure? (It is noted in comparison that, for example, the powers to change fixed amounts of penalty in section 170(1) are subject to the affirmative procedure).

Scottish Government response: The Government accepts the Committee’s suggestion that the power in section 102 should be subject to affirmative procedure and intends to propose this as an amendment at Stage 2.

The Committee also asked the following related questions:

Section 150(2) – Power to make further provision about penalties for failure to make a tax return;

- Why, similarly, the Bill could not specify initially the circumstances in which a penalty is payable, where a person fails to make a tax return by the filing date, in respect of the 2 devolved taxes?

Section 151(2) – Power to make further provision about penalties for failure to pay tax on or before the due date

- Why, again, the Bill could not specify initially the circumstances in which a penalty is payable, where a person fails to pay tax by the due date, in respect of the 2 devolved taxes?
Sections 160(7) and 162(4) – Power to make further provision about penalties for errors in taxpayer documents, and power to make further provision about penalties for errors in taxpayer documents attributable to another person

Why the power is appropriate to specify “relevant documents” which amount or lead to the circumstances set out in sections 160(2) or 162(1) arising, and how this power could be exercised?

Scottish Government response: In the light of the Committee’s comments, the Government will consider further and consult stakeholders on the scope for including more detail in the Bill regarding the circumstances in which the penalties to which reference is made in sections 150(2) and 151(2) should be payable, and also in respect of the “relevant documents” referred to in sections 160(7)(a) and 162(4)(a).

The Committee also asked the Scottish Government the following questions all of which relate specifically to the amount of penalties and are therefore dealt with together:

Section 102 - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant

- Why the power in section 103(2) enables any amount of penalty (including daily penalties) to be imposed by regulation; and so why the power could not be drawn more narrowly, to provide for suitable maximum penalties?

Section 150(2) – Power to make further provision about penalties for failure to make a tax return

- Why the provision enables any amount of penalty (including fixed or daily penalties) to be imposed by regulation; and so why the power could not be drawn more narrowly to provide initially for suitable maximum penalty amounts, in relation to the 2 taxes which are currently devolved?

Section 151(2) – Power to make further provision about penalties for failure to pay tax on or before the due date

- Why, as with the previously discussed power at Section 150(2), the provision enables any amount of penalty (including fixed or daily penalties) to be imposed by regulation; and so why the power could not be drawn more narrowly to provide initially for suitable maximum penalty amounts, in relation to the 2 taxes which are currently devolved?
Section 160(7) – Power to make further provision about penalties for errors in taxpayer documents; and

Section 162(4) – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

- Why the provisions enable any amount of penalty to be imposed by regulation; and so why the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Section 163(3) – Power to make further provision about penalties for failure to notify Revenue Scotland about an assessment which understates the tax liability

- The Committee asks the Scottish Government why the power enables any amount of penalty to be imposed by regulation; and so why the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Section 181(2) - Power to make further provision about penalties for failure to register for tax

- The Committee asks the Scottish Government why this power enables any amount of penalty to be imposed by regulation; and so why the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Scottish Government Response: Having considered the views of the Committee and consulted further with stakeholders, the Government is minded to bring forward amendments at Stage 2 specifying all initial penalty amounts on the face of the Bill. Following Royal Assent and commencement, any subsequent changes to penalty amounts will be set out in secondary legislation subject to affirmative procedure.

Schedule 2 paragraph 21(1) - Conduct rules for the members of the Tax Tribunals

Schedule 2 paragraph 31 - Rules for the procedures at a fitness assessment tribunal

The Committee asked the Scottish Government:

- For clarification of the Parliamentary procedure intended to apply to these rules, and whether the provisions achieve that procedure.

- If it is proposed that the rules are not to be laid, why is that more appropriate than the rules being laid (and made by Scottish statutory instrument)?
• Why is there provision for publication of the rules under paragraph 21, but not it appears under paragraph 31?

Scottish Government response: The corresponding rules relating to conduct and fitness assessment in the Tribunals (Scotland) Bill are made by Act of Sederunt and are therefore published but not subject to Parliamentary procedure. In respect of the Scottish Tax Tribunals which will be established by Part 4 of the Bill, the rule-making power is vested in Scottish Ministers for the interim period until jurisdiction for devolved tax appeals is transferred to the new Tribunals for Scotland. However the Government accepts that in both cases the rules should be published and will accordingly bring forward an amendment to Schedule 2, paragraph 31 to that effect.
Revenue Scotland and Tax Powers Bill: The Committee considered its approach to the delegated powers provisions in this Bill at Stage 1 and agreed to seek further information from the Scottish Government.
Revenue Scotland and Tax Powers Bill: Stage 1

11:11

The Convener: Under item 4 the committee will consider the delegated powers in the Revenue Scotland and Tax Powers Bill at stage 1. The committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that those questions are raised in written correspondence. The responses that are received will help to inform a draft report on the bill. The committee will have the opportunity to consider the responses at a future meeting before the draft report is considered.

The committee may wish to note that, in keeping with standing orders requirements, the delegated powers memorandum covers only powers to make subordinate legislation. Therefore, the powers to issue guidance that are contained in the bill are not discussed in the delegated powers memorandum. The committee may wish to seek further explanation on those powers from the Scottish Government.

Section 8 of the bill sets out that ministers may give guidance to revenue Scotland about the exercise of its functions, to which the body must have regard. The guidance that is provided must be published as is considered appropriate by ministers, unless they consider that to do so would impact on the ability to carry out the functions effectively.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I understand that there may be circumstances in which the publication of guidance would inhibit revenue Scotland’s ability to recover all due tax. However, as part of the Parliament’s consideration of whether it is appropriate for ministers to have the decision-making power not to publish certain parts of the guidance, it would be appropriate for us to ask ministers to help us to understand under what circumstances they would exercise that discretion not to publish guidance to revenue Scotland.

The Convener: Indeed. Does the committee agree to ask the Government what the purposes of the power are and how it could be exercised, and why the section provides for the publication of the guidance but does not provide for a copy of it to be laid before the Parliament?

Members indicated agreement.

The Convener: Section 11(7)(a) allows the Scottish ministers to set the period that revenue Scotland’s first corporate plan will cover. The corporate plan will set out revenue Scotland’s
main objectives, the outcomes that would demonstrate achievement of those objectives and the activities that revenue Scotland expects to undertake. The delegated powers memorandum states that the power is required to specify a planning period, to which the corporate plan of revenue Scotland will relate, of less than three years, and that it is intended that the planning period of the second plan will start from 1 April 2018. However, the scope of the power allows any first planning period to be specified by order, whether it is less or more than three years. Does the committee agree to ask the Scottish Government why the power should not be drawn more narrowly to permit a first planning period of three years or less to be specified?

Members indicated agreement.

The Convener: Section 41 provides that

“The Tax Tribunals are to sit at such times and in such places as the President of the Tax Tribunals may determine.”

The committee may wish to note that a different approach is taken in the Tribunals (Scotland) Bill for the first-tier tribunal and upper tribunal for Scotland. Section 56 of the Tribunals (Scotland) Bill provides that the first-tier tribunal and the upper tribunal may be convened at any place in Scotland to hear or decide a case, or for any other purpose relating to its functions. That is subject to any provision made by the tribunal rules as to the question of where in Scotland the Scottish tribunals are to be convened.

Does the committee agree to ask the Scottish Government why the power in section 41 is proposed and why it is formulated differently from the power in section 56 of the Tribunals (Scotland) Bill to determine the venue and timing of hearings of the first-tier tribunal and the upper tribunal for Scotland?

Members indicated agreement.

11.15

The Convener: Section 45(1) confers a power on the Scottish ministers to confer “such additional powers” on the tax tribunals

“as are necessary or expedient for the proper exercise of their functions.”

Section 45(2)(b) provides that the regulations can include provision

“causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ... to apply to the making of a relevant Act of Sederunt as it does to the making of tribunal rules”

under the bill. Part 1 of that act established the Scottish Civil Justice Council, and the Court of Session must consider any draft civil procedure rules submitted to it by that council.

Does the committee agree to ask the Scottish Government what the purpose of the provision is; why it is appropriate to include it in regulations under section 45(1), rather than to confer a power to make an act of sederunt in relation to the tax tribunals to which that part 1 could be applied; and what “relevant Act of Sederunt” refers to, as the section does not define that term?

Members indicated agreement.

The Convener: Section 54 provides that

“The President of the Tax Tribunals may issue guidance such about the administration of the tax tribunals as appears ... necessary or expedient”

to secure that

“the functions of the tribunals are exercised efficiently and effectively.”

Does the committee agree to ask the Scottish Government why there is no provision for the publication of the guidance—unlike, for instance, in section 52(4), on the publication of practice directions—nor for laying a copy before the Parliament on issue; and why, although it is specified in the section that the guidance has the purpose of securing that the functions of the tax tribunals are exercised efficiently and effectively, there is no provision that any specified persons are required to have regard to it?

Members indicated agreement.

The Convener: Section 69 provides for the duty of a person who is required to make a tax return for a devolved tax to

“keep any records that may be needed to enable the person to make a correct and complete return, and ... to preserve those records”.

Section 69(2) provides that

“The records must be preserved until the end of the later of the relevant day and the date on which ... an enquiry into the return is completed, or ... a designated officer no longer has power to enquire into the return.”

Section 69(3) states that the “relevant day” is

“the fifth anniversary of the day on which the return is made or,“

a notice of the amendment of the return is given, or

“any earlier day that may be specified in writing by revenue Scotland.”

The duty under section 69 to preserve records may be satisfied by preserving them in any form and by any means.

Section 70(b) provides that the duty may also be satisfied by preserving the information that is contained in the records in any form and by any means. Section 70(b) states that that is subject to any conditions or exceptions that may be specified in writing by revenue Scotland, which enables...
revenue Scotland to specify the form or means by which information that is contained in tax records may require to be kept.

In relation to both sections 69(3) and 70(b), does the committee agree to ask the Scottish Government why those powers are appropriate in principle and why they should be exercisable by revenue Scotland rather than by the Scottish ministers; why the powers should be exercisable by informal written specification, which is not subject to parliamentary procedure, rather than through a form of subordinate legislation; and why there is no provision for appropriate publication of the written specifications?

**Members indicated agreement.**

**The Convener:** Unjust enrichment may occur where a repayment of tax is made to a taxpayer, but the taxpayer has not ultimately borne the cost of the tax. Section 100 provides that unjust enrichment would be a defence against a claim for repayment of tax. Section 102 enables regulations to be made under which certain reimbursement arrangements may count for the purposes of section 100, and so do not allow revenue Scotland to defend a repayment claim on the ground of unjust enrichment. The regulations may provide for the conditions the reimbursement arrangements must comply with and for other arrangements to be disregarded for the purposes of section 100. Section 103 provides that the regulations may make provision for penalties for a breach of regulations under section 102.

Does the committee agree to ask the Scottish Government why the power in section 103(2) enables any amount of penalty, including daily penalties, to be imposed by regulation; why, therefore, the power could not be drawn more narrowly to provide for suitable maximum penalties; and, given the width of the power in that respect, whether the affirmative procedure would provide a more suitable level of scrutiny of the regulations than the negative procedure? It is noted by way of comparison that, for example, the powers to change fixed amounts of penalty in section 170(1) are subject to the affirmative procedure.

**Stewart Stevenson:** In some parts of what is before us, an amount is to be specified in primary legislation while, in other parts, the matter will be left to secondary legislation. It might be more satisfactory to have a consistent approach in which an amount is specified in primary legislation, albeit with the power to modify that through secondary legislation, or in which all amounts are excluded from primary legislation and are specified in secondary legislation instead. I hope that putting that general observation into the *Official Report* will be sufficient to carry it forward.

**The Convener:** I hope so, too, and I think that our questions, if members are happy for us to ask them, will allow the Government to answer that very point. Are members agreed?

**Members indicated agreement.**

**The Convener:** The power in section 150(2) allows ministers to make further provision for penalties for a failure to make a tax return on or before the filing date, as defined in section 73(3). Further provision can include the circumstances in which such a penalty is payable, penalty amounts and types and arrangements for issuing, appealing and enforcing such a penalty.

Does the committee agree to ask the Scottish Government why the provision enables any amount of penalty, including fixed or daily penalties, to be imposed by regulation; why, therefore, the power could not be drawn more narrowly to provide initially for suitable maximum penalty amounts in relation to the two taxes that are currently devolved; and why, similarly, the bill could not specify initially the circumstances in which a penalty is payable, where a person fails to make a tax return by the filing date in respect of the two devolved taxes?

**Members indicated agreement.**

**The Convener:** The power in section 151(2) enables ministers to make further provision for penalties for a failure to pay tax on or before the due date, including the circumstances in which such a penalty is payable, penalty amounts and types and arrangements for issuing, appealing and enforcing such a penalty.

Does the committee agree to ask the Scottish Government why, as with the previously discussed power in section 150(2), the provision enables any amount of penalty, including fixed or daily penalties, to be imposed by regulation; why, therefore, the power could not be drawn more narrowly to provide initially for suitable maximum penalty amounts in relation to the two taxes that are currently devolved; and why, again, the bill could not specify initially the circumstances in which a penalty is payable, where a person fails to pay tax by the due date in respect of the two devolved taxes?

**Members indicated agreement.**

**The Convener:** Section 160(7) allows ministers to make further provision for penalties that apply when a person submits a "relevant document" that contains one or more errors amounting or leading to an understated tax liability or a false or inflated claim for relief. The error must be careless or deliberate, and a penalty is payable for each error or inaccuracy in the document. The Scottish ministers have the power to make further provision, specifying what the "relevant
documents” are, the penalty amounts and the arrangements for issuing, appealing and enforcing such a penalty.

Similarly, section 162(4) allows ministers to make further provision on the penalties that are applicable when a person submits a “relevant document” containing one or more errors that understate the tax liability or provide a false or inflated claim for relief but where the error is attributable to another person. A penalty is payable by the other person where they have deliberately supplied false information or withheld information from the person who submitted the document. Ministers have the power to make further provision specifying what the “relevant documents” are for the purposes of sections 160(7) and 162(4), the penalty amounts and the arrangements for issuing, appealing and enforcing the penalty.

With regard to both section 160(7) and section 162(4), does the committee agree to ask the Scottish Government why those provisions enable any amount of penalty to be imposed by regulation; why, therefore, the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts; why the power is appropriate in relation to specifying “relevant documents” that amount or lead to the circumstances set out in sections 160(2) or 162(1); and how that power could be exercised?

Stewart Stevenson: Looking at the way in which the bill is drafted, I have a minor point to raise, but it is a point about which I have some curiosity. The person who is paying the tax is designated as “person P” and the person who is creating the error is designated as “person T”. I am not clear why those letters were chosen—they seem to bear no relationship to anything sensible. I just wanted to put that on the record, but I do not think that we should take any action on it.

The Convener: I am grateful for your observations, but I am not quite sure what I am going to do with them. Nonetheless, I have to ask the committee whether it happy to ask the Government those questions. Is that agreed?

Members indicated agreement.

The Convener: Section 163(3) allows ministers to make further provision about the penalties that are applicable when a person fails to take reasonable steps to notify revenue Scotland about a revenue Scotland assessment that understates the tax liability. Ministers can make further provision specifying what “relevant”—devolved—taxes are for the purposes of that penalty. They may also prescribe the penalty amounts and the arrangements for issuing, appealing and enforcing such a penalty.

Does the committee agree to ask the Scottish Government why those provisions enable any amount of penalty to be imposed by regulation; and why, therefore, the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Members indicated agreement.

The Convener: Section 181(2) allows ministers to make further provision about penalties for a failure to register for the Scottish landfill tax. Ministers can make further provisions specifying the penalty amounts and the arrangements for issuing, appealing and enforcing such a penalty.

Does the committee agree to ask the Scottish Government why that power enables any amount of penalty to be imposed by regulation; and why, therefore, the powers could not be drawn more narrowly to provide initially for suitable maximum penalty amounts?

Members indicated agreement.

The Convener: The power in paragraph 21(1) of schedule 2 will enable provisions in connection with “the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals,” and “the review of any such determination.”

Paragraph 21(2) makes provision about what the rules may cover in particular. Paragraph 22(b) provides that the rules are to be published in such manner as ministers may determine. Paragraph 23 sets out the possible consequences of an investigation.

A similar power in paragraph 31 of schedule 2 enables the procedures to be followed at a fitness assessment tribunal to be set out in rules. Ministers will have responsibility for constituting a fitness assessment tribunal, when requested to do so by the president of the tax tribunals. The function of a fitness assessment tribunal is to assess whether a person is fit to hold the position of member of the tax tribunals.

The delegated powers memorandum states that the intended procedure applying to these rules is “not laid, no procedure”. However, the default position provided for by sections 27 and 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 is that rules made by the Scottish ministers under an enactment are made as a Scottish statutory instrument that is laid before the Parliament.

With regard to both paragraph 21(1) and paragraph 31 of schedule 2, does the committee agree to ask the Scottish Government for clarification of the parliamentary procedure that is
intended to apply to those rules and whether the provisions achieve that procedure; if it is proposed that the rules are not to be laid, why that is more appropriate than their being laid and made by Scottish statutory instrument; and why there is provision for publication of the rules under paragraph 21, but not, it appears, under paragraph 31?

Members indicated agreement.

The Convener: That completes a lengthy list of questions on a bill, and I hope that we will manage to change the procedures so that we do not need to do such exercises terribly often. I am looking at the convener of the Standards, Procedures and Public Appointments Committee as I say that.

Stewart Stevenson: Indeed, convener.

John Scott (Ayr) (Con): It is important to have those matters firmly on the record, for the avoidance of doubt.

The Convener: There is no doubt that we would get those matters on the record, but we may be able to do it in other ways, without my having to read them out. That is what I think is being proposed. I thank members for their patience.
ANNEXE B: ORAL EVIDENCE TO THE FINANCE COMMITTEE

4th Meeting, 2014 (Session 4) Wednesday 5 February 2014
Professor Sir James Mirrlees.

5th Meeting, 2014 (Session 4) Wednesday 19 February 2014
Colin Miller, Tax Management Bill Team Leader, and John St Clair, Senior Principal Legal Officer, Scottish Government; Nicky Harrison, Chief Operating Officer, Revenue Scotland.

6th Meeting, 2014 (Session 4) Wednesday 26 February 2014
Crawford Beveridge, Chair, and Professor Andrew Hughes Hallett, Member, Fiscal Commission Working Group; Professor John Kay.

7th Meeting, 2014 (Session 4) Wednesday 5 March 2014
Elspeth Orcharton, Director, Corporate and International Taxation, and Charlotte Barbour, Head of Taxation, The Institute of Chartered Accountants of Scotland; John Whiting, Tax Policy Director, Chartered Institute of Taxation.

8th Meeting, 2014 (Session 4) Wednesday 12 March 2014
Philip Simpson, Advocate, and James Wolffe, QC, Dean of Faculty, Faculty of Advocates; and Alan Barr, Partner, Brodies LLP, The Law Society of Scotland; Isobel d'Inverno, Convener of the Tax Law Committee, The Law Society of Scotland.

9th Meeting, 2014 (Session 4) Wednesday 19 March 2014
Dave Moxham, Deputy General Secretary, Scottish Trades Union Congress; Joanne Walker, Technical Officer, Low Incomes Tax Reform Group.

10th Meeting, 2014 (Session 4) Wednesday 26 March 2014
Dr Heidi Poon, Tribunal Member and Tax Law Lecturer, The University of Edinburgh; Justine Riccomini, Independent HR and employment taxes consultant.

11th Meeting, 2014 (Session 4) Wednesday 2 April 2014
Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, Scottish Government; John Kenny, Head of National Operations, Scottish Environment Protection Agency; John King, Director of Registration, Registers of Scotland; John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth; Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, and Colin Miller, Tax Management Bill Team Leader, Scottish Government.
09:30

The Convener: Item 2 is an evidence-taking session with Professor Sir James Mirrlees as part of our stage 1 consideration of the Revenue Scotland and Tax Powers Bill. I welcome him to the meeting and invite him to make a short opening statement.

Professor Sir James Mirrlees: It is a pleasure and very interesting to be here. I wrote a short submission and, when I read it through again, I realised that I promised in it to refer to a fiscal commission working group report, but I did not do that. That is a good point at which to begin.

The FCWG used rather different terms from Adam Smith’s four maxims. We said that good criteria for taxation are simplicity, stability, neutrality and flexibility. We did not mention progressive taxation, although, if anyone had asked, we would have said that we were certainly in favour of it.

There is an interesting contrast between those two approaches. Adam Smith was right to put a lot of emphasis on certainty, which was the first thing that I thought about. Setting up a tax system that will be in many ways like the UK’s existing tax system will achieve a fair degree of certainty. It is probably a good thing that people should expect the tax system to continue to be administered in a way that is similar to what they have been used to. Changes can be made, but it is important to achieve the ideal of certainty that enables people to make decisions with a good sense of whether they will pay taxes on particular transactions. Certainty is achieved partly through people being used to practices.

As an academic economist, I have been intrigued by the way in which tax rates generally do not change much from one party to another. I think that the difference between a 40 per cent tax rate and a 50 per cent tax rate is not very large. It is as though an implicit agreement has been made not to change rates too rapidly. That is rather difficult to get into legislation; it must be a kind of understanding.

Members have probably gathered from the tone of my submission that, although I think that the bill does not achieve a lot of certainty about what taxes will be and how they will apply, that is right, because such certainty probably cannot be achieved directly by legislation. The difference between the framework that is set up in the bill, which will become an act, and the exact numbers that describe the tax rates and penalties, which
will be set in regulations, makes a lot of sense. That is the first point that I made in my submission.

There are other points but I assume that you do not want me to read out my evidence, since I know that it has been circulated.

The Convener: We all have copies of your evidence but if there is anything that you want to accentuate or add, we would be more than happy for you to do so.

Sir James Mirrlees: In talking about the convenience of taxing, I did not give sufficient credit to the plan for a great deal of information, for example in property transactions, to be entered digitally. That will be a tremendous advance in the simplicity of paying taxes, and most people I know greatly appreciate that. Digital entry is intended to be part of the whole system, but I did not mention that in paragraph 6 of my submission in which I talk about ways of increasing convenience.

I also mentioned the issue of how rapidly people can complete tax returns. That may be a bit harder to address if digital entry is being considered, partly because it is something that people often do several times. On reflection, that point may not be so relevant to the two devolved taxes that the committee is considering but I wanted to extend it slightly.

I also underline that the fiscal commission working group put a lot of emphasis on the criterion of neutrality. We put a lot of emphasis on that in the Mirrlees review of taxation, too. Neutrality is certainly a desirable feature, but exactly what it means seems to vary a lot from one tax rate to another. It seems to be something that, again, cannot be handled by very general legislation. It is something to consider when we talk about more specific taxes, such as the land and buildings transaction tax.

I will not say any more at the moment, convener.

The Convener: That is fine. What usually happens at the Finance Committee is that I ask some opening questions just to kick us off and then I allow committee colleagues to come in with their own questions. Some members have already indicated that they want to come in.

I would first like to ask you about the general anti-avoidance rule. We have had some informal sessions with a number of organisations and, according to the papers that they have given us informally, that issue has been highlighted to them. You say that your

"sympathies are very much with this measure"

but that you see

"possible difficulties"

with it. You point out that, in section 58 of the bill, one of the criteria for identifying tax avoidance is that

"obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement."

Given that tax avoidance galls many members of the public, we obviously want to ensure that the legislation is fairly robust in that direction. Will you expand on your thoughts on that issue?

Sir James Mirrlees: I took that example because I think that, in the case of a property transaction tax, if we do not have proportional taxation of the value of the sale, there is clearly an incentive to split the sale into parts, each of which will attract the lowest possible proportional tax.

In my very limited experience of these transactions, I have never come across that being done. It cannot easily be done for a dwelling-house in Britain, for example, but the incentive to do it is very great when, as in the UK currently, the tax rate switches from 1 to 4 per cent of the value of the property when we go over the threshold.

An arrangement in which separate cheques are paid for different parts of the property simultaneously is something that we would want to rule as clear tax avoidance. I have no difficulty with that, but there could be good practical reasons why someone would gradually buy different parts of a property—it might be made up of a lot of different houses, for example. The difficulty there is how the plot should be defined.

My concern in relation to the anti-avoidance rule is the reference to just one of the purposes being to reduce taxation. That will frequently happen: if someone is thinking of alternative ways of doing something, without being too artificial about it, they will naturally try to keep the tax low. After all, you would not do artificial things that would increase your tax.

I think that there is a difficulty in drawing the line if the anti-avoidance rule refers to one of the purposes of an arrangement being to reduce tax. There might be entirely reasonable reasons for gradually buying different parts of a property, such as not being able to borrow enough money to buy the whole site straight away and having to wait several years to buy the rest of it. They would be perfectly legitimate, and we would probably not want to apply the rule in that case. The problem arises from the somewhat unreasonable structure of a tax that is not proportional.

In my submission, I mentioned one tax that is not explicitly under consideration, which is customs duty. I was thinking of the well-known case of people taking a van across to France, filling it with wine and bringing it back duty free. If it is meant to be a year's consumption for the family,
it will be regarded as being perfectly legitimate, but it would clearly breach the anti-avoidance rule if it applied. One of the main purposes of making a short trip to fill up the van is to reduce the tax paid.

I suppose that that is an extreme case, and too much might have been allowed. However, we are talking about areas in which there should be explicit legislation or regulation that sets out when tax should be paid rather than just a general rule that could catch everything. The rule, therefore, struck me as too strong.

The Convener: You say in your submission:

“It is reasonable to have progressive taxes on income, at least in the upper ranges; but not on property transactions”.

Why do you take that view? I take that as meaning that someone who is selling a house at £100,000 pays the same kind of transaction fee as someone who is selling a house for £1 million. A lot of people might think that that is not fair. What is your thinking on that?

Sir James Mirrlees: I certainly meant that the tax that is paid should be proportional to the value of the property.

The Convener: Okay. It is just that your submission says:

“It is reasonable to have progressive taxes on income, at least in the upper ranges; but not on property transactions”.

Perhaps I have not interpreted it properly.

Sir James Mirrlees: When I referred to “progressive taxes”, I was thinking of a system in which the rate of tax increases in the same way as it does for income tax.

The Convener: That is fine. That will happen under LBTT anyway. We already have that in the system and it will be as you suggest it should be.

Sir James Mirrlees: So LBTT is proportional.

The Convener: Yes. That is the intention. Apologies for that misinterpretation.

Sir James Mirrlees: That is fine. It is a step forward.

The Convener: The aim is to get rid of slabs of tax and stuff like that.

In your written submission—you also mentioned the issue in your introductory remarks—you refer to “measures of convenience that could be imposed on the tax agency.”

Can you tell us a wee bit more about how that could work in relation to the bill?

09:45

Sir James Mirrlees: It ought to be relatively simple to report most of the items that come under the two taxes, so it is hard to imagine any convenience problems. I was really thinking more about what would happen if the same principles applied when more taxes were devolved. I did not know when there would be a chance in legislation to set out requirements concerning the nature of tax returns to ensure that there is a clear incentive for them to be convenient for the taxpayer—in other words, quick and easy to do.

In some ways, the bill increases convenience by creating a more uniform set of rules about how long relevant information should be kept, which is, broadly speaking, five years throughout. That seems a bit simpler than what is in our current UK legislation. That is an example of where people would want convenience. I wonder whether that could be changed, as nowadays records can be kept on a computer and can, in a sense, last for ever—or at least until the hard disk dies.

The Convener: They will last a lot longer than us, that is for sure.

Sir James Mirrlees: The bill might increase convenience by saying that people should always keep their records.

The Convener: Okay. In paragraph 13 of your submission, you say:

“It is sensible to determine tax rates and penalties by regulation, rather than stating them in the Act.”

I have a lot of sympathy with that. I have never understood why pieces of legislation have specific financial penalties in them, given that inflation erodes them almost from the day on which the legislation is enacted. I take your point on board, as, I am sure, do my colleagues.

Are there any other parts of the bill that could be improved, or any that should be removed because they are superfluous to its good working?

Sir James Mirrlees: No. As I indicate towards the end of my submission—perhaps I could be more explicit—I was surprised that I had so few ideas about how the bill could be improved. The bill seems to have been arranged so that any numbers have been combed out of it and left to regulations, which seems entirely sensible. I do not know how regulations are handled in the Scottish Parliament, but I presume that they are laid before the house and can be discussed at a particular time. It is important that they should always be discussable in Parliament, but it would not sound quite right to say that they should be discussable before they become effective, as it would be natural for a budget to announce a number of tax increases that would come into
effect immediately or the next morning. As I understand it, that is allowed for in the bill.

**The Convener:** I will open up the session to colleagues. Jamie Hepburn will be followed by Michael McMahon.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** Thank you, convener.

Professor Mirrlees, the convener raised the issue of avoidance. In paragraphs 10 and 11 of your paper, you raise the anti-avoidance rule, towards which you say that you are sympathetic. You then talk about possible unintended consequences and say that you are not necessarily a legal expert in these matters. Do you think that the current system does enough to tackle avoidance, bearing in mind the convener’s fair point that the issue irks the public? Is there good practice in other jurisdictions outwith the United Kingdom, for instance? What more could we do on anti-avoidance?

**Sir James Mirrlees:** I am not terribly well informed on that area. Current practice in the UK is for schemes to be devised and discussed with Her Majesty’s Revenue and Customs to see whether they are acceptable methods of tax reduction or whether they amount to tax avoidance. Many of those schemes are accepted, usually on the ground that they have some rationale besides simply trying to escape tax entirely. It seems almost as though we want to say that, if a tax lawyer comes along with a proposal for an avoidance measure, that means that it is an avoidance measure and we would like to stop it.

I know that HMRC constantly has a problem making such decisions. Any proposed scheme has to be pretty abusive of the system before it can be ruled out under the legislation, which is clearly too weak. In fact, we would expect the same thing to happen under Scottish tax arrangements. The question is, how can one find good reasons for ruling out such schemes?

**Jamie Hepburn:** Our adviser has suggested some form of general purpose clause that would say that no one should act in a way that is inconsistent with Parliament’s intention. That might allow the tax authority to interpret Parliament’s intention. Indeed, it would become a matter for the courts, which could look at what the relevant minister said in Parliament about the intention behind the bill. Is that worth exploring?

**Sir James Mirrlees:** When I was looking at that, I wondered whether it would not be natural to say that we want to rule out arrangements whose primary purpose was avoidance. A word that was slightly weaker than “main” could be used that meant that avoidance should not be the overriding purpose. In the spirit of exactly what you say, it should then be a matter for judgment whether a scheme could be ruled out.

**Jamie Hepburn:** You also talk about revenue Scotland acquiring “potentially larger and wider responsibilities” in the context of either a yes vote or further devolution of taxes. Clearly, there is potential for revenue Scotland to become a tax body that deals with a more substantial array of taxes. Indeed, it could become the tax collection authority for Scotland. In that context, how could it improve on HMRC’s approach? Can we build in some kind of advantage for Scotland?

**Sir James Mirrlees:** The improvement must come through its being more rigorous, perhaps along the lines that you suggest. The rest of the bill speaks of the overall intention, and what happens must be judged in that context. What you suggest makes sense, but it means that ultimately things will go to the courts—or a kind of court—and case law will be built up gradually.

We have perhaps already gone quite a long way in that direction in the UK, in that opportunities for tax avoidance are thought to be becoming fewer. The big thing—and it is hard to know how we can tackle this—is companies’ ability to divert their profits to foreign jurisdictions. One example is Microsoft, which has all its patent royalties in Ireland, but there are lots of examples in company taxation. It is a big area. Of course, that is supposed to be handled by pricing—by insisting that the accounts should be worked out with appropriate prices for everything, which seems to have been very difficult to achieve properly. That might be one area in which you could expect to legislate in due course.

**Jamie Hepburn:** You said that revenue Scotland could act with greater rigour than HMRC does. Did I pick you up as saying that, in essence, the bill builds in greater rigour?

**Sir James Mirrlees:** Oh, yes—it is very rigorous. I was fearful that it had gone slightly too far in the direction of leaving things general when there should have been quite specific provision—or at least regulation—by Parliament, for example in the case of split purchase, which turns out not to matter under the current tax schedule for the property tax. In that case, my fear had been that things that were entirely reasonable would be covered, for example if there was a long delay between the purchasing of the various parts. Setting out the general intention of the legislation seems a very good thing.

**Jamie Hepburn:** You produced a report on UK taxation, which I confess that I have not read in great detail. Have your recommendations been taken account of in the context of the limited array...
of taxes that fall within the scope of the bill? We must bear in mind that revenue Scotland might deal with a wider array of taxes. What key points in your report might we consider? As well as there being lessons for HMRC, are there lessons for us as we establish revenue Scotland?

10:00

Sir James Mirrlees: The items of tax change that generally attract attention—and which are reported as far away as Hong Kong, where I live these days—are things such as tax rates on top incomes. We did not really comment on such matters, because we were trying to find ways of making the tax system more efficient within a progressive overall structure.

If I were to pick out what we thought of as important general principles, one would be that—leaving aside what would usually be called income from pay and interest on investments—there should be a pretty much uniform rate of tax on lots of things. In other words, for example, VAT should apply to everything. It is difficult to make such an approach work because of things such as financial services and the enjoyment of property, which are difficult to measure properly for that purpose. However, if we leave aside the technical details, there seems to have been no change in that area and I believe that such change would be politically difficult.

The proposals on property taxes are the best example so far of a move towards what we recommended, which was effectively a proportional tax on value to replace the current council tax. The transaction tax that you are going to have is a considerable improvement. However, we also recommended that there should not be transaction taxes as such and that, ideally, the taxes should be based on the value of property. There has been no move that I am aware of towards that. I would struggle to think of changes that have been made in the British tax system that resulted from the report on UK taxation.

However, on the recent Australian tax reform, for example, it seems to me that the initial proposals—it is true that they passed through several stages of discussion—would have led to a quite wide-ranging tax on land, resources and so on. That is something that we recommended, and Australia had a tax commission of its own that made essentially the same recommendation. I find it hard to know the exact chronology of these things, but I think that we had some influence on that.

Michael McMahon (Uddingston and Bellshill) (Lab): Paragraph 3 of your submission states that

"The Bill is explicitly to create an agency ... to collect two taxes".

You point out later on in the paragraph that there could be more devolved taxation or, if there is independence, all taxation could be brought to Scotland. Does the bill cover only the two taxes that we are discussing or is the framework that is being established by the bill sufficient to cope with additional taxes? Will there be a requirement for more primary legislation to take account of new taxation?

Sir James Mirrlees: The two devolved taxes are mentioned at several points, but in the main the bill is much more general than that. Almost everything—including the penalties and the period of time for which we have to keep information—is quite general. Things such as the structure of the membership of revenue Scotland, how many people would be involved and the appointment of a chief executive who is not a member of revenue Scotland itself, are all powerful general arrangements that are certainly not at all restricted to the two devolved taxes. I find it quite difficult to recollect anything in the bill that is specific to the two taxes.

Michael McMahon: Is there nothing that could require us to go back and revisit how revenue Scotland would operate, further down the line?

Sir James Mirrlees: That is hard to say; you have posed an interesting conundrum. I kept thinking, of course, about income tax, which could very quickly come to revenue Scotland. It seems to me that the bill covers almost everything. The only thing that I would pick out—it is really a very small thing—is that there has not been, naturally, a lot of attention paid to the exact way in which tax return forms would be done and how they would be handled through computers, for example. The intention is clear, however—in particular, in the policy memorandum to the bill—that those things should be carefully worked out. Of course, there is no reason to say much about that when we are looking at only two very simple taxes.

Michael McMahon: In paragraph 4 of your submission, you point out that it is just not viable to set tax rates 10 years in advance. However, during our consideration of the Land and Buildings Transaction Tax (Scotland) Bill, there was a bit of debate about how far in advance commercial entities require to know what tax rates are going to be, because they have commercial and investment decisions to make. If 10 years is too far ahead, what would be a reasonable timescale over which to give even indicative figures for the two taxes that are covered by the proposal?

Sir James Mirrlees: One Government cannot commit the subsequent Government to do something. Even in Scotland, it is possible that a different party might be in power.
These things have been discussed by tax people. Professor Marty Feldstein has argued that people should legislate on taxation and savings, for example, long in advance. In a related area, one of the arguments—with which I do not agree—against having a state pension system is that it is difficult for governments to make really effective commitments. There are situations in which people are not going to get the pensions that they had expected. It is clearly desirable that governments should be able to make something in the nature of a sensible promise. The United States has sometimes legislated quite far in advance on taxes—in the order of 10 years.

I will leave aside the tax rate for a moment and consider pensions. It can be argued that governments should commit as much as possible to saying that the basic pension rate will be a given proportion of the then-average wage in the country. That would get around the problem that commitments might not make a lot of sense when circumstances change and the economy does not do as well as it should. We have had a lot of experience of that. It might be better to think in terms of fixing proportions, in a sort of automatic way.

With major taxes such as income tax and VAT, it really does not make sense to fix the rate, except for the next year. We have to rely on a kind of social contract that no one will abolish the tax suddenly or, say, in the following year. Small changes could be made. The difficulty is that, on the one hand, you do not want to rule out possible small changes, while on the other, you do not want things to change so rapidly that people are unable to make sensible plans.

**John Mason (Glasgow Shettleston) (SNP):** It is good to have you here, professor.

In paragraph 8 of your submission, you say:  
“*When Adam Smith suggested that taxes should be proportionate to ability to pay, I doubt that he thought that meant proportional.*”

Some of us have greater and some have lesser understanding of the English language, so can you clarify the difference between “proportionate” and “proportional”?

**Sir James Mirrlees:** I have always understood the term “proportionate”, which is rather old-fashioned now, to be vaguer and to mean “related to”. That is my interpretation, but I do not claim to be a great lexicographer.

**John Mason:** So, the word “proportional” is more definite.

**Sir James Mirrlees:** Yes—“proportional” refers to definite proportions.

**John Mason:** So, for example, VAT being 20 per cent of everything is proportional.

**Sir James Mirrlees:** Yes.

**John Mason:** You could say that income tax is proportionate because it is related to individual incomes.

**Sir James Mirrlees:** Yes.

**John Mason:** That is the key difference.

**Sir James Mirrlees:** That is what I had in mind.

**John Mason:** That was helpful.

The issue of the pace of change and, indeed, whether change itself is possible has come up once or twice in our discussion, particularly in your response to Mr McMahon. You have said that we could make little changes, but your review suggests some changes that are actually radical and major. You also said that Australia has not implemented some of the changes, but New Zealand has. Do we simply have to take a very long-term approach? Will it take, say, 50 years to change the whole tax system?

**Sir James Mirrlees:** I am certainly not against making big changes from time to time, but they should be well heralded. Fifty years is certainly far too long. I think that one might aspire to create such a programme within 10 years.

I can easily think of examples of tax legislation that has introduced completely new arrangements. For example, when the student loans system, which is sort of part of the tax and benefits system, was introduced, quite a large change was made straight away. That was a perfectly reasonable move; quite often it does not make sense to introduce a tax gradually and then build it up. That said, when people suddenly discovered that student grants were no longer available in the UK—of course, I am not referring to Scotland—their expectations about the savings that they would put away for their children were confounded. I have no objection as such to that kind of big change, but it seriously confounds people.

10:15

In areas such as taxation of land and property, big changes can have a very big effect; land and property could lose a lot of value because of the introduction of a new tax or a new way of taxing. Something that puzzled us in our tax review was the question of what one should recommend about the present very unreasonable system of local taxation based on property, which has tranches and a remarkably low top. It is clear that change is wanted, but the change is bound to involve enormous changes in the values of more valuable properties.
John Mason: Would it be necessary to have cross-party agreement for such radical changes in the tax system, or could they be imposed by one Government that would just be there for four or five years?

Sir James Mirrlees: With the example of local taxation based on property, one could change the legislation straight away and say that tax would be proportional to the value of property. Of course, if it were just going to be changed back again, there would not be much point in doing it.

It is an interesting suggestion and I am trying to think of examples. Has it ever happened?

John Mason: You made the point at the beginning that changes between parties often are not very radical—1 or 2 per cent, or 5 per cent; that kind of thing.

Sir James Mirrlees: Yes, but from time to time there are cases in which the Government wants to introduce a tax that the Opposition says it will repeal as soon as it gets back in. You can see that in relation to healthcare in the United States.

John Mason: In “The Mirrlees Review” there is a fascinating table. The left hand side shows “a good tax system”, and the right hand side shows the “current UK tax system”. The top item says that a good tax system has

“A progressive income tax with a transparent and coherent rate structure”

and that the current UK tax system is

“An opaque jumble of different effective rates as a result of tapered allowances and a separate National Insurance system”,

which I think is quite scathing.

One of the things that I would really like to make, and I believe that John Swinney would like to make, is a simple tax system: to make whatever taxes we have simpler. Is that possible?

Sir James Mirrlees: Countries, for example Estonia, have from time to time tried to do that. They seem to have had a lot of difficulty in hanging on to it. The main difficulty is in the relationship between the tax system and what we call the national insurance system. Ideally, we would like a fixed basic subsidy for everybody, which would be equivalent to having the tax-free allowance as part of the income tax schedule, and various other allowances such as housing allowance. When you look at the total effect of British tax and insurance legislation, you get a rather complicated graph to show what it is like, which is what John Mason referred to. It could be made into a nice straight-line system, or something a bit like that, which would be simple.

It would not necessarily be so simple to administer that because, for example, the various national insurance things would be paid on a weekly basis whereas, of course, income tax is determined on an annual basis. There is “pay as you earn” being collected at whatever the pay frequency is from people’s employment, but it is the same week after week, whereas welfare benefits such as housing or disability benefits have to be checked more frequently. In some ways, we cannot quite get away from that.

To be honest, I think that the review group slightly overstated the point in the table to which John Mason referred because, when we were doing it, we kind of ignored disability benefits, which in practice is an important area and it cannot be administered simply. It turns out that there are lots of such areas. It is not simple to get a lot of information about people, and sometimes it is not even simple to find out what a person’s income is.

Although it is a reasonable ambition to have a nice simple overall tax schedule, including benefits in general, you would have to start making exceptions. Another issue is the business of assessing the size of the tax base, as it is called, of income, for example, because income is not as easily defined or measured as one might think.

John Mason: You mentioned national insurance. Is there any logic at all for PAYE, or income tax, and national insurance being separate, or should they be combined?

Sir James Mirrlees: The logic is that, as I mentioned, one is in essence determined on a weekly basis, while the other is determined—

John Mason: I am talking about payment. We all pay both, so would it not be simpler for us all to pay a bit more tax and to forget about national insurance?

Sir James Mirrlees: Yes—I am very much in favour of that. From time to time, there have been initiatives on that in the Government. Barbara Castle tried to achieve something like that years ago, and it came up again in Conservative plans to try it, I think. So far, such plans have always collapsed. One wonders why.

John Mason: I suspect that people would not like the idea of paying 10 per cent more income tax, even if they were paying no national insurance.

Sir James Mirrlees: It is even more complicated than you suggest, because the tax credit system has been put on top of another system.

John Mason: Is the present system a disincentive to work at some stages because, as you say, there is not a smooth line? Are people discouraged from working just because of how the system works?
**Sir James Mirrlees:** The members of the group that wrote the tax review had remarkably differing views on that. I happen to think that it is not all that well established that the effect applies to people in the lower income range, which is where there is in theory a big effect, because there are income ranges over which, in effect, the marginal tax rate is about 100 per cent. I have come across cases in which, because of the particular rules on unemployment or disability benefit, people would lose out by going to work. It is hard to believe that that does not have some effects but, anecdotally, I have found that, partly because people like to do a certain amount of work, they are not necessarily discouraged all that much.

It comes down to one of the fundamental empirical issues that are very hard to settle: to what extent are people not working because there are no jobs that they can get, and to what extent are they not working because they really do not want to, and are avoiding it? That is very hard to establish.

The reason why I do not believe that the incentive effects are all that strong is that, in countries such as Spain and Greece, there have recently been such big changes in the level of employment over relatively few months. That is even the case in parts of Britain.

**John Mason:** You have mentioned other countries and you said that Estonia tried to make its system simpler. In comparison with the UK, do some countries have a simpler system or do most countries have a more complex system? How does the UK fit in on the world stage?

**Sir James Mirrlees:** Hong Kong has a much simpler system, although it achieves its simplicity by having some very odd features. The income tax system is not a strictly proportional tax system, and the income tax is only a salary tax. In other words, only the parts of income that can be easily reported are taxed. Furthermore, there is a 15 per cent maximum rate for higher incomes. The rates are all quite low.

Hong Kong also has a uniform profit tax and some simple property taxes. That is all made possible because the Government owns the land and enormous reserves have been stored up. It is easier to be simple if that is the case. On the other hand, large amounts of income simply do not get taxed. If the Government needed the revenue, it would have to do something about that. However, other countries do not have that situation.

**Jean Urquhart (Highlands and Islands) (Ind):** I will highlight a couple of statements in your review. You state that to

"improve the quality of debate on tax and help people think coherently ... will lead to some improvement in policy".

How does that manifest itself? Whose debate is that? I, too, am interested in the idea in the review about clarity on tax and about laypeople—for want of a better term—such as us understanding the tax system. Perhaps there will never be a day when people are happy to pay their taxes, but at least they might understand better the system that has been devised and the outcomes from that system.

The other quote that I want to ask you about is:

"we need to get better at the very tough job of quantifying the welfare gains to be had from reform."

The two statements seem to be related.

**Sir James Mirrlees:** Yes. On the first point, one question might be whether people can understand the arguments for an alternative to having zero VAT on certain foods. Almost everybody agrees that we want to do some redistribution, and the obvious thing to do is to base that on how well off people are.

We would think that, once the issue was discussed, people would begin to see that there is no reason for treating food differently from, let us say, expensive wine—although, at first, they might think, “No, that doesn’t make sense. Obviously we should be taxing luxuries at a higher rate.” There are some paradoxical things such as that, where the argument can be widely understood, although it will no doubt take a little while. That proposal would probably work.

10:30

Even our students have a lot of trouble with quantifying welfare gains, so people at large would be a bit puzzled. We can produce numbers, as we did in the review, but we are relying on people believing that we have done a good job rather than understanding exactly what the argument is. It is a different thing to say, “We claim that, if you make that change, the efficiency gained would be worth so many millions of pounds.” We are just hoping that the—perhaps slightly spurious—precision of the number will at least tell people what is at stake, but that is not the same as persuading them of the validity of the argument.

There are two different things, both of which are important to do. We should not expect people to accept a tax change happily if they have not been given some estimate of the gain and some indication of who is gaining and who is losing.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** It is not a tradition in the Scottish Parliament, unlike at Westminster, to put general principles in bills. In your submission, you suggest that

"A proportionality principle could have been inserted in the Bill"
and that

“There could also have been a principle of continuity”.

Were those partly recommendations or were you talking theoretically, as it were?

Sir James Mirrlees: I was not sure whether that would work, taking into account the views of people with a much better judgment of what is influential in legislation. Bringing in such principles is a bit like what happens when one establishes a constitution, and that has not always been the British way of doing things. Members might not accept that the principles are good and sensible to include and you might not quite see the point of creating a constraint on future legislation.

However, the issue struck me in the context of the bill because of the striking difference between what is in the bill and what will be set out in regulations. It seems to make more sense to have some constraint on the type of tax rates and schedules that could be proposed.

There is no indication—in fact, the position is rather the contrary—that the tax rates would not conform to such principles. I could probably dream up other general principles of the same character. I was not sure whether those principles would sound attractive to most of the people who are responsible for legislation, and I was absolutely right.

Malcolm Chisholm: As I said, we have not had a lot of precedent for including principles. Would including such principles rule out some taxes per se? There is also the question of ambiguity. We have dealt with the issue of proportionate and proportional taxes, so to what extent would your suggestion be viable?

Sir James Mirrlees: There are UK taxes—the transaction taxes are leading examples—for which we do not have continuity. That is what made me think that, if one could rule out some unfortunate things, that would be fine. It might not be as easy to think of other clearer examples. Of course, one of the principles—continuity—is much weaker and therefore much more acceptable than the other.

Malcolm Chisholm: We know from your submission that you do not like taxing property transactions. You say:

“Taxing property transactions is also a source of inefficiency. There is little the Scottish Government or Parliament can do about it, since they have been given so few tax powers.”

You suggest in your review that we could

“replace business rates”

and LBTT on business property

“with a land value tax”.

Would that be a viable approach in Scotland? Would we have the powers to make such a change? Could that change be revenue neutral?

Sir James Mirrlees: There is a lot to be said for it, but I do not know what powers are available. Such a change could be revenue neutral, but it would not need to be.

Malcolm Chisholm: In your review, you seem quite keen on a land value tax—is that right?

Sir James Mirrlees: I have concerns about a land value tax, which is more subtle than it seems at first. It is an old idea. On general economic principles, it sounds as though it would be grand because, in some sense, it has no adverse incentive effects. People will not throw away land or fail to create land because of such a tax. However, we then start to realise that Government regulations and permissions—local as well as central—can greatly change the value of land. Development value is a well-known concept. To get down to pure, simple land value is not straightforward.

The real concern—although I thought in the end that one should not be too concerned about it—is that, if we introduce a land value tax, it will have widely different effects on different people. It will tax people who happen to have a lot of their wealth in land but it will do nothing to people who happen to have their wealth in other things—in stocks and shares or in the bank.

If all those people are pretty rich anyway, we might say, “Well, we are still doing some good—we are taxing the rich and that is what we wanted to do. We are just missing out some of the rich.” However, a land value tax has a rather inequitable aspect in that it has a very different effect on different people who, in other respects, the system would want to tax to the same extent. The feeling is therefore still that a more general wealth tax would be better.

Malcolm Chisholm: Paragraph 6 of your submission says:

“The American requirement that the Internal Revenue Service state how much time they estimate it will take to complete the tax return, on average, seems an example that could with advantage be copied.”

Are you suggesting a general reference to that principle in the bill or do you just think that that would be quite a good idea administratively?

Sir James Mirrlees: It is a small point, but it would be a good idea to require revenue Scotland to estimate how much time would be involved in taxpayers conforming to the legislation’s requirements.

Malcolm Chisholm: I will go back to something that you touched on at the beginning—the general
anti-avoidance principle and your concern that section 58 says that
“obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.”

How does that compare with the general anti-avoidance measure in UK legislation? I presume that there is no similar reference. Is it just omitted or does the UK legislation say something better?

**Sir James Mirrlees:** I do not have the wording here, but I think that the UK legislation refers only to a main purpose and that the arrangements have to be abusive. I have forgotten the exact wording, which is quite a lot weaker.

**Malcolm Chisholm:** So you are mainly concerned about the words “one of the main purposes”.

**Sir James Mirrlees:** Yes—it is only that.

**Malcolm Chisholm:** This is rather a general question. To what extent does the bill reflect UK arrangements and to what extent is it significantly different?

**Sir James Mirrlees:** On the anti-avoidance measure, the bill is significantly different and is distinctly stronger.

**Malcolm Chisholm:** What about in other respects, more generally?

**Sir James Mirrlees:** The bill seems very like the UK arrangements. In many ways, it is presented somewhat more smoothly. That is the advantage of coming later.

**Gavin Brown (Lothian) (Con):** I have a couple of brief questions. Do you have a view on the board structure that a tax authority should have? Are there any general principles on, for example, having a mixture of executives and non-executives or having all non-execs and having the chief exec report separately to the board? Are there any general principles that you would recommend?

**Sir James Mirrlees:** I have thought about that, but I really do not know. The way in which the arrangements are set out seems perfectly sensible, but other arrangements would have seemed sensible, too. I am sorry—I do not have enough expertise on the subject to make sensible recommendations.

**Gavin Brown:** Okay. The concept of advance clearance—the idea that the tax authority could speak to parties before a transaction took place and, in effect, clear it by saying that it would not be subject to tax, for example—has been raised with the committee in various discussions. I guess that there are three broad approaches. One is not to have a system of advance clearance at all. Another is to have a system in which there are informal discussions between the tax authority and the parties and a non-binding steer is given. A third example that we have been shown involves a formal discussion between the tax authority and the parties and a binding agreement on clearance being given in advance of the transaction. Do you have views on any of those three approaches or any principles about advance clearance?

**Sir James Mirrlees:** Often, the particular instance needs to be thought about. We can have tax avoidance schemes or a question whether a set of transactions is held to be an example of tax avoidance that would change the tax calculation. Many cases would be like that, which implies that the tax authority could give a steer in initial discussions without any commitment to approve what is finally done because, as with many legal cases, the exact circumstances might turn out to be important.

The second of your three approaches makes sense to me. It violates certainty a bit, so I can see why there is a case for the third approach but, on balance, that is what I would call for.

**The Convener:** That concludes questions from the committee. Would you like to make any other points?

**Sir James Mirrlees:** That was an interesting set of questions. Thank you very much for treating me so well.

**The Convener:** We have quite a gentle bunch. Thank you very much for coming along. It is very much appreciated and will help us in our deliberations on the bill.

That is the end of the public session. I will allow a brief pause to enable the public and the official report to leave before we go into private session.
09:30

The Convener: Our second item of business is to take evidence from the Scottish Government bill team and revenue Scotland as part of our scrutiny of the Revenue Scotland and Tax Powers Bill. I welcome to the meeting Colin Miller, head of the bill team; John St Clair and Greig Walker, from the Scottish Government legal directorate; and Nicky Harrison, chief operating officer of revenue Scotland. I believe that Colin Miller would like to make a brief opening statement.

Colin Miller (Scottish Government): Thank you, convener. As you will know, the bill establishes revenue Scotland as the tax authority with responsibility for the devolved taxes and puts in place a statutory framework for the collection and management of those taxes. The bill as introduced is structurally complete in the sense that there are no new issues to be added at stage 2. However, with a bill of this size and complexity, there is undoubtedly scope for improving and refining it at stage 2. With that in mind, we have continued to engage closely with the key stakeholder groups. For example, we have recently had very helpful comments and suggestions from the Delegated Powers and Law Reform Committee. We look forward to the evidence that this committee will take during stage 1, and we are very happy indeed to do whatever we can this morning to assist you.

The Convener: Thank you for that brief statement. I will start by asking you some questions, then I will open up the session to colleagues. I may have further questions towards the end of the session.

We have been provided with quite a lot of financial information, as you would expect. For some of the questions that I will ask, we have the answers to an extent, but I think that it is important to put some issues on the record.

I will start with what the financial memorandum to the bill says on the issue of costs to the Scottish Government, which is that the

"total for the areas of cost ... remains £16.7m. The revised costs are directly comparable with HMRC’s estimate for administering two ‘like for like’ taxes to SDLT and LfT and continue to reflect the 25% saving originally identified by the Scottish Government."

Can you detail for us how that 25 per cent saving is achieved?

Colin Miller: Nicky Harrison will deal with that question.
Nicky Harrison (Scottish Government): The figures that are used to arrive at a 25 per cent cheaper cost come from a like-for-like comparison. Following the Scotland Act 2012, ministers had to decide how to deliver the devolved tax powers. One of the options was to ask HM Revenue and Customs to administer the taxes on Scottish ministers’ behalf. At that time, HMRC gave an estimate of the cost to deliver and administer taxes that would essentially be similar to the existing non-devolved taxes: stamp duty, land tax and landfill tax. That amount was put on the record at the time as being £22.7 million.

By contrast, the Scottish ministers were able to estimate what it would cost were they to introduce and develop taxes that were broadly similar to the non-devolved taxes of stamp duty, land tax and landfill tax and set up their own administration within the Scottish Government for the newly devolved taxes. The estimate was £16.7 million. On a like-for-like basis for taxes that are broadly similar to the non-devolved taxes, our estimate is still that, in the cost for the set-up phase and for five years’ running, which is the basis on which the two estimates have been compared, there is a 25 per cent reduction for the Scottish Government administering the taxes compared to the HMRC estimate from 2012.

The Convener: Thank you. However, new activity has been estimated and I wonder whether you could talk us through that, because it comes to £3.51 million, including, for example, £1.5 million for information technology, and £610,000 for revenue Scotland. Can you talk us through that extra £3.5 million?

Nicky Harrison: Some of these are estimates that have been newly presented to you, but the activity is not necessarily new. Forgive me for a moment; I just want to be sure that I am looking at the same table that you are looking at.

For example, one of the costs that were not included in HMRC’s original estimate is the cost of an appropriate tax tribunal to administer appeals or disputes over taxes. One of the items of difference that we are now making explicit in the financial memorandum is the cost of setting up and running a Scottish tax tribunal. That is not really an additional cost because it had not been estimated by HMRC. If we had decided to ask HMRC to administer the taxes, at this point HMRC would be giving us an estimate of what it would cost to use a tax tribunal system.

Some of the other costs are, as you say, proposed additional costs. I will take it in the sequence that is presented in table 1 in the financial memorandum, if that would be helpful. The first estimate of new activity is additional compliance activity. That is an estimate of additional costs for just one year, 2015-16. It is well documented that additional investment in compliance activity by revenue authorities can generate significant amounts of additional tax yield. Although we had costed for an adequate and comparable amount of compliance activity in our baseline costs, I am sure that the committee will be as aware as the rest of us are of the additional investment that HMRC has received in recent years to generate additional tax compliance yield. We feel that we could benefit from something like that. We have proposed the amount shown in table 1 for one year and the situation will be closely monitored to see how much additional yield it generates. We are confident that we would more than recoup the investment, but we are proposing only one year of additional investment at the moment so that the situation can be reviewed.

The next item is IT investment in revenue Scotland. Previous financial memoranda have made it clear that the estimates did not include central IT development in revenue Scotland, nor did HMRC’s like-for-like costs. In view of our developing understanding of the requirements to provide an effective service to taxpayers, and their agents and advisers, particularly for complex transactions, and to manage risk assessment activity and compliance effectively, it would be helpful to have a central data repository in revenue Scotland. Our current estimate is that that would cost £1 million to set up, and £100,000 per year to run, which is where the £1.5 million that is shown in table 1 comes from. Previous memoranda have stated explicitly that the costs did not include an estimate but that that would be reviewed.

I have already covered the Scottish tax tribunals item.

The final item is the cost to the Scottish Environment Protection Agency for tackling illegal dumping. One of the big differences between the Scottish landfill tax and the UK landfill tax is that the former permits the tax authority to tax illegal dumping. That is a significant issue in environmental terms and in terms of criminal activity. At the moment, UK tax authorities cannot tax operators who are found to be illegally tipping. The Landfill Tax (Scotland) Act 2014 permits illegal tipping to be taxed. We have presented estimates for what it would cost to most effectively tackle that. Again, the estimates are for setting up and for running five years of tackling that illegal activity.

The Convener: I think that your answers will generate quite a few questions from members, because some of my colleagues around the table have quizzical looks on their faces. I will ask a couple of further questions, but no doubt my colleagues will ask for further, in-depth information.
The financial memorandum states:

“Modest additional investment in compliance activity ... can generate significant increases in revenue.”

When I read that, I did not think that it would be about just covering the cost of the investment in the compliance investigation activity. I was going to ask you how much more revenue would result, but you seem to indicate that it will just cover the costs. If that is the case, one wonders why you are proceeding with it. I understand that there might be further benefits years down the line if it is a one-off exercise. Can you clarify that? I have questions on a couple of other issues, but I would like you to respond to that issue first before we go on to some of the other things that you talked about.

Nicky Harrison: In saying that compliance activity would at least cover the cost, I did not wish to imply that we expect it only to cover the cost. I apologise if I gave that impression. It is well documented that investment in compliance activity often generates significant amounts of additional yield. For example, the additional funding that HMRC has received from the Treasury for investment in compliance activity generally works on a ratio of about 10:1, which means that there is a return of about 10 times the investment.

We were quite cautious and prudent in the financial memorandum because we do not have a track record for the devolved taxes that would enable us to assess the size of the tax gap, which is what the additional investment in compliance would help to reduce; nor do we have a track record to demonstrate the effectiveness of our compliance function. So, apologies if I was being rather prudent before when I said that the compliance activity would at least cover its costs.

If all that we aimed to do in the compliance activity and all that it managed to do was to cover the costs, it would obviously not be an investment that was worth making, and I certainly would not wish to suggest that. However, I certainly expect there to be a significant return on the investment. I think that earlier I was trying to reassure you that at the very least the cost would be covered.

It is important to say that we expect that the additional investment in compliance will bring in significant additional yield that will more than justify the investment. We will do more work to try to understand exactly how much it will bring in. That is partly why we have suggested investment only for one year. That will be our first year of operation, and by the second year we will be much clearer about the expected rate of return. The performance of revenue Scotland can then be challenged on the rate of return that would be expected for the investment.

It is also important to recognise that this sort of additional investment in compliance activity can often bring in additional yield in two ways. Part of it is a direct yield in terms of the money that we bring in from the cases that we investigate, but there is also the deterrent effect that is generated by this sort of activity when it is clear that the revenue authority is at the top of its game in identifying and tackling both evasion and avoidance activity. That can help to increase the voluntary compliance rates. We expect to be able to map our estimates of the impact of investment on both those forms of additional yield.

The Convener: Thank you.

Again on the subject of estimates for new activity, the cost to SEPA for processing and administering Scottish landfill tax revenue from taxing illegal dumping is estimated to be £1,050,000. Why was that figure not in the financial memorandum to the Landfill Tax (Scotland) Bill? I would have thought that such a huge cost of over £1 million would have been integral to that bill.

09:45

Nicky Harrison: As it has become clearer with the passage of time what the powers will be to tackle illegal dumping, what the extent of illegal dumping is and what additional effort will realistically be required to pursue the tax that is at risk, we have been able to update the figures for the financial memorandum to the Revenue Scotland and Tax Powers Bill. I cannot comment on why the information was not in the Landfill Tax (Scotland) Bill financial memorandum.

Much of the information is provided in the spirit of being as open as possible. As our ideas develop and as we develop greater understanding of what could be involved in administering the devolved taxes, we wish to share information about the costs with the committee. The financial memorandum to the Revenue Scotland and Tax Powers Bill has provided a helpful opportunity to do that.

That is in a way linked to the conceptual approach to the additional investment in compliance activity. Now that we know that we have the ability to tackle illegal dumping, we can work out more clearly exactly how much investment would be needed to make the measures effective to counteract and deter illegal tipping. I remind members that that is over the five-year period.

The Convener: The financial memorandums to the Land and Buildings Transaction Tax (Scotland) Bill and the Landfill Tax (Scotland) Bill did not refer to IT costs, but the financial memorandum to this bill talks about £1 million plus £100,000 a year for
five years. Surely that should have been anticipated—we are not talking about a few thousand quid here or there.

Nicky Harrison: Much of this reflects where we have got to in our thinking about how best to administer the devolved taxes. The previous financial memoranda stated explicitly that they did not include costs for a central IT system in revenue Scotland and included only minimal IT costs for web page development, for instance.

As we have worked through mapping out and developing our thoughts on the systems and processes that would ideally be needed to produce the most seamless service for the taxpayer and to provide the best customer service and the most effective risk assessment and compliance approaches, we have come to the understanding that a central secure repository in revenue Scotland, which the partner agencies could access, would be the best way of meeting the requirements that we are now clear we have.

The position reflects the progress that we have made in setting up the devolved taxes administration. Now that we are much further through the system, we have a much deeper understanding than we had before.

The Convener: Audit Scotland has made a brief submission, which says:

"the Explanatory Notes say that 'Revenue Scotland will have the status of a non-ministerial department ... Revenue Scotland is expected to have the status of an office-holder in the Scottish Administration, within the meaning of section 126 of the Scotland Act 1998, by virtue of an order under that Act' ... In the absence of explicit provisions in the Bill about accounting and auditing it is important that the order is made and applies from the same date as the commencement date for the Bill as a whole."

Will that happen?

Colin Miller: Yes. Precisely because office-holders in the Scottish Administration are defined in the Scotland Act 1998 and are therefore a reserved matter, it is not possible to put such a provision in the bill. We have been in touch with the Scotland Office about a section 104 order, and it has been in touch with the relevant United Kingdom Government departments. It has been agreed at ministerial level that a section 104 order will be made. Among other things, it will designate revenue Scotland as an office-holder in the Scottish Administration. As Audit Scotland’s submission makes clear, that will trigger the relevant provisions of the Public Finance and Accountability (Scotland) Act 2000 and therefore the requirement to prepare accounts, which Audit Scotland will audit.

The Convener: Thank you for that clarification. I will ask one more question and then open up the session to colleagues.

Our adviser, Professor McEwen, has produced an excellent paper, which I will probably touch on later, as will colleagues. Part 4 of and schedule 2 to the bill deal with the Scottish tax tribunals.

Professor McEwen has stated:

"a striking contrast is that Revenue Scotland is set up in 11 sections and a Schedule of 9 paragraphs while setting up the Tax Tribunals takes 39 sections and a Schedule of 42 paragraphs."

That seems awfully cumbersome and disproportionate. Can you explain why there is such an apparent imbalance?

Colin Miller: The issue is the interaction between the bill, the devolved taxes that will come into force on 1 April 2015 and the Tribunals (Scotland) Bill, which is currently before Parliament and will establish a unified Scottish tribunals system that, in due course, will take over the jurisdiction for all the existing devolved tribunals including, we envisage, the tax jurisdiction. The problem is that, although the Tribunals (Scotland) Bill is expected to complete its passage through Parliament this year, the first devolved tribunals will not transfer across into the new tribunals for Scotland until the end of 2016 at the earliest, whereas we need to be able to provide for appeals to be heard by an independent tribunal from 1 April 2015 onwards.

In part 4 of the Revenue Scotland and Tax Powers Bill, we have therefore replicated all the corresponding provisions of the Tribunals (Scotland) Bill to create a self-standing two-tier tax tribunal to hear tax appeals during that interim period until the new Scottish tribunal service is up and running. When it is, the intention is to transfer the jurisdiction and members of the tax tribunal into the new unified tribunal. The intention of going into the detail—which we have done—and consciously replicating the provisions of the Tribunals (Scotland) Bill is to make the transfer of that jurisdiction into the new one as seamless as possible, with no adaptation or amendment necessary. We hope that that will take place somewhere around the end of 2016 or in 2017.

The Convener: Thank you. That is very helpful. I open up the questioning to committee members.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I, too, will refer to Professor McEwen’s briefing. He identifies the proposal to remove the privilege in relation to information that was extended to tax advisers and accountants in the Finance Act 2008, although it will remain for lawyers. Can you set out the thinking behind that?

Colin Miller: It is an interesting issue, which we have discussed with the professional bodies. Legal professional privilege is well established across the board, not simply in relation to the tax world but generally. The starting point is that
revenue Scotland’s powers to require information would not interfere with legal professional privilege, and that is what the bill provides for.

As you said, in the Finance Act 2008 the UK extended protection to tax advisers. In the 2008 act, tax advisers were defined simply as anyone who provides tax advice, which is a very wide definition indeed. It extends beyond those who have a recognised professional qualification or belong to a recognised professional group—it can be literally anyone who sets themselves up to offer tax advice—and the professional groups have told us that there are some fairly unscrupulous operators at one end of the spectrum. In judging where to strike the balance and where the public interest lies, we have retained legal professional privilege but have not followed the UK in extending that privilege to tax advisers.

Jamie Hepburn: Is it your perspective that there might be unscrupulous tax advisers but not unscrupulous lawyers? [Laughter.] I am not really asking you to comment on that.

Does that put lawyers on the same footing as tax advisers? Their privilege is limited, so if information is required that a tax adviser—whatever that might be—has provided, a lawyer would have to provide the same information under the bill.

Colin Miller: The tax adviser has no protection. Bear in mind that we are talking about protection in the context of information notices, which revenue Scotland will issue when it seeks information on tax compliance. The bill’s provisions on information notices are designed to allow revenue Scotland to engage in compliance activities. The question is what exceptions there should be.

We do not seek to intrude on the very well-established concept of legal professional privilege, so the issue is whether there ought to be an extension across the board for tax advisers. We very much understand the views of groups such as the Chartered Institute of Taxation and the Institute of Chartered Accountants of Scotland. There is no question but that they are reputable organisations, and it is easy to understand why they do not see why, in relation to tax, they should not share the same privilege that legal advisers have.

The argument against that, which you might want to weigh yourselves, is the question of where the public interest lies. We have chosen to put the emphasis on effective compliance; of course, the provisions relating to information notices are subject to safeguards.

Jamie Hepburn: I will dig into that a little further. Under the powers that are set out in the bill, lawyers do not have absolute privilege. They can still be required to provide the same information that a tax adviser may be asked to provide. Is that correct?

Colin Miller: No, I do not think so. I will ask my legal colleagues to elaborate on this in a moment, but, as the bill stands, legal communications between a lawyer and their client are protected—

Jamie Hepburn: Absolutely?

Colin Miller: In the circumstances that are set out in the bill. An information notice would not bite in that regard. Revenue Scotland would not be able to use its powers to issue information notices to obtain communications between a legal adviser and his client, but it would be able to obtain communications between a tax adviser and his or her client. I ask my legal colleagues to elaborate.

John St Clair (Scottish Government): Section 130(2) says:

“For the purposes of this Part, information or a document is privileged if it is information or a document in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.”

That very well-known—almost hallowed—expression is found in a great number of bits of legislation. It enshrines the Scottish and English doctrine that there are certain communications between lawyers and clients that you cannot get under any circumstances.

Where exactly the same material is being communicated between a tax adviser and his client, it is difficult to say why that should not be privileged in the same way and enshrined in statute. That is not yet the case in England and we know that last year the Supreme Court turned down the idea of extending the privilege to accountants and other tax advisers—the court said that it is up to Parliament to do that.

It is very much a policy decision, and one that the Supreme Court said should not be taken lightly, because it may have the unintended consequence of opening up that very important cornerstone of the constitution.

Jamie Hepburn: Are you saying that only certain documents held by a lawyer are privileged, or is every document privileged?

John St Clair: Not every document is privileged.

Jamie Hepburn: That is what I am trying to establish.

John St Clair: There could be documents on fee charging or something ancillary to what is going on. A document is privileged when it is to do with legal advice in relation to a legal case.
Jamie Hepburn: So that is the difference. The privilege does not extend to tax advisers, whoever they may be, but is there a degree of equivalence between the documentation that a lawyer might hold and that which a tax adviser might hold?

10:00

John St Clair: There could be. If, for example, lawyers were selling and promoting avoidance schemes and tax advisers were doing the same, neither would be covered by legal privilege because they would not be dealing with the client on the basis of giving legal advice.

Jamie Hepburn: It could become a matter of interpretation. I presume that the number of cases will be limited—we hope that there will be none. Who will be the arbiter in any case where the tax authority says, “We think that this is something that we should look at”, and the lawyer says, “No, it absolutely isn’t.”

John St Clair: The case would ultimately go to the tribunal, but the initial decision would be taken by revenue Scotland.

Jamie Hepburn: I have a final question on anti-avoidance measures. Our adviser has suggested that it could be helpful to have—I do not know whether this is the right term, but it is the only one that comes to mind—a general purpose clause whereby, in interpreting a matter, the tax authority and the courts, if it becomes a matter for them, could look at the Parliament’s will in passing the bill. That is not routine, but has it been looked at?

Colin Miller: We do indeed have something along those lines. Section 59(2)(a) covers the definition of “artificial”. As you know, one of the central concepts in the Scottish general anti-avoidance rule, as opposed to the UK one, is artificiality. In section 59, we have tried to give clear pointers as to what constitutes artificiality. Among those are

“any principles on which”

the relevant

“provisions are based (whether express or implied)**,

“the policy objectives of those provisions”,

and

“whether the arrangement is intended to exploit any shortcomings in those provisions.”

Those are deliberately purposive tests. They will allow revenue Scotland and then the courts and the tribunal to do more than just look to the words in a tax statute, given that avoidance activity, by definition, is intended to try to get round those plain words. The tests will also allow revenue Scotland, the courts and the tribunal to look at the declared policy intention in, for example, any statements that have been made in the Parliament during the passage of the bill about what the tax legislation or reliefs incorporated within it are designed to achieve.

We have gone rather further than in previous attempts to allow revenue Scotland to apply a purposeful approach in taking counteraction under the general anti-avoidance rule as set out in the bill.

Jamie Hepburn: Thank you, Mr Miller. That is helpful.

John Mason (Glasgow Shettleston) (SNP): I declare that I am a member of ICAS.

I am intrigued by the debate between the witnesses and Mr Hepburn, and I would like to take it a little further. As I understand it, specifically legal advice that only a lawyer could give has a certain amount of protection around it. I am comfortable with that. We then get into advice that is specifically on tax, which can be given by a solicitor, an accountant or another tax adviser.

Do we have a level playing field? I hope that we do, because I presume that it is not part of the job of the Scottish Parliament or the Westminster Parliament to favour one profession over another. If Mrs Jones wants a wee bit of tax advice about whatever, is it the case that, if she goes to her solicitor, that advice will be kept more secret than if she goes to her accountant or somebody else, where it will be more liable to come out into the open? That is the area that I am interested in.

Colin Miller: I can offer two comments on that, to which John St Clair might again want to add.

In section 130(2), the bill does not distinguish between legal advice on the one hand and tax advice on the other. What it says is that information or a document that revenue Scotland would otherwise be able to obtain under an information notice

“is privileged if it is information or a document in respect of which a claim to confidentiality”

could be made

“as between client and professional legal adviser”.

In other words, that goes to the general principles relating to legal professional privilege. What we have not done is make available to tax advisers, however defined, a corresponding claim to privilege. Therefore, in those terms, you are perfectly right—there is not a level playing field between legal advisers and tax advisers.

If we wanted to achieve a level playing field, we could do one of two things: we could remove the privilege that extends to lawyers, which would be a fairly extraordinary step, because legal professional privilege is very well recognised
across the board; or we could extend that privilege to tax advisers, however defined.

John Mason: For simplicity’s sake, I would rather have things more open than more closed. Can we take some of the privilege away from the solicitors but still leave a bit there—the pure legal bit—or is it not possible to make that distinction?

Colin Miller: John St Clair will tell me if I am wrong but I think that the difficulty with that is that legal professional privilege goes to the nature of the relationship between lawyer and client—it does not matter whether it is tax advice as opposed to family law advice or some such. It would be very difficult to make inroads into legal professional privilege—

John Mason: To be fair, in my experience solicitors have had to split up a lot of their advice over recent years because of financial regulations and so on. For example, they often do not give advice about financial investments, which they used to do. It seems possible to split up advice from a solicitor into different sections.

Colin Miller: I take your point that there are precedents in relation to financial services, but if we went down that road it would still leave the question whether a similar, watered-down protection should be available to tax advisers, however defined. My concern remains that if you offer any form of privilege to tax advisers at large, which really means anybody who purports to set themselves up to provide that sort of advice, you are creating scope for abuse at the unscrupulous end of the spectrum.

John Mason: Mr Hepburn did not press the point but I will: I do not have any more faith in solicitors than I do in other professions.

Jamie Hepburn: Good luck, John. [Laughter.]

John Mason: Thank you. I realise that I am in a minority in Parliament.

The Convener: Well, I agree with you.

John Mason: I am not suggesting for a minute that we give privilege to other people. It is about more openness.

Colin Miller: We would be very happy indeed, if the committee was giving us a steer in that direction, to go back and have another look at section 130 and see whether it was possible to narrow the scope of the protection that solicitors are accorded without driving a coach and horses through concepts that the legal profession, and no doubt the judiciary, are very attached to.

John Mason: I am pleased to have that reassurance that you could have a look at it. We do not want to drive a coach and horses through things but, in one sense, this is quite an important piece of legislation because we are going to set a precedent here and potentially we will get other taxes somewhere along the line. A lot of this will fit into place, so if we are going to change it a bit, this would be the time to do so. However, I am not suggesting that we throw everything out.

Colin Miller: The steer that you are giving us is a helpful one because, curiously enough, in the engagement that we have had with stakeholders, they have been rather pushing us in the opposite direction. The professional groups such as ICAS and CIOT are arguing essentially that they should have the same protection that the bill accords to solicitors.

John Mason: I hope that you are reassured that I am not speaking for ICAS.

John St Clair: Perhaps I could provide a little bit of clarification on the question of slightly diluting legal professional privilege. I mentioned before that legal professional privilege was a sort of constitutional thing. It is interwoven into European law and the European convention on human rights. If it was helpful in relation to a move in the direction that you obviously want, we could delineate where the privilege did or did not apply. That might give people a steer so that they realise that it was not a complete blanket thing.

John Mason: Personally, I would be comfortable with that, but I cannot speak for the rest of the committee.

The convener asked about the fact that we could tax illegal dumping, which we have not been able to do in the past. It may just be me, but I struggle a wee bit to get my head round that. At the moment, we find a huge amount of illegal dumping in Mr McMahon’s constituency and elsewhere. There is a fine and a penalty, and people might go to prison. The only extra thing would be our sending them a tax bill. There would not be much cost in sending that tax bill, would there?

Colin Miller: That point goes back again to the one that Nicky Harrison raised. The fact that we are now able to tax illegal dumping provides SEPA, which is obviously engaged in such enforcement activity already, with a new set of tools. It does not mean that SEPA will not continue to prosecute people for environmental offences; it means that it can now take action in conjunction with other agencies—such as, in large cases, the Crown Office civil recovery unit—to recover what might be large amounts of unpaid tax. However, that involves a cost in relation to litigation, court proceedings and so on.

Only yesterday, the Crown Office civil recovery unit recovered a large amount at the end of a long and expensive investigation and subsequent litigation.
John Mason: So the calculation of the tax would be quite straightforward. The big problem occurs thereafter.

Colin Miller: Yes—securing the money, especially, by definition, at the illegal end of the spectrum.

John Mason: One of the criticisms of HMRC is that it seems to have had quite a lot of latitude to make concessions to taxpayers, especially—some people would argue—larger taxpayers. It pursues small taxpayers thoroughly, but sometimes it does a deal. Our adviser referred to some of that having come about through the Fleet Street case, when there was a change in the way that people were paid, and it was accepted that the Inland Revenue, as it was then, had a fair degree of flexibility.

Will you comment on where we are going with that? The issue links to the openness of revenue Scotland's internal advice.

Colin Miller: I will make two or three points on that and then, perhaps, ask Nicky Harrison to come in with the revenue Scotland point of view.

The intention is that revenue Scotland will proactively prepare and publish guidance, including internal guidance to its staff and investigators, on the way in which it proposes to exercise the significant discretion on taxes and penalties with which the bill provides it.

I think that it would be fair to say that the direction of travel in HMRC in recent years has been quite similar. For example, the extensive use that was made of what were called extra-statutory concessions has, as I understand it, gradually become more and more formalised—such concessions are less the subject of open discretion and much more the subject of clear, specific guidance.

Your point is fair, but the direction in which HMRC is moving is probably where we would like to start, which is to ensure that any discretion that revenue Scotland has is exercised in accordance with clear, published guidance.

Nicky Harrison: John Mason’s question probably goes to the heart of the collection and management principle, which we have incorporated in the bill. It has a long history of application and interpretation through litigation over the years going back to its previous incarnation as care and management.

The collection and management principle is very helpful because, in the administration of taxes, it is important to be able to apply judgment and discretion in certain circumstances. However, Mr Mason is quite right that that needs to be sufficiently open and curtailed so that the boundaries within which the discretion is exercised are clear.

10:15

On how that will look operationally, it will be important for revenue Scotland to be open about its guidance to staff on how it administers taxes and when it will exercise discretion so that it strikes the appropriate balance between pursuing tax and being sufficiently forceful in counteracting non-compliance, evasion and avoidance, while not being unduly punitive in pursuing people whose tax affairs are not in order to the degree that we would expect, sometimes because of circumstances beyond their control.

This is partly about the performance reporting of revenue Scotland. In a written response to the Public Audit Committee, we have already indicated that revenue Scotland will, of course, be quite open in reporting its performance in pursuing tax, its customer service standards, how effectively it deals with taxpayer transactions, and how effectively it tackles non-compliance. It will also be open about the extent to which it exercises discretion in non-pursuit. That will give openness and transparency. To be fair, that is something that HMRC has done increasingly over the years.

John St Clair: I can add a bit of clarification. We are consciously incorporating the jurisprudence in relation to collection and management. John Mason mentioned the Fleet Street casuals case. That was not quite an extra-statutory concession. We are very aware of the recent jurisprudence, and HMRC and revenue Scotland must be careful not to give concessions that Parliament has not intended. However, that is a different issue from the issue that arose in the Fleet Street casuals case, where the court said that the workers should not be pursued because the chances of getting any money out of them was zero; there were big political reasons why they should not be pursued. That is to do with discretion; it is not an extra-statutory concession.

John Mason: That is helpful, and it takes us on to the charter that has been mentioned a few times. There has been some suggestion that the charter would be a bit one-sided in that it would emphasise the duties of the taxpayer but would not put enough emphasis on the duties of revenue Scotland. Would the reporting that you just mentioned be against the charter and would a comparison be made?

John St Clair: The point that you make about equality or even-handedness between the tax authority on the one hand and the taxpayer on the other is a good one. That was what we had in mind but, during discussions with the stakeholders, we have realised that the language that is used in section 10(2) does not give that impression. It was intended that there would be matching commitments. The section actually says:

“The Charter must include—"
(a) standards of behaviour and values which Revenue Scotland will aspire to

and

“(b) standards of behaviour and values which Revenue Scotland expects people to aspire to”.

The language has given an impression that we did not intend it to give. On the one hand it says, “Here is what revenue Scotland will hope to do,” and on the other, it says, “Here is what revenue Scotland expects the taxpayer to do.” We will consider that with a view to lodging at stage 2 amendments that will make it clear that the charter is even-handed. The charter will set out something about the standards of service that the taxpayer can expect of revenue Scotland, but it will also set out the other side of the coin. It is intended to face both ways; revenue Scotland will be expected to report performance against the charter.

John Mason: Okay. We look forward to seeing such amendments.

Another question about wording is around the general anti-avoidance rule and what has been called the “double reasonableness test”. The Finance Act 2013 says:

“Tax arrangements are ‘abusive’ if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action”.

I think that I have said before that I do not like using the word “reasonable” twice in one sentence. In a sense, it could be used three times, because the concept of what a reasonable person would think could be brought in. What was the thinking in making the bill slightly different from the UK legislation?

Colin Miller: To be perfectly honest, our thinking was exactly the same as yours. We are not entirely sure what section 207(2) of the Finance Act 2013 means when it sets out the double reasonableness test; it is certainly complex.

In designing the Scottish GAAR in part 5, we tried to do two things. First, we tried to go further than the UK has gone so far in tackling artificiality as opposed to simply abuse. Secondly, we tried to set out simpler tests, one example of which is precisely the one that John Mason has mentioned. Our reasonableness test in section 59(2) is an entirely standard and orthodox reasonableness test. One of the tests of artificiality is whether an

“arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances”.

As I mentioned earlier, the circumstances expressly include the more purposive tests, the principles on which they are based and the policy objectives. We have consciously stepped away from the UK double reasonableness test simply because it seems to be unnecessarily complicated. I am not entirely sure what a double reasonableness test adds, or in whose eyes the reasonableness is.

John Mason: Is the word “reasonable” one that the courts are comfortable dealing with in all sorts of legislation?

Colin Miller: Absolutely. I think that the courts and, indeed, lawyers, would regard our reasonableness test as a standard one. Perhaps what is more novel in our GAAR is that we have attached somewhat purposive tests to the interpretation of reasonableness, but the reasonableness test in itself is entirely orthodox. I am not aware of any precedents anywhere in UK legislation for the double reasonableness test that the UK GAAR has adopted, and I do not think that anybody will be very clear about what it means until jurisprudence emerges.

John Mason: That is great. Thanks very much.

Gavin Brown (Lothian) (Con): It seems that the treble reasonableness test will not get in at stage 2.

Colin Miller: It certainly will not.

Gavin Brown: Nor, indeed, will it get in at stage 3.

I have a couple of comments to make, one of which is on penalties. We have had briefings from stakeholders, among whom there are two schools of thought: one is that penalties should be nailed down very precisely in primary legislation, and the other is that as little as possible should be in primary legislation and that regulation should be used to outline penalties more clearly, in which case it is obviously easier to update numbers based on inflation and so on. Can you give us a bit of background information on how you have approached penalties in the bill?

Colin Miller: We have debated that matter with stakeholder groups, and the Delegated Powers and Law Reform Committee has picked up the point. We recently replied to it on the subject.

The approach that we have adopted to penalties in the bill is not entirely consistent. In general, we have not specified amounts in the bill—although there are a few examples of our having done so—and we have not provided complete detail about the box within which the penalty fits.

We accept that we need to look at that again in the light of points that have been made. Indeed, in our response to the Delegated Powers and Law Reform Committee, we undertook to consider bringing all the penalty amounts into the bill, and to examine the scope for bringing further detail about the circumstances surrounding the penalty
in to the bill. We will still suggest to the Finance Committee at stage 2 that we should retain the order-making powers. The ideal would be to provide clarity in the bill so that everyone can see the four corners of the penalties and the amounts from 1 April next year, and also to provide flexibility for adjustment in the light of experience, which is where the order-making powers come in.

Gavin Brown: Thank you.

Schedule 1 sets out the structure of revenue Scotland. There will be between five and nine members on the board, who will then appoint a chief executive and so on. Again, there appear to be two schools of thought on that, one of which is that the chief executive and other executives ought to be members so that there is a board of executives and non-executives. The other school of thought is as you have laid out in the bill: the chief executive will not be on the board and there will be five to nine members. What are the background to and thought processes behind that structure?

Colin Miller: The issue is the arrangements for accountability within revenue Scotland and between revenue Scotland and the Parliament. The structure that we have put in place is that the “office-holder” in the Scottish Administration will not be a single person; it will be the collective—the members—and therefore the board. In simple terms, the thinking is that the job of the board will be to hold the executives, including the chief executive, to account. In turn, the board itself will be accountable to Parliament. That is quite a clear line of accountability.

If the chief executive and other members of the executive team were members of the board, there is a danger that it would become much more difficult for the board to hold the chief executive to account. Particularly with a small board of five to nine members, if one or more were executives, the danger is that we would be placing rather too much authority in the hands of the chief executive, who will, of course, also be the accountable officer for revenue Scotland.

That said, there are various precedents. Parliament has established three new statutory non-ministerial departments since devolution: the Scottish Court Service, the Scottish Housing Regulator and the Office of the Scottish Charity Regulator. It is fair to acknowledge that in relation to the Scottish Court Service, the chief executive is a member of the board, but it has a much larger board of 16 members that is chaired by the Lord President and of which half the members—I think—are judicial members. It is fairly evident that the chief executive of the board would not have a dominant voice.

In relation to the Scottish Housing Regulator and the Office of the Scottish Charity Regulator, the model is exactly the same as that which is set out in schedule 1, in that the “office-holder” is the board and the chief executive is not to be a member of the board.

Gavin Brown: That is helpful; thank you.

Has the bill in its entirety, with the organisations that it will create, been developed with an eye specifically on the two taxes that will be devolved in April next year, or has it been set up with one eye on future taxes—potentially the whole lot, or one or two more—being devolved? Again, there seem to be two schools of thought on that among stakeholders to whom I have spoken. Which is it? Is it a blend of the two?

Colin Miller: I have two things to say on that. First, every provision in the bill is necessary for the purposes of the two devolved taxes. If that were not the case, there would be a question about whether provisions that did not relate to either or both devolved taxes were within devolved competence. That said, we have also tried to put in place a statutory framework for collection and management of taxes that could readily be adapted in the event of there being more devolved taxes or, indeed, in the event of all taxes being devolved through independence.

10:30

We expect that we will, when Parliament acquires responsibility for further taxes, have to develop more tax-specific bills that will set out the rules relating to those taxes. The intention would be to link each new tax to the framework that is set out in the Revenue Scotland and Tax Powers Bill. We hope that that could be done with minimum modification. Any modifications that were required to reflect the peculiarities of individual taxes could be dealt with under the relevant tax-specific bill, although we also have amendments to the RSTPB. We would not need to put in place a new overarching framework.

The answer to the question whether the bill and the organisations that it will set up have been developed with a view to either of the things that Gavin Brown mentioned is that they have been developed with a view to both. We certainly have an eye to ensuring that the framework that is being put in place could be adapted in the event of there being more devolved taxes—just as the work that Nicky Harrison and her team are doing to establish revenue Scotland is scalable. Revenue Scotland will be responsible for two devolved taxes from day 1, but it is also being established as the tax authority that would be responsible for further devolved taxes or all taxes, should that materialise.
Gavin Brown: This is a slightly off-the-cuff question. Do you need a GAAR for two taxes?

Colin Miller: One of the taxes is land and buildings transaction tax; there has been a great deal of avoidance activity in relation to its precursor tax, which is stamp duty land tax. The point is that any GAAR is only one tool in an armoury of measures that are designed to combat tax avoidance. The committee will know, having dealt with the Land and Buildings Transaction Tax (Scotland) Bill, which is now the Land and Buildings Transaction Tax (Scotland) Act 2013, that that bill was designed to address known abuses by way of TAARs—targeted anti-avoidance rules. The nature of tax avoidance is such that people seek to get round the TAARs and to devise new avoidance measures.

A GAAR is designed as a last line of defence and is not specific to any particular tax. It is designed to allow revenue Scotland to take counteraction against avoidance activity generally. The lesson of stamp duty land tax is that this is an area in which there is—and in which there will no doubt continue to be—avoidance activity, regardless of our efforts to design it out of the LBTT.

Gavin Brown: The convener has asked some of the questions that were in my mind regarding the references to revenue Scotland in the financial memorandum, but I have one or two others.

The additional IT investment in revenue Scotland is £1.5 million. I think that £1 million is set-up costs, with £100,000 a year for each of five years. Was that genuinely not envisaged when we got previous estimates? I felt that the previous estimates were low. They were in tens of thousands of pounds, which I and other members challenged at the time. We were, however, given assurances that everything was being taken into account. Indeed, there was a contingency in the figures. How is the figure now so much bigger than it was?

Nicky Harrison: You are right to say that the previous financial memoranda included items for IT development. They were quite explicit, however, in saying that the estimates did not include any amount for a central IT development in revenue Scotland, and that a different design might be chosen for administration of the taxes. There were no costs included for that—it was specifically excluded.

Over the past year, we have developed the two devolved taxes and we have worked through the systems and processes to understand what taxpayer service requirements there might be, what different approaches we might take to meeting taxpayer and agent customer service standards, the approaches to risk assessment and the approaches to compliance. We have decided that a different design is very much needed—one that will require a central data repository.

That is a reflection of where we have got to. We now have a much more detailed understanding of the approach that we want to take to administering the taxes. It is very much a design decision rather than something that had not been considered previously. We have been quite explicit in including the figures in the financial memorandum now that we are clearer about that design decision. Those are costs that would not have been in the original estimates from HMRC or the like-for-like estimates that were in the previous financial memoranda.

You can imagine that much of the discussion that we have had around, for instance, dealing with avoidance and evasion has informed views about the design. We certainly need a design that will enable us and our delivery partners—Registers of Scotland and SEPA—to be able readily to access and look up an individual taxpayer’s records. Such records can be quite complex and involve different entities and transactions over a period of time. The design must also enable us to do much more sophisticated risk assessment, perhaps considering patterns of behaviour by taxpayers and taxpayer groups by factors such as age and population. In that regard, we feel that investment in a central data repository and IT system will be a much more effective way of enabling us to administer the taxes as efficiently as possible.

Gavin Brown: Is there anything that is explicitly IT related that is not included in the estimate, or is that the final figure?

Nicky Harrison: That is our current estimate. As with all estimates, it is our best estimate based on what we know at the moment. I do not have a crystal ball that allows me to say that it will be exactly that amount.

Gavin Brown: I would not ask you to do a crystal-ball act—that is always risky. The impression that I got from the previous discussion was that everything was included—you were right to say that that is what it says in black and white. My question is basically to ask whether anything is specifically excluded.

Nicky Harrison: No, nothing is specifically excluded.

Gavin Brown: Nothing?

Nicky Harrison: Nothing is specifically excluded. That is our best estimate of what it will cost, in its entirety.

Michael McMahon (Uddingston and Bellshill) (Lab): I have a question for the purposes of clarification. On information notices, section 144
outlines the course of an appeal. Does that reflect adoption of the current practice, or is the refusal to allow an appeal beyond the tribunal something new that will be introduced through the bill?

John St Clair: My recollection is that there is no departure from the stamp duty land tax practice in relation to the provision.

Michael McMahon: So, the provision is not new.

John St Clair: No.

Jean Urquhart (Highlands and Islands) (Ind): When we took evidence about the landfill tax charge, most people felt that it should not diverge from the cost in England. Would taxing illegal dumping introduce such a difference? Will HMRC introduce such a tax?

Colin Miller: Our approach to the taxing of illegal dumping is new. It is clearly designed to provide an additional tool in relation to criminal activity. It does not, by definition, impact on legal operators who are working within the laws that are passed by Parliament.

Jean Urquhart: Yes, but the point was made that should we charge a slightly higher rate in Scotland than is charged in England, people might take their landfill to England and pay less. By the same token, if somebody is going to dump illegally and they are not far from the border, what happens if they dump illegally in England?

Colin Miller: The charges in Scotland are entirely a policy decision for ministers and the Scottish Parliament. Whether the UK chooses to follow our approach to illegal dumping is entirely a matter for the UK Government and Parliament. It is fair to say that we have consciously adopted a different policy from England and Wales. One aspect of that is the provision of greater deterrents to those who engage in illegal dumping activity.

John St Clair: Criminals do not usually factor in the level of fines or tax, because they expect not to get caught, so the argument is probably theoretical.

Colin Miller: If we and SEPA have greater success in compliance activity with regard to illegal operators, I hope that at the very least—as I think we said earlier—that will be a deterrent to such activity. The power to tax and, for example, the power that the Crown Office exercises in both civil and criminal proceedings to recover the proceeds of crime are very effective measures.

The Convener: See, Jean, if only you had the mind of Ernst Stavro Blofeld.

That concludes questions from committee members, but I will ask a couple of questions to round things off. I had intended to ask a number of questions based on the report from our tax adviser, but time precludes that.

In evidence that we took on the landfill tax, revenue Scotland stated:

"There will need to be a formal agreement between revenue Scotland and SEPA. The two organisations are already clear that we will need to develop that once the tax management bill is sufficiently far through its consideration. That should be a public document that the committee will have an opportunity to scrutinise."—[Official Report, Finance Committee, 19 June 2013; c 2830.]

When is that likely to take place?

Colin Miller: The requirement in section 4 of the bill is for revenue Scotland to publish and lay before Parliament the terms of any delegations to the Registers of Scotland or SEPA and any directions that revenue Scotland gives to accompany those delegations. Those will be formal documents—they will almost be legal documents.

Underneath that, there will be more detailed and more operationally orientated memorandums of understanding. I invite Nicky Harrison to comment on the timescale and the manner in which those are being developed.

Nicky Harrison: I will explain the approach that we—working with Registers of Scotland and SEPA—are adopting. We are working on the basis of mapping out taxpayer journeys to develop systems and processes for the administration of the taxes. Once we have a clear view of the end-to-end processes, we will assess the strengths—if you like—of the organisations involved to decide where the boundaries should lie for the delegated functions.

We could have done it the other way round. We could have started by saying, "The boundary will lie here," and we could have developed our systems and processes independently, but we feel that the value of our approach to tax administration lies in making the systems as efficient and seamless as possible. That is why we do not yet have clarity about where the boundaries will ultimately lie. However, we have certainly got working agreements at the moment about where the boundaries lie as we are developing the process and putting the systems in place.

As we progress through 2014, the boundaries will become clearer, and that information will be condensed into the documentation that will constitute the formal schedule of delegation, which will be published as required under the Revenue Scotland and Tax Powers Bill. We will also publish memorandums of understanding that will set out in an operational context what we expect with regard to service delivery by the organisations to which we delegate functions.
10:45

**Colin Miller:** We intend to publish the MOUs, with the possible exception of anything that might assist someone who is trying to evade compliance activity.

**The Convener:** In the joint six-monthly progress report on the implementation of the LBTT that is dated 4 October 2013, Revenue Scotland and the Registers of Scotland state:

“The result of this work will be a comprehensive catalogue of user interactions with the collection system which in turn will be translated into system requirements.”

As you will recall, concerns were raised during the LBTT bill process about how ordinary members of the public would be able to interact with the system following its implementation. There was talk about help desks, the frustration of dealing with HMRC and so on. Can you outline how the public will be able to access the system, and where we are with that at present?

**Nicky Harrison:** Yes, certainly. Among the streams of work that are being undertaken to develop the administration of the devolved taxes, there is a stream around customer contact; I use the word “customer” to encompass taxpayers and their agents. As part of that workstream we are focusing on understanding what users’ requirements will be, how those requirements are best met and the importance of understanding them.

For instance, as the land and buildings transaction tax is administered largely by solicitors as the intermediary for the taxpayer, we have been keen to understand the processes from the solicitors’ point of view so that we can provide a contact mechanism that most effectively meets their needs. We are still in the process of developing the requirements for that and making decisions within the governance framework for the programme with regard to how it is delivered.

I am sure that, when the next six-monthly update is produced, Eleanor Emberson, John King and John Kenny will be happy to give you more detail on it. We are actively working on that area at present, and we are focusing on the importance of getting contact opportunities with customers and their agents right to meet their needs, rather than the process being driven by the bureaucratic needs of the organisation.

**The Convener:** Thank you for the comprehensive answers that you have given today. Do you wish to make any further points to the committee?

**Colin Miller:** I will add one final word on the charter—I should have made this point earlier when one of the members asked about the balance. As the committee will know, the provisions in the bill require Revenue Scotland to prepare a charter, publish it and keep it under review. However, the point has been raised with us that the bill does not expressly require Revenue Scotland to consult, either on the first charter or on any revisions to it, so we propose to lodge an amendment to address that at stage 2.

**The Convener:** Thank you—that is very helpful. I thank colleagues for their questions, and I thank everyone for attending.
The Convener: Our second item of business is to take evidence from the Scottish Government’s fiscal commission working group as part of our scrutiny of the Revenue Scotland and Tax Powers Bill. I welcome Crawford Beveridge and Professor Andrew Hughes Hallett. I understand that you both want to make a short opening statement.

Crawford Beveridge (Fiscal Commission Working Group): Thank you, convener. We appreciate the opportunity to speak to you today. Our appearance is on behalf of the fiscal commission working group, and we welcome the opportunity to share some of the thinking around the principles of tax design. Professor Mirrlees, who is a member of the group, has spoken to you before on a slightly wider basis, and we noted with great interest the experience that he was able to bring.

As you probably know, the working group is a subset of the Council of Economic Advisers. It has been established since March 2012 and was tasked with designing a robust macroeconomic framework for Scotland post-independence. To date, we have published four reports, which, if you have trouble sleeping, I am sure you will be able to work your way through over time. Three of those focus on currency, financial sustainability and the fiscal framework. Perhaps most relevant to the committee, however, is the paper that we published in November, which sets out the principles of a modern and efficient tax system in an independent Scotland. That report, together with the three other publications of the working group, provides a clear blueprint for a comprehensive fiscal framework for an independent Scotland.

Our work was not about particular tax rates, so we have not tried in any way to suggest what the specific taxes or rates should be. We were aiming to create a framework for designing a system that can meet the objectives of the Government in the most effective and efficient manner. It focuses on the clear principles of simplicity, stability, neutrality and flexibility—apologies to Adam Smith and his tax provisions—that we recommend the Scottish Government should follow in pursuing those objectives. However, we recommend that tax policy should form part of a much broader whole-system approach to the formulation of policy, taking advantage of Scotland’s size to streamline institutions and decision making and focusing on the objectives of taxation and welfare across the entire public sector and beyond, which we think
could provide Scotland with a significant international advantage.

Our report made it clear that there is significant room for improvement in the United Kingdom tax system, which, like many others in the western world, has grown like Topsy over the couple of hundred years since it was introduced. It also stressed the importance of ensuring that individuals and companies pay their fair share of taxes in the system and highlighted the opportunities of using the tax system to make Scotland more competitive environment. Such a system would be a tool for promoting economic growth, attracting quality jobs and, importantly, tackling inequalities across Scotland.

As you may know if you have read the report, we did not specifically cover the Revenue Scotland and Tax Powers Bill. Our work focused mainly on high-level principles of taxation generally. However, we hope that it can be used to inform the committee’s work on the bill, and we welcome the opportunity to discuss the implications of the proposed framework.

Professor Andrew Hughes Hallett (Fiscal Commission Working Group): I have very little to add to that. That was the collective view of the working group.

Given the various principles of taxation, which have been mentioned—there are at least four, but sometimes one or two others can be added—it will never be possible to design one system that satisfies all of them perfectly simultaneously, so there is a trade-off. Not only is it for the policy makers to fix tax rates and so on—we do not suggest anything like that—but the priorities are also for the policy makers to decide. We can point out some of the pluses and minuses of different regimes, but not the details.

The evidence that you had from Professor Mirrlees a few weeks ago was very good—he gave a wonderful review of the principles behind taxation. There is little that I can add to it. There might be one or two points to pick up on but, in general, I think that he did a wonderful job, so I will not add any more on that.

The Convener: Thank you, gentlemen, for your opening comments, which are very much appreciated. In your submission there is a lot of discussion about the referendum issue and independence but we are not really here to ask about that so we will keep the questions on the issue of the bill before us. That might disappoint some of the folk in the public gallery, but never mind.

To fire on, I note that you state in paragraph 6.19 of your submission:

“A simple tax system is one in which tax rules and obligations are well known, easily understood, and liability is clear.”

However, as you touched on, the UK system is very complex. I think that there are somewhere in the region of 11,400 pages of tax law. Indeed, you go on to say in the submission:

“The UK tax system is complex and costly, and studies have shown there is considerable room for improvement in its design and operation.”

When we design a tax system for Scotland, what pitfalls should we be avoiding?

Crawford Beveridge: I will let Andrew Hughes Hallett give his views as well but what we were trying to say in the submission was that people—and businesses in particular—need a degree of certainty about what will happen with taxes. There has been a lot of discussion in the past few days about the oil industry, which is obviously very keen to make long-term investments and to have some certainty about what the tax system will do to those investments.

We were trying to say that it was important that people—individuals and companies—understood on what basis they were going to be taxed. People understand that taxes change over time because circumstances change; they understand that there needs to be flexibility in the system. However, by and large we ought to have some clarity about how things will work in the future.

To the extent that you can simplify these things, you also have an opportunity for efficiency in the system, which would allow the cost of taking taxes to come down dramatically compared with the rather complex way in which we do things today, particularly with regard to the need for large numbers of accountants to help us to get our taxes into line.

That was all that we were trying to say, really—that you cannot do all that overnight. You cannot take a very complex tax system and change it on day 1. As Professor Mirrlees probably mentioned, we were looking at probably a 10-year horizon to be able to solve the tax system and get it into a much better format. However, getting it into that state of simplicity would be worth while.

Professor Hughes Hallett: Of course, simplicity and flexibility are likely to conflict a bit and we want both, so that is where one of the trade-offs will come. It is difficult to manage that. It is particularly hard to set out a set of rules ex ante about how that trade-off should be managed, because if circumstances change, you might want to manage the trade-off in a slightly different way.

People want clarity about the system and how it works rather than rates. You cannot give them the rates. You do not want to make forecasts about
what you are going to do because forecasts are always wrong. You want to provide a set of principles and possibly some contingent rules, one of which might be to establish a presumption—but not necessarily a hard and fast rule—of small changes rather than large changes so that you have a gradual evolution if possible, which is known in the literature as tax smoothing. That is a popular idea.

The only thing that I would quarrel with Crawford Beveridge about is whether the UK tax system grew like Topsy or whether it is like Heathrow airport. The problem is that every time we face a new demand, we add a little bit on to the system and we end up walking down extremely complicated passages. It is much easier to have a clear system if you start with a concept and try to design it from there, working down from the general to the specific rather than adding bits on to the specific. There is an opportunity here in that regard that I would underline.

**The Convener:** So basically, you are saying that we should start from scratch.

One issue that causes great concern and, indeed, anger among the public is tax avoidance. For every new rule that is brought in to reduce avoidance, new loopholes seem to appear in the UK system. There is a perception among many that there are individuals who are not paying their fair share of taxation. How would you develop general anti-avoidance rules in a Scottish context in order to ensure that we have the kind of fairness that everybody feels the tax system should deliver?

**Professor Hughes Hallett:** I am taking notes as I listen to your question so that I do not forget it. At my age, the memory is not what it used to be, as my kids tell me.

I am not sure how to answer that question, because you are getting into the nitty-gritty of administration, implementation and, presumably, tax law. I find it difficult to talk with lawyers about the law, because I have a different perception of it. The one thing that I would say is that, if you focus on simplicity, you will have a good chance of getting higher compliance, first of all because it is more difficult to wriggle round and, secondly, because people know in advance that certain things are doable and certain things are not. That is much easier in a simple system.

The same thing applies to the question of fairness. If the system is relatively simple, you can see the degree of fairness or otherwise rather easily, so the incentive to wriggle round things if you feel that something is not quite fair is less. Without going into specific rules and administrative arrangements, I would go for simplicity as a way of trying to characterise rules that can help us avoid avoidance.

**Crawford Beveridge:** Jim Mirrlees gave an example concerning property transfer, where somebody might decide that because there are differential rates, they can split up a property and buy it in sections. Given such cases, there is a stage at which one can never stop somebody with larceny in their heart from getting round the system; they will find a way to cheat no matter how many rules you put in. Therefore, it is helpful to start with the principles of what you are trying to do, so that people understand clearly that there will be somebody watching to ensure that nobody can get round the system.

At a certain point, trying to enforce the system could become more expensive than the tax that you are actually able to take, so we need a system that is as simple as possible, so that people understand what we are trying to achieve. We may just have to hope for the best as people try to find their way around.

**The Convener:** One issue with taxation is that sometimes the absolute letter of the law is used, as opposed to the clear meaning behind the law. That influenced the interpretation of the famous case involving Glasgow Rangers Football Club a year or two ago.

In chapter 2 of “Principles for a Modern and Efficient Tax System in an Independent Scotland”, you say:

“In considering the strengths and weaknesses of taxation, it is essential to reflect upon the entire system and not just one element.”

This is a framework bill, to a large extent. Do you feel that it does that?

**Crawford Beveridge:** I have to tell you that I am not an expert on the bill. I read it for the first time this week. It was long, and the bill was certainly trying to set out what we were suggesting, but we did not specifically discuss it in the working group, so we have not had time to think that through at all. I am sure that we can ask the working group to take a look at it if you wish, but Jim Mirrlees is probably the most expert of our people in that area and I suspect that the information that you got from him is as good as we are going to get.

**The Convener:** As I said, this discussion is not about independence, but you say in chapter 5 that independence would allow for the redesign of the tax system according to

“specific Scottish circumstances and needs”,

that

“Taxation is a key lever in competitiveness, economic growth and tackling inequalities”,

""
and that it
“plays a key role in a robust and successful macroeconomic framework.”

Do you believe that a bill such as this can deliver such a framework now, which can be adapted if there is a yes vote in the referendum but which can also deliver with devolved competences?

Crawford Beveridge: As far as I could tell from my reading of it, it is an attempt to put together a bill that will affect not only the two specific issues that you have mentioned but which could also be expanded to take on other levels of taxation if they were devolved to the Scottish Government. It seems to have gone quite a long way towards being able to do that, so I do not see why there should not be an opportunity to do exactly what you suggest and to adapt other things to the specific circumstances of Scotland.

The Convener: This is my final question, because I will open the discussion up to other colleagues, who will have their own questions.

You talk in your paper about
“Better linkages and streamlining of institutions involved in i) setting tax policy, ii) implementing tax policy, iii) administering tax collection, iv) linking to business policy, v) linking to welfare policy and vi) linking to environmental policy.”

How can all of those be worked together in such a bill?

09:45

Professor Hughes Hallett: That takes us back to Crawford Beveridge’s previous point. The answer is not very much, as far as the bill as drafted is concerned. You want to frame the provisions in such a way that you have the potential to do that in the future, because those issues will come up. Whether you are in a position to influence the other taxes is another matter. You certainly want to be in that position, and you would not want to frame a bill and, after the event, say, “Oh gee, we have these other taxes. Let’s see how we can link them with everything else,” without having the framework in place to do that.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): We have before us some excerpts of your report, “Principles for a Modern and Efficient Tax System in an Independent Scotland”. You highlight a statistic that I have heard being used before. It occurred to me when I was reading the report that it has the ability to make changes to only about 7 per cent of all tax raised here, including a geographical share of oil. The Scotland Act 2012 allows us to push that up towards 15 per cent, but it is still a relatively small amount, as you are probably aware.

It can be difficult to build a tax system in pieces like this. Sometimes, some taxes will offset other taxes and will cause other things to happen. A good example might be the passenger tax at airports. Even if we had control of that and we thought that doing away with passenger tax would mean many more people coming into Scotland, such that we would make it back in VAT and other tax revenues coming in, those tax revenues would not necessarily accrue back to Scotland—they would accrue back to the Treasury. It is sometimes difficult not to take a holistic view of things in trying to figure out what it is possible to do with some small pieces.

Jamie Hepburn: Thank you for that useful clarification. That was my instinct: I thought that that would probably be the case, but I just wanted to clarify that.

The summary in your report sets out a key theme that is articulated throughout the report, which is that it is essential to consider the entire tax system rather than just one element. We are considering a bill to create a body that will deal with a very limited number of taxes. How much of an issue is that? We are where we are, so how do we do as best we can if we are not necessarily considering the entire tax system?

Professor Hughes Hallett: Quite—that is my instinctive answer. If you are looking at only a couple of small pieces, you cannot do very much with that. I know that the income tax bit under the Scotland Act 2012 is not with you at the moment, but it might be one of these days. The big problem in trying to use these taxes to steer the economy is that you have no access to the spillover on to other taxes. That is a problem in running the system, and it is one of the big disadvantages of that approach to devolving.

I reiterate what I said before. You would want a system that is capable of dealing with those things, and you should be able at least to talk about them even if you do not have the capacity to look after them until some point in the future.

Professor Hughes Hallett: We have before us some excerpts of your report, “Principles for a Modern and Efficient Tax System in an Independent Scotland”. You highlight a statistic that I have heard being used before. It occurred to me when I was reading the report that I have always accepted this without assessing what it means. You state:

“the Scottish Parliament is responsible for around 7% of all taxes raised in Scotland ... This will rise to 15% with the introduction of new responsibilities flowing from the Scotland Act 2012.”

What is it that we are talking about here? Does that refer to 7 per cent of all revenue accrued, or some other mechanism?

Crawford Beveridge: The report was trying to say that, at the moment, the Scottish Government has the ability to make changes to only about 7 per cent of all tax raised here, including a geographical share of oil. The Scotland Act 2012 allows us to push that up towards 15 per cent, but it is still a relatively small amount, as you are probably aware.

I reiterate what I said before. You would want a system that is capable of dealing with those things, and you should be able at least to talk about them even if you do not have the capacity to look after them until some point in the future.

Jamie Hepburn: Mr Beveridge mentioned that you have only recently looked at the bill that we are assessing just now. Judging by your reading of
the bill so far, do you think that is it doing as best it can with the powers that we have?

Professor Hughes Hallett: I would say yes.

Crawford Beveridge: From what I have read, I think that the answer is yes. However, we pointed out in our report that, ideally, you would have tax as part of an entire fiscal system in Scotland. Why do we collect taxes in the first place? One reason is to ensure that the Government is funded for the programmes that it wants to run. Another reason might be to make transfers of various sorts, either between social groups or from today into the future—for pensions and other things of that nature. A further reason might be to tackle some kind of market failure.

It is difficult to take just a couple of taxes, as you have in the bill before you, rather than making the measures part of a much more rigorous system that attaches them to what you are doing with your budgeting system, your transfer system and so on. The main point that we were trying to make was about dealing with one element in an entire macroeconomic system. We need to be careful about that. When you are fiddling with just one bit, you can only go so far.

Jamie Hepburn: I have a further similar question. The convener has highlighted part of the executive summary of your report, and I will highlight it again. The report said:

"The UK tax system is complex and costly, and ... there is considerable room for improvement in its design and operation."

The convener asked about the pitfalls to avoid, and that leads me on to another question. Again I take on board the fact that you have only just recently looked at the bill but, in so far as you have read and understood it, does it represent an improvement, particularly in relation to the two taxes? Is it an improvement on what the UK has administered?

Crawford Beveridge: It looked to me from reading the bill that it simplifies things and makes them a lot easier for people like me to understand. I do not do a lot of work on the transfer of property and so on, but I thought that the bill makes a real attempt to simplify what has been quite a complicated system into one that is easy to understand as far as the principles are concerned.

Jamie Hepburn: Noting the answers that you have just given, I know that your recommendations on the principles for a modern, efficient tax system obviously go much wider, but do you think that the limited number of taxes that we are dealing with today meet the recommendations that you have set out?

Crawford Beveridge: Yes, I think so. As far as I could tell by checking the provisions against the principles that we set out, they will.

Jamie Hepburn: Would you agree, professor?

Professor Hughes Hallett: Yes. In part, that comes from the fact that you are able to consider the matter for the first time, as it were. I know that the taxes are not being considered for the first time, but you now have the opportunity to examine them and to ask whether this is really how you want to use them. Then, you slightly adapt the framework to fit that and you are able to do something that has not been possible before. You have the two taxes, and you can work out whether you can set them up in such a way that they allow for what you want to happen in Scotland, as opposed to there just being some average for a wider field.

I have just one further point to make on this subject, and it is a fairly obvious one for those who have listened to me before. I am fairly keen on forward-looking analysis. What are the various implications for the future? Even if you do not have control over some of the things that you might have control over in another context, you can consider the particular taxes before you and the implications of changing them or making them work in a different way—there will be various possible implications for the way in which the economy or a particular market functions. You cannot do anything about it, because it is a reserved power, but it is good to know, before something else happens—before there is a disaster, or before there is some wonderful windfall that you had not expected.

John Mason (Glasgow Shettleston) (SNP): In the overall scheme of things, when international companies from around the world are thinking of investing in one country or another country, how important is tax as part of the whole package? Presumably, they are considering other things, including an educated workforce. How important is tax in all of that?

Crawford Beveridge: When the companies that I have worked for—which I can probably speak to—are doing international location studies, tax is definitely fairly far down at the bottom of the list. If people are not sure that a tax regime is going to be consistent, they need to ensure that all the other operational things pay off for the investment that they are going to make in their company.

I have mostly been in technology industries, in which the payback time for investments is relatively short. In the oil or oil processing industries, for example, the payback time is much longer. I am sure that if I had worked for oil companies, tax and the ability to predict tax would have been further up my list.
By and large, for most companies with reasonably short-term investment paybacks, tax is one factor that they would consider. We can see, for example, the effect that the Irish position of having very low taxes had on their ability to drive inward investment. It has not done all that they might have wanted it to do, but it was certainly a factor in getting companies to consider whether they wanted to pay 20 to 30 per cent in corporation tax or 10 per cent.

Andrew Hughes Hallett might be able to talk about this more wisely than I can, but it is not just about the tax rate but about how it is administered. If I recall correctly, Germany has a relatively high rate but collects very little in tax, because there are so many allowances in the middle. That is a condition that creates a very complex tax system. The simpler the tax system, the easier it is for companies to comprehend it and include it in their decisions about whether to locate somewhere. Is that fair, Andrew?

Professor Hughes Hallett: Yes. I think that we have been in the working group too long. Crawford Beveridge has pinched half of my thunder.

Crawford Beveridge: I should explain that I am not an economist but just a simple businessperson. These guys have done their best to train me for the past four years, but I still fail sometimes.

John Mason: I found what you said interesting. You have a Scottish Enterprise background, so you have quite a lot of knowledge of companies coming and going and of what they are interested in.

Professor Hughes Hallett: What Crawford Beveridge said cuts both ways, because he has been in business and I have not, so he can speak with more authority about that.

When we consider how important tax is, we immediately start talking about corporation tax, because that is what grabs the headlines in the newspapers. Corporation tax is important, but it is not totally important and is probably less important than people would like to persuade you.

There are all sorts of other costs and taxes. When I am lecturing, we call them non-wage taxes, which are costs to the employer that are not part of the wages that they have to pay out. Those are important as well because they have to do with the competitiveness of a company’s position and whether they will invest in one place rather than another. The factors that are probably further up Crawford’s list, depending on what is being done, are to do with skills, education and language, and the ease of doing business. There are a lot of factors, but tax is clearly in there.

When we use the phrase “ease of doing business”, what exactly are we talking about becomes a bit murky. It is often argued that a complex tax system puts businesspeople off. That is probably true, because they fear unpredictable changes that come with no warning. A simpler tax scheme would be much better for them than a complex one. It is therefore really not so much the level of tax but the potential for changing it that would bother businesspeople.

That said, the complexity is to do with how the tax system works, as Crawford implied when he mentioned Germany; it is not to do with filling in forms. There is an academic paper—I like to push academic papers—that shows that the complexity in a tax system from filling in forms apparently has no impact at all on most businesspeople’s thinking. The issue is how the system actually works.

My numbers are perhaps a little out of date, but a couple of years back German corporation tax rates were in the 30 per cents, depending on where a company was and what it was doing, compared with Ireland’s 12.5 per cent rate. However, Germany raised much less money by having the higher tax rate, because there were thousands of exemptions and other arrangements that meant that people found that they did not have to pay or they could pay a lower rate. It can therefore be argued that that system is too complex and takes up too much time.

As I said earlier, a simpler rate has the advantage that it is better for compliance reasons. People know what it is and are more ready to pay.

Crawford Beveridge: Just to add to that, one of the things that we said in the paper is that it is important when constructing a tax system to try to gain international co-operation. I can assure you that almost any time a company picks a country to settle in, which is usually for the reasons that Andrew Hughes Hallett highlighted—skill levels and so on—the company can structure itself in particular ways, which can be called tax avoidance or whatever, that allow it to minimise the amount of tax that it pays. There are lots of very smart accountants out there who can tell companies how to set up in Scotland and pay practically no tax at all, because they can run it through subsidiaries in places such as Ireland or Holland that will gladly allow them to do that. If we want to get fair taxes paid, we must understand that international co-operation in the way that I indicated is very important.

10:00

John Mason: I presume that the situation for a company such as Google that is just going to put up a big office in one place, which is one decision,
is different from that for companies such as Starbucks, which wants a coffee shop in every part of the world, I guess. I presume that, as long as it can make a profit, Starbucks will be less affected by tax rates than the big headquarters moving around are.

Crawford Beveridge: The reason why such companies are less affected is that they can set up their businesses in ways that flow their revenue to places where there are very low taxes. You have seen some companies, such as Starbucks, that have been under a lot of criticism because they have very large revenue in the UK but do not pay very much tax here. That is because they take that revenue and show it somewhere else in a much lower tax regime. Almost every company for which I have worked has employed large numbers of lawyers to ensure that revenue flows to places where they do not have to pay any taxes. That is because there has been no international co-operation in the arena at all.

John Mason: That is interesting, because Professor Kay is coming next and he argues that there should be more international co-operation, especially on the big taxes such as VAT and corporation tax.

Crawford Beveridge: Absolutely.

John Mason: Is that the way we are going or should be going?

Crawford Beveridge: Yes. There are many countries in the world and many of them think that giving tax breaks to people will enhance their economies dramatically because they will get some income and, perhaps, some jobs coming in. Singapore, for example, allows companies to put headquarters there and, as long as the company has a certain number of reasonable-level jobs in it, gives it a tax break on all its Asian income flowing in through the Singapore operations. There will always be such countries that will not want to sign up to a totally international system, but we could at least get a large number of countries working together.

John Kay will probably know a lot more about that than I do, but I think that he, too, would argue that we ought to try as hard as we can to get everybody to co-operate.

John Mason: Smoothing or not having large changes in the tax system has also been mentioned. Any country would be tempted, if it suddenly saw a sector making superprofits—be it banking, oil or whatever—to get in and get a cut of them. How do we balance that against stability?

Crawford Beveridge: As Andrew Hughes Hallett said earlier, that is the complexity. Some flexibility is needed because conditions change and you want to ensure that you get the right revenue and tackle the right kinds of things through the tax system. However, the problem is that, if you make sharp shifts, you affect not only the industry that you have gone after—let us say banking or oil—because everybody else sits up and says, "Uh oh, if they do that to them, what will happen to me?" We need to be thoughtful, planful and forward thinking about how we make such changes. Is that fair, Andrew?

Professor Hughes Hallett: Yes. If you start with a small change, you can see what the reaction is. If you start with a big change, you get a reaction that may be the one that you did not want, but it is then too late. If I were doing it—which I am not going to be asked to do—I would make a small change, see how people reacted to it and then build up a bit further so that, in any one time period, there would not be a terribly big change. What is more, that would allow firms to see what way the tax regime was going. If they do not like it, they will let you know and, if they really do not like it, they will vote with their feet. It is best to go steadily.

John Mason: You say that they would vote with their feet but, if their industry is oil, which is fixed in the North Sea, they cannot exactly go away and leave it.

Professor Hughes Hallett: No. I am talking in generalities, of course. Firms voted with their feet on the pay arrangements that were put in place for banks in London. A number of funds moved themselves to Geneva. I understand that a number of them got to Geneva, found it a little bit boring—forgive me—and moved back again.

Many factors are in play, but there is a potential for firms to vote with their feet. If we look at European integration, we find that a surprising number of firms are mobile. Those in the oil industry are not because they have to be where the oil is, but factories can be deconstructed and moved elsewhere.

Crawford Beveridge: However, even with oil, there are choices to be made about where it is pumped and where the next round of investment is made. If the cost of retrieving the oil and the tax system are such that it is much easier to retrieve it in Saudi Arabia and the Gulf, firms could disinvest for a while. Eventually, investment will come back, because the firms will need to go and get the stuff out of the ground—John Mason is right about that—but we need to be careful that we do not cause firms to make investment decisions that are against our best interests.

John Mason: The final area that I want to touch on is the suggestion that tax and welfare should be joined up. There is perhaps not much room for that with the landfill tax and the land and buildings transaction tax, but we might need to consider that
at some stage. Are there international examples of where a more joined-up approach is taken than in the UK, or is it a general problem that tax and welfare are not joined up? Is that an unfair question?

Professor Hughes Hallett: No, it is not an unfair question, but it offers a temptation to make amazing generalities that are probably not terribly useful.

The Convener: It is not terribly connected to the bill either, which is what we are trying to focus on.

Professor Hughes Hallett: No, but I think that some of the discussion on the bill must reflect ideas on general practice and presumptions about how things work. If we have such discussion now, that will colour what is done at a later stage, so it is important to get round that.

There should be a connection with welfare, and I go back to the issue of taxes being assessed on incomes and what I called non-wage costs—there are connections there, too. In many European countries, those two are linked together, whereas here they are lumped together without much thought. Therefore, there probably is scope for tax and welfare to be joined up but, as you said, that is not the case with the land fill tax and the LBTT.

John Mason: Thanks very much.

Gavin Brown (Lothian) (Con): I will return to the bill. In response to a question from Jamie Hepburn, Mr Beveridge said—I think that I wrote this down right—that the bill "simplifies" the system for people like you. Will you expand on that? Which areas of the bill simplify the system?

Crawford Beveridge: Neither of the issues with which the bill deals affects me very much at all, but I had never quite understood the system in Scotland and, when I read the bill, I understood what the Government was trying to do. If I can do that with areas that are not of particular interest to me and in which I have no particular expertise, I presume that others who need to make use of these taxes will understand them much better as well.

Gavin Brown: Which parts of the bill simplified matters for you, compared with the existing system?

Crawford Beveridge: Perhaps it is just that I had not spent enough time understanding how the taxes work at the moment. When I read through the bill, I thought, "Ah! Now I understand exactly how these things work." The answer that I gave was a general one, because I had never studied the taxes. It seemed from the bill that they were fairly simple, whereas I had always heard people complain about them in the past.

Gavin Brown: Should the bill deal purely with the two taxes that will be devolved from April of next year, or should it look at setting up a longer-term framework?

Crawford Beveridge: As I read it, the principle behind the bill was that the Government was trying to ensure that it allowed for any other devolved taxes that came along to be dealt with without going back to square 1 and starting all over again with a new bill. It seemed to meet some of the tests on simplicity, neutrality and so on in those kinds of areas, so I felt that it was set up to deal with other things that might come along.

Gavin Brown: Okay.

I would be interested to get answers from both of you on a more general proposition. To what extent should tax legislation be dealt with in primary legislation as opposed to secondary legislation and regulations? In your view, how should that balance be struck?

Professor Hughes Hallett: This is a nice discussion, because it allows me to open up on areas that I know nothing about. As I am not a tax expert and have not done a lot of work on that, it is difficult for me to know whether I am talking sense. However, my sense is that, as I said earlier, the bill should definitely be set up to look forward. The general principles should be in the primary legislation, but I do not think that it is possible to legislate on the basis of presumptions about how things will work. That has to be dealt with in secondary legislation or in implementation and practice—the regulation part.

If that is what the bill ends up doing, that is progress. With the passage of time, other things happen and it is easy to bring in extra bits of legislation that say, “You can’t do this,” or “You must do that,” and if the principles are not laid out, that can become a muddle. Separating the principles from how things will work means that the simplicity will last longer.

Crawford Beveridge: That is right. Getting the principles in primary legislation is one thing, but flexibility reduces as the principal legislation becomes more specific, because changes will require another bill later. Doing most of the stuff in regulations is much wiser than putting it all in the principal legislation.

Gavin Brown: Do you have a view on the balance that has been struck in the bill?

Crawford Beveridge: I honestly do not.

Professor Hughes Hallett: I can give you any views that you like, but we are not expert enough to give you a useful view.

Gavin Brown: The general anti-avoidance rule is the measure in the bill that has attracted the
most discussion. Will you give me your views on how it is framed in the bill or more generally, if you cannot comment on the specifics?

Crawford Beveridge: As I said in response to the convener, the bill does as good a job as can be done to lay out the principles. However, the position is difficult, because this is a bit like dealing with hacking in computer systems. If somebody is bound and determined to get round the law, they will do everything that they can and spend lots of money to do that.

You cannot stop everything that tries to avoid tax. All that you can do is lay out what you are trying to achieve and ensure that that is written with enough scope so that, if somebody goes definitely against the spirit of the rule, there is an opportunity to tackle them on their avoidance. Is that fair, Andrew?

Professor Hughes Hallett: Yes—that is fair. I find it difficult to comment. In general terms, the rule seems fine, but I am left wondering what specifically will be done. That question probably cannot be answered in the context of framing a bill on revenue Scotland.

The one issue that has caught my attention is whether there is scope and whether it is sensible to have a set of guidelines, when revenue Scotland is up and running, on its view about what can and cannot be done. I hesitate about that because we do not want to get to the point at which it looks as though ex ante deals are being done for best friends. I imagine that it would be helpful if general guidelines came from revenue Scotland about whether something was okay, rather than it being known as a matter of practice that a firm got away with something, which means that people think that they can try the same thing. However, the guidelines might be a bit difficult to craft.

Crawford Beveridge: I will use a slightly different example from elsewhere. Some years ago, California, which is one of the other places where I live, introduced a landfill tax with the intent of getting people to recycle more, which I assume is similar to the intention in the bill. However, people in California incinerated waste more, which caused all sorts of environmental problems. The legislation there had to be changed to ensure that its purpose was met.

Unintended consequences often arise from what we do. As far as I can tell from reading the bill, the Government has tried its best to ensure that that does not happen, but some people will always say that there is an easier, cheaper and better way for them to do something, so they do not have to do exactly what the bill says.

Gavin Brown: In relation to the general anti-avoidance rule, it has been suggested to us that a formal pre-transaction clearance procedure should exist. That is not universally agreed on; some people think that it should be used and some do not. From your business experience, what is your view on such a formal procedure?

Crawford Beveridge: The good news is that such a procedure provides a degree of certainty and means that people know that they can go ahead without running foul of the authorities. The bad news is that, as with planning processes, if the procedure turns into a fairly lengthy bureaucratic process, that can start people down the road of saying, "Maybe we don’t want to go there—it’s just too complicated."

A balance needs to be struck whereby people understand that they might take risks if they proceed without pre-approval. However, if everything is put into a stack and we have to wait for somebody to look at it and say, “I’ve taken all the legal advice and you’re absolutely clear,” that can cause problems.

Gavin Brown: So, on balance?

Crawford Beveridge: On balance, the more guidance we can give about those things that are not likely to draw contention the better, but I would be cautious about pre-approval for everything.

Gavin Brown: I just want to make sure that I heard you right at the start. Did you say that the bill has not been formally discussed by the fiscal commission working group?

Crawford Beveridge: That is correct.

10:15

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I will start with the bill, to keep the convener happy.

Do you believe that the bill, as it stands, will be flexible enough to accommodate a wholesale transfer of tax powers, or do you think that such a transfer would require a new piece of primary legislation to embed the kind of principles that you have articulated in your policy paper?

Crawford Beveridge: I will let Andrew Hughes Hallett speak for himself, but my suspicion is that more legislation would probably be needed, just because of the number of taxes involved, their breadth and the amounts that we would be talking about. We need to remember that we would have to take on a lot of things immediately and that there would be a lot of things that we would not be able to change immediately; it would take time to decide how to shift and change the tax system. I do not know enough about the way that the legal system works here to tell you that it would definitely need primary legislation, but I would think, given the range of existing UK taxes that we
would be likely to inherit, that the bill is probably a shade lighter than we would need to be able to tackle all of them. However, as I have said, I am not an expert.

Professor Hughes Hallett: I am not an expert, either, but I agree with that. The two taxes that we are talking about at the moment are quite specific, and you might want to have new legislation to alter the balance between the different criteria that you are trying to satisfy if you want to adopt a more general approach, so I imagine that more legislation would be needed.

Malcolm Chisholm: That is interesting. There has been some tension in the evidence that we have had so far about the extent to which the bill is focused on the limited tax powers and the extent to which it could be used for a much wider range of taxes. We will undoubtedly pursue that with other witnesses.

You mentioned that the Scottish Government should take a whole-systems approach and should take into account key interlinkages with wider policy objectives, which is quite an interesting area in itself. For example, you say that you want a tax system that helps to increase productivity and economic growth, and one that is a key lever for tackling inequalities, which are fairly high-level principles. Do you think that, in practice, those two objectives are often contradictory?

Professor Hughes Hallett: Not necessarily, but maybe. You will know the joke that goes, “For heaven’s sake, find me a one-handed economist.” It is a bit like that.

Malcolm Chisholm: Did your colleague Professor Stiglitz not go on about growth not necessarily leading to more equality?

Professor Hughes Hallett: He is very concerned about the equality angle. Growth may lead there, but it depends what else you do with the system.

The productivity angle has a lot to do with trying to help investment in the right places, which does not in itself do anything for inequality because, again, it is a question of what the other parts of the system are doing. What your question underlines is the general need to look at those links and to ensure that the taxes are joined up, in the sense that the spillovers—or in the case of growth and equality, the lack of spillovers in the right places—are taken care of and are built into the system.

Normally, you do not fiddle around with the taxes with which you aim to create productivity growth or to address equality pressures; you build in extra movements in other taxes that are not directed at that to take care of the spillovers from growth to greater inequality and take them out.

You need something of that nature. You need the overview.

Crawford Beveridge: If you read Joe Stiglitz’s book, you will see that he makes a cogent case that inequality holds back growth anyway, so there is not always an incompatibility. You need to have a discussion at a more political or policy level, and then design the tax system to try to meet the objectives set out at that level. Economic growth and equality are not always incompatible. In fact, Professor Stiglitz would argue that they are inextricably linked and that we need to solve one to solve the other.

Malcolm Chisholm: I am not suggesting that they are incompatible. It is just that at certain times they could be, depending on what kind of business investment it is or whatever.

The other issue that is very topical is oil taxation and climate change, on which we just accept that we have to have spillovers, which we make up for in other ways. I presume that that is what you think.

Professor Hughes Hallett: Yes, that is the general principle.

Malcolm Chisholm: This has already been covered by John Mason to some extent, but another recommendation in your report is that “The government should put the issue of globalisation at the heart of its tax system”.

I have no doubt that we will ask Professor Kay about that but, to summarise, are you basically saying that we need to have international co-operation and that you do not think that the tax advantages will persist? Is that what you are suggesting?

Crawford Beveridge: There may well be pieces of taxation that could enhance your economic competitiveness and which would not impinge on other people. For example, if you moved towards a set of taxes that pushed people towards a much greener economy here, there could well be industries that found that particularly attractive, even though there could be some higher taxes on other areas that they run.

However, in general, what I was saying to Mr Mason was that I have never worked for a company that has not had very sophisticated tax help to make it take its revenue in places that lowered its taxes, irrespective of which countries they happened to be in. Unless you get some degree of co-operation globally, you will never be able to solve that.

Professor Hughes Hallett: The other side of the coin is that other countries on the outside may do something and, without co-operation, you will have no handle on them.
However, if you have some sort of formalised co-operation, you can talk to them and say, “It would not be very helpful if you did that; we might be able to do something that is more helpful to you.” Those are the standard co-operation arguments. It is probably feasible to do that within groups of countries, but to do it worldwide is more difficult. I am thinking of Singapore, the Cayman Islands and so on. I imagine that some co-operation could be very usefully introduced, but it may not involve absolutely everything.

Malcolm Chisholm: Okay. Thank you.

You recommend establishing one or more fiscal rules. Do you have any suggestions about what they should be?

Professor Hughes Hallett: Oh, yes. I could go on at length. There are a range of possible fiscal rules. If you want specifics, I would favour something that put some controls on the public sector debt ratio, although that is not necessarily what everybody else would favour. I do not want to get technical about it, but that has implications for your ability to set the primary surplus—that is the surplus that exists before the budget balance and before interest payments are made.

You might well want to have a rule that says that on average—across the cycle or some other specified period of time—you need to balance the current budget, as opposed to the capital budget that you borrow for capital purposes. That used to be known as the golden rule and used to be used in London, but it is not any more. It is still used in Germany to good effect.

I only mention those because they are very specific sets of rules that are easy enough for me to dream up. Whether they are acceptable in the particular form of government is another matter.

Malcolm Chisholm: Okay. I could pursue that, but I will not.

In your report, you identify four principles for an independent taxation system: simplicity, stability, neutrality and flexibility. Others have suggested proportionality. Is there any reason why you have not included that principle?

Professor Hughes Hallett: I think that Jim Mirrlees went over that at some length and he is better than me at this, as I remember. I was a graduate student once.

The debate was between proportionate and proportionality. I think that we would probably all agree on proportionate, but we might disagree on whether it is a good idea to have a proportional tax, which implies no progressivity or something of that kind. We would prefer not to have that.

Crawford Beveridge: We could have been more explicit about that point, to tell you the truth.

It was certainly in the back of people’s minds that there ought to be some system—whether we call it proportional or proportionate. It would have been helpful to have something about it in the report.

Michael McMahon (Uddingston and Bellshill) (Lab): I hope that the witnesses will bear with me, because I want to connect some of their comments today with the paper that they submitted. Malcolm Chisholm talked about the connection between growth and inequality, but I note that the third aspect of the recommendation that he mentioned is competitiveness. In light of some of your other comments, there are real questions in my mind about how advantageous it would be to try to be competitive, based on the bill that is before us and the taxes that it affects.

Mr Beveridge, one of the concerns that were raised when we were considering the Landfill Tax (Scotland) Bill highlights the issue of unintended consequences, to which you referred in discussing incineration in California. The concern was about whether a particular rate would drive waste south to England or attract waste from England to Scotland for disposal. However, you said that we should not fiddle with the small bits. Is that an argument for having an all-or-nothing attitude to the transfer of taxation?

Crawford Beveridge: No. First, I would ask what the Parliament was trying to achieve through the landfill tax. Were you trying to ensure that we did not have an excessive amount of landfill and to drive people towards being more thoughtful about recycling, or were you trying to build a waste management industry in Scotland, or both? That might affect the way in which you decided to set up the tax system.

In one way, you might—as you say—have made the system attractive enough that people started moving waste here. If that was what we really wanted—although I suspect that it probably was not—we could build that type of business in Scotland. Some countries in the world have done that, as you will know, particularly in areas such as computer recycling. Parts of Africa have decided that they would be willing to take the risks that are associated with some of the very bad materials that bleed out of computer systems in order to bring enough work to their people, and so they import all the dead computers from around the world. Some other countries say, “We simply want to ensure that our waste is recycled to the maximum extent, and we are putting in place the tax regimes that will allow us to do that, as we do not want to build a waste management industry.”

You need to start by considering what it is that you want to do.

Michael McMahon: That leads on to the idea of co-operation. I understand why we would want co-operation to be as wide as possible in terms of
preventing tax avoidance but what would be the extent of the co-operation that would be required to set a tax rate?

We have had political arguments about whether we would put Scotland at an advantage or disadvantage if we had a lower rate of corporation tax. When we considered the LBTT, we looked at whether people in London who were seeking to invest would base their investment decisions on whether the tax rate in Scotland is higher or lower than in England. How extensive does co-operation have to be in order to create a situation in which Scotland is neither advantaged nor disadvantaged as a result of setting tax rates that are different from those of our nearest neighbours, who could become our greatest competitors?

Crawford Beveridge: Andrew Hughes Hallett knows more about that than I do, but, in my opinion, the biggest area of co-operation that we should start with is corporation tax. That is the area in which the biggest fiddles go on with regard to where people take revenue and how they move it around the world.

If you try to achieve co-operation across the board, you will not be able to do so, but in principle you should start by asking what you are trying to achieve for Scotland and then think about the tax system in that regard. You should then think about what effect the system would have on our neighbours and whether there is a competitiveness issue that would cause them to cry foul and say, “These people are setting up an avoidance scheme and we are not going to co-operate with them any more on such things.”

You do not need to have a levelling of tax everywhere; I think that everyone understands that you need to be competitive in such things. However, there needs to be some way by which people understand that no totally unfair advantages have been built into the system that might cause a war and a rush to the bottom as a result of people trying to set up avoidance schemes. Is that fair?

Professor Hughes Hallett: That is reasonable. I would start from the same point as Crawford Beveridge: you have to decide what you want to achieve.

Having said that, I think that Michael McMahon’s point is valid, as other people are worried about that sort of thing in other contexts. When the North American free trade agreement was set up between the United States, Canada and Mexico, those countries were worried that what used to be called the dirty industries would all go to Mexico, which had a comparative advantage in cost terms. Although such a move would, of course, have got rid of pollution in the US, legislation was introduced to try to prevent that from happening by trying to persuade the Mexicans to introduce rather better labour protection laws, which would have meant that costs in Mexico would not have been so low. It was a back-handed way of addressing the issue.

In the event, that turned out not to be so terribly important, which suggests that the differences that have to exist to make differential rates a serious problem are probably larger than one might imagine. That is my supposition from reading the evidence.

10:30

Finally, I do not wish to belittle anything, but the effects on the overall economy of the two taxes that we are discussing are not going to be huge. It is possible that you might worry about that sort of thing when another tax comes along that might have a much larger effect, which brings us back to the point that we want the framework to be open enough to deal with other potential taxes that might be introduced later on. That is my forward-looking point.

Michael McMahon: When we considered the two previous bills, people expressed to us concerns about differential rates of landfill tax or land and buildings transaction tax in Scotland compared with England. Are you saying that the difference would have to be quite extensive before there would be a huge disadvantage or advantage?

Crawford Beveridge: I think that that is right.

Professor Hughes Hallett: Yes.

Michael McMahon: So the same would apply if there were a differential rate of corporation tax between Scotland and England. The difference would have to be quite vast before it would have an effect.

Crawford Beveridge: That is what I believe. A marginal change of 1 or 2 per cent would probably not cause a company to say, “Oh, let’s up sticks and move everything.”

Michael McMahon: Would 3 per cent make a difference?

Crawford Beveridge: That is something that you ought to look at, but, as Andrew Hughes Hallett says, the other interesting point is that the tax rate is not the only factor; there is also what you do inside that rate in terms of giving people allowances, exemptions and so on. It is very hard to sit down and say, “How does Ireland compare with Germany, France or Indonesia?” You have to understand the systems at a fairly detailed level.

In principle, I agree that it would take a fairly big shift in the actual rate of tax that people have to pay, rather than in the headline rate, to make a
company want to move its operations in some way.

Professor Hughes Hallett: There are several points to make in that regard. As I am not a lawyer, it is difficult for me to know how I would frame the question of how large is large in that context. Of course, the level of difference that would have an effect will be different for different taxes, but I think that the difference would have to be quite large. Obviously, you can make it large enough so that it makes a difference.

For example, on corporation tax, the difference between a rate of 30 per cent in Germany and 12 per cent in Ireland might be large and a number of firms—of a certain type, anyway—might have moved but, coming back to Crawford Beveridge’s second point, the headline rate will be quite different from the effective rate once all the allowances et cetera have been taken into account. It is a complicated issue.

Such an advantage is being set against other costs all the time. For example, it costs a company to move physically, as it would have to move its offices or its factory, employ a new labour force and get used to a new place. That would not have such an effect on companies moving between Scotland and England, because people have been doing that for years, but on a wider scale those considerations must be taken into account.

The mobility issue must be considered. The competitive differentials between Scotland and England are one thing, but the situation is different if we compare countries across the European Union, where there has not been as much mobility as some people had expected. That said, for someone is working in a car factory in Spain that collapsed, there is more mobility than they would like. There are a lot of factors to consider.

Michael McMahon: Certainly. I am not sure whether that has been helpful in understanding whether the bill is fit for purpose, but it has certainly been helpful in enabling us to understand some of the other arguments that have been made elsewhere about taxation differentials.

The Convener: We are not talking about those arguments.

Michael McMahon: I know.

The Convener: There are also issues about the size and type of business and whether a company would set up a new operation or shift an existing one. However, we are not dealing with those issues.

Jean Urquhart (Highlands and Islands) (Ind): To a certain extent, my question, which is on the globalisation issues that we face, has been answered, but are there examples of other countries setting different rates? Given that we—or some of us—are expecting to have a very different type of control of tax-raising powers, how would Scotland address those issues? Should we be looking at other examples? Do you have examples of small countries that have negotiated terms with other countries in order to stop that type of tax evasion? Is that actually possible?

Crawford Beveridge: Andrew Hughes Hallett might know of some countries that have done that, but I do not know of any. I have heard a lot of people talk about it. There is a lot of discussion here, in the US and in parts of Europe about how we stop people moving money around the world and avoiding paying taxes, but I have not heard anybody say, “Let’s sit down and put together a treaty to deal with all of this, so that we can make it happen.”

As Andrew Hughes Hallett has alluded to, there are places such as Singapore and the Cayman Islands where it is their living. That is how they make a lot of their income, so they will not be wildly enthused about getting involved in such talks. We might well find it easy to bring EU people together to talk about these things and we might be able to get a deal with the Americans and possibly the South Americans, but there will still be places in the world that will say to businesses, “Forget all of that—we can fix this for you.” Unless people are very smart about the legislation that they put in place, such places will always be used as a means of avoidance.

Professor Hughes Hallett: It is difficult—that is for sure. The issue surfaces all the time in the EU. For example, many EU countries would like Luxembourg to change its tax arrangements, because too much money such as savings and things disappears into Luxembourg outside the tax net of the home country. I do not know the details; there must be some arrangements but clearly they are not very effective. It is not easy in the EU and it would be even more difficult if you started doing it on a wider scale.

In answer to Jean Urquhart’s question, I am sure that I can dream up some examples, but whether I can dream up examples of where such moves have been very effective is another matter. You have to bear in mind the incentives that people face. I heard of an example in relation to money laundering and the Bahamas—not the Cayman Islands this time. If you are a small country, you can come home with co-operative arrangements to stop something and then find that other countries are doing it anyway. The incentives are as Jean Urquhart’s question implied. What do they sell? They sell the incentive plus holidays. It is very difficult in a lot of cases.

I imagine that that will increase over time. Lots of countries are concerned about this. An example of something that is not quite what you meant but
which is worth thinking about is the way in which the Americans try to stop things, particularly corporation tax, shifting between states by saying that individual states can have their own corporation tax rates but that firms will pay in aggregate a weighted average of the tax rates in the different states in which they operate. The weights are usually something like employment; in other words, firms can go to a cheap place but they have to employ a lot of people there. If a place is cheap because it is not very good, firms will not go there. There are some things that you can do.

Jean Urquhart: Regardless of any constitutional change that might happen in Scotland in the next couple of years, there is an expectancy that there will be a drip-feed of different taxes coming here. Is the bill fit for purpose to deal with that?

Crawford Beveridge: It will depend on the taxes. If something like a passenger tax or transport tax came along, the bill could probably handle it very well. If everything from income tax to corporation tax was suddenly dumped on you, the bill might not be robust enough to handle it.

Professor Hughes Hallett: That is why I said that it would be a good idea to make the bill as forward looking as possible, so that you do not get hit by a problem that you have not yet had time to think about.

The Convener: I have a question that follows what Jean Urquhart was talking about. If the bill is not robust enough to take on those additional taxes, what weaknesses in it could be remedied to change that? We want a framework bill that is ready for all eventualities.

Crawford Beveridge: Again, I am not expert enough to know how you would need to change the bill in order to do that. The question is whether that is necessary at this point. As I understand it, even if there were a vote to become independent, you would have another couple of years in front of you before you would be asked to take on all those complex problems. It would be easy to start the transfer with the simpler taxes and figure out along the way whether the bill was robust enough. You would certainly have time to amend it in some way before you were asked to take on more complicated taxes.

The Convener: Thank you. That concludes questions from committee members. Would you like to make any further points before we wind up the session?

Crawford Beveridge: No. We are very surprised that we have been able to talk about as many things as we have. Thank you very much for putting up with us.
That is one large general point. The other is to say that we need to think about jurisdiction on a Scotland and the world basis. The committee has already been doing that in the part of the discussion that I heard with Crawford Beveridge and Andrew Hughes Hallett earlier. First, we have to implement taxes in a global world, which creates issues with regard to tax administration. However, there is also a key issue that we need to think about. When we think about fairness in taxation, it is quite important that we think about fairness in relation to the tax system as a whole rather than in relation to individual taxes.

The example I give, on which you can elaborate as much as you like, is to say that we can achieve a degree of progressivity, for example through differential rates of value added tax. We do that by having lower rates on food, children’s clothing and things like that. Actually, differential rates of value added tax is a terribly inefficient way of achieving fairness compared with achieving the same degree of progressivity through differential rates of income tax. That is what I mean by saying that if we think about fairness issues on a tax-by-tax basis, we do not do the job very well.

One of the implications of that is what happens when, as is bound to happen in the modern world, different layers of government exercise tax-raising powers. If they all try to achieve those objectives differentially and they all have different views on it, we are liable to get a mess of people devising tax structures that conflict with one another. In the previous discussion, I heard the suggestion that that might mean that you have to have all the tax powers being exercised at a particular level. There is plainly an argument for that, but there are also arguments against it because, as far as possible, you really want the levels of government that are spending the money being the ones that are raising the revenue. The issue has no simple resolution. We need to flag it and discuss it and, as we think about more tax powers being devolved to Scotland in the future—whatever the constitutional arrangements are—that is one of the many things that ought to be in our minds.

The Convener: Thank you. I notice that you talked about the size of the two taxes that the bill covers, which represent between 1 and 2 per cent of our revenue. I am sure that I speak for the committee, but having lived, eaten, slept and breathed those taxes for a number of months, we are still a bit wounded by those comments, but never mind. [Laughter.]

Professor Kay: I am sorry. Perhaps you could think of it as practice, convener.

The Convener: The first sentence of your submission is:

"Revenue Scotland is a grand title for a body that administers two modest taxes."

That goes to the nub of it. This is a framework bill that will hopefully enable further taxes to be administered as they are devolved or whatever the case may be, depending on possible constitutional change.

Your submission says:

"My second general comment is that experience suggests that the level of government at which it is most efficient to raise revenue tends to be higher than the level of government at which it is most efficient to plan expenditures."

Will you talk us through that and the implications for Scotland, particularly in terms of the further progress of the bill?

Professor Kay: Everywhere in the world there are different levels of government. That is appropriate, because some things are best done at very local level. To take the extreme case, you want parish councils or similar levels of government to decide what will be in the village hall or the town square. At the other end, climate change is a global issue on which you want decisions to be made at some kind of global or multinational level. The functions of government are tiered in that way.

When we allocate expenditure to appropriate levels of government, we tend to find that the levels of government are lower than the ones at which revenue is naturally collected. Almost everywhere around the world, where we have these multiple ways of government, the top levels of government collect more and then distribute part of what they raise to the lower-level authorities.

In Britain today, we have taken that very far because getting on for 90 per cent of the money that our local authorities spend comes down to them from central Government rather than being raised from people locally. That is too high for us to get efficient and responsible decision making that works well at lower levels. We must therefore have some sort of compromise between distributing the revenue downwards and giving people the authority and revenue-collecting powers that they need to match the level at which revenue is raised with the level at which expenditure is incurred.

The Convener: Under the Scotland Act 2012, the share of revenue that will be raised in Scotland will be about 15 per cent. Is that too low a figure? What would be the optimal range, for example?

Professor Kay: Optimal would be getting on for 100 per cent, but if we were to get to 100 per cent, we would have to talk about some of those big taxes being levied separately in Scotland by this Parliament. That is a very different world.
It is also a difficult world because some of those big taxes do not lend themselves well to being administered at as low a level, if I can put it like that, as Scotland; I think that I described that in my submission. Frankly, VAT would be best levied and collected at the European level rather than by the member states.

The Convener: Absolutely. I noted your comments on that, and I am sure that members around the table hold a variety of views on it.

Your submission says:

“In the UK today”

there are

“income tax, VAT and national insurance. For a government to raise significant revenue ... it needs to be involved with at least one of these.”

What do you consider to be “significant revenue” as a percentage? That is a difficult question to answer specifically, but what would you consider to be a significant tax?

Professor Kay: We have the three dominant taxes, as I said, and then we have the smaller ones, such as those that are covered by this bill—the landfill tax and the land and buildings transactions tax. As you have said, those represent 1 or 2 per cent of the total revenue.

There are two or three taxes in between, such as corporation tax and ad hoc excise duties on particular elements. There is also the special regime, which we might want to talk about and which is clearly very relevant to Scotland, with regard to North Sea oil. Those are not small taxes of the kind that are covered by the bill, but nor do they make it into the big league of taxes. There are not very many of them; there are about three or four of that kind.

The Convener: If this is a framework bill and additional taxes are to be devolved, which ones would be the simplest to add to the list of those that are already devolved? I am asking for the economist’s point of view.

Professor Kay: The simplest would be those that do not have much consequence, such as the air passenger duty. If we are serious about this, we should be talking about one of the other two groups that I mentioned. The intermediate group—North Sea oil, corporation tax and perhaps excise duties—all have their own problems. It might be feasible to add excise duties, but corporation tax and North Sea oil have their own special problems.

We are talking about the first three, and mainly national insurance or income tax.

The Convener: Thank you. I open up the session to colleagues around the table. Malcolm Chisholm is first, to be followed by Jamie Hepburn.
framework, it raised more of its own revenue and received less of it in a block grant from Westminster. I think that, now, almost everyone agrees with that observation. The post-Calman reforms are pushing in the direction of making that more possible.

Malcolm Chisholm: In terms of multinational companies, with regard to corporation tax and perhaps some other taxes, is it your position that the balance has not gone far enough and that it needs to go higher because of tax evasion? Is that correct, or are there other reasons?

Professor Kay: It is because of tax evasion and avoidance, basically. It is too hard to strip out, on a country-by-country basis, the origin of the profits of complicated multinational businesses. That is one problem. The second problem is that we have had a bit of a race to the bottom in terms of corporation tax rates, with countries trying to attract either economic activity or the appearance of economic activity—in some cases, that economic activity is not particularly real—by setting a lower corporation tax than their neighbours.

Malcolm Chisholm: There are already quite a lot of European constraints on VAT, but there is also a lot of nation-state discretion, so it is not obvious why you would want to eliminate the discretion that the nation state has with regard to VAT and so on. I am not sure why that would be desirable.

Professor Kay: The single market implies common tax rates on goods and services. At the moment, we have a rather messy regime of payments and refunds, some of which apply in some circumstances but not in others, in relation to transactions across borders.

Malcolm Chisholm: So you think that that is an implication of the single market.

Professor Kay: Yes.

Malcolm Chisholm: Does that have implications for other taxes? Obviously, there is quite a lot of discussion about more physical harmony in the EU. Would there be other taxes that would be caught by your principles?

Professor Kay: VAT and corporation tax are the ones that the principle of efficiency in collection would suggest should be administered at higher levels.

Malcolm Chisholm: That is connected with the point that you made about VAT on the final page of your submission. Are variants such as zero rating for certain goods specific to the UK? I do not know how things work in other countries.

Professor Kay: Yes. As you know, zero rating is a particular UK dispensation. One of the questions in independence discussions has been whether that would be acceptable in the different framework.

Malcolm Chisholm: Yes, that has come up recently. You also made the more general point that, irrespective of the EU dimension, you would rather not have such complexities in the VAT system and you would prefer a progressive income tax system. I suppose that a counterargument is that zero rates of VAT help people who are not in work.

Professor Kay: Yes, they do. When we talk about the tax system we must think about the tax and benefits systems together.

Malcolm Chisholm: Right. There would need to be compensating action in the benefits system.

Professor Kay: Yes. Lower-rate taxation on clothing for all children is a fairly inefficiently targeted way of helping poor households. I am not sure that the food that I eat needs to be zero rated, either.

Malcolm Chisholm: That leads us into a much wider argument, which we will not visit at the moment.

I thought that this statement in your submission was interesting:

"'Ability to pay' is not a precise, and perhaps not a helpful concept."

I am not sure whether that is related to your comment that Adam Smith’s

"'proportionate to ability to pay' is inadequate even as a starting point for vertical equity."

Will you fill us in on that? Are the two comments complementary?

Professor Kay: At its simplest, I do not think that ability to pay is a concept that has the same meaning in today’s world as it had in Adam Smith’s world, when the vast majority of the population lived on subsistence incomes, in essence. My general point is that we must remember that really until the second world war most people in this country paid no direct tax and did not pay much tax at all. Today, everyone pays quite a substantial amount of tax, which is inevitable if we are spending 40 per cent of our national income on public expenditure.

Therefore, we should think about the matter in terms of fairness of the distribution of the overall tax burden. Do we feel that the overall result is right in terms of the relative tax burden on different households? Even there, I have elided something: do we mean individuals or do we mean households?

Malcolm Chisholm: I am struggling slightly, because fairness and ability to pay seem to me to be in the same territory.
**Professor Kay:** They are in the same territory, but I am not sure that they have the same meaning. I do not want to get into that argument, because I am not sure that we would be arguing about substance rather than the words that we use.

**Malcolm Chisholm:** We will leave that sticking to the wall. Thank you.

**Jamie Hepburn:** We have touched on the principles that you think are the hallmarks of a tax system: efficiency, fairness and administrative feasibility. How will the Revenue Scotland and Tax Powers Bill achieve those ends?

**Professor Kay:** The land and buildings transaction tax and the landfill tax are not difficult to administer, as long as we do not complicate them. Indeed, the land and buildings transaction tax does not have many merits other than that we can administer it. It is not the way in which we would tax the occupation of land and buildings in the ideal world, but it is the way in which we can do so in a less than ideal world.

What I am suggesting—and now might be the moment to spell it out—is that talk about fairness in relation to taxes that raise 1 or 2 per cent of revenue is something that has fairly limited applicability. They are not going to be the ones that contribute to the fairness of the tax system as a whole.

In relation to the land and buildings transaction tax and the landfill tax, fairness is primarily a matter of ensuring that people in similar circumstances are taxed in similar ways. That is why the slab system of collecting tax is a bad idea, because it taxes in materially different ways people who are in not very different circumstances. However, I think that that is a relatively minor part of the total.

**Jamie Hepburn:** Of course, fairness can also be about how people are treated by the tax authority. Do you think that what is envisaged in terms of revenue Scotland will go some way to meeting the general principles of efficiency, fairness and administrative feasibility?

**Professor Kay:** Yes.

**Jamie Hepburn:** You referred to an area that I want to explore further. You said that the two taxes are boring, which raises the interesting question of what would be an exciting tax—I struggle to think of one. You have started to touch on the successor to stamp duty—

**Professor Kay:** I wrote a book about taxation that several people said was the only interesting book about taxation that they had read. I think that most subjects are interesting once we get into them. I am sure that this committee has found that about these taxes. 

**Malcolm Chisholm:** Not yet. [Laughter.]

**Jamie Hepburn:** I have to confess that I have not read your book, but I shall endeavour to do so.

You said in your written submission that stamp duty “is a bad tax by most criteria”, and “a poor mechanism for achieving progressively”. You also spoke earlier about the slab structure, which we know will not apply to the LBTT. Do you think that what we are doing on that tax is progressive?

**Professor Kay:** Do I think that we are doing the right thing on that in Scotland? Yes, I do. I am surprised that it has gone so long without the UK coming to a more sensible position on it.

**Jamie Hepburn:** On landfill tax, you said in your written submission: “I hope the Committee will resist the thought that ever more elaborate attempts at engineering its complexity would make it better still.”

What did you mean?

**Professor Kay:** At the moment, we have broadly two categories of landfill. I think that it would be very easy for people to sit in this room and devise more elaborate theoretical structures that differentiate between different kinds of activity according to how toxic they are, how quickly the stuff that is put to landfill degrades and—as was discussed earlier—whether we want to encourage or discourage particular industries. My experience also makes me very conscious that when politicians get involved in taxation they are often keen to have discussions on those matters and are often lobbied by particular business groups to have such discussions.

I think that such matters are the source in general of a great deal of complexity in our tax system, with rather little benefit and often disbenefit. They are also often a very elaborate, fruitful source of avoidance, because as soon as you create more complications you give people incentives to put things into one category rather than another. That is why I say that “First, do no harm” is my rule of taxation. We should be quite modest about the ways in which we think we can make things better by tax elaborations.

**Jamie Hepburn:** Okay. Thank you.

**John Mason:** On your final point, Professor Kay, we thought about doing that with the LBTT because there was quite a demand, for example, for very energy efficient houses to have a special rate, but we resisted.
I was interested in your paper generally, but I found this point particularly interesting:

“Tax is efficiently collected when the payment is combined with some other beneficial transaction”.

We have not looked at that issue terribly much, but it is common sense that, if people pay tax with their salary, VAT on their shopping or tax when buying a house, they just accept it, but that it is more unpleasant when they actually have to write a cheque.

I am wondering how you feel that point fits in. I remember people saying in the past that taxation on new motor cars was the most easily collected in the UK—it was about £1,000 on a new car, I think—and yet it was dropped. Are there other areas that we should be considering? Inheritance tax and capital transfer tax are two others. We do not have capital transfer tax any more, but in a sense that is an example. Is that the kind of thing that you are thinking of?

11:15

Professor Kay: Yes. The biggest example involves the transactions tax in relation to property. A couple of weeks ago, Professor Mirrlees told you—and I would agree with him—that it would be much better to have an annual tax on the value of property. We have had annual taxes on the value of property, and we have discovered that they are pretty much the most unpopular taxes around, because people have to write out cheques for them. In truth, inheritance tax has a similar problem, although it need not if we collected it slightly differently.

As you have pointed out, if the money just goes out when their salary is coming in, or if it is paid over when they are buying something that they want in a shop, people pay the tax without really resenting it. When they have to write out a cheque and get nothing directly in return, they think, "I don’t want to pay that." The issue is not just one of the political resentment that people get from that; there are consequences in people resenting the overall level of taxation and trying to think of things that they could do to avoid it.

John Mason: That is an interesting point, and it has made me think slightly differently about a whole range of taxes to which it applies.

You also made the point that, in many cases, it is better to collect tax at a higher level. We discussed corporation tax earlier. I have sometimes thought that one way of helping local authorities to raise more tax as a proportion of what they spend would be to allow them to start their own taxes. For example, if Edinburgh or Highland wanted to do a bedroom tax for tourists, let them do it, but Glasgow and Dundee might not want to do that. Is that a bad way of thinking, because the system then becomes very bitty and inefficient?

Professor Kay: No, I do not think that that is a bad way of thinking. However, the arrangements that you describe would mean having a very variable capacity to collect tax in that way. You are pointing out—correctly, I fear—that Edinburgh has a lot more tourists than Dundee, and that tax would give Edinburgh a double benefit. With more tourists, the City of Edinburgh Council could impose such a tax without deterring people from going there. I guess that Dundee would rather like more tourists than it gets—actually, I am going to Dundee tomorrow and I realise that there are some attractions in Dundee that I want to go and see.

I think that we should give local authorities more scope to raise revenue for themselves. However, in doing so we would encounter what is one of the key difficulties in all of this—and it is one reason why we have the phenomenon of tax being better raised at the higher level—which is that it is difficult to pin down the place that we associate with a particular economic activity.

That is why a tax on tourist bedrooms works—we know where the bedroom is. A tax on land and buildings works, because we know where the land and buildings are. You do not do too badly when you have a tax on people’s work because, in the main, you know where they are doing it. For a tax on capital income it gets more difficult, and for a tax on corporate profits it gets more difficult still. It is a question of how easy it is to identify the economic transaction with a particular place. The harder that is, the more difficult it is to push that tax down to a lower level.

John Mason: Malcolm Chisholm touched on the ability to pay, and I am still struggling a bit to get my head around that issue. VAT takes no account of ability to pay but, obviously, it is a major tax not only in the UK but throughout Europe.

Professor Kay: It does in the sense that, the more that someone spends, the more they pay.

John Mason: Yes, but that means that, if a well-off person buys a shirt—

Professor Kay: He pays the same VAT—

John Mason: As the poor person buying the shirt. Is your argument that we just live with that and compensate for it through the income tax and benefits systems?

Professor Kay: Largely, it is. We do it much better that way than by differentiating between, for example, expensive shirts and cheap shirts. We have gone down that route and madness lies at the end of it.
John Mason: It becomes incredibly complicated.

Professor Kay: Yes. It is the world that we got into in the 1970s when the Government decided to keep down the price of cheese and then we had to decide which cheeses were luxury cheeses and which were everyday cheeses. My strong view is that we simply do not want to go there.

John Mason: I have to say that I am personally sympathetic to the idea of maximising simplicity in the whole system.

Another idea that you did not specifically mention in your submission, but which came up in the evidence from the previous witnesses, is making only small changes in tax rates and the tax system, which reassures taxpayers—individuals and companies—that the country is stable and will not do anything silly, compared to introducing a windfall tax when we see somebody making a big profit. What is your thinking on that?

Professor Kay: In general, windfall taxes—moving around from time to time to pick and impose a tax on whoever happen to be the bad guys of the moment in popular perception—are undesirable. On the other hand, especially in corporation tax, which is difficult to collect appropriately on commodities, there is something to be said for ad hoc regimes of taxation on particular products.

Two examples of that come to mind in relation to Scotland. One is oil, in which we do that at the moment. To deal with the problem that oil is developed by companies that operate multinationally, we have a ring fence around North Sea activities. We tax them just on what happens in the North Sea as far as corporation tax is concerned and we have a variety of special taxes on North Sea activities. We say that it is a uniquely profitable—or specially profitable—activity that deserves to be taxed in a special way for that industry because we can collect it.

We do the same with one or two other industries, such as gambling, in which we tax casino and bookmakers’ profits on the same kind of basis. It is a mobile industry and a specially profitable one for which we have a special regime.

When one thinks about Scotland, there is another commodity that falls into a similar category. That is whisky. I put out that thought for the committee.

John Mason: Yes, as you were speaking, I remembered that you had suggested that before.

The Convener: Does the bill provide the correct framework for the addition of further devolved taxes or, indeed, taxes should Scotland vote for independence in future? Does it have the capacity to do that?

Professor Kay: It is going in the right direction, but the revenue Scotland that you are creating will not have the capacity to administer one of the big taxes that we are talking about. It would need to be a very different organisation before it could.

If we were to have the capability to administer a genuinely separate income tax within Scotland—if I talk about administering one of the three big taxes that I described, it must be income tax, national insurance or a social security tax—rather than, as we will do under the Scotland Act 2012, having a Scotland-administered element of income tax that is really just a subset of the UK income tax, we would be talking about an organisation with a very different capacity and staffing.

The Convener: Capacity would obviously be an issue, and we would expect revenue Scotland to expand its capacity. However, does the legislative framework need tweaking as opposed to the number of personnel? Is the structure itself the problem?

Professor Kay: It looks okay to me, but other people will talk to you who are more expert on that side of things than I am.

The Convener: Another point in the bill is the general anti-avoidance rule. One of the concerns that is expressed about the UK taxation system is that it runs to 11,400 pages and there is probably no one on earth who understands it comprehensively—how could anyone unless they had the mind of a computer and did nothing else but read the stuff? It has become a bit of a Hydra in the way that it has developed, as whenever loopholes are closed others apparently open.

What are the benefits of introducing a general anti-avoidance rule in the new legislation? The legislation is new and we are, in effect, starting from scratch. What opportunities does that present?

Professor Kay: I support the idea of general anti-avoidance provisions, but my sense is that, where they have been implemented, they have generally produced rather less than people had hoped for.

I am not sure that, if we were really serious about avoidance, we could not do a great deal more to deal with it under existing frameworks. We have talked this morning—both in the previous evidence session and in this one—about avoidance and evasion of corporation tax. I think that a lot of what is currently happening is happening because of a consensual attitude that has built up over many years towards what people are allowed to do. If we were a lot more aggressive about avoidance, we could have a very different set-up.
It seems to me that, for example, a lot of profits are not being earned in any ordinary sense of the word in the Netherlands and that a lot of sales are not in reality taking place in Ireland. If we were to challenge them on the basis of economic and commercial reality rather than the way in which the transactions are being formally described, we would be able to challenge them under the legislation that we have at the moment. We just need the willingness to do that.

The Convener: In terms of taxation law, we are all lay people apart from our distinguished adviser Professor McEwen, and a lot of us think that, if the money is earned here, the tax should be paid on it here—full stop. A lot of us struggle to understand why that does not happen. We realise that there are all sorts of complexities involved, but that seems a pretty obvious and straightforward statement and there seems to be a lack of willingness in the Government at a UK level to address that.

Professor Kay: It is not quite as simple as your description implies, but it is not quite as complicated as the other side describes it, either.

The Convener: I appreciate that it is not as simple as I imply. I realise that the balance is in the middle somewhere.

John Mason: Is that because the UK—although it is probably not just the UK—has taken a very legalistic view of the transactions? Similarly, have the courts tended to look not at the principles as you have described them—at where a transaction has taken place—but just at the letter of the law? We seem to have got very bogged down with the letter of the law, and tax experts, including accountants, have benefited from that. Is that the key problem?

Professor Kay: I am not sure that it is. First, it is a general problem and not a particularly British problem. Secondly, not many cases go to court. I know of odd cases that have gone to court and the courts have taken a more robust view than the Inland Revenue or Her Majesty’s Revenue and Customs have been naturally used to taking.

I am not sure that a legalistic problem is the source of the difficulty. A lot of it is down to the fact that it is easier for HMRC, or revenue Scotland in the future, to take a conciliatory view and negotiate an agreement with a large company than to spend years fighting it in the courts.

The Convener: Is that the case even when it costs the taxpayer millions or billions of pounds? It has been argued that some cases have cost that—Vodafone being an obvious example.

Professor Kay: In individual cases, a simple cost benefit analysis might show that the costs of litigating make it not worth it, or it might be not spectacularly worth it but worth it in terms of the aggregate impact.

The Convener: I think that we have all been hunted at some time because we have been a tenner short in our tax for the year, and I know people who have received a letter when they have allegedly underpaid by 45p or some ridiculous amount of money.

Thank you for your contribution this morning, Professor Kay. As always when you come to the Finance Committee—which is not as often as we would like—you have been thought provoking in your deliberations and your evidence to us. Do you want to make any final comments?

Professor Kay: No. We have had a useful discussion this morning. Thank you for having me.

The Convener: Thank you very much. We hope to see you again before too long.
Scottish Parliament
Finance Committee
Wednesday 5 March 2014

[The Convener opened the meeting at 10:00]

Revenue Scotland and Tax Powers Bill: Stage 1

The Convener (Kenneth Gibson): Good morning and welcome to the seventh meeting in 2014 of the Finance Committee of the Scottish Parliament. I remind everyone present to turn off mobile phones or other electronic devices.

Our first item of business is to continue our stage 1 consideration of the Revenue Scotland and Tax Powers Bill. Today, we will take evidence from the Institute of Chartered Accountants of Scotland and the Chartered Institute of Taxation.

I welcome to the committee Elspeth Orcharton and Charlotte Barbour of ICAS, and John Whiting of the Chartered Institute of Taxation. I understand that there will be no opening statements because we have your fairly extensive written submissions, which all members will have read and digested and on which they are prepared to fire questions at you. As usual, I will start off with a few initial questions.

I will go straight to one of the nubs of our deliberations, which is the general anti-avoidance rule. Your papers are so detailed that I could spend the full 90 minutes going through the matter but, obviously, my committee colleagues will want to have their say, so I will not abuse my position in the chair.

On the rule, ICAS states that “the Bill lacks balanced safeguards”; and CIOT says that “the use of the phrase ‘one of the main purposes’” will result in “a very low threshold for” determining that a tax avoidance arrangement exists.

Your organisations provide advice to people on how they can reduce their tax bills, but surely the point of the bill is to do the opposite and ensure that people pay their fair share. We want to pass legislation that ensures that the population accepts that there is general fairness. There is real resentment in society that someone who earns 10 times as much as a nurse, bus driver or postman might, through use of certain tax legislation, pay a much smaller proportion of tax than people in those professions.

What would be the outcome of the changes that both organisations suggest to the bill, other than a reduced tax take for the state, which would mean fewer potholes getting fixed and less money in the national health service, for instance? How do your positions on the anti-avoidance rule create a balance whereby people pay what they should pay and, at the same time, pay a fair share?

John Whiting (Chartered Institute of Taxation): I will start on that one.

You are absolutely right, convener, to state that our members give advice in practice but, as a body, we are deliberately constituted as a charity and exist to improve the tax legislation for the benefit of all involved with it. That means taxpayers and the authorities, as well as practitioners.

The aim of our comments on the bill—and the key thing that we want to achieve with any amendment to the rules—is to improve certainty. It is obviously completely up to the Parliament and revenue Scotland to decide how they wish to frame the legislation on a general anti-avoidance rule. As you well know, the United Kingdom has gone down the route of the general anti-abuse rule. However you do it, one of the things that people—we mainly have in mind businesses—will ask when they look at it is whether they know that, if they take a particular course of action, they will or will not be within the ambit of the provisions. The worry is that if that is uncertain, people might decide not to do something, which can damage business confidence.

The simple aim is to try to improve confidence and certainty so that people know where they are. A simple illustration that I always use to test out provisions is: what would I say to someone who told me that they were thinking of starting in business and wanted to know whether they should act as a sole trader, a partnership or a company? There are many commercial issues around decisions of how someone should operate, and those decisions also have tax consequences. If I was going to say to you, convener, that you should operate as a company because of certain circumstances or as a sole trader because of other circumstances, I would want to be sure that there would be no risk of the authorities saying under the general anti-avoidance rule, “There was a tax benefit in you going one route rather than another.” Therefore, I might have to advise you that I did not know whether you would be affected by the GAAR.

It is as simple as that. I am aiming for certainty in knowing where I am and where you as my client are, so that you know what the results will be.
The Convener: I am keen to hear from ICAS on this important issue as well.

Surely the point of not having certainty—in tablets of stone, if you like—is that there is room for interpretation. The GAAR is not as wide as you have suggested. A couple of years ago, there was a famous case that every layperson would have said involved a deliberate attempt to avoid taxation. However, because the legislation was so specific, two thirds of the judges who looked at the case decided that the letter of the law had been followed, even though its spirit clearly had not been.

There is an issue about having tax law that is so clearly defined that it is easy to get around. Having less certainty to a degree allows interpretation based on what is intended, instead of just what is absolutely stated in the wording in a piece of legislation.

John Whiting: That is a fair point. We have great concerns about the way in which detailed anti-avoidance legislation is being piled on more and more. You are absolutely right that what you have suggested is sometimes the case. I do not know the exact case that you are thinking of, but disguised remuneration legislation is sometimes cited as a good example of something that exists to police things such as employee benefit trusts, which I know is a sensitive issue in Scotland. However, the problem with the legislation is that it has become so detailed that people start to look for loopholes in it and you end up with exactly the sort of problem that you allude to.

There is considerable merit in taking more of a look at the bill’s principles, which should, after all, express what it aims to do, and they should be coupled with good guidance to make it clear what the bill really means. As we say in our paper, that might be termed “dynamic guidance”—in other words, guidance that is kept up to date in the light of experience and is not allowed just to lie down and grow whiskers.

That would help people know where they were; would give them certainty; and would help them know what the legislation was aiming at and what it was trying to prevent them from doing. They would know not only that it was trying to prevent them from avoiding tax in a certain way, but that they would not be tripped up if they went down what to them was a perfectly good commercial route for good commercial reasons.

I had better let ICAS speak.

Elspeth Orcharton (Institute of Chartered Accountants of Scotland): Thank you. What with the press and media coverage in recent years, sometimes in relation to the case that the convener alluded to—which I thought was a slightly different case; it was not about EBTs—the general expectation has become, in a phrase that I have heard used, “Everybody’s at it.”

Like the vast majority of our members, I have spent the vast majority of my time in professional practice—I think that it is 25 years now; I have stopped counting—explaining to clients what the law is and what the answers are with regard to the specific transactions that they wish to make. We are not seeking to keep open any particular route to tax avoidance, but we are aiming to get to a position in which there is certainty in transactions.

That is why we want to look further at the current draft of the GAAR. ICAS has a committee of members from a significant commercial and business background who are examining the position with regard to Scottish taxes. Generally, their concerns are that, if more certainty is not given, businesses that are looking at property development or transactions or which are considering an investment might, in the absence of certainty, take their business south of the border rather than invest in Scotland. There is room to improve on the certainty aspect.

On safeguards, we are concerned about the extent to which revenue Scotland, which is as yet an unestablished and unstaffed body, appears to have almost a delegated right to decide whether a transaction—to use the wording of one of the tests—lacks “commercial substance.” As revenue Scotland would write the guidance that tribunals would have to take into account, it would to a certain extent have the right to say exactly what was and what was not commercial, despite the fact that the staff—with all due respect for their technical expertise—would not have a commercial background. We want balanced safeguards to ensure that, if there is a test for commercial substance, people with commercial experience will be involved in the decision-making process.

It might be helpful for the committee to know that earlier this week we met the Scottish Government bill team, and I would like to hope that the door is open for us to go back with some constructive suggestions about what might be possible with regard to adding further definitions to the GAAR or, alternatively, looking at a clearance process that might help to deal with the fear of a lack of certainty without necessarily giving rise to the kinds of misplaced concerns that Kenneth Gibson expressed that the measures are all about the tax avoidance industry.

The Convener: Revenue Scotland’s role is to optimise rather than maximise tax revenue and to ensure fairness across the board.

At paragraph 23 of your submission you state that

“Reasonableness’ … has been criticised as being too subjective”
and that
“the Bill lacks balanced safeguards”,
which I assume means for taxpayers, or a proportion of them.

Incidentally, on page 36, you mention “scheme promoters”. What is a scheme promoter?

Elspeth Orcharton: I am sorry—I do not have the page numbers in front of me.

The Convener: I am sorry—I was talking about paragraph, not page, 36, which mentions “disclosure obligations on taxpayers and scheme promoters”.

What is a scheme promoter?

Elspeth Orcharton: Paragraph 36 addresses the question whether there would be an equivalent of the HM Revenue and Customs provisions for the disclosure of tax avoidance schemes. That separate regime requires what UK law defines as “scheme promoters”—those who suggest or recommend avoidance arrangements—to make formal disclosures of that activity to HMRC. I understand from recent discussions with the Scottish Government that Scotland is not going down that route.

The Convener: Okay. I have a question first for ICAS and then for CIOT.

On revenue Scotland’s investigatory powers, ICAS suggests that the comment in the Government’s policy memorandum to the bill that to extend protection beyond the legal profession would “unduly hinder efforts to tackle tax avoidance in Scotland” is “unsubstantiated, misplaced and anti-competitive.”

How much avoidance is there, and how would extending the protection “unduly hinder” such efforts?

10:15

Elspeth Orcharton: That was a deliberate quote from the Scottish Government’s policy memorandum. Those claims are unsubstantiated, simply because we have not seen any evidence that, within the remit of giving tax advice, the non-legal profession on its own is the great promoter of tax avoidance in Scotland.

On your question about hindering efforts to tackle tax avoidance in Scotland, I should make it clear that, on a daily basis, most of our members help people to meet their tax obligations. Generally, people seek tax advice because they want to comply; because they do not understand the rules or necessarily come into contact with those rules on a regular basis; and because they do not have the time to develop the expertise and are not comfortable about doing so. As a result, they go and ask someone who knows the answers to their questions.

In providing advice to those individuals, assisting them with their filing obligations and reminding them of their payment and legal obligations, tax advisers such as the members of ICAS and CIOT are governed by a professional code of conduct that covers legal and ethical issues. Most of what they do has nothing to do with tax avoidance; instead, they are mostly answering the question, “What tax liability am I going to pay?”

The Convener: That is a good point, and it is important for the committee to hear. I do not want to overegg the pudding with regard to GAAR, but in considering the legislation we are looking at the margins and where changes could and should be made. I think that everyone accepts that what you have described is the basis of what your membership does.

Mr Whiting, your organisation expresses concerns about client confidentiality, which is a real issue. In your submission you state that “a tax advisor may have no formal qualification and not be subject to professional regulation but those who are members of one of the accountancy institutes or the CIOT are qualified and regulated.”

Do you think that extending protection beyond the legal profession is in the public interest? If so, can you explain why?

John Whiting: Our basic point is that, at present, there is not a level playing field. We are arguing that it is in the public interest—and in the interests of revenue Scotland and the Parliament—that people who want tax advice are free to go where they wish and to get the best advice that they can.

I associate myself wholly with Elspeth Orcharton’s comments about why people seek tax advice; they do so for all the reasons that she mentioned, including the fact that, frankly, they have better things to do. You and I could do plumbing, but I have no doubt that we choose not to do so because we would rather do other things. For those reasons it is in everybody’s interest that, if somebody wants tax advice, they are in a position to go to the best—so there needs to be a level playing field—and to people who are well qualified to give that tax advice.

At present, the way in which privilege operates means that there is a certain amount of additional protection in certain circumstances, particularly for advice that is given by lawyers. Does that hinder people who are seeking the right advice? In some circumstances—as we mention in our
submission—it might push somebody to take advice from a lawyer because they know that the advice that they are getting can never be disclosed to revenue Scotland or to anybody else.

Does that get us to the right position? I am not sure that it does. Are we arguing that privilege ought to be extended to everyone? No, we are not. We are trying to highlight the fact that there is an unlevel playing field and that it is in everybody’s interests that, in the same way as if they want an expert plumber, if people want tax advice they should get somebody who is properly qualified and regulated. We therefore think that, if there is an argument for some form of privilege, it should attach to certain circumstances and to anyone who is properly qualified and who gives advice in that area.

The Convener: Some of the tax advisers are not qualified, as you accept in your submission.

John Whiting: Yes, and in many ways that is quite a concern. The statistics show that approximately 30 per cent of those who act as advisers do not have a professional qualification or have a qualification that is not of as high standing, if I can put it that way, as ICAS or the Chartered Institute of Taxation. We subscribe to professional rules, practice guidelines, professional conduct in relation to tax and disciplinary boards, and, if we are in practice, we have to have professional indemnity insurance. That is all the paraphernalia that one could expect of a good professional.

That is a continuing issue. I do not have an obvious solution to it, but we have to flag it up. All we can do is make sure that our members are properly trained, kept up to date, subject to a proper code and disciplined if they do not conform to the proper way of operating.

The Convener: How often are people disciplined?

John Whiting: I do not think that I have one in my bag, but our monthly magazine Tax Adviser reports the results of the independent taxation disciplinary board, and I am not proud to say that cases are always being reported. I am also a member of the Institute of Chartered Accountants in England and Wales, and it has about four pages on the issue in most of its monthly magazines. I am not sure whether ICAS has people being disciplined; I am sure that it does. We are not proud of it, other than of the fact that it shows that we discipline those who fall short of standards.

The Convener: I am going to let in my colleagues in a wee minute, but Charlotte Barbour wants to say something.

Charlotte Barbour (Institute of Chartered Accountants of Scotland): I was just going to comment on ICAS’s regulatory regimes because I worked with them for a while. All our members who are in practice need practising certificates. Monitors go out, check the way that practices are conducted and report back regularly to the practising certificate committee. Like John Whiting, I do not want to say that lots of people are being disciplined, but there is a strong regulatory regime around all the activities of our members in practice. It is a well-regulated and well-functioning system.

The Convener: I have one final point on extending privilege. It would obviously benefit the accountancy profession as it does the legal profession, but how does it benefit the public? Is it just by widening choice? What are the benefits to the taxation system?

Elspeth Orcharton: The answer to that probably sits in widening the choice. When I last appeared before the committee, I mentioned that that has not historically been a great issue for the accountancy profession or for ICAS members, but it has gained prominence recently in two situations.

I think that the committee has heard about the first one before. It was a Supreme Court case that involved Prudential, which was the name under which it was listed. The Supreme Court judges opined that the law did not require to be addressed in terms of the imbalance that means that only lawyers can have legal privilege on tax matters. However, in the UK, the bulk of tax advice is given by people who are not qualified lawyers, namely the accountancy profession or tax professionals as members of John Whiting’s institute.

The second area in which the issue has come much more to the fore is the extent to which legal firms, particularly from London, are advertising in publicity and marketing material the fact of confidentiality of legal privilege as a reason why anyone seeking advice would want to go to them rather than elsewhere. I do not remember that being a feature a few years ago, but it is the kind of issue that we would not necessarily want games to be played with.

A straightforward method of addressing the issue might be to follow our suggestion—which is, of course, not the only solution—to go the way of the rest of the United Kingdom by having particular information powers at an early stage of an inquiry to keep the playing field level.

John Whiting: I completely agree with Elspeth Orcharton. Some out-and-out avoidance schemes have been devised by lawyers under the cloak of privilege, and they have tried to resist disclosure of papers to the tax authorities by sheltering behind that privilege. That is a risk, but I simply want to point out how the system might not be operating in
the right way. We feel that the answer is to level the playing field, coupled with a certain amount of education about the value of going to a properly qualified adviser if people want proper advice.

The Convener: Thank you. I will now open out the session to colleagues.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I want to stick with this particular issue, because I think that it is important. Indeed, Mr Whiting’s last response demonstrates why it is important for us to get all this right.

Elspeth Orcharton has kind of answered this question already but I will ask it: on a practical level, how big is the issue? You have already said that, historically, it has not been a big issue for the profession, but the question is whether it actually harms accountancy firms. Are they struggling because of it? As has been pointed out, the vast bulk of tax advice is still given not by lawyers but by other professionals.

Elspeth Orcharton: Someone might say that they have never seen a starving accountant, but that is not the point that we are making. At the moment, the provision of coherent tax advice, which sits primarily within the accountancy profession, can be interrupted, and if you are looking for people to make their fair contribution—and to understand what that actually is—you do not really want that conversation with an accountant to be interrupted by some lawyer jumping up and down, saying, “You should come to us to discuss this issue, because it’s slightly different.”

Although at the moment it is not a massive issue for most of our members, it is increasingly becoming one. This conversation and its timing have been occasioned by the introduction of this bill in the light of other case law that has come up. We believe that this is a matter for Parliament; indeed, the Supreme Court has said as much to the Scottish Parliament and Westminster, and that is why it is on the agenda.

Jamie Hepburn: I think—one of my colleagues will correct me if I am wrong—that, when we spoke to the bill team last week, it made it pretty clear that the privilege that lawyers have is not wide ranging but pretty tightly defined. It also suggested that it might go away and reflect on the evidence that we gather at stage 1 and that, if it felt that privilege needed an even tighter definition, it would put that in place. Do you welcome that?

Going back to Mr Whiting’s comment that lawyers have used privilege as a guise to devise avoidance schemes, I have to say that my understanding is that that is not what this power of privilege—for want of a better term—is there for. Would you welcome a tighter definition of privilege?

John Whiting: Yes. Indeed, that is very much what we want. The Prudential case that we were involved in and which Elspeth Orcharton has already alluded to supports the argument in that respect. Our objective is for the issue to be looked at properly, and we believe that the Parliaments here, at Westminster or in both places need to examine the issue and tell us what they want privilege to apply to.

My own belief is that privilege stems from a time when only lawyers could speak on behalf of those accused of crimes and it was required to protect the accused’s communications with their lawyer, who, in effect, was speaking their words. If that is where privilege came from, I am not entirely sure what it is doing regulating how tax advice is given. That is what makes me feel that the whole area needs to be looked at to determine what should be privileged.

10:30

I keep coming back to the idea that, in certain circumstances, privilege should apply no matter who is giving the advice because it is in everyone’s interests that people get proper advice. I point to a situation in which somebody gets very behind, is seriously in arrears and has serious problems with their tax affairs. It is in everybody’s interests that they make a complete clean breast of it to their adviser, who will then help them to get up to date and regularise their position. We might say that we want no worries about disclosure of what is said in those circumstances, and obviously the good professional will use the information that is given properly. It is in such situations that we might want privilege to apply because we want everybody to feel able to give proper advice and to get the person up to date.

Jamie Hepburn: Okay. We will probably look at that issue a bit further.

Mr Whiting, your organisation has set out concerns about some matters being left to secondary legislation, arguing that some rules should be part of the primary legislation. However, it is a more arduous process to amend primary legislation, and secondary legislation is still subject to parliamentary scrutiny, so I am not clear what your concern is.

John Whiting: It is one of those questions of balance. As a matter of principle, we always prefer rules about tax to be in primary legislation. At the same time, we freely accept that we can never put everything in primary legislation and that we are going to have secondary legislation, particularly about administrative matters, and guidance. However carefully legislation is written—the bill team has done a very good job in writing clear legislation—we will always want a certain amount
of guidance to help people to know what the law is. We might therefore say that there will be three levels.

Our concern is that the real rules should be in primary legislation and, in that respect, we home in on certain aspects of the penalty provisions. Penalties are a key part of legislation, and taxpayers should know when they are going to be penalised. I fully accept your point that secondary legislation is still subject to parliamentary scrutiny, but we think that something as key as the penalties that will apply should be in the primary legislation. Secondary legislation can cover how the penalties will be applied mechanically, but the circumstances of the penalties should be in primary legislation together with the welcome powers on how they can be mitigated and when they can be suspended. That area of the penalty regime is pretty fundamental to the fairness of the tax system, and we would have thought that the Parliament would want to be sure that it is being fair.

Jamie Hepburn: Why would taxpayers not know where they stand in relation to penalties just because they are in secondary legislation? I do not see why people would not know that. To be perfectly frank with you, I would imagine that most people out there do not know the difference between primary and secondary legislation.

John Whiting: That is a fair challenge. You might take it a stage further and ask whether they would mind if it was just in guidance. It is a matter of principle: I accept your practical point that, at the end of the day, the taxpayer does not know whether something is in primary legislation, in secondary legislation or in guidance, but I feel strongly that something as key as this should be in primary legislation.

I think that Charlotte Barbour wants to comment.

Charlotte Barbour: I and ICAS members feel strongly and have long said that principles should be in primary legislation. One of the difficulties with tax legislation is that a lot of it is very detailed. We tend to think, “Detail? Secondary legislation—pop it in the regulations”, whereas an awful lot of what we are working with is the detail, and the detail constitutes powers.

I believe that principles should be in primary legislation, and the powers are the principles. What revenue Scotland will be able to do on levies, penalties and interest are powers and they should be up at the top. In particular, the penalties are for promoting and enforcing compliance in a self-assessment system, and so the penalties are the main tool. In any appeals system, people who are hit by penalties usually come back to the question whether or not they are fair.

That brings us back to your points about fairness, convener. I believe that, in order that those who have implemented the legislation can say, hand on heart, that the system is fair and that they have actively considered it and put it in place to encourage compliance in such a way that the onus is on the taxpayer to do things themselves, those provisions should sit up among the main principles in the primary legislation.

Jamie Hepburn: Whether they are in secondary or primary legislation, they will still have effect in law. I am hearing you all talking about the high principle, but I am not getting a sense of why it is such a high principle.

Charlotte Barbour: With regard to how you structure legislation, primary legislation—the first port of call—should say what powers are being awarded. Awarding a penalty to a taxpayer means giving revenue Scotland a power. The details of that are therefore really important: the amount, when and why. That should all be put in the proposed legislation, at the top. It is really important that Parliament considers that.

I ought to declare an interest, as I sit on the first-tier tax tribunal. We hear lots of cases about penalties, and nine times out of 10 the questions concern the fairness of the penalties. That is not for the tribunal, the taxpayer or revenue Scotland to decide; it sits with why the penalties have been legislated for. I accept that secondary legislation comes before Parliament, but I do not think that it is as actively discussed and deliberated on as part of the full package of how you are forcing your citizens to comply.

Jamie Hepburn: That depends on what committee the measures go before—it is up to the committee to consider them rigorously.

I have a question for the Chartered Institute of Taxation. In relation to the charter in the bill, you noted the contrast between what revenue Scotland should aspire to and what is expected of the taxpayer. That was raised with the bill team and, to be fair to them, they accepted that the provisions could be better framed. What was the institute’s concern? There is an offer from the bill team to consider those provisions and perhaps word them better. How could they be worded better?

John Whiting: That is very welcome news—I am aware that the bill team is going to have a think about it.

We are great fans of charters. We have been involved in a project that has been taking place around the world to develop model charters. We view them as very good demonstrations to ordinary taxpayers of how the tax authority will work and what responsibilities there are. It is all part of building confidence in the tax system.
At the same time, the charter is a good means of communicating to taxpayers how the whole thing will operate. It is very much a two-way street, with rights and obligations on both sides. To have confidence in the charter and to make maximum use of it, it must be seen to say what the tax authority is expected to do. We were keen for the charter to outline the expectations on both sides.

The charter should regularly be reported on, with an obligation for revenue Scotland—probably signed off by the members of revenue Scotland—to lay a report before the Parliament on how the charter is going. There should be observations on how the tax authority is operating and how taxpayers are responding to it.

**Jamie Hepburn:** I take it from that therefore that there should be some sort of equivalence in terms of the standards for the tax authority on one hand and those for taxpayers on the other.

**John Whiting:** Yes. The system involves rights and obligations on both sides, and the charter is a good way to communicate that.

Returning to your previous questioning, I think that taxpayers will not look at legislation, be it primary or secondary, whereas ideally a charter can be communicated in a poster or in a pretty brief document. It can be part of a statement of how the tax authority is going to treat people and, at the same time, what it expects from people: taxpayers are supposed to do this, and in return the tax authority will do that. That is a pretty powerful means of building a good rapport between taxpayers and tax authorities and of ensuring that everybody has confidence in how the system will operate.

**Jamie Hepburn:** I take that point, which is well made.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I was going to ask about the charter, but that has been substantially covered by the previous series of questions and answers. To be fair to the bill team, it has indicated movement on consultation, which was a concern, and on the language of aspiration. I agree with everything that John Whiting said in his previous comment and I hope that those changes will be made, which would help to give the public confidence about revenue Scotland.

One of your concerns about the GAAR is that revenue Scotland’s position is not quite right—perhaps it is being given too much discretion and too much will depend on what it decides is reasonable. I will ask mainly about that. Some of your evidence on that is a little persuasive. In the past few weeks, various people have mocked the double reasonableness test but, when I read your submissions, I came to think that the double reasonableness test is quite reasonable. The essence of the test is an attempt to take an objective view of what is reasonable. The fear is that, otherwise, what is reasonable will be just what revenue Scotland decides.

Does the approach work in England? How does the advisory panel work in practice? That is the essence of achieving objectivity.

**John Whiting:** I make it clear that the advisory panel has not formally pronounced on the UK general anti-abuse rule—as far as I know, no cases have gone before it. However, in principle, the intention is to ensure that—as you put it well—reasonableness is judged reasonably, to keep peddling that word.

The view should be not just that of HM Revenue and Customs or revenue Scotland but that of a group of reasonable people. The aim of having the advisory panel is to bring in commercial common sense. That does not override the rights of revenue Scotland or HM Revenue and Customs to run the tax system properly and police the avoidance that the convener referred to; the aim is just to ensure that the view fits in with commercial reality.

**Elspeth Orcharton:** As John Whiting said, the advisory panel has not judged a case, but it has had a role in reviewing the guidance that was issued on the operation of the UK general anti-abuse rule. That guidance was universally welcomed by practitioners, because it described succinctly what the rule is intended to do—it is game changing, to use that expression. The guidance also went into detailed worked examples to show why the law would be considered to apply in particular circumstances. That law applies to a range of taxes and not just to the two currently devolved taxes, as in Scotland.

The advisory panel objectively reviewed that guidance. We would support having such guidance in Scotland. It does not say just what does and does not work; it explains in the context of the legislation and the legislative principles why something is or is not acceptable. That is an additional role for the panel.

**Malcolm Chisholm:** I was going to ask about the guidance. The bill says that the courts must take into account non-statutory guidance, which revenue Scotland could issue. You have suggested one way of dealing with concern about that—having oversight of the guidance—but is there another way of doing that? Is it accepted that such guidance is required? Should some of it be in legislation of one form or another? Is there another way of ensuring a check on the guidance?
10:45

Elspeth Orchanton: The question to be answered with respect to the provision as it is drafted is: what will make the guidance both workable for practitioners and succinct and clear in terms of revenue Scotland fulfilling its obligations? I alluded earlier to the test on whether a transaction lacked commercial substance or otherwise, or whether it was artificial or otherwise. The model seems to be—so far—working for the rest of the UK, partly because it is deterring people from the kind of behaviours that the tax authorities want people to steer clear of. The model seems to be a good one on which to proceed, and it should be seriously considered.

John Whiting: It all comes back almost to where the convener started. The guidance, in common with the GAAR, should send clear signals that abusive tax avoidance will just not be tolerated and will not work.

The point of an advisory panel, or something else, looking at the guidance is to ensure that the message goes out in a proper, balanced way. What could operate as well as an advisory panel? As much as anything, that probably comes down to our favourite topic of consultation. Even if an advisory panel is not formally constituted, the guidance should go through bodies such as ours so that we have an opportunity to comment and say, “We can see what you’re getting at but it won’t be read quite like that in practice. To get over the message that you want to communicate, it would be better if it were worded in this way.”

Malcolm Chisholm: One of your concerns that I am not quite so sure about is whether the bill should refer to

“one of the main purposes”

or just to “the main purpose”. I do not see the problem, as

“one of the main purposes”

is still a main purpose. I am not sure why the fact that there may be other main purposes should make much difference.

John Whiting: Our point is that we would prefer the phraseology “sole or main purpose” to be used in reference to tax avoidance. That is our objective. We can accept the way in which the provision has been framed but, at the risk of sounding like the proverbial stuck record, we want to be sure that people going into normal commercial transactions are clear about whether they are caught by the provision.

Earlier, I used the example of incorporation. If I advise someone on incorporation, one of the purposes of the advice is to enable them to take into account tax considerations. I would not be doing my job if I did not explain that aspect to them. Giving someone advice on incorporation is, therefore, immediately within the ambit of the provision, whereas nobody would say that the sole or main purpose of advice on incorporation is tax avoidance.

It is a matter of terminology. We accept that “one of the main purposes” is where we are; we are just trying to ensure that there is proper balance to achieve the certainty that we think is important.

Malcolm Chisholm: I have one final question about another area. Different views seem to have been expressed, over the past week or two, about the extent to which the bill will be fit for purpose in the context of a greatly expanded range of tax powers, whether they come through enhanced devolution or independence. Is the bill geared simply to the limited tax powers that are in the pipeline, or will it be fit for purpose in the context of that wider range of tax powers?

Elspeth Orchanton: My view is that the bill does what it sets out to do, which is to provide everything that is needed for the currently devolved taxes to be brought into play, but that it does not cover every circumstance that will be possible in the future. It covers the landfill tax and the land and buildings transaction tax, which are essentially one-off transaction taxes. However, income tax powers work on an annualised system of annual income, offsets and different things. A number of powers would probably need to be introduced simply to deal with annualised taxes as opposed to transaction taxes.

However, that is not a failing. Our concern, back at the start of the process, was that a bill could be devised to deal with absolutely everything and to detract attention. We feel that there is quite enough to focus on in the bill as it stands and that it is far better to focus on a really good-quality bill with one eye to the future than to try to cover everything at the same time, particularly when those further tax powers have not been designed or determined.

John Whiting: I am possibly a little more optimistic than Elspeth Orchanton. The bill does a very good job of putting in place a framework for revenue Scotland—let us not forget that it establishes that body—for powers that will apply in most circumstances and for the tribunals. The bill has a terrific amount in it and, as I have said, the bill team deserves great credit for what it has covered in the bill.

I do not think that the bill takes into account or caters for absolutely everything that could happen on devolution in any shape or independence and I do not think that anybody could ever imagine it. There are reports in the papers today about a
possible sugar tax. If the Parliament decided to introduce a sugar tax, would the bill cover it? The framework is there, but you would almost want to be sure that it did. As Elspeth Orcharton said, if Scotland takes full powers over income tax, we would want to test whether the bill would cover everything that you would want.

As a framework that gets you most of the way, the bill does a good job.

The Convener: The next rumour will be that we will introduce a tax on the air that we breathe.

John Mason (Glasgow Shettleston) (SNP): I should probably declare an interest in that I am a member of ICAS, which means that I have to cross-examine the ICAS witnesses with more rigour.

John Whiting: Be careful of the disciplinary process, Mr Mason.

John Mason: Yes, well I might touch on that later, but we will see how we get on. We have covered a wide range of areas. I will go back over a few and question a few points that have been raised.

I start with privilege for the legal profession as against the other professions. I totally agree with the idea that there should be a level playing field. If we are in the position in which lawyers have a bit more privilege and accountants and tax advisers have a bit less, the question is whether we bring everybody else up and give them more privilege or bring the lawyers down and give them less and, perhaps, define it. I would prefer the latter approach. Do the witnesses have particular views? Should there be more privilege for everybody?

Elspeth Orcharton: We are looking at the powers in relation to certain information notices only. We are talking about accountants and tax advisers coming up in a fairly contained area. The area simply supports open discussions when clients come in and, particularly, something has gone wrong so that there are enough safeguards on what the advisers have to do on that.

I suspect that lawyers apply legal privilege to things other than tax advice that do not cause a particular concern, but we are considering tax, so it is a lifting up but in a fairly defined and narrow area.

John Whiting: To use your analogy, Mr Mason, we would envisage the lawyers coming down and qualified tax advisers going up. I do not know whether they would meet halfway, but it would be a movement on both sides. Of course, some of the CIOT’s members are lawyers and they end up in slightly strange positions.

John Mason: When they are giving different advice.

I think that the bill team said that it was considering the matter.

If someone comes along with their affairs in a bit of a mess—perhaps they have just not done their tax return in a while—and they are going to be open with their adviser about that, there seems to be an assumption that they should not be open with revenue Scotland about it. I am a bit concerned about that. We have had a very confrontational approach in the past between HMRC and taxpayers. Would it be possible to have more of a partnership approach in which the adviser or the taxpayer goes to revenue Scotland, admits that they have made a mess, provides all the information and asks whether they can come to a reasonable agreement?

John Whiting: Yes. I think that that is what we would all promote.

Charlotte Barbour: That is an excellent road for going forward. We would hope that that would always be our starting point. I would be very supportive of the mediation facilities that are proposed in the bill. Anything that helps to fix things must be good. I do not think that privilege is necessarily used to cover up anything; I think that it is used to help get the best compliance. We know ourselves that if we have blotted our copybook, we might not be sure how to proceed. We might want to have a private discussion about it, then be assisted in addressing the matter properly. As was suggested, our accountants are mainly fairly conservative professionals who are there to help and make the system work.

John Mason: Right—although we have one or two accountants who have not been quite so conservative.

Elspeth Orcharton: The power that we are looking at in the bill relates only to investigations. The vast majority of cases, as was described, involve someone who has not filled in their tax return and has gone to their accountants. The expectation is that the full work would be done, full disclosure would be made to HMRC and all taxes would be paid and settled. However, I think that the power is about cases in which a different view might be taken by the tax authority, and that happens in a very small percentage of cases. There are occasions when HMRC takes a particularly aggressive approach and wants copies of absolutely everything but not necessarily at the right time for disclosure to be made. In addition, HMRC might make allegations or go beyond what is necessary for full disclosure and settlement, and for regularisation of tax affairs to take place.

I would therefore not want everyone to think that it is a day-to-day occurrence for accountants to put
their head in their hands and say, “Oh, I don’t have privilege.” In a big percentage of cases, privilege does not apply. However, where it applies, it is pretty relevant.

**John Mason:** Presumably, that is where the charter might come in. The attitude of revenue Scotland could be covered in there, as well as the need for it to be as rigorous with big taxpayers as with small taxpayers; sometimes that has not been the case in the past.

**John Whiting:** That is a very good point.

**John Mason:** The word “reasonable” has been mentioned. You got some sympathy on that from Malcolm Chisholm, so I will give you a different view. I still maintain that using the word “reasonable” twice in the same sentence is bad English. We could just keep adding the word “reasonable”; I came up with a sentence that used the word three times. A wording has been suggested along the lines of, “The arrangement cannot reasonably be regarded as a reasonable course of action”, but that still does not say who will have the regard. I would add to that wording, “a reasonable person cannot reasonably regard as a reasonable course of action.” That would give us the word “reasonable” three times, which presumably would be even better.

Someone—I cannot remember who—referred to bringing in commercial common sense. However, that approach would worry me. Would it mean that we were swinging the balance towards commercial interests or the taxpayer and away from the beneficiary of the tax—that is, the citizen? Do the witnesses have any thoughts on that?

**John Whiting:** The concern with the use of the word “reasonable” is around who is being reasonable and whose judgment it is. If you want a fourth use of the word “reasonable” for your example, you could add the phrase “at a reasonable time of day.” I am being facetious, but the serious point is that we would all come to a different view of what is reasonable at different times and in different circumstances.

In all honesty, I do not think that one can get away from the use of “reasonable”. It is a well-used term in cases. One of its prime uses is with penalties and whether a taxpayer has a reasonable excuse, so it comes up a great deal. The concern is that it is a rather flexible term, whose meaning can change according to circumstances.

We probably need to establish some guidance or track record on how the term will be used. If we can constrain, rather than expand, the number of occasions on which it is used, that will contribute to certainty for the individual taxpayer or business taxpayer. It will also translate to a little more certainty about how much tax will be raised by the revenue authority through the power, so the recipient will know a little more surely when they are going to see the money.

11:00

**John Mason:** Do you accept that, as the convener pointed out, the more we pin such things down, the more we move away from principles and back to the detailed rules and regulations that we are trying to escape from?

**John Whiting:** I quite accept the danger of going down the path of endless details, but it is a question of striking a balance between those endless details, which none of us wants, and the legendary one-section act that some people say the UK tax code could be reduced to, which is basically that the taxpayer shall be left with such proportion of his, her or its income as HM Revenue and Customs in its infinite discretion shall reasonably decide. [Laughter] I should say that I am a non-executive director of HM Revenue and Customs and that I do not support such a proposition.

**John Mason:** To be fair, most of us probably do not.

On what the word “reasonable” means, if I understand it correctly, the double reasonable condition in England has not yet been tested in court, so any words that we use—including the word “reasonable”, although it has been used in court in other areas—will move us on to new ground anyway. Presumably, therefore, if revenue Scotland were to abuse its position and be unreasonable, that would soon be challenged in court.

**John Whiting:** Potentially, yes. I am sure that revenue Scotland does not plan to set out to be unreasonable. Without trying to do Charlotte Barbour out of a job, we do not want endless cases coming to the tribunal, so it is about giving some reasonable guidance.

**Elspeth Orcharton:** I completely understand the slight frustration about the use of the word “reasonable”. I have failed to come up with a different word, so I cannot criticise from that perspective, but context is the way in which one applies what is reasonable, and context is what we are looking for. It could be given in guidance, by a separate panel or by moves towards objectivity rather than subjectivity and uncertainty.

**John Mason:** You said that you reckoned that most taxpayers want to comply, and ICAS’s submission refers to the expectation of revenue Scotland

*“Treating the taxpayer as honest (unless there is a good reason not to).”*
I suppose that I start with a slightly more sceptical approach, because there are a lot of people out there who want to pay as little tax as they possibly can, especially if they are writing a cheque for it, and self-employed people have more freedom than employed people, I guess. Do you stand by your claim that everybody is honest to start with?

Elspeth Orcharton: Two different things apply. My experience is that most people whom I have come across want to comply, and that means that they want to act within the law and in a lawful fashion. That can sit alongside not wanting to pay the maximum amount of tax possible. Those people want to pay the minimum amount of tax possible within the law.

There are statistics on the scale of the black economy—those who operate outwith the law and do not comply with their obligations. I am not sure that anyone has ever measured it accurately, but it is still expected to involve a minority rather than a majority of the UK population. The interesting question is about the extent to which fairness is a spectrum. If you ask a room full of people how many of them would like to pay less tax, most people will put their hand up. If you give people two legal alternatives and ask who would like to take the alternative in which they paid less tax rather than more tax, most people would say that they want to pay less tax rather than more, but within a framework of complying and doing it legally.

I do not think that we will ever get away from that, or that we should necessarily try to get away from it. However, we try to ensure that the boundaries on what is legal and what is not legal are as clear and certain as possible, so that we can go back to people and say that they were definitely on the wrong side or on the right side.

The wording in our submission was intended to stimulate debate. Quite a few of the suggestions come from other charters that are around. John Whiting alluded to some international charters. We wanted to get a flavour of the Parliament’s thoughts on what should be in the charter. Are those reasonable—sorry, there is that word again. Are they appropriate comments or expectations? If Parliament can set the tone and the direction, it is a lot easier for professional bodies and our members to understand what you are aiming at. Also, it is about the direction that you give revenue Scotland.

John Whiting: The vast majority of people in this country want to pay their taxes and move on—they have better things to do—and therefore they want to comply. To put the issue into context, the UK generally is a pretty compliant country. About 93 or 93.5 per cent of our taxes just come in, and HMRC gathers a little more on top of that. That means that our tax gap is famously about 7 per cent, compared to about 13 per cent in the US and 8 or 9 per cent in Germany. We are a pretty compliant nation. Although I am not in any sense saying that we have not got a problem, let us keep it in proportion.

John Mason: That is fair comment, although I sometimes wonder how such figures are measured.

I turn to the final area that I want to touch on. Ms Orcharton suggested that, if there was more certainty in England and less in Scotland, businesses would move there. However, I suppose that that depends a bit on the type of business. Businesses such as Tesco or Starbucks want to be everywhere and extract money from the population wherever they are. From their point of view, if the tax situation was slightly less favourable in Scotland or Holland—or anywhere else, for that matter—that would not prevent them from going there, and it would not mean that they would concentrate only in England. I presume that they would just have to deal with it. However, I presume that, if a business such as Barclays is thinking of staying in England or moving to Scotland, the comparison becomes more relevant. Is that the case?

Elspeth Orcharton: The discussion that took place in our office was in the context of the land and buildings transaction tax, which is the imminent one that we face, and locational decisions by those who might invest in a portfolio. The issue is not the absolute cost of the tax; it is the uncertainty as to whether the tax applies. If a business knows that something will definitely cost X, it will price that into its commercial decisions on deals and might pay less for a piece of land because it has more tax to pay. The issue relates to the impact of the uncertainty over whether businesses will have to pay tax. While that period of uncertainty exists, they might think that they cannot be bothered and will just concentrate elsewhere. That was the context in which our discussion took place—it was more about dealing with uncertainty rather than the absolute cost.

John Whiting: From my experience as a long-term tax practitioner, when businesses or wealthy individuals are making decisions as to where to locate, tax is one of the issues, but it is only one of the issues, and there are plenty of others. Tax can tip the balance, but it is rarely the deciding factor, except when people are, frankly, trying to out and out evade tax. Obviously, on evasion, we are into a completely different area.

John Mason: Obviously, tax is a factor. Some people go to the Isle of Man or the Channel Islands because the tax position is certain—they will pay less tax—but not everybody does that.
John Whiting: Indeed. For a period, I was involved with location studies and helping businesses to decide where to invest. As I said, tax is one factor, but so are things such as communications infrastructure, transport infrastructure, language, time zone and availability of grants—you can tick them off as well as I can. All those are put into the mix and weighed up.

Tax is a factor, and very often—particularly in relation to headline rates of tax—it can get on to the shortlist for the individual or company to consider. More detail is then considered and we will see the likely result at the end of the day. If the result is that people do not know how much tax they will pay in a country or if they think that they will be subject to the vagaries of a rapidly changing tax system, that will tend to put investors off the country. However, there is a range of factors.

The Convener: I do not know how rapidly changing many tax systems are, but there is a real issue to do with organisations—Starbucks has been mentioned—paying tax in the country where they make money as opposed to looking at countries such as Ireland or Luxembourg, where they choose to pay the lowest tax for their entire European or worldwide operations. That issue is separate from the one that John Mason raised.

John Whiting: It is. I am sure that you are aware that the Organisation for Economic Co-operation and Development is seriously worried about that.

On how frequently tax systems change, I am aware that Brazil is legendary for being the country in which it takes longest for people to do their tax. Basically, that is because its tax system changes every day. The Parliament is very productive, but I suggest that that is not an example that you should emulate.

The Convener: That would keep some of your Brazilian colleagues in work, though.

John Whiting: Indeed.

Jean Urquhart (Highlands and Islands) (Ind): A couple of my questions have been answered, one of which was about the bill being fit for purpose, given the constitutional change in the country.

I want to follow up on the heartening information that most people pay their tax, although people want to know that they are being fairly taxed and are paying their due. Does that not reflect the earlier concern about primary legislation dealing with the tax that is to be paid and the default position of secondary legislation dealing with tax evasion and avoidance penalties? The penalties are not spelled out. It seems to me that, if this is a positive piece of legislation and we agree that most people want to be fair and to be treated fairly, that should be reflected in primary legislation.

Elspeth Orchanton: The view that we took and which our members express to us is that the bill is fairly historic. This is the first time that the proposals have come to the Scottish Parliament, and our members have many aspirations and expectations that the bill should be as comprehensive as possible, set out a coherent picture, and tell people what is expected of them and what will happen to them if they do not comply. That is where the point about having penalties at the same level of detail as applies to obligations comes in.

As has been said, the bill has to do all those things. It should raise revenue, give certainty, say very clearly what will happen to those who do not comply and fall foul of it, and be fit for purpose. I think that everything sits together in the same place.

John Whiting: Yes. Some 93 per cent or whatever pay partly because of sheer confidence in the system. It is well run by HMRC and Parliament and is not subject to whim or the Brazilian style of constant change. That creates confidence in the system, and that is an important message that the Parliament needs to send.

Jean Urquhart: I have another question about reporting to Parliament. I think that you have concerns about that, although I cannot find the page in question. How do you envisage the system working? Who should do the reporting?

Charlotte Barbour: We were slightly unsure about exactly what the reporting structures were from the bill. I know that it says that a report will be laid, but there is no provision for accounts or actively reporting to Parliament. We have had subsequent discussions with the bill team in which it explained the finer nuances of how the chief executive will report to the board and how the board will be the office-holder.

We just wondered whether the bill or the supporting material need to be slightly clearer so that people know exactly how the board is to conduct its business.

11:15

Gavin Brown (Lothian) (Con): Paragraph 8(2) of schedule 1 to the bill says:

“The person employed as chief executive may not be a member of Revenue Scotland.”

Are there advantages to that approach?

John Whiting: I will, if I may, reiterate something that I mentioned in passing earlier. I am a non-executive director of HM Revenue and
Customs in my spare time, as it were, so I have some experience of this.

The CIOT thinks that it is much better to have the chief executive and, potentially, the chief operating officer—the senior members of the executive, if you like—of Revenue Scotland as part of the governing body. In the terminology of schedule 1, they should be members.

We say that because we want to build the right sort of team for non-executives, if I can use that term, and executives, so that there is good regular interaction. It seems a little strange to set up a structure that has members—all of whom are non-executives—who govern but who, when they meet, do not routinely have the chief executive there. They can call her or him in to see them, and they would probably do that as a matter of routine, but it builds a better, more regular operating atmosphere if the top team consists of the members, the non-executives and the senior executives.

From my experience of being a board member at HMRC, that structure works. We are trying to take a regular team approach, with people who know, trust, and deal with one another regularly. That does not stop us challenging.

Gavin Brown: Does ICAS have a view on that one?

Charlotte Barbour: ICAS feels quite strongly that it would be much better to have a mixed team of executives and non-executives for the reasons that John Whiting has just discussed. It is slightly disjointed to have a completely non-executive board.

Revenue Scotland is going to be primarily operational and, if it is to have a proper handle on how operations are running, the chief executive needs to be on the board of Revenue Scotland as a member of Revenue Scotland. It would all pull together much better if the board had that mixture of executive and non-executive members. That is what most businesses do. A complete board of non-executives is often at one remove, which does not seem to make sense.

I also should mention that when we were asked about the issue in the consultation before the bill was drafted, the majority said that it should be a mixed board. What is in the bill is quite unusual, and, from subsequent conversations, it is my understanding that it has been decided to do it in this way because of the reporting provisions. However, the approach is perhaps slightly artificial.

Gavin Brown: Okay. We will move on to the issue of penalties, which has already been touched on.

Penalties are covered in sections 148 to 185. I do not propose to go through each section, but some stakeholders have made the point that the sections on penalties are a little bit light and overreliant on regulations.

As I read them, the sections on failure to submit a return, on failure to pay tax on time, on making an error and on underassessment by Revenue Scotland have almost nothing by way of specifics. However, section 167 is explicit: it says that not complying with an investigation carries a penalty of £300, and submitting a document that has errors carries a penalty of £3,000. Some sections contain nothing, whereas others give exact sums. What is your view on what needs to change in the bill to comply with the principles that you think are important?

John Whiting: That is a very good analysis. We think that section 150 needs to set out what a failure is and what the penalty is. Given that there is provision elsewhere in the bill for penalty amounts to be increased in secondary legislation so as to keep up with inflation or whatever, it will not hamstring the system if such provisions are laid down in the bill—if the bill spells out the circumstances and the amounts. To me, it is as simple as that.

Charlotte Barbour: I completely agree with that. Sections 150 and 151 probably need the most expansion. The circumstances in which a penalty is payable should be on the face of the bill, and the amounts should be on the face of the bill, too. To me, the only things that should be in regulations are the procedure and the administrative side. Everything else should be in the bill. That is particularly the case for penalties for the most humdrum things: the failure to make a return and the failure to pay tax, which we come across most frequently.

John Whiting: Those are the regular ones.

Charlotte Barbour: Yes. Those are the regular ones—they are the penalties that really upset people when they get them. Usually, people do not appreciate that they should have done something, and they think that it is singularly unfair when they get a penalty.

Gavin Brown: I have a question about another aspect of penalties. Some of the issues are similar, and I will not press those points.

Section 163 is on “Under-assessment by Revenue Scotland”. From a brief reading of that section, it seems to me that, if revenue Scotland makes an error and underasses, and if the taxpayer—or person P, as they are described in the bill—through carelessness does not notice that, they must pay a penalty because revenue Scotland has made a mistake. Further, it is up to revenue Scotland to decide whether that person...
has been careless. That struck me as giving revenue Scotland a fair bit of power. Effectively, it could rectify its own mistakes in that way. Do the witnesses have views on section 163?

John Whiting: Let us start with the fact that mistakes happen. In a sense, the starting point should be that, if an honest mistake has been made on either side, people should not suffer. What section 163 is trying to get at—you have picked up on this very well—is the situation in which it is blindingly obvious that the tax authority has made a mistake. If someone's income is £1 million and the authority has put the decimal point in the wrong place and has instead assessed an income of £1,000, that is screamingly obviously wrong, as the person knows perfectly well, and frankly they should own up and say so. In such situations, we would accept that there is the possibility of a penalty if the person does not own up. However, even in such cases, there are issues around whether it is really that obvious to an ordinary taxpayer that things have gone wrong. You put it well. Section 163 seems to leave quite a lot of discretion to revenue Scotland.

Elspeth Orcharton: My handwritten note says that that provision is very harsh, for two reasons. In what will be quite unusual in a self-assessment system, revenue Scotland will issue an assessment in which it has made a mistake. That activity will involve a tiny fraction of revenue Scotland's business. A really harsh penalty applies, yet—to return to your first point, Mr Brown—the bill is silent on all the other processes and procedures that might take place on a day-to-day basis. Who is doing what that might give rise to a penalty, which could then give rise to something equally harsh? Could it be harsher? Could it be less harsh? We do not know. On the question whether the penalty provisions in the bill should be really harsh, is that the tone that the Parliament wants to set? Do you want something much fairer? “Fairer” is another word that we used earlier. Do you want something that is quite lenient in certain circumstances, with something very penal put in place for persistently wrong?

That is what we are trying to get at in relation to the shape and consistency of the bill and the penalty system. What is it that you are actually trying to penalise, by how much and with what caveats? In the view of ICAS, it is for Parliament to determine that, and that is why we wanted to have a discussion about what is in the primary legislation.

Gavin Brown: To paraphrase John Whiting, if an error is made in relation to someone with an income of £1 million and the mistake is blindingly obvious, you would have a lot less sympathy for somebody who did nothing than you would have for someone who was penalised if the error of margin was small and there was a perfectly feasible reason why the error was not picked up. You would find that a bit harsh.

John Whiting: It is not just a function of size. We are in a complex area, so you have to ask whether it is reasonable—to use a well-known word—to expect the average taxpayer to pick up the error.

Let us face it: most people who get a letter from HMRC tend to accept that HMRC has got it right, because tax is complex and people do not always understand it. You can project from there that if something comes from revenue Scotland that says, “We have assessed this. We’ve worked it out and the figure is so much,” the taxpayer will say, “Oh well, I suppose that must be about right.”

I come back to the point that if it is blindingly obvious that something is completely wrong, you can say that the taxpayer is at fault. However, whatever penalty there is should not penalise those who make a tiny error or errors that the taxpayer could not be expected to pick up. He or she is not the expert.

The Convener: That concludes the committee’s questions. Would you like to make any points to the committee that have not come out from the questioning?

John Whiting: No. We have been given a good opportunity, so thank you very much for listening to us.

I echo what we said earlier: the bill team has done a good job. The CIOT put out a note earlier this week in which we awarded the bill eight out 10. That will very quickly get to nine out 10 with the discussions that we have suggested, although I do not suppose that we would ever give a bill 10 out of 10.

The Convener: I am sure that the bill team will take eight out of 10 at this stage. There are still stage 2 amendments to come and the committee has yet to produce its report.

Thank you very much for your comprehensive answers, which the committee appreciates.
Scottish Parliament

Finance Committee

Wednesday 12 March 2014

[The Convener opened the meeting at 09:30]
10:08

On resuming—

Revenue Scotland and Tax Powers Bill: Stage 1

The Convener: Our fourth item of business is the continuation of our stage 1 consideration of the Revenue Scotland and Tax Powers Bill. We will take evidence from the Faculty of Advocates and the Law Society of Scotland. I welcome to the meeting Philip Simpson and James Wolfe QC from the Faculty of Advocates, and Alan Barr and Isobel d’Inverno from the Law Society of Scotland.

There being no opening statements, we will go straight to questions, which will be asked by me and then other committee members. Most of the witnesses have been here before, so they will know the drill.

I was impressed by the submissions, which are concise but cover a lot of ground. I am sure that we will delve into them in great detail. Paragraph 9 of the submission from the Faculty of Advocates, on appeals to the Court of Session, states:

“The Faculty recognises the policy issues behind restricting appeals to the Court of Session to cases raising important issues of principle or practice, or in which there is some other compelling reason for allowing the appeal to proceed. However, the Faculty is concerned that this may unduly restrict the right of individual litigants to have access to the supreme court in Scotland.”

Why would that be the case? How long would someone have to wait before a case came to the Court of Session?

James Wolfe QC (Faculty of Advocates): I preface my direct answer to those questions by observing that the bill proposes to establish a system of tribunals, the first of which will be the first-tier tribunal, which will sit with up to three members. Appeals will be made to the upper tribunal, which, as I read the bill, will be required to sit with a single member, who may or may not be qualified in Scots law and may or may not be experienced in tax work or expertise the members who sat in the first-tier tribunal have. A separate point that the committee might wish to consider is whether it would be appropriate to allow the upper tribunal to sit with more than one member. Otherwise, one will have the odd situation in which a decision by three people will be subject, on appeal, to a decision by a single individual.

One must look at onward appeals to the inner house in that context. The test that is articulated in the bill for access to the inner house, which is restricted, has been described as the second-tier appeals test. A necessary consequence of that test is that, although the upper tribunal might have got a case wrong, the right of appeal will be cut off if no point of general importance arises. If that provision is enacted, that will be a deliberate decision to live with mistakes, even if they are relatively obvious, simply to avoid the possibility of a litigant having yet another bite at the cherry.

It is important for the committee to understand that the test that will be applied will deliberately exclude a well-founded appeal—even a well-founded appeal in which it is reasonably clear that there is a seriously good point to be argued. If all that the litigant can say is, “This is really important to me; the tribunal has got it wrong,” they will not get leave to appeal, because the case does not raise a point of general importance.

The question is whether it is right to say to a taxpayer—Revenue Scotland might be on the other side—“We are content that the system might have got it wrong but, nevertheless, we’re not going to let you appeal to Scotland’s supreme court,” particularly when the upper tribunal decision might have been made by a single individual, who may or may not be qualified in Scots law and may or may not be as well qualified as members of the first-tier tribunal are. I suggest that the committee should be concerned about that restriction.

The Convener: I noted your comments on that in your submission.

How long would someone have to wait before their case was heard at the Court of Session?

James Wolfe: I do not have the current statistics on waiting times, but we can provide the information after the meeting. An appeal to the inner house from a statutory tribunal must be taken within a statutory period. It is then a question of how long it takes from lodging the appeal to the point at which it is heard and determined by the court.

The inner house has significantly improved its internal procedures in the relatively recent past. The perception of practitioners is that the former problem of a delay in getting appeals heard no longer exists. In effect, the way in which the process works now is that the inner house insists on cases being much more front-loaded than they used to be. My perception is that the time to get a case to a hearing is much shorter than it used to be.

10:15

The Convener: It is months rather than years.

James Wolfe: My perception is that it certainly is not years; a case might run from one year into the next—that would depend on when in the year the appeal was marked. I do not know whether Philip Simpson has a different experience.
Philip Simpson (Faculty of Advocates): I agree with your comment. In the context of currently devolved taxes, another point is that a very small amount of litigation would end up in the Court of Session. As I mention in our submission, across the gamut of UK taxes, only about 50 or 60 cases have proceeded before the UK First-tier Tribunal each year since it came into existence four or five years ago. Off the top of my head, I am not sure whether any cases involving stamp duty land tax or landfill tax have been raised in that tribunal. Broadening the possibility to appeal to the Court of Session would not open any floodgates in a way that would have a material impact on the inner house's workload.

The Convener: Maybe I missed it, but I did not see privilege mentioned in your submissions. Interestingly enough, we have a solicitor and an accountant on the committee. The witnesses will know that the Chartered Institute of Taxation and the Institute of Chartered Accountants of Scotland are strong on extending privilege beyond the legal profession when it comes to taxation. What is the view of the Faculty of Advocates and the Law Society of Scotland?

James Wolfe: The clue is perhaps in the name—it is legal professional privilege. The privilege attaches when people seek and take legal advice; it allows the candid provision of information to the legal adviser and the candid giving of appropriate advice. It is a special privilege, which is there for a good reason, but it is important to confine it. If one expands it beyond the regulated professions whose job it is to give legal advice, where does one draw the boundary? One has to remember that tax advice in the broad sense can be given by entirely unregulated and unqualified people. I invite the committee to take the clue from the name and recognise the importance of seeing it as a privilege that attaches to legal advice that is given by qualified legal advisers.

The Convener: Our accountant friend wants to come in.

John Mason: Thank you for the opportunity to ask a supplementary question, convener. Is James Wolfe saying that non-legal advice given by a legal adviser should not be privileged? Would he accept that?

James Wolfe: I will not give the committee legal advice off the cuff in public, if I can put it in that way. I am not being difficult, but I would want to remind myself of the privilege's ambit before commenting.

Alan Barr (Law Society of Scotland): Perhaps unsurprisingly, the Law Society of Scotland supports the restriction as it exists and as was recently confirmed in the UK Supreme Court. I should say that our representation today is from a lawyer and a chartered accountant, so our evidence is not purely from the legal point of view.

If one is looking for the origins of and demands for privilege, the phrase "officer of the court" is important. Privilege is not restricted to things that do or could end up in court; it is the notion that advisers should be able to give candid advice and receive candid information when a citizen finds himself or herself liable to prosecution or other proceedings, which demands freedom from that advice being produced against them, as it were.

James Wolfe: I would not necessarily characterise the situation even as a restriction on the privilege; it is the logic of the privilege that it attaches to legal advice. It is concerned with advice that is sought and taken from the professions that are regulated for the giving of legal advice and, as Alan Barr observed, for pursuing or defending proceedings, should proceedings ultimately arise.

The Convener: I will not press the matter, although colleagues around the table might wish to.

The general anti-avoidance rule features in both your submissions. You both speak along similar lines. The first line of paragraph 22 of the Law Society’s submission says:

"We are concerned at the lack of certainty inherent in the GAAR provisions."

In paragraph 13 of its submission, the Faculty of Advocates points out that it would like the general anti-avoidance rule to be

"more certain for both taxpayers and Revenue Scotland."

One issue is that, given the way in which the law is sometimes interpreted, it can be too certain. The difficulty is that, unless the wording of legislation is absolutely perfect, it can allow loopholes and potential avoidance, because there is no flexibility in how it is applied. In other words, even when the intention is clear—I have previously quoted a case on this issue—it can still be circumvented if the certainty is too tight. How tightly do we draw the legislation?

As a layperson—as a taxpayer, one could say—I think that what annoys the public more than anything else is seeing a lot of people using avoidance measures and loopholes to avoid paying their fair share, which, all else being equal, burdens the rest of the population who pay their fair share. I am concerned about tightening things up to make things more certain, regardless of what Adam Smith might have said in a previous century. Will the Law Society and the Faculty of Advocates expand a wee bit on what their submissions said?
Alan Barr: We recognise that the line is difficult to draw. The Law Society fully accepts—we accepted it in relation to the equivalent UK statute—the absolute and understandable need to stamp out unacceptable avoidance. That is best characterised by circular transactions, which create a non-economic loss that nonetheless leads to a tax deduction. Through the long history of the courts, it has proved extremely difficult to stamp that out without a general anti-avoidance rule—or anti-abuse rule, as in the UK legislation. Such avoidance needs to be stamped out, and we understand why both legislatures wish to do that.

We appreciate that absolute certainty is impossible in tax legislation, particularly in a world whose economics is more complicated than that of Adam Smith’s days. The question is much more about where the certainty has to come from. That relates to the production of enough evidence of what will or will not be regarded as falling within the general rules, without the need to further complicate those general rules by saying that various things are disqualified or qualify.

That is what is required in guidance, so that people can be told that revenue Scotland regards a certain kind of transaction as falling within certain provisions and that it will pursue the matter on that basis. Perhaps more important, it would white-label things that definitely do not fall within the provisions, so that people can proceed with their transactions in the knowledge that they will not be challenged later.

It is perhaps understandable that revenue Scotland would wish to make the sole decision, but we support a more independent view of what is reasonable in the circumstances. That is why we recommend having an expert panel of some description to give advice on what is available. That would not necessarily lead to any change in the bill. The guidance around it is particularly important.

We note the policy decision to restore the term “anti-avoidance” as opposed to “anti-abuse”, which is used in the provisions that the UK eventually legislated for. That is deliberate and we understand that policy decision. It certainly leads to a perception—it is no doubt deliberate—that the measures are intended to be wider than the equivalent UK provisions in order to catch more things, to put it simply. That is fine—it is a matter for policy—but, if there is to be a difference from the UK provision, that probably adds even more to the need for the certainty that guidance will provide, rather than a tightening of the bill.

The Convener: That is interesting.

Isobel d’Inverno (Law Society of Scotland): The big advantage of having an external panel is that the people who were involved in it would have commercial experience of a wide range of transactions and acting and so on, so they might be better able to determine whether something was an unusual way of behaving or just the way in which the property industry now does a particular transaction, because of the changing economic circumstances in which we find ourselves or because of pressures from other legislation affecting how transactions are done. That is a particular aspect that is difficult to grasp without good guidance or an external body to which it is possible to apply to obtain a view.

Most business transactions have a tax element and most business decisions pay attention to tax. We must allow taxpayers to make a tax-flavoured decision, as John Whiting has referred to it, without worrying that, because they have taken tax into account, they are falling foul of the GAAR. The question is one of giving taxpayers more certainty as to how the GAAR will apply, rather than tightening the legislation, which would just lead to loopholes being created, as has been said.

James Wolffe: I will make a couple of observations about certainty. I do so against the background of recognising the policy—or policies—significance, as Alan Barr has observed, of dealing with transactions that are, on a proper view of it, abusive or illicit avoidance.

We tend to think of certainty as having a constitutional significance. The notion of the rule of law is that individuals, in their dealings with the state, should be able to plan their affairs with a reasonable confidence that they can predict how the rules will be applied to them, once they have taken appropriate advice. There is therefore a constitutional dimension to trying to find mechanisms that give a sufficient measure of certainty to taxpayers.

10:30

That value, which we tend to think of as part of the rule of law, also has an economic significance. There is now a literature about the way in which the rule of law and its institutions promote economic success. Unless economic actors have a reasonable measure of certainty in carrying out their affairs and making decisions or, at least, are able to achieve a reasonable measure of certainty by taking advice and to ascertain how rules will be applied to them, perfectly legitimate innovation may be deterred.
Therefore, in any system, there is real significance to seeking to identify and create mechanisms that provide a reasonable level of certainty, recognising that absolute certainty is never possible. Against that background, the faculty would support the use of an advisory panel both to introduce a measure of certainty and to give an external and independent input into decisions that may be made.

That is my take on it. I do not know whether Philip Simpson wants to add anything.

Philip Simpson: The proposed Scottish GAAR is intended to be rather wider than the UK GAAR. The UK GAAR is quite narrow, and I suspect that the band of uncertainty within which the line will be drawn as time goes by and cases come through will be fairly narrow.

There is uncertainty about precisely where the line will be drawn, but the degree of uncertainty is reasonably limited, at least compared with the uncertainty about where the line might be drawn with the proposed Scottish GAAR. That is because the band of transactions that might be regarded as falling on one side of the line or the other is much wider and, therefore, there seems to be a higher degree of uncertainty as to how the proposed Scottish GAAR would operate in practice.

For that reason, something like an advisory panel in which, in effect, three expert witnesses give an advance view would assist, particularly if—as with the UK GAAR—the panel is required to publish anonymously annual guidance about the decisions that have been made. That would enable us to build up a corpus of decisions that indicate where the line will be drawn in any particular case.

Guidance from revenue Scotland would be helpful—and I think that the idea is that revenue Scotland will publish guidance. That would at least give certainty as to where it thinks that the line ought to be drawn.

That leads into one particular question. As the bill is drafted, the court is required to take into account any guidance by revenue Scotland in setting out how the GAAR should be operated. That is slightly unusual because we have the idea of the separation of powers at a constitutional level, whereby the Executive is not supposed to be the body that interprets legislation; that is a matter for the judiciary. On the face of it, the provision in the bill seems to be an inroad into the principle of the separation of powers, giving particular necessary weight to the Executive’s view as to how a broadly drafted and, on its own, quite flexible and elastic provision should be interpreted.

Therefore, while the faculty supports an advisory panel, plus revenue Scotland guidance, I am not so sure that we support the proposition that the courts should be required to take that into account in interpreting and applying the GAAR.

The Convener: Okay—thank you. I think that Mr Wolffe touched on the issue when he referred to a reasonable measure of certainty. The question is how that is defined that. We do not want to see every i dotted and every t crossed, because that can cause difficulties.

I realise that other committee members are keen to come in, so I will not abuse my position in the chair; I just want to cover one other area. I refer to paragraphs 29 and 40 of the Law Society’s submission, which deal with parts 6 and 8 of the bill.

In paragraph 29, you state:

“We do question the introduction of a general unjustified enrichment defence for Revenue Scotland across all devolved taxes when, to date, the same has been restricted to specific taxes in the UK context.”

I am not really sure why anyone would be against that, because the word used is “unjustified”. In paragraph 40, you state:

“There are copious provisions in the Bill to prevent ‘unjustified enrichment’ of the taxpayer; we see absolutely no reason why they should not be balanced by provisions against unjustified enrichment to the tax authority.”

I would like you to talk to this unjustified enrichment issue, which you mention twice.

Alan Barr: I suspect that the point is little affected by the initially devolved taxes; the provision is more commonly found in some of the UK taxes.

The issue is best seen in relation to the pay as you earn system, in which a responsibility is put on the employer—which is a separate responsibility from the tax charge—to deduct and pay over to the revenue authorities the employee’s tax. If the employer fails to do that, they are subject to the tax being collected and penalties and interest being applied in the normal tax enforcement procedure. It is in practice—although not in theory—taken into account whether the employee has in fact already paid the tax, to avoid the need for interest to be paid.

Because of those separate obligations, there are situations in which the state can end up collecting twice, as it were. One taxpayer has made a mistake, but his fault has been made up for by another taxpayer. It is not impossible to envisage that happening in the land and buildings transaction tax system—for example, somebody else could have paid what was primarily one taxpayer’s responsibility.

I think that our point is that the provisions should be balanced. In other words, it should indeed be a factor, certainly as regards penalties but probably as regards tax as well, whether the amount of tax
in question has actually been collected from another taxpayer, perhaps incorrectly. In other words, the unjustified enrichment provisions should balance each other out. That was the thrust of our suggestions.

Isobel d’Inverno: In UK taxes, the issue also comes up in relation to VAT; it is a feature of that tax. There can be problems in practice with establishing whether there has been unjustified enrichment—in relation to the taxpayer trying to claim relief, for example—by looking back at transactions and trying to figure out what has happened.

We therefore thought that there would be dangers in applying the unjustified enrichment provision in the bill across the board. It would be another way of introducing uncertainty—the taxpayer might be able to go down a particular road only if they could demonstrate that there had not been unjustified enrichment.

Philip Simpson: The provisions are quite clearly based on UK tax provisions, which are applied tax by tax depending on whether it is thought appropriate for them to apply. One tax to which they apply is value added tax.

Another tax to which the provisions apply is landfill tax. That is because of the way in which landfill tax operates in practice; it is paid by the operator of a landfill site, who makes a charge for his or her services to the people who actually deposit waste to be put into the site. The landfill operator may make a separate entry specifically for the landfill tax in their invoice to the person depositing the waste, because landfill tax is simply charged by the tonne on the amount that is put into the site, depending on the nature of the waste involved.

In that context, one can quite clearly see the potential for unjustified enrichment of the person who has actually paid the tax, because the landfill site operator simply takes the money that he has received from the person whose waste it is and passes it on to Her Majesty’s Revenue and Customs. If all that HMRC does in the event that money has been wrongly collected is to pass it back to the operator of the site, and if the operator of the site then retains it, that is unjustified, because it is not an amount that the operator has actually borne.

In those circumstances, one can enter into reimbursement arrangements between the operator and the person who has deposited the waste, in effect requiring the operator, if they receive any money from HMRC, to pass it back to the person who deposited the waste. In that way, unjustified enrichment is avoided, and there is still an opportunity to recover from HMRC unlawfully levied tax, or tax that was not due but was paid.

In UK tax, therefore, there is quite a specific instrument to deal with the way in which taxes operate. VAT is the other obvious example, because that is also an indirect tax. The tax is actually borne by the consumer of goods and not by the taxable person who pays the VAT to HMRC. Again, if VAT that was not due has been paid and if it is simply returned to the taxable person, that person receives a windfall because they have money from the consumer and from HMRC, so they have two lots of VAT instead of one. In such a case, one could enter into reimbursement arrangements—and that is a necessary condition of seeking to recover from HMRC VAT that has been paid but was not due.

The provision on unjustified enrichment is directed at scenarios of that sort that are to do with the structure of the tax. As the Law Society suggests, a different context such as PAYE is a more complex area of tax that does not necessarily sit comfortably with the broad unjustified enrichment rules that are set out in the bill. One would clearly be against the idea that a taxpayer, by receiving a repayment from revenue Scotland, should somehow make a windfall gain, but it is perhaps more appropriate to think about how that might be dealt with on a tax-by-tax basis, rather than by general rules that fit with specific taxes but not necessarily with all taxes.

The Convener: Thank you. I will now open out the discussion for questions from the rest of the committee, starting with Jamie Hepburn.

Jamie Hepburn: I return to the issue of privilege. The Chartered Institute of Taxation and Institute of Chartered Accountants of Scotland expressed their concern that privilege gives a competitive advantage to the legal profession, as opposed to people in their position. What is your perspective on that?

James Wolfe: If the intrinsic nature of the privilege is that it is legal professional privilege, the logic is that it is a privilege that attaches to advice sought and taken from regulated legal professionals. I suppose that the consequential question is where we ultimately draw the line, given that advice on all sorts of things—including on legal matters, provided that it does not trench into certain specific areas—can be given by members of all sorts of professions and, indeed, members of no profession at all.

10:45

Jamie Hepburn: Does the Law Society have a comment?

Isobel d’Inverno: It would be misleading to suggest that most of the work of lawyers is involved in advising taxpayers on tax avoidance schemes. That is very far from the case. Most tax
advice is geared towards advising people on the tax implications of transactions that they propose to carry out, so that they can avoid elephant traps, look into things and make reasoned decisions.

We are not aware of people flooding to lawyers’ offices rather than accountants’ offices to take tax advice because legal privilege exists. Accountants get more than their fair share of tax advisory work. Most clients who are not obviously trying to do schemes that are beyond the pale will not decide whether to take advice from a lawyer or an accountant on the basis of privilege; instead, they will take advice from whoever they think will best be able to advise them.

Jamie Hepburn: You used the interesting term, “schemes that are beyond the pale”. Are you aware of any instances in which privilege has been used as a guise to devise avoidance schemes?

Isobel d’Inverno: We are all aware of situations in which that has happened. The case that has been in the news recently was about that very thing. Because advice was taken from accountants rather than lawyers, questions were asked about whether there should have been privilege and so on. However, that really is a small part of the work that accountants and lawyers, in relation to tax, are involved in. Most of the time, the issue of whether there is privilege is not at the forefront of people’s minds when they are choosing a tax adviser.

Philip Simpson: I do not have any empirical evidence, but my impression is that most tax advice in the UK is given by the accountancy profession. Therefore, if the existence of privilege gives the legal profession a competitive advantage, it is not a very effective one.

We must remember that the case in the Supreme Court a couple of years ago in which the court decided not to extend the scope of legal professional privilege to accountants was taken by Prudential plc. Obviously, Prudential is a sophisticated user of legal and accountancy services, but it nonetheless chose to get tax advice from an accountancy firm rather than a legal firm, because, I suppose, that is where it is thought it would get the best advice. Clearly, Prudential must have been aware that, as the law stood, advice from an accountancy firm would not attract privilege, but it nonetheless chose to get advice from accountants. Therefore, I suggest that the point about competitive advantage is not terribly practical.

Jamie Hepburn: I appreciate that evidence and, to be fair, I made that point to the accountancy profession last week. I asked whether legal privilege had actively harmed the profession, and the answer that I received was that it had not particularly done so. Elspeth Orcharton said:

“Someone might say that they have never seen a starving accountant”.—[Official Report, Finance Committee, 5 March 2014; c 3735.]

John Mason: Oh!

Jamie Hepburn: That was not meant as a jibe, Mr Mason. I suppose that it makes the point that the issue is not as big as it might first appear, although it is still important that we explore it.

I turn to the issue of whether some measures should be left to secondary legislation. The Law Society states that, because some elements are to be dealt with in secondary legislation, the bill “cannot be said to have passed” the “tests of certainty and convenience”.

I thought that that was quite a bold thing to say. Surely it is more about the system that has been put in place and whether it causes inconvenience to the taxpayers rather than everything having to go into primary legislation. Do you accept that?

Alan Barr: I think that we would accept that absolutely. It was not a very big point, but we noticed that, if anything, the bill was slightly unbalanced. Some things are gone into in great detail in great slices of legislation, whereas others, which will undoubtedly end up in the same kind of quantity of legislation, will be secondary.

It is not a huge point. Matters of principle in particular should always be in primary legislation, and the bill meets our criterion there. Details or procedure are much better suited to secondary legislation.

We would be more concerned if there was a huge use of the provision, and the Scottish Parliament as a tax-legislating Parliament is too early in that procedure for us to know whether that is going to happen. We would be more concerned if a lot of things were put into secondary legislation as a matter of course.

Jamie Hepburn: That is helpful. The convener raised the issue of tribunals. The Law Society says that there will be four forums for appeal—first-tier tribunal, upper tribunal, the Court of Session and the Supreme Court, and that until now Scotland has had one fewer layer than England and has not suffered because of it. Our adviser says that that puzzles him because the current layers in England are the first-tier tribunal, upper tribunal, the Court of Appeal and the Supreme Court. What is your comment on that?

Alan Barr: I absolutely accept that. Our comment is somewhat out of date. Until the relatively recent introduction of the first-tier tribunal
system, the Scottish system had three layers and not four. We accept that both systems have four layers at the moment. It is the preservation of four layers, particularly in a small jurisdiction, that we are questioning slightly. Again, it is not a huge point.

Jamie Hepburn: The Faculty of Advocates states the opposite view. It:

"welcomes the establishment of specialist first instance and appellate tribunals for tax matters."

However, it suggests that there could be confusion because of the names of the UK and Scottish systems. It would be interesting if you could put a bit more about that on the record.

Philip Simpson: The whole system reflects the current tribunal system for UK taxes. Since 1 April 2010, the system in Scotland has been aligned with the system in England and Wales, so that there is a first-tier tribunal, an upper tribunal, the inner house of the Court of Session, and then the Supreme Court. Before April, we went directly from the special commissioners of the VAT tribunal to the inner house with no intermediate layer. In England, they had the intermediate layer that has now been created in Scotland.

There does not seem to be any problem with that system, but I reiterate the dean of faculty’s comments to the effect that there is not a terribly positive reason for restricting appeals from the upper tribunal to the inner house in the way in which the legislation as currently drafted does.

As far as the names are concerned, it is almost inevitable that, at some point, some litigant will confuse which tribunal they should be appealing to. In fact, it is likely to be a litigant who does not have a lot of tax at stake and who is unadvised: a lower-income type of litigant. It will simply create a procedural mess if an appeal is started in the wrong jurisdiction and the forms sent to the wrong address. It will have to be sorted out in one way or another. To avoid that confusion, I wondered whether different names might be chosen, but if the approach is, as I understand it, part of the broader reform of the Scottish tribunals system, that might not be possible.

Jamie Hepburn: We can certainly reflect on that point and report back.

Similarly, you state that the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014—which were passed in different years—should be described differently in the bill. What would be the practical effect of that change?

Philip Simpson: That is just a minor drafting issue. We anticipate that, if further taxes come within the competence of the Scottish Parliament, there is likely to be more than one act per year that concerns a tax. The shorthand that is currently used in tax law generally takes the initials of the tax statute plus the year, so everyone knows, for example, that ITTOIA 05 is the Income Tax (Trading and Other Income) Act 2005—

Jamie Hepburn: When you say “everyone”, I am not sure that that is the case, but I take the point.

Philip Simpson: Yes, but all the statutes are referred to in that way—for example, ITEPA 03 for the Income Tax (Earnings and Pensions) Act 2003; ITA 07 for the Income Tax Act 2007; and CTA 09 for the Corporation Tax Act 2009. That is the form that everyone is used to, and it works quite well when there is a proliferation of statutes—rather than simply a reference to the 2012 act, for example. I have some difficulty remembering which act was passed in which year, so it makes life a bit easier if I am given additional help from the initials.

Jamie Hepburn: It would make it easier for you.

Philip Simpson: Yes.

Jamie Hepburn: I take your point, and we will take that issue on board.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): You both expressed concern about the delegation of certain aspects of tax management to revenue Scotland and to the Scottish Environment Protection Agency. The Law Society goes so far as to question

"whether it is appropriate that Revenue Scotland is empowered to delegate any of its functions to the two Agencies", while the Faculty of Advocates is a bit more selective. What is the basis of those concerns?

Alan Barr: Again, that is not a major point. The power is there for revenue Scotland to delegate “any of its functions”—by “any” we mean “every”—to the two agencies and we simply wonder whether that is appropriate if such a course is decided on in the future.

If we are to have a tax authority, it should act as a tax authority. There were very good reasons for large quantities of administrative functions being delegated to other aspects concerned with the administration of transactions under the land and buildings transaction tax or the landfill tax. It makes sense that the agencies that are involved in those transactions would also be responsible for administration of the tax.

I am sure that that is what is currently proposed, but a power to allow revenue Scotland to delegate everything to either of those—or indeed other—agencies in due course strikes us, as a matter of principle, as being a bit wide.
James Wolfe: Our point is the same, in a sense, but we are perhaps putting it the other way round. Certain powers are inherently the powers of a taxing authority, such as the power to levy a penalty, to make an assessment and the like, and we may have to be careful about permitting a taxing authority carte blanche, as it were, to delegate whatever it likes to somebody else.

I have just looked at the provision on the GAAR, which provides that an “authorised officer” can be a member of staff of revenue Scotland, or another person who presumably might not be a member of staff. That is perhaps part of the same question with regard to whether functions in relation to the operation of the tax system should, as they are inherently part of what a taxing authority is there to do, be retained and exercised by the taxing authority, even if there is a power to delegate certain functions.

Philip Simpson: I reiterate that; basically, certain core functions of a tax authority ought to be exercised by that authority. One thinks of the imposition of penalties, for example, and of debt collection, particularly when we start to consider lower-income taxpayers, who would not necessarily be affected by the currently devolved taxes.

If we think about taxes that might be devolved in the future, HMRC takes an attitude to debt collection that is very different from that of commercial debt collectors. It can take a more sophisticated approach with people on low incomes who are in serious difficulty, for example on the repayment of tax credits. It would be much better for that sort of activity to be kept as part of the tax authority’s core functions.

11:00

James Wolfe: One has to remember that some of the powers of taxing authorities are intrusive in the sense that, in the public interest—rightly and properly—they have investigative powers. When powers such as the power to impose a penalty are exercised by an organ of the state, it is important that they are exercised by an organ of the state that has the appropriate structures of accountability to enable it to be trusted with such intrusive and coercive authority.

In that context, one must think carefully about which powers are ones that, constitutionally, should be exercised by the body that the Parliament sets up, which will have the structures of accountability and responsibility that the Parliament considers are right for a taxing authority, and which powers the Parliament is content to allow that body to, in effect, hand over to someone else to exercise on its behalf.

Malcolm Chisholm: That is interesting. It sounds as if you would like the bill to be amended to make some of that more explicit. That leads to the more general question about what should be in the bill that is not in it, which you touched on in your answers to Jamie Hepburn.

In that context, I was going to ask about the GAAR, but Mr Simpson made a comment that interested me. I think that you said that you did not think that guidance should be taken into account by the courts. I think that you were probably worried about the discretion that revenue Scotland might have. Were you implying that more of that kind of thing should be in the bill or that there should be statutory guidance, or did I pick you up wrongly?

Philip Simpson: The concern is a constitutional one. There is a separation of powers between the Executive and the judiciary. Broadly, that means that it is not the Executive that gets to interpret the laws that it has had passed. I was looking for something about that in Adam Smith’s lecture on jurisprudence this morning, but I could not download it properly on to my Kindle. He was writing about the same time as Montesquieu, who came up with the idea.

If the courts are required to take into account guidance that revenue Scotland provides on where the line should be drawn, that will, conceivably, give revenue Scotland, as a branch of the Executive, more power than, properly, it should have to determine how the rules are interpreted and applied in practice. That would go beyond what one would normally anticipate, whereby that function is left to the judiciary.

In reality, as matters stand, the tribunals and the courts can look to HMRC manuals to see what HMRC says about how a rule works, but that is not something to which they give a great deal of weight—it can simply be regarded as HMRC’s line, which might happen to be the same as the line that is being presented in a particular case. However, the proposition that revenue Scotland’s guidance must be taken into account seems to elevate its view beyond its proper limits in the constitutional framework in the UK, in which we have the separation of powers.

Malcolm Chisholm: But statutory guidance has a well-recognised role in legislation. Is the guidance that you are talking about different, because it will come from the Government?

Philip Simpson: It is the obligation on the courts and the tribunal to take revenue Scotland’s guidance into account that perhaps elevates it. The suggestion might be that the tribunal and the courts may take the guidance into account or may have regard to it, rather than must have regard to it.
Malcolm Chisholm: Okay. That was really interesting.

To touch on one of the first questions that the convener asked, I am not quite clear about something in your submission. You say that “in any recent 12 month period there have been... 50 or 60 decisions made by the First-tier Tribunal (Tax Chamber)”. You suggest by implication that there would not be a large number of such cases in Scotland even if we had a larger number of devolved taxes. However, are we comparing like with like in that instance?

Philip Simpson: Yes. To be clear, the 50 or 60 cases in the first-tier tribunal that are mentioned are in the first-tier tribunal sitting in Scotland across the whole gamut of UK taxes. Those taxes include VAT, which is by far the most litigated tax in the UK. That is perhaps the volume that could be anticipated were all taxes devolved to the Scottish Parliament. So far as LBTT and the Scottish landfill tax are concerned, I have not checked but I am not aware of any first-tier tribunal cases on SDLT or landfill tax in the past four or five years. There has been one landfill tax case in the Court of Session. That was not anything technical—it was a judicial review matter. Certainly, I would not anticipate anything more than perhaps two or three cases a year in the first-tier tribunal on devolved taxes.

Isobel d’Inverno: In relation to SDLT generally, across the UK, there have not been a huge number of cases. There have been quite a few penalty cases and there have been the big avoidance cases, but there has not been a huge stream of cases. In relation to Scotland, I am sure that we could expect only a small number.

Malcolm Chisholm: In a way, that connects with the other, more general issue, which is to what extent the bill is about what might be called true taxes or whether it is a bill about several other taxes that will come through one constitutional route or another.

Sticking with tribunals, the Law Society seems to be concerned that the upper tribunal could have a single member judging the appeal at its second hearing. How does that compare with the existing arrangements and what is your concern about that?

Alan Barr: It is the same concern that was expressed by James Wolffe in relation to the nature of an appeal that could go from up to three experts and specialists to a single member of the upper tax tribunal. We do not know for certain who that single member might be, but they need not be a particularly experienced tax judge. There is something that just smells a little wrong about perhaps going from two or three experts to one person—someone who is no doubt highly qualified but not necessarily an expert in the area—as a mechanism for appeal. It would not be particularly different from where we are now.

Malcolm Chisholm: I do not really know much about tax tribunals—perhaps that is fairly obvious—but the Faculty of Advocates suggests that “parties should not be required to pay fees to the Tribunal in relation to appeals. It is suggested that this be made clear in the Bill.”

Again, how does that compare with the current system?

Philip Simpson: That is the current system. There are no fees payable—to the tribunals, at least—for raising appeals there.

Malcolm Chisholm: They do pay fees?

Philip Simpson: There are no fees.

Malcolm Chisholm: There are no fees at the moment, so that would be a change.

Philip Simpson: Yes, if fees were charged, that would be a change from the existing system.

Alan Barr: That knocks on to our comments about the expenses system, in which we are suggesting that unless one party is wholly unreasonable, there should be a system of no expenses awarded against a party at the first-tier tribunal. Rather than fees, it is often the fear of expenses—perhaps, particularly, the other side’s expenses when the other side is the state—that deters people from making appeals.

Malcolm Chisholm: The Faculty of Advocates is concerned that “The period for Revenue Scotland to correct obvious errors in returns is three years”, which again seems to be a lot longer than at present. I do not know why there is such a big discrepancy, but what is your concern about that?

Philip Simpson: Broadly, as matters stand, after one year has expired, taxpayers have certainty that, except in particular circumstances, the return that they have submitted and the payment that they have made on the basis of it have finalised their liability for the transactions of the year in question. To go from a period of one year to a period of three years seems quite a large extension. The concern is that there would be a longer period of uncertainty for taxpayers.

From the point of view of revenue Scotland—particularly if annual taxes start to be devolved—a one-year period in which random inquiries can be made would fit much more comfortably with a system of annual returns. There is nothing wrong with revenue Scotland taking inquiries at random; that is just part of the system and it helps the
system work. It is a much better means of organising inquiries than having to take large numbers of them. After one year has expired from the filing date for a year’s tax returns, there will be another year’s worth of tax returns coming in, so there will be an overlap in the period of open inquiries. Revenue Scotland might require additional resources so that it can deal with three years’ worth of returns at the same time.

Alan Barr: We can give a specific example of such a proliferation of returns, relating directly to devolved taxes. Under the proposed, and now enacted, system for leases for land and buildings transaction tax, more returns will be made. If they were all to be left open for a period of up to three years after they had been made, there could conceivably be a three-year cycle for making returns relating to long-term leases. One could well see cases backing up in which people are uncertain about their previous return, because it has not been inquired into but still might be, by the time that they are ready to do their next one. That seems to be too long in the circumstances, and that is a direct example from one of the devolved taxes.

Malcolm Chisholm: The Law Society is not the first to be worried about the chief executive not sitting on the board. Could you comment on that? The Faculty of Advocates may wish to do so too.

Isobel d’Inverno: Our view is that it is important that revenue Scotland works well when it sets off as the new Scottish tax authority. It makes better sense for the chief executive to be involved in the board, in the same way as the chief executive of a commercial company is involved in the board; it would be unusual for that not to be the case. There are so many technical issues that revenue Scotland would have to be involved in—in relation to the administration and collection of taxes, policy and so on—that it makes a lot more sense for the chief executive, who has the greatest knowledge of those things, to be on the board.

Malcolm Chisholm: Does the Faculty of Advocates agree?

John Wolfe: We do not have a comment one way or the other on that issue.

John Mason: We have covered quite a lot of ground. One of the aims and opportunities is for Scotland, as a smaller country, to have a simpler system; witnesses have already referred to that. I wonder whether, if we were starting from scratch, we would have four levels of tribunals or appeals. We are adapting what we have got at the moment, and that is a factor, but it seems excessive.

Introducing an advisory panel on top of the current structure would bring in yet another body, and every time that another body is brought in it complicates matters because somebody else is involved in the mix. We are trying to get simplicity, but we also want safeguards. Presumably, bringing in new bodies also increases the uncertainty, and you have all been arguing for more certainty. Is there not a tension there?

11:15

Alan Barr: There are two separate things. I entirely accept your point about the number of appeal tribunals in a small jurisdiction. That fits in with our point about an appeal going from a panel of perhaps two or three experts to one person who is less expert. It seems to me that we did not do too badly in tax appeals before 2010 when the system involved going from a tribunal to the inner house of the Court of Session to, if necessary, the Supreme Court. That seems to be a more sensible appeals structure than simply replicating the current—but only recently introduced in Scotland—UK system.

The argument about another body being introduced for the general anti-avoidance rule is rather different, because that body would not exercise a judicial function. In terms of increasing certainty, that would depend on such a body publishing its results, the decisions it has reached and its advice. As that body of knowledge builds up, one would expect more certainty as time goes on. The fundamental difference is that that body would be separate from revenue Scotland. Revenue Scotland’s job will include enforcing the tax law as it is enacted. Initially, I believe that there was talk about producing as much tax as possible, but that should not be its function; its function should be to produce the correct amount of tax. However, the correct amount and the largest amount possible might, in the eyes of the state, be the same thing.

John Mason: Would you accept that the public want the maximum tax?

Alan Barr: I certainly would not accept that as far as individual taxpayers are concerned. The public want the correct amount of tax and, as the convener said, the fair amount of tax, which is not the same thing as the largest amount of tax.

John Mason: But the public who want hospitals, schools and such things surely want the maximum amount of tax.

Alan Barr: Again, I do not accept that that is the case. The public want the correct amount of tax to fund things that the public want. I think that it would be reasonable to say that there is sometimes a gap when it comes to the perception of the amount of tax that is needed to fund the things that you are talking about. That does not equate to the largest amount of tax; it should equate to the correct amount of tax.
John Mason: Okay. Does the Faculty of Advocates have a comment?

James Wolfe: We have to remember that members of the public are also taxpayers.

John Mason: Yes.

James Wolfe: So it must be absolutely right that the aim of any tax system is to ensure that tax that should be collected is collected but that the taxing authority is not collecting more than should be collected. It may be that, ultimately, we are not at disagreement on that, but we should be clear that ordinary members of the public pay taxes, too, and the ultimate aim must be to collect the right amount of tax.

As Alan Barr said, you have raised two separate issues. The first is the structure of the tribunals. Our comment on that comes against the background of our already having within the UK structure, and now also separately within the more general devolved tribunals structure, a system of first-tier tribunals and appeal within the tribunal system and then an appeal to the inner house, which of course has the ultimate responsibility to ensure that the law in Scotland is being applied correctly across the board.

If one were starting from scratch, I would certainly have sympathy with what Alan Barr said and with the thrust of the question. In a small jurisdiction, where the volume of cases will be relatively small compared with the number of cases in the UK system, one might ask whether one really needs an intermediate tier or whether it is not enough to have a first-tier specialist tribunal that does the specialist work, subject to supervision by the inner house, which will ensure that the law is applied.

There is then the separate question of how one achieves a suitable measure of certainty about the operation of the GAAR. I support what Alan Barr said on that, which is that one is trying to build into a system in which, by the nature of the GAAR, there will be uncertainty about how it will be applied, ways in which the taxpayer can obtain clarity, if possible in advance, about how the taxing authority will apply it and a measure of independent input, as it were, into the decisions of the taxing authority.

In defining the GAAR, the bill states that a tax avoidance arrangement is artificial if one of two conditions is met. The second of those is that the arrangement “lacks commercial substance”, which implies that, under the first condition, there might be an arrangement that has “commercial substance” but which nevertheless is going to be treated as artificial. Ultimately, the only test that will be applied is whether the arrangement is

“a reasonable course of action in relation to the tax provisions in question”.

The bill then gives a very short list of circumstances that have to be taken into account. However, they may or may not be taken into account. The only test is whether an arrangement is

“a reasonable course of action in relation to the tax provisions in question”

and, by implication, it could be one that has “commercial substance”. In the context of such a provision, there might be a question of ensuring, first, that taxpayers have mechanisms for achieving a reasonable measure of clarity about how it will be applied and, secondly, that there is some independent input into revenue Scotland’s thinking about how it is to be applied, bearing in mind that ultimately, as Alan Barr said, the aim is to get the right amount of tax and not an excessive amount of tax.

John Mason: Or too little, for that matter.

James Wolfe: Indeed.

John Mason: Do you accept that certainty and clarity are good for a good taxpayer but bad for a bad taxpayer? For the bad taxpayers—the people who do not want to pay tax fairly—we want uncertainty because we want them to be scared.

Alan Barr: I do not think that we want uncertainty. We want certainty on what the tax is meant to collect. You are never going to get that perfect in primary legislation. This is where the line is a fuzzy one. One man or woman’s sensible tax planning is another person’s abusive avoidance, to combine the two systems. That is always going to be the case.

The certainty needs to come with the state’s attitude about what falls on the wrong side of the line. That can be done only by examples and the like. You are never going to get absolute clarity out of the legislation itself, because some people will try to interpret it to minimise the amount that they are going to pay while, as they see it, still falling on the right side of the fairness line. It is all very well to talk of fairness, but some citizens might want the maximum amount of tax to be collected, while others want the minimum amount of tax to be collected on the basis that they are better placed than the state to decide what to do with their money.

John Mason: Yes—the individuals who are not paying the tax. However, do you accept that society feels that the balance is wrong at the moment? People feel that the balance is far too much in favour of large taxpayers in particular, who are not paying the tax that everybody thinks they should. The public would say that they want a
swing back towards having a bit more clout for the principles of the legislation as against the letter.

**Alan Barr:** I would absolutely accept that, particularly the point about the principles as against the letter. However, as I said, it is the moving of a fuzzy line rather than the establishment of an absolutely clear line. Even with the best will in the world, it will always be a fuzzy line.

**Isobel d’Inverno:** When some of the mass-marketed SDLT avoidance schemes were being undertaken, the Government was perhaps not firm enough in saying, “We are absolutely certain that this doesn’t work.” Often, taxpayers are advised by scheme promoters to do something, and they do not know whether it is the wrong side of the line. An ordinary taxpayer might not know that, but if there is clear guidance from the state that it is not acceptable and should not be done, taxpayers are less likely to undertake such a scheme. If there is clear guidance about where the line is and what is on the wrong side of it, that can give certainty without stopping the state from pursuing people who are trying to avoid tax.

**John Mason:** The Law Society’s evidence refers, in paragraph 3, under “General Comments”, to striking a balance between existing devolved taxes and taxes that might come in due course. It states:

“In striking this balance, we would urge strongly that priority is given to creating an effective system for the taxes already devolved”.

Do you feel that the bill has achieved that?

**Alan Barr:** Yes, I do, but it still attempts to be comprehensive. In a sense, we are past that stage. The bill attempts to be comprehensive, so you should be able to slot in any number of devolved taxes, or indeed invented taxes, into the structure without too much trouble. The immediate way forward, given the pressures on legislative and administrative time, is always to consider how that structure will work with land and buildings transaction tax and with Scottish landfill tax from 1 April 2015, rather than wondering how it might work in five or 10 years’ time, or three or four years’ time, with the full panoply of income tax. That should be the thinking behind it. The question should be how is it going to work with these taxes.

**John Mason:** You are not suggesting that the present bill should be changed to fit?

**Alan Barr:** No.

**Gavin Brown:** Most of my issues have been raised already, but one that has not been covered is penalties, which are dealt with in sections 148 to 181. Both organisations have commented on penalties in their written submissions. Would both groups of witnesses like to put on record their views on how penalties have been structured so far in the bill? Does there need to be more in primary legislation, or is the balance about right?

**Philip Simpson:** I suggest that there should be more in primary legislation, to provide certainty to taxpayers. That is how it is normally done in current UK legislation, which sets out amounts and rates of penalties. For example, schedule 36 of the Finance Act 2008 is where one finds most direct tax penalties; for corporation tax matters, it is schedule 18 of the Finance Act 1998. That allows changes to be subject to full parliamentary scrutiny, as opposed to being made by ministers in delegated legislation, so it provides some degree of stability.

**Gavin Brown:** Does the Law Society have a view?

**Alan Barr:** We would echo that. Amounts may need to be firmed up. We have one particular bugbear, which is the automatic collection of small penalties in cases where it turns out at the end of the day that no tax is actually due—in other words, it is an administrative penalty.

We fully acknowledge the need for returns or other administrative compliance in situations where no tax is payable. No system can operate without the tax authority seeing things where there is no tax payable, but it is extremely galling, to say the least, that in situations where, for example, a return is made late but there is no tax payable, a penalty is then levied on a non-existent tax for an administrative error. We have suggested a compromise—that such penalties, where there is no tax involved, should arise only on a second or subsequent offence of failing to comply administratively. That used to be the case under the UK system and has only recently ceased to be the case.

One reason for the suggestion is that people often pay the £100 penalty, which is the current UK level for many administrative penalties, rather than go through the appeal system— we talked about it being relatively cumbersome—to make what might be entirely reasonable attempts to get the penalty removed as a matter of principle because, for example, there is a reasonable excuse. The cost of opposing a penalty would exceed the penalty. We think that the suggestion that we have made should be taken into account.

11:30

**Isobel d’Inverno:** The issue is particularly important because there might well be lots of nil returns in relation to leases, which Alan Barr mentioned.

**Gavin Brown:** Both organisations seem to agree that more is needed in primary legislation,
but the Law Society proposes that no administrative penalty should be imposed for a first offence, if I can call it that, when no tax is due.

Alan Barr: Yes—for a first offence, if you like.

Gavin Brown: You are not saying that somebody who consistently breached requirements should be exempt.

Alan Barr: Exactly. The system for VAT penalties is not dissimilar. Interest on the tax kicks in immediately, but penalties kick in only for persistent administrative failures. People get a yellow card before they get a red card.

Gavin Brown: For absolute clarity, are you saying explicitly that penalties should apply from the second offence?

Alan Barr: We have just made a suggestion. What might be thought to constitute a second offence will vary for different taxes. That is easier to judge with annual taxes; if somebody does not make a return in one year and does not do one in the next year, it is obvious. Land and buildings transaction tax will be a transactional tax, so a second offence might not turn up. However, Isobel d’Inverno’s example of leases is right. A number of returns will relate to leases and it would be good to apply the suggested approach to them.

Jean Urquhart (Highlands and Islands) (Ind): I have a small point that arises from the discussion about the fact that we would all like everybody to pay their tax properly all the time, although they do not. I go back to legal advice being privileged. Is that part of the suspicion that arises? Although people are not happy to pay tax, they acknowledge that they must do so and they are content if they believe that everybody else is paying the tax that is due. We heard evidence previously that the privilege for your profession suggests a lack of clarity or a privilege to which most people do not have access. I am not sure whether I am clear about your defence of your position.

James Wolfe: It is important to keep it in mind that legal professional privilege is for all types of cases. The committee is interested in tax and tax collection, but legal professional privilege applies to every case. It is constitutionally important in a variety of contexts and perhaps most sharply in ordinary criminal cases.

That ties in with the discussion about the fact that a great deal of tax advice is not given by lawyers. I have no particular insight into that aspect. It might be a mistake to see legal professional privilege as a particular problem that relates to tax advice, because it is there for bigger constitutional reasons that concern citizens being able to speak candidly to and take advice from their lawyer and to organise their affairs or make decisions accordingly. Legal professional privilege exists for reasons that are not to do with tax, which is the issue that concerns the committee; it is there to address much broader concerns.

Jean Urquhart: I understand that, but I think that we were talking about tax advice only. We are not talking generally.

James Wolfe: I understand that, but the point is that the privilege exists for good reason, which relates to the relationship that individuals have with their lawyers and lawyers’ professional responsibility in dealing with their clients. It is not particularly about tax advice. As we know, a lot of tax advice is given by non-lawyers.

Jean Urquhart: Does the Law Society want to add to that?

Isobel d’Inverno: I reiterate that most tax advice is not involved with tax avoidance and developing schemes; most of it is simply to help people to comply with their obligations to make tax returns, pay tax and all the rest of it. In most cases, whether or not there is privilege does not make any difference, but legal privilege is important if there is going to be litigation on a tax issue, for example. However, I do not think that the existence of legal professional privilege is the main reason why there is tax avoidance in the UK. That is simply not what causes it at all.

Jean Urquhart: No, I am not suggesting that. I accept that you have already said that the number of cases is small and that giving tax advice is not the mainstay of your profession but, given the circumstances, why does the accountancy profession, for example, clearly think that the privilege should be lifted as we write the legislation?

Alan Barr: I think that the accountancy profession’s point is not that it should be lifted but that it should be extended to that profession—that the right not to reveal to the revenue or the courts the advice that has been given should be extended to it.

In my view, the answer is in the name—James Wolfe referred to this earlier. It is a legal privilege, which also involves consideration of where the boundaries of the law are drawn. Lawyers are subject to the rules. If somebody comes to me and says, “I want to murder my husband. What is the best way of doing it?” my legal professional privilege does not extend to my doing nothing about that particular question if she proceeds to murder her husband. Where the boundaries of privilege are drawn is a legal question. In our view, that is why it should be restricted to lawyers.

Jean Urquhart: Okay. Thank you.

The Convener: I thank the members of the committee for their questions. Do the Faculty of
Advocates and the Law Society of Scotland wish to make any further points to the committee before we end the session?

**James Wolfe:** No. I am just very grateful for the opportunity to give evidence to the committee.

**The Convener:** Not at all. We appreciate your being here.

**Alan Barr:** I do not think that we have anything to add. I have been involved in the tax legislative process for quite a bit, and such sessions are always directed at criticism of proposals. It would be fair to say that there are not huge areas where the Law Society found itself saying, “Oh my goodness. We wouldn’t do that at all.” There are details that we tried to deal with in the report, but in general we thought that the bill was a pretty good effort for a pretty significant piece of legislation in a new area for Scotland as a whole. The bill is in pretty reasonable shape, although there are some areas of disagreement or refinement, as you would expect.

**The Convener:** I am sure that that will cheer up the bill team, whose representatives are scribbling down your very positive comments.

I thank the witnesses very much for giving evidence.
Scottish Parliament
Finance Committee

Wednesday 19 March 2014

[The Convener opened the meeting at 10:00]

Revenue Scotland and Tax Powers Bill: Stage 1

10:00

The Convener: Agenda item 2 is continuation of the committee’s stage 1 consideration of the Revenue Scotland and Tax Powers Bill with evidence from the Scottish Trades Union Congress and the low incomes tax reform group. I welcome Dave Moxham from the STUC and Joanne Walker from the low incomes tax reform group. There will be no opening statements, and I will start the questioning. I will direct my questions to one or other of you, but you should both feel free to answer if you wish.

In your written submission, Ms Walker, you say that the bill is well drafted and reflects “the consultative approach that the Scottish Government has adopted”.

However, you go on to say that, in your view, it contains some gaps and that in some areas, such as penalties, it would be better for the powers to be in primary legislation rather than in secondary legislation, as is proposed. Can you give one or two specific examples in that respect?

Joanne Walker (Low Incomes Tax Reform Group): We think that all the principles and the powers concerning penalties should be in primary legislation. That is partly a matter of principle but it is also because such an approach would give more opportunity for scrutiny and amendment through the parliamentary process. Moreover, by putting all the powers in primary legislation, you would send a clearer message to the taxpayer and tax advisers about the importance of compliance.

Dave Moxham (Scottish Trades Union Congress): I have general sympathy for that view. Words are important when one judges severity and intention, but so are figures, and it can sometimes be helpful at the outset to add to the words by quantifying the effect of a bill’s intention.

The Convener: One area in which there is a difference of opinion between our witnesses this morning is the general anti-avoidance rule. Ms Walker, you say that taxpayers, particularly those who are unrepresented and are required to self-assess, are entitled to clear legislation with certainty of effect. You suggest that clarity and certainty in legislation counter tax avoidance, but do they?

Joanne Walker: If you keep the legislation fairly simple and, therefore, clear—if, indeed, clarity is a function of simplicity in the legislation—you offer fewer loopholes and, therefore, fewer opportunities for avoidance. Moreover, if you try to create a more level playing field with less of a
differential between the ways in which you tax different types of transactions, there will be less of a will or desire to avoid. If you keep things simple, there will be fewer loopholes and complexities.

We are concerned that low-income taxpayers might get caught in the crossfire of the GAAR, which is why we want certainty. Sometimes a low-income taxpayer who is unrepresented can, in effect, be forced into using what the GAAR might consider a tax avoidance scheme. As a result, they might become a tax avoider, but not through their own choice.

That might happen, for example, with the use of umbrella companies or personal service companies. Low-income taxpayers are sometimes forced to accept work by becoming a worker for an umbrella company or by setting up a limited company. That can be the only way in which they get the work, and if they do not accept that, they might lose their benefits.

The Convener: Surely, if the GAAR is drawn too narrowly, the interpretation, as we have seen with recent high-profile cases, can be exactly the opposite; in fact, it can allow much more room for avoidance. That is why the Scottish Government is considering a general anti-avoidance rule rather than the anti-abuse rule that has been introduced in the United Kingdom. If the rule is too strictly defined, the spirit is lost in the precise wording of the legislation.

Joanne Walker: We are concerned about obtaining a bit more certainty. You could perhaps keep the rule as wide as it is currently drawn, but, if so, we would suggest the introduction of other safeguards for unrepresented taxpayers. Those are the people with whom we are concerned, and that is what we would hope to see.

That aim could be achieved by ensuring that the guidance is extremely good and kept up to date. We have made other suggestions, but the requirement is to ensure that there is a balance.

The Convener: Mr Moxham, you say in your submission:

“a Scottish GAAR should not be narrowly drawn and should reflect elements of the European Union recommendations on tax avoidance.”

Can you expand a wee bit on the STUC’s view on that?

Dave Moxham: Our general view is that tax avoidance is now a significant political issue. There is an extent to which politics should be dealt with carefully in the design of new legislation, but the current public perception of avoidance and its use can affect a whole range of behaviours and legitimacies. People’s approach to their benefit payments, tax and a whole range of what we would describe as societal compliance rests at least partly on their view of whether a tax system is fair and is being applied evenly and justly. That is a general point; we think that it matters in a broad economic and social context. I should also say that we are not for a moment averse to considering in detail the supporting mechanisms that might be put in place for small and unrepresented taxpayers in dealing with the GAAR.

The bill essentially sets out two principles. First, a key factor in whether subsequent avoidance is judged acceptable or not is the intention of the original legislation and of Parliament in allowing to be designed any tax planning process. Secondly, there is the question of financial proportionality—in other words, whether the tax planning or avoidance sought is proportionate to the profit or tax advantage that is gained.

We think it entirely reasonable that, once those principles are established, the question of how the issue is dealt with in-house by revenue Scotland and through the support that might be provided by way of early clearing for small taxpayers should be considered. The principle itself is very important, and it would set the approach taken by the Scottish Parliament and Government in stark contrast to the very narrowly drawn regulations that have been introduced at Westminster.

The Convener: Unison’s submission states:

“The EU guidance is that it should be for the taxpayer to demonstrate that the arrangements are not artificial but section 62 puts the burden of proof on RS.”

I take it that you are of the view that the burden of proof should be on the taxpayer, not revenue Scotland.

Dave Moxham: Yes, absolutely.

The Convener: Unison’s submission also states:

“Unison would support the introduction of a provision in the Bill requiring disclosure of tax avoidance schemes ... UK GAAR panel members are all drawn from the tax avoidance industry which makes consent to the application of the GAAR unlikely in most cases. If there is pressure on Ministers to introduce an advisory panel for the Scottish GAAR it must be done in a transparent way with truly independent members.”

I take it that you would also go along with that.

Dave Moxham: I would. Taking your second point first, I do not think that the comparison is entirely analogous, but the STUC is a great fan of what was once described as the industrial tribunal, in which our members had the opportunity to have their cases heard before an employer expert, an employee expert and a third person who very often brought to the table a general perception of how the workplace should be. The other two people’s expertise was, of course, very important and obviously there is an extent to which any
advisory panel will expect to have a requisite level of expertise as far as its guidance is concerned.

However, on my earlier point that the bill’s overall principles and their application are a matter of general public concern, we believe that any advisory panel should, as Unison says, be not only created “in a transparent way” but drawn from a broad enough range of people to ensure that the public can have faith that all considerations are being taken into account.

Joanne Walker: We have suggested the introduction of an advisory panel with commercial experience. It is important to stress that an advisory panel is just that—it advises. At the end of the day, revenue Scotland will draw up the guidance and decide what the GAAR will and will not cover; an advisory panel is there to advise. It is important that panel members have commercial experience because corporation tax, for example, moves very quickly, as do certain kinds of businesses in the digital sector, and there is a danger that if people with no commercial or tax experience decide these matters, they will make incorrect decisions purely through a lack of understanding. That is our reasoning for having people with commercial experience on the panel.

The Convener: Only commercial experience?

Joanne Walker: Commercial and tax experience.

The Convener: Okay. I have one final point before I open the session to colleagues. Ms Walker, your submission suggests:

“there should be limitations on the power to charge a fee, for example, if a taxpayer is unable to pay using a fee-free method because of a disability”.

I am a bit confused about how someone’s disability would prevent them from paying with a fee-free method.

Joanne Walker: It is just a slight concern; our real concern is with safeguards for low-income taxpayers. Our remit covers people with disabilities, low-income workers, migrants, students and pensioners. There is a concern about payment methods, in that there might be some reason why a person cannot use a payment method other than a method that revenue Scotland has decided to charge a fee for.

I might not be able to think of an example—

The Convener: What would prevent them from using certain methods of payment?

Joanne Walker: For example, a fee might be charged for paying by cheque or credit card. If, because of a disability or whatever, a person could pay only by cheque, they would be charged a fee and would not have the option of using a fee-free method. It is more a concern about equality impacts, and we should be aware that such impacts might need to be considered in that area.

The Convener: I open the session to colleagues.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Both witnesses have mentioned the process of consultation that has informed the bill and indeed the low incomes tax reform group has said that, as a consequence, the bill is well drafted. Can you comment on the process of consultation and how it has informed the bill?

10:15

Joanne Walker: I am aware that there have been various avenues of consultation. The first consultation on tax management was, I believe, back in 2012. Every six months, there is a devolved tax collaborative at which various bills or parts of bills are discussed, and I have been involved in various other workshops to discuss, for example, equality impacts and the design of the website for revenue Scotland.

The important point is that revenue Scotland and the taxes framework are being set up from scratch. There is not that much experience of having such frameworks and a tax authority within Scotland, although that is not to say that experience of other situations is not relevant. There is a willingness to learn from other situations and experiences to get the widest possible view, which is always helpful in developing systems and frameworks. That willingness shows—the bill is generally well drafted. We have a few little issues with certain areas, but the bill itself generally stands up well. It is quite clear and, whatever happens after 2014, it will, I hope, provide a good framework for any devolved taxes.

Dave Moxham: I would echo most of that. As I said in our consultation response, the STUC and a range of other organisations were invited to participate in not just the devolved tax collaborative but the Cabinet Secretary for Finance, Employment and Sustainable Growth’s consultative forum. What was important and indeed particularly helpful about his forum was that it brought together a mix of people with specific expertise—of whom I can clearly state I am not one—from a range of organisations, including the Poverty Alliance, youth organisations and the STUC. The cabinet secretary will probably say—the officials certainly will—that the fact that Westminster has been going through a similar process, albeit a process that we are less happy with the outcome of, has also been of assistance.

Jamie Hepburn: I am sure that you are a valued member of the group, Mr Moxham.
Ms Walker, in response to the convener, you mentioned your concern about the GAAR impacting on low-income taxpayers. When you talk about low-income taxpayers, I presume that you are talking about people on low incomes rather than people who pay a low amount of income tax, who are not necessarily one and the same.

You also referred to the further devolution of taxes. Do you have an on-going concern about the impact on low-income taxpayers? Realistically, how many of those people are likely to be caught up in the land and buildings transaction tax and the landfill tax?

Joanne Walker: The impact from the two taxes that have been devolved might be minimal, but I am aware of groups of low-income taxpayers who might be affected by the Scottish landfill tax. There are also those who do not have a very high income but who, because they have a lot of property, might be caught within the land and buildings transaction tax, and those people would be of concern to us.

Jamie Hepburn: That is helpful.

In your submission you say that people who are not directly employed by revenue Scotland could be delegated functions to carry out on behalf of revenue Scotland. You say that an explicit provision should be included to set out that a delegatee could not exceed revenue Scotland powers when carrying out a function and that they should adhere to the charter that is put in place. What is your concern here?

Joanne Walker: The concern, based on experience elsewhere, is that when functions are delegated to another organisation, that organisation might not act in a way that revenue Scotland would deem appropriate. I understand that the delegates are likely, in the main, to be other governmental organisations, such as the Scottish Environment Protection Agency and Registers of Scotland in the first instance. I also understand that it is an accepted principle that they would not be able to exceed the powers.

However, as the bill is setting up the framework for revenue Scotland, it is setting the tone for the Scottish tax system, and it is important to make that an explicit provision. Although unrepresented taxpayers are unlikely to read the bill itself, if there is something explicitly provided for in the law, they are more likely to be aware of it, or an adviser might be able to draw their attention to it, so that they realise that they have rights.

The danger is that, if it is not explicit in the bill, in order for taxpayers to be aware of their rights, they will also have to be aware of a general principle that may be part of a law elsewhere, and you would be relying on taxpayers being aware of other laws and how they dovetail into the tax system. That would not be the most equitable situation, so that is why we would like it to be explicit. It is another safeguard for the taxpayer.

Dave Moxham: I have a point relating to the delegated authority. As you will see from our submission, we are not against the idea of delegating authority to SEPA and to Registers of Scotland, but some care has to be taken in relation to the overall guidance and objectives of those organisations. For instance, we recently had some concerns that the Regulatory Reform (Scotland) Act 2014 conferred on SEPA a duty to promote sustainable economic development. We argued when the bill was going through Parliament that that was a slightly contentious position to take, given that SEPA’s main function is to guarantee good environmental governance.

Our understanding is that revenue Scotland would not have that expectation, so it is important that, in undertaking its delegated functions, SEPA would be adhering to delegated functions based on revenue Scotland’s objectives rather than on others that it holds in its remit.

Jamie Hepburn: That is helpful. In the low incomes tax reform group’s submission, you set out a point that has been raised with us by others, which is that, in the charter, revenue Scotland should be expected to adhere to, rather than simply aspire to, its standards. We raised that with members of the bill team, who conceded that the charter might not have been drafted appropriately and said that they would look at that. I presume that you would welcome the fact that they will be looking at that again.

Joanne Walker: Yes, I am aware that they were looking at that again. The specific duties for the taxpayer are to be set out in the law, as are the consequences of failure to comply—that is why we think that the penalties should be there—but the charter is to set out and frame the relationship between the taxpayer and revenue Scotland, so we think that there should be expectations on both sides and that it should provide a balance, showing what the taxpayers’ rights and responsibilities are and what revenue Scotland’s rights and responsibilities are. I hope that that will develop a relationship that is built on trust and mutual respect and will show that revenue Scotland will be even-handed in its dealings.

Jamie Hepburn: I suppose that what you are saying is that there should be a degree of equivalence between them.

Joanne Walker: Yes.

Jamie Hepburn: You mentioned your perspective that penalties should be specified on the face of the bill, which is something that you have both commented on. The point has been
raised by others, too, but I still cannot quite see what is really being contested. Ms Walker, I think that you said that this is almost an issue of principle—others have said that, too—but I am not clear why it is such a high principle. Secondary legislation has the same effect in the law as primary legislation. Surely what matters to the taxpayer is the certainty of the system, rather than the certainty of what is in primary legislation or secondary legislation. It is the system that will affect them. Is it such a big issue?

Joanne Walker: I think that it should be a big issue for revenue Scotland and for Scotland generally. We agree that there should be a GAAR, but having penalties is a bit like having a GAAR. A GAAR is about ensuring compliance and deterring avoidance, but that is even more the case for penalties, because penalties show the taxpayer what will happen if they do not comply.

It is also a matter of sending out a message that revenue Scotland is going to be fair and is going to be seen to be fair. The taxpayer will see what will happen if they either do something or do not do something. I will know that if I do not do it, I will get a penalty, and I will also know that if my next-door neighbour does not do it, they will get a penalty.

Jamie Hepburn: It is still not clear to me. That is not an issue of whether the provisions are in primary or secondary legislation—it is almost as if the guidance on what the penalties are going to be was going to be hidden, but I am pretty clear that that will not be the case. What is being contested here? I am still not clear about it.

Joanne Walker: If someone gets a letter from revenue Scotland saying, “We are imposing a penalty on you under the Revenue Scotland and Tax Powers Act,” that will be a bit stronger than saying, “We are giving you a penalty under regulation 26” or whatever. Everyone knows that an act is law, but I imagine that some people might not realise that regulations are law. They might think that they are just rules, and that they are not as important as law.

Jamie Hepburn: I am not going to sit here and write letters for revenue Scotland, but presumably the letter would go on to say, “And, by the way, if you don’t pay this, you could face the full force of the Scottish legal system.” Presumably that is the bit that would cause people more concern than whether the measures are in the act or in regulations. If I got such a letter, that is what would frighten me, rather than where in legislation it emanated from. Surely that is the case.

Joanne Walker: It probably would be, but I think that it is about sending out a message that compliance is so important that it has to be in the bill.

Dave Moxham: My reaction is to do with preference more than principle. I suspect that many people who have been involved in drafting the bill would probably consider their current view to be a question of preference rather than one of principle. I tend to concur with you, Mr Hepburn, when it comes to the effect of a letter and how things are described. If Parliament is laying out clear principles on avoidance in primary legislation, then quantifying for Parliament the extent to which the bill considers lack of compliance to be a punishable offence is not unhelpful in terms of framing the overall tenor of the bill. That will help Parliament to take a view on the quality and substance of the bill. As I say, that is a matter of preference rather than principle, but I think that it would be helpful.

Jamie Hepburn: That is useful.

Joanne Walker: I will add one more little thing—an example of the length of time of scrutiny. The bill was published in December 2013, so we have had quite a long time to look at it already and to make our suggestions in evidence. I believe that the regulations will be published from April onwards, which provides a lot less time between the regulations being published and coming into effect. Although the regulations will be subject to parliamentary scrutiny, they will not, by necessity, be subject to as much scrutiny, because there is just not as much time for other people to give their views as well as for Parliament to consider them.
produced by trade unions and other organisations that one of the problems with HM Revenue and Customs has been a lack of staff working on the recovery of tax. Figures have been produced that show clearly that the additional tax recovered per HMRC employee in instances where extra employees have been utilised has been very high.

Revenue Scotland will start with a relatively small pool of staff, with—we hope—a relatively broadly drawn anti-avoidance principle. That means that it will require sufficient staffing levels to provide guidance and, eventually, effective recovery under the new system.

None of the unions that represent people in either HMRC or SEPA is saying that the broad arrangements that are outlined in the bill are not workable, but one of the issues that must be dealt with is the fact that there are a number of people north and south of the border working on these two taxes who are not working in a discrete geographical situation or on just one single tax. There is clearly a reorganisational implication in the medium term, and that would grow if further taxes were devolved.

We are not arguing that the transition should be anything other than manageable in any of those cases, but it requires resourcing and it requires a reasonable view to be taken on the number of staff who will be required, particularly in the first few years. It also requires—you would expect us to say this—a full consultation with trade unions to ensure that that takes place effectively.

Michael McMahon: Unison in particular has identified issues to do with the “adequate funding” of the organisations and ensuring “sufficient powers and protocols to enable staff to do their work”.

Should that be in place before revenue Scotland is up and running and the staff are already working? Should the consultations on that have been taking place already?

Dave Moxham: I do not think that that is possible. I would be delighted if you could correct me and tell me that those protocols should be fully negotiated prior to the end of the legislative process. However, if it is made clear at committee, parliamentary and ministerial levels that that is a commitment looking forward, that would be very helpful to us.

Michael McMahon: I do not know whether you will be able to answer this question, which came from Unison—I do not know what your knowledge of its attitude to this issue is. In response to the consultation, Unison has expressed support for the idea that, in order to investigate illegal activity, there must be a power to enter domestic premises, as long as that is done according to appropriate levels of scrutiny. Do you have a view on that, and can you understand why Unison would be concerned about that?

Dave Moxham: I can understand why Unison would take that view, but I would temper it by referring to the second part of your question, which is that it would need to be subject to clear guidelines. I am no expert, but one can imagine circumstances in which that might be necessary.

Joanne Walker: I had a look at Unison’s submission, because I am aware that HMRC does not have criminal powers, as such, in primary legislation. However, the Police and Criminal Evidence Act 1984 is applied to HMRC to give it power, under statutory instruments, to enter and search in certain situations, so I would have thought that that was the route to choose. My reason for saying that is that tax law is generally civil law with civil penalties for non-compliance. Although, obviously, there can be criminal activity relating to tax, that should be covered by the Police and Criminal Evidence Act 1984. It may also be the case that HMRC staff may not want to have those powers, and it may be that a special unit is required.

Michael McMahon: Would the new act have to say specifically that that power is covered by the 1984 act?

Joanne Walker: It would need regulations. I do not think that you would need to put anything in the bill. My understanding is that it would be a case of having secondary legislation and statutory instruments.

Michael McMahon: That may be something that we can look into. Thank you.

John Mason (Glasgow Shettleston) (SNP): I would like to start off with one or two points that have been raised already and which I would like to clarify. Mr Hepburn was going on about penalties. My gut feeling about why I would not want penalties in the primary legislation is that, having lived through inflation that was 10 or 15 per cent, I know that any figure for penalties in legislation can be eroded to a point at which it becomes nonsensical, and it is a huge effort to go back and amend primary legislation. Could we get round that by just putting an inflation index in the primary legislation, so that at least it would keep going up?

Joanne Walker: You do not have the same process in Scotland as there is in the UK for updating the rates each year, but there might be some mechanism whereby you could put a number in the bill and then say that it is subject to amendment by regulation, so that the administration for making those amendments for uprating could be in secondary legislation.
**John Mason:** The other thing that I am thinking of is a situation in which, let us say, there are two penalties—one for £100 and one for £500—and you decide that it is illogical that one should be so much higher than the other, so you want to vary them. If the penalties are fixed in primary legislation, would it be harder to make those adjustments?

**Joanne Walker:** When you say that they are fixed, do you mean for different taxes or different offences?

**John Mason:** It could be for different offences under the one tax.

**Joanne Walker:** It might depend on the offence, and I suppose that in that respect the situation will change once there are different taxes. At the moment, we have two transactional taxes. When you have a tax such as income tax, which is annual, you will want the penalties for that to be different, so there are ways in which the bill may need to be changed in future, or amended by other laws.

**John Mason:** Is there a balance to be struck between the clárity of having as much as possible in the primary legislation and the flexibility of not having it in the primary legislation?

**Joanne Walker:** Yes. You need that flexibility to be able to make amendments. How that is done in the legislation is for the bill team to look at.

**John Mason:** I return to some of the points that you made when you were speaking to the convener. You talked about having clarity linked to simplicity—I am certainly a fan of simplicity—and I think that you said that that would lead to less desire to avoid paying tax. Did I understand you correctly?

**Joanne Walker:** When I said that, I was thinking about having less of a differential between the ways in which different structures are taxed. At the moment, if someone sets up a business and is self-employed, they will be taxed at the income tax rates. If they then decide to become a company but are still a one-man band, their rate is substantially lower. There are obviously other reasons for incorporation that are non-tax related but, from a tax point of view, it can be more efficient to incorporate.

**John Mason:** That clarification is helpful, and I agree with that point. Sometimes people make artificial decisions, such as being self-employed when we would probably all say that they should be employed, because the decision has been made so that the employer does not have to pay national insurance.

**Joanne Walker:** Yes, and sometimes that is not really their choice. Sometimes it is, but in some cases they are forced by circumstances to take that decision.

**John Mason:** That is something that we cannot do an awful lot about at the moment, but your ideal tax system would be one in which things were simpler and maybe everybody would pay the same rate, so that it would not matter so much whether someone was self-employed.

**Joanne Walker:** Essentially, yes. More fiscal neutrality can prevent there being as much of a need for avoidance.

**John Mason:** Does the STUC have any feelings on that point? It is perhaps a little outside the scope of the bill, but there can be such a big tax difference between being employed and being self-employed. Are you comfortable with that?

**Dave Moxham:** We are not at all comfortable with the way that what we call bogus self-employment is currently operating at a UK tax level. I accept the point that simplicity can be helpful to some extent, but what is more important is that clear messages about what is acceptable and unacceptable begin to emerge. To an extent, that is an evolutionary process, particularly with the creation of any new tax system or tax body, but it seems fairly clear to me that a general anti-avoidance principle could apply and be interpreted fairly quickly in relation to the large majority of cases, such as the example of self-employment that has just been cited. That is more of a question of clear guidance and consistent application of the rules, if and when they have to be implemented in relation to a particular tax. I take the general point, but I think that it is more about how the system operates than about the drawing of the rule in the first place.

**John Mason:** We talked about the advisory panel. Ms Walker, I think that you said that it was just to advise. That makes me wonder what the point of it is. You said that people on the panel should have commercial experience, whereas Mr Moxham drew a parallel with an industrial tribunal, where there is one person with employer expertise, one with employee expertise and one who is more of a layperson or member of the public. Could we replicate that in the advisory panel? My fear is about whether the public, who want taxes to pay for hospitals and schools, would be represented on the advisory panel.

**Joanne Walker:** There is probably a place for some variety on an advisory panel. You do not just want three people with exactly the same views; that defeats the object of having three people on the panel. However, if you want a proper view of avoidance, you need to have some understanding of the business environment in which the company, business or individual is operating, and some understanding of the tax environment. That
is not to say that a lay member would not have that—they may very well have that experience and understanding—but we must be careful about who goes on a panel, ensuring that they are making a valid and reasoned judgment. That would be the point of having a panel: its members should be providing input. Revenue Scotland might not have certain experience, and the panel would be providing that knowledge and experience.

10:45

**John Mason:** I wish to push you on that point. Surely it is valid for a member of the public who does not have any tax experience to say that Starbucks should be paying more tax. We do not need an expert to look at that, do we?

**Joanne Walker:** One would need to have a bit more understanding of that firm’s accounting system or whatever; we cannot really comment on individual cases. If we are considering a GAAR, we have to be a bit concerned about the extent to which revenue Scotland would have jurisdiction over the worldwide affairs of international companies like Starbucks.

**Dave Moxham:** I presume that were the bill to provide for an advisory panel, it would be there for two reasons. Flank 1 would be that revenue Scotland staff might be overzealous, and the other flank might be that revenue Scotland—or a particular officer—might lack expertise. Our primary point is that such things can be minimised, to an extent, by good governance and by good and effective training and skills in the organisation. I do not wish to exaggerate the difficulties that might occur day to day, as I have heard some people do. Properly trained revenue Scotland officers will be able to undertake their tasks.

If it were agreed that an advisory panel should be in place, the issue would not be so much around the layperson’s view of tax generally; it would be about interpretation of the intention behind the legislation. The intention of legislation is political and is subject to public perception. It is a very public event for the Cabinet Secretary for Finance, Employment and Sustainable Growth to introduce proposed legislation that would enable additional tax planning, and for that bill to be analysed. It is entirely appropriate that people with commercial experience should judge the proportionality and effects of a company’s decision to take a particular tax planning route. It is also important to have expertise and to have laypersons’ input into considering what the cabinet secretary meant by introducing a particular piece of legislation and what the public understands by that legislation.

**John Mason:** Has there been too much emphasis on the letter of the law in tax legislation in recent years, and have we forgotten about the spirit of it?

**Dave Moxham:** That has begun to change, to some extent. At UK level, there have been a number of cases recently in which the courts have taken into account more general provisions around the intention, rather than the letter, of the law. Judging from how the bill is drawn, I say that there is a leaning towards the idea that legitimacy comes partly from a judgment as to whether legislation that comes to be relied on for tax planning purposes was intended for that purpose. In starting from a clean slate, if the aim is for intention to play a greater part in the future considerations of revenue Scotland, that should be reflected in how revenue Scotland acts and is advised by any advisory panel that might be created.

**John Mason:** I will move on to a separate issue. Ms Walker, your submission mentions judicial review, which should be extended and made more available, rather than restricted. Your submission discusses the “lower courts and tribunals” being involved. Will you expand on that?

**Joanne Walker:** Yes. There is not a huge amount on judicial review in the bill. We put a reasonable amount about that in our written submission because there was recently a UK consultation on restricting access to judicial review, which concerned us greatly. That is why we wanted to ensure that we put to the committee our view that judicial review should certainly not be restricted and should even be extended.

Judicial review is a remedy that applies when a taxpayer has no statutory right of appeal or when they have exhausted all other remedies. It is for when a tax authority, with the best will in the world, makes a mistake; if there is alleged wrongdoing or a failure to act by the tax authority and no other remedy is available to the taxpayer, they would use the judicial review route. The UK Ministry of Justice was proposing to remove or restrict the ability of representative bodies like the low incomes tax reform group to bring judicial review cases on behalf of groups of taxpayers, so that it would be up to an individual taxpayer or, because judicial review covers more than tax, any individual to bring a case. Following the consultation, the Ministry of Justice has rejected that proposal and has accepted that it will still be possible for representative bodies to bring such cases.

An example of a case that we were involved in came from the realisation in 2007 that a lot of pensioners had been underpaying tax because their pension providers had not, with HMRC agreement, been using tax codes and so were not deducting tax on small pensions. Individuals did not owe very much tax over the years, but in total it was quite a large amount. HMRC decided to
regularise that position and to write off all the tax apart from the tax for the previous 12 months. Essentially, it was trying to tax retrospectively people whom it had not been aware of because, with HMRC agreement, the pension providers had not been deducting tax.

The low incomes tax reform group managed to negotiate with HMRC on that case. Groups such as ours would always try to negotiate and persuade first rather than go immediately down the judicial review route. Thankfully, we managed to persuade HMRC that it would have been conspicuously unfair and, in fact, an abuse of power to collect the tax for 2007-08 and that it should collect tax only from the point at which the taxpayer was made aware of the situation through their tax code. Basically, that meant that the future tax could be collected.

We managed to persuade HMRC in that case, but we did so by suggesting that we would be willing to take it to judicial review. In that instance, no individual would have been able to take the case to judicial review, because by the time that they realised something was amiss, it would have been too late. They would not have been aware in time and would have had tax codes that meant that HMRC would have been collecting tax that, strictly speaking, was due but which went back several years.

That is the kind of case that the low incomes tax reform group would want to bring to a judicial review. We must ensure that there is such a safeguard and that people are made aware of its existence by its being publicised properly.

John Mason: I am not an expert on judicial review; you probably know more about it than I do. Does it need to be in the legislation, or is it out there anyway?

Joanne Walker: Judicial review is out there anyway because it is part of the legal system. However, at the moment people have to go to quite high-level court. We would like judicial review to be extended so that cases can be heard in the lower courts and in tribunals—for example, the tax tribunals, which would be less costly. At the moment, it is very costly for an individual to take a case to judicial review.

John Mason: I understand the point. I do not know whether it lies within the bill’s remit, but I will take advice on that.

Paragraph 11 of your submission says:

“It would be sensible for RS to adopt the position that tax and administrative burdens should be no more onerous than those in the rest of the UK and that any divergences should be in favour of the taxpayer.”

I agree with that as far as administrative burdens are concerned, and it goes back to the issue of simplicity that we discussed earlier. We have achieved that to some extent, because revenue Scotland will charge less than HMRC would charge. Are you suggesting that the tax rates should not be any more onerous?

Joanne Walker: No. It is more to do with things like, for example, record keeping. Section 69 contains the taxpayer's duty to retain records for five years. The current record-keeping requirements for individual taxpayers in the UK is only two years, or a year and 10 months after the tax year, so the new requirement is for a significantly longer time than the UK system. For the individual—especially the individual unrepresented taxpayer—that could cause confusion. It is fine if a different length of time is chosen, but that difference must be communicated properly. How it will be communicated might not be for the bill, but a longer record-keeping requirement means that the impact on the taxpayers must be considered.

John Mason: If changes are made to what people have been used to, that should be publicised.

Joanne Walker: Yes.

John Mason: Two years strikes me as being an amazingly short time.

Joanne Walker: That requirement is for individual or personal taxpayers. Businesses must keep records for five years and 10 months.

John Mason: The final area I want to touch on is the general anti-avoidance rule—I am sorry Mr Moxham, but I am aiming most of my questions at your colleague.

Dave Moxham: You are welcome to do so.

John Mason: Ms Walker, on the general anti-avoidance rule, paragraph 28 of your submission states:

“We suggest that at s58 the phrase ‘sole or main purpose’ is used, rather than the wider and less certain ‘main purpose, or one of the main purposes’.”

We have touched a little on how wide the GAAR should be. Why do you want the bill to say “sole or main purpose”?

Joanne Walker: Our points on the GAAR have been made with a view to ensuring as much certainty as possible for the unrepresented taxpayer. We have therefore made various suggestions—not all of which we expect to be adopted, by any means—that we think might make the situation slightly more certain for the unrepresented taxpayer.

John Mason: I made this point at last week’s meeting. Do you accept that more certainty is
good for a good taxpayer but bad for a bad taxpayer?

Joanne Walker: That is possible, although more certainty might not affect too much someone who wishes to avoid paying tax. I suggest that most people want to comply. They might not want to pay the maximum amount of tax that might be due, but they certainly want to comply because they want to get on with their business. The LITRG comes across people who just want to understand what their duties and obligations are, and to comply with them. They do not want to find that they have been penalised for not doing a tax return when they should have done it. What is legal, what is not, and where the line is drawn all need to be made clear. Those are the things that people want to know.

John Mason: Thank you. Do you want to comment, Mr Moxham?

Dave Moxham: Yes. If we want to provide clarity, and if a judgment is going to be made about whether an individual has acted reasonably, the provision in the bill is a better way of alerting an individual to factors that they must take into account. The formulation “one of the main purposes” should alert them to the need to seek further guidance or take appropriate action, in order to ensure that they do not fall foul of the law. In a sense, I prefer the first formulation to the one that is proposed; it offers better guidance for the individual.

11:00

Gavin Brown (Lothian) (Con): I want to explore penalties in a bit more depth, because my view is that the approach is somewhat inconsistent. With regard to four failures—not filing a return, not paying the tax, making errors or being underassessed by revenue Scotland and not paying the money back forthwith—the bill simply says that the Scottish ministers may make provision in regulations. However, if a person fails to comply with an investigation, the bill provides specifically for a penalty of £300, and if someone complies but carelessly gives inaccurate information there is a penalty of up to £3,000 per inaccuracy or failure. Therefore, penalties in four areas are to be left to regulations, an exact penalty is specified in one area, and there is a penalty up to a maximum amount in another area. Will the witnesses comment on that inconsistency?

Joanne Walker: We have made our position clear. As Gavin Brown said, some investigatory penalties are in the bill. Our preference is that all penalties be included, which would resolve the inconsistency and would, I suggest, be a preferable position in the context of encouraging compliance.

Gavin Brown: You think that all penalties should be in the bill.

Joanne Walker: Yes.

Dave Moxham: I agree. Consistency is important; it is not clear why a penalty is set out for some cases but not for others. Someone might be able to explain that to me, but in the discussions that I have had so far I have not heard a reason.

Gavin Brown: We can put that question to the minister. Should anything else be in the bill in relation to penalties, such as the principles behind them or the approach that revenue Scotland should take? Would simply putting numbers in the bill satisfactorily address your concerns, or is something else needed in the primary legislation?

Joanne Walker: We would like, for example, provision for the amounts of reduction to be included, making clear the circumstances in which a penalty might be reduced, by what proportion the penalty would be reduced and any conditions for such a reduction. That would give the taxpayer a sense of consistency, fairness and certainty.

Other things are not in the bill that we think should be in it. For example, it should set out the factors to be taken into account in determining a penalty, such as whether a failure is deliberate or negligent, the amount of tax involved and the reason for and length of a delay, if someone has failed to do something on time.

Gavin Brown: Do you want to comment, Mr Moxham?

Dave Moxham: I have nothing to add.

Gavin Brown: There have been lots of questions about the GAAR. I might have noted this down wrong, but I think that Joanne Walker said that if the bill remains as it is, without the changes that you have proposed, there will be a need for safeguards for the unrepresented taxpayer, as opposed to the taxpayer who has expert representation. What safeguards do you have in mind for the group that you represent?

Joanne Walker: When it comes to helping out unrepresented taxpayers, guidance is key—guidance in general, but specifically guidance for the GAAR. Obviously, when we have not had much experience of the GAAR—there have not been many cases—that guidance may be rather small, but it will, we hope, expand, and we would expect it to evolve continuously. We need to make that guidance available in various ways because people may or may not have access to it, for example on revenue Scotland’s website.

We have suggested that one option might be a clearance procedure. If there was a clearance
procedure, I do not really see that it could be for one group of taxpayers and not another group. It would probably have to be universal—it would not help unrepresented people in particular. It is mainly about ensuring that the guidance and clear messages are there.

Dave Moxham: It would obviously be helpful for an unrepresented individual to know whether a particular scheme that they might be using had been cleared through disclosure, which is why we support a disclosure provision.

It is quite important to look at the way in which the mechanism that we have just talked about might operate. It is fair to say that one could not distinguish, in that mechanism, between represented individuals and unrepresented individuals. I understand that there would be a concern that a situation could develop in which it was the reflexive action for unrepresented individuals and represented individuals simply to pop into revenue Scotland any concern that they have, such that revenue Scotland would become an enormous clearing house for safety-first disclosure. Some thought would have to be given to how that would be constructed.

One thought in my mind is that, rather than filling out forms, there should be a presumption that a person using that process should give a reason why they are availing themselves of the process: “What was the question in your mind when you wanted to find out whether you were at risk of falling foul of avoidance legislation?” There should be a balance between individuals being able to avail themselves of a process and a presumption that they would need to go further than just saying, “These are all the things that I intend to do in the next year. Can you please make a judgment on them and get back to me?” which would be burdensome and inefficient.

Gavin Brown: Tax advisers have also said that there needs to be guidance. Guidance may clear things up for someone who is well advised; if it is written in legalese, it may not clear things up for an individual taxpayer. Are you driving at the suggestion that there could be some kind of separate phone line, department or area of revenue Scotland that would be accessible only by people who are unrepresented?

Dave Moxham: I am not necessarily driving at that. Advice and guidance is one thing, but I am suggesting that the facility should exist whereby someone can—beyond advice—legitimately ask the question, “Is what I am proposing likely to fall foul of the law?” As to the separation between a represented and an unrepresented individual, it seems to me that if a representative organisation began to overuse such a facility, revenue Scotland might want to say something about that, hence my suggestion that one should have to explain why one is using the provision, rather than simply being able to use it, as I said before, as a kind of clearing house for all elements of doubt.

Joanne Walker: Gavin Brown mentioned that the guidance might be written in legalese. We have always stressed that guidance should not be written in legalese and that it is essential that it be written in plain English. That does not necessarily mean that an unrepresented taxpayer will completely understand the guidance, because it will explain difficult concepts and they still might not grasp fully whether they are within or without the GAAR. However, guidance that is written in plain English would at least give them a chance to understand the subject.

HMRC has separate clearance departments. The decision on that, along with whether to have telephone helplines, is a resource matter for revenue Scotland. Such departments are helpful.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Dave Moxham did not object when John Mason directed his questions to Joanne Walker, so I hope that he will not object when I do the opposite, although I would obviously be delighted to hear from Ms Walker, too.

The STUC’s paper is interesting. The low incomes tax reform group paper is very interesting as well, but it would be fair to say that it contains a degree of overlap with what we have heard before, whereas the STUC’s paper puts forward views in two or three areas that we have not heard so much about.

I will take one point from each section of the STUC’s paper. On the general principles, Dave Moxham and the STUC are quite keen on further tax devolution, including to local government, which is highlighted in section 2.3. I am interested in the final sentence of that section, which I suppose is directly relevant to the bill. It says:

“Given the possibility that further taxes will be devolved to Scotland it is entirely right that this should form part of the Committee’s considerations even though the role of Revenue Scotland, in the first instance will be limited.”

Has that issue been properly taken into account in the bill’s design, or is the bill too narrowly focused on the taxes that are scheduled for devolution?

Dave Moxham: The combination of being fairly specific about the taxes that will be devolved and incorporating the general principles and the approach probably provides a vehicle in which further tax change could be accommodated.

I do not want to delve into this too much, but you will know that the STUC is particularly concerned that, almost irrespective of the result of certain constitutional matters that are coming up in the next six months, local taxation is desperately in need of reform. The issue is also mentioned in the
submission from the Convention of Scottish Local Authorities. It seems likely that at least one proposal that might be suggested is more to do with income-related issues and the potential creation of new taxes. Indeed, we must never forget that we are not talking just about the further devolution of taxes because the Scottish Parliament has the power to introduce new taxes of its own. The STUC does not have a settled view on land tax, but we think that it is an area that should be examined in the next period, irrespective of the constitutional outcome.

When you begin to talk about the potential for income-related and land taxation, it is important to look at the bill’s principles. Those principles allow for that to be considered, notwithstanding the fact that any significant further tax change would involve primary legislation at some point.

Malcolm Chisholm: Ms Walker, do you want to comment?

Joanne Walker: No.

Malcolm Chisholm: The next section of the STUC’s paper is on the general anti-avoidance rule, which has been touched on. As has been said, there is a contrast between the STUC position and that of the low incomes tax reform group, which considers the bill to be widely drawn. It would rather have the narrower "sole or main purpose" that I think is in the UK legislation. However, the STUC proposes that "a Scottish GAAR should not be narrowly drawn ... The burden of proof on tax avoidance should therefore sit with the tax payer rather than the tax authority."

It goes on to say that a Scottish GAAR should "Be applicable to international transactions" and "include additional EU criteria".

11:15

The Trades Union Congress said two things that you may or may not agree with. It said that the UK GAAR “will allow 99 per cent of tax avoidance to continue” and that it objects to the panel because its members will be drawn from the tax avoidance industry. You might not agree with your colleagues in the TUC, but a combination of those views makes us stop and think, because that is a completely different perspective from what we have heard so far—particularly what the TUC said about the 99 per cent figure, although perhaps that is partly because of the international transactions issue that you raised; I do not really know.

To what extent do you think that the Scottish arrangements will improve on the UK situation and how could we make them better and stronger?

Dave Moxham: There is a fairly fundamental difference between the bill and the UK legislation regarding wording and the overall burden of proof.

I am not certain whether the figure is 97, 98 or 99 per cent, but I trust my colleagues, particularly Richard Murphy, who wrote that submission. You are right to point to the fact that the UK general anti-abuse rule will apply to the full gamut of taxes, including income tax and national forms of taxation, giving rise to that enormously worrying figure. However, let us be clear: the UK legislation is not fit for purpose. It is hard to be specific, but our judgment is that if the approach in the bill was applied to the UK situation, that 99 per cent figure could fall very quickly.

It is hard to apply the UK legislation to our position in Scotland; it is easier to look at how the bill’s principles would apply to the full gamut of taxes in the UK and internationally. Undoubtedly, it would be a major advance if the bill’s principles were applied at the UK level, which is the view of the TUC and other experts.

Malcolm Chisholm: Does Joanne Walker accept that analysis of the UK GAAR? In a way, the low incomes tax reform group seems to want us to replicate the UK GAAR as far as possible, which might be problematic if it is as ineffective as the figure that I quoted suggests.

Joanne Walker: I am not sure about those figures so I will not comment on them.

The anti-abuse rule would provide more certainty for our constituents, who are low-income taxpayers. Unless they actively sought an abusive scheme—which in general they would not, because often such schemes must be paid for—they could happily ignore that rule because it would not affect them. However, as I illustrated earlier, the general anti-avoidance rule might encompass them unwittingly. That is our concern.

We have not commented on the burden of proof because we probably agree with the bill, partly because it will provide a bit more balance by putting the burden of proof on revenue Scotland. As I said, revenue Scotland will draw up the guidance and ultimately it will decide whether someone’s behaviour falls inside or outside the GAAR. It is right that the burden of proof will be on revenue Scotland.

Malcolm Chisholm: The final section of the STUC’s submission is on workforce implications. I am particularly interested in the phrase “redesign of jobs”. Does that relate to a stronger enforcement role, or is it more just to do with the
way in which different organisations will work together? What did you have in mind?

**Dave Moxham:** We probably had both those descriptions in mind. There is a clear suggestion that there would be cross-working between revenue Scotland and the two bodies that are named, and, potentially, other bodies. As with other pieces of collaborative working, such as that proposed for health and social care under the Public Bodies (Joint Working) (Scotland) Bill, we are very clear that to maximise the effect of that approach, we must ensure that people at the grass roots have the skills to work together. Joint training and equalisation of skills are very important.

There are people working in the UK tax system in HMRC who undertake enforcement, valuation or other activities in relation to the two devolved taxes but who do not do just that, so their jobs will need to be redesigned in the direction of training or greater specialisation in areas where they do not have expertise. Thankfully, there is a presumption in the Scottish Government against compulsory redundancies. Any such presumption calls for a policy of skills utilisation and training that ensures that people are used effectively and trained when they are redeployed into a new task. The situation is not unusual, but it is one that you would expect trade unions to point to.

**Malcolm Chisholm:** Does Joanne Walker have a comment?

**Joanne Walker:** The two devolved taxes were mentioned, but the same situation for workers probably applies with regard to the Scottish rate of income tax, which is being administered by HMRC at the moment on behalf of revenue Scotland.

**Jean Urquhart (Highlands and Islands) (Ind):** I return to the issue of penalties. I am disappointed that Joanne Walker feels that penalties should not be in secondary legislation. Although in the short term we are looking specifically at the two devolved taxes that Scotland will have governance over, that has clearly opened everybody’s minds to think about what might be in the future. Without exception, the witnesses in our evidence sessions have shown that people regard what is proposed as an opportunity to improve everything. However, do you think that it is also an opportunity to change the culture of how we see tax? We know that although well over 90 per cent of people are not happy to pay tax, they recognise that they must pay it. Both submissions referred to large companies and tax avoidance, which should not be part of our culture—we really do not like it. It is seen as hugely unfair, as it is of course.

It seems to me that having penalties in the bill is almost saying that we expect that people will bend the law—it is a psychological thing. There is something to be said for saying, “Here is a new bill and this is what we expect.” That is what we are doing. We are setting the bar high—I hope—but we are not being so specific, hence the use of the word “reasonable” throughout the bill. My understanding is that we are doing that so that we cannot be accused of leaving a loophole. If something is not in the bill but it is reasonable and expected, the pressure is on people to pay their tax.

I suppose that I really just want you to comment on the point that, in a new tax base, the presumption must be that people will pay. The spirit and letter of the law should be much more in favour of tax collection by not allowing so many loopholes and by leaving matters to the reasonableness argument.

**Joanne Walker:** That is a really interesting point. I understand your rationale for saying that the penalties should not be stated in the bill. However, our view is that, as you say, most people want to comply and do not like to see avoidance, so it is important to state the penalties in the bill. If I am paying my tax and complying with the law fully, I want to know that people who do not do that—the 5 per cent or whatever who try to avoid paying tax or who do not comply properly by failing to submit on time and so on—will be penalised. I know that that would come through in regulations as well, but putting the penalties in the bill would send a clearer message.

I understand that you want to send a different, more positive message that people will comply anyway. At the moment, we are a compliant society in general, compared with some societies elsewhere, and we have one of the highest compliance rates. However, the danger is that, if you do not state the penalties in the bill, people might look around and say, “I’m not sure that people are being penalised when they avoid tax or don’t submit their tax returns.” If the penalties are not in the bill but are only in secondary legislation, people might think that they are not that important and might decide not to comply any more. My concern is that although people want to do the right thing—they want to comply—they also want to know that if others do not comply they will be punished, and the way to show that that will happen is to state the penalties in the bill.

**Jean Urquhart:** That is not a psychology that works for everyone.

**Dave Moxham:** I feel that I might be in danger of dancing on the head of a pin if I comment any further. I accept the rationale, to an extent. One of the bill’s key messages is that avoidance will be punished—that is an inescapable fact, however much we want to promote better compliance as the bill’s aim. If you are saying that avoidance should be punished, quantifying that punishment is
not necessarily a bad thing to do. However, I know that it will eventually be quantified in secondary legislation, which is why I feel that we are probably dancing on the head of a pin.

The Convener: Thank you for answering all the committee’s questions. Do you have any further points that you want to make before we wind up the meeting?

Joanne Walker: As Jean Urquhart said, references to reasonableness are spread throughout the bill, which may detract a bit from the certainty for the unrepresented taxpayer. However, there is not really any alternative to using the word “reasonable”. That demonstrates the importance of having really good guidance and making sure that people understand what is expected of them.

This is perhaps not for inclusion in the bill, but it might be worth considering that what is reasonable is not necessarily measurable by way of an objective test or what the average person thinks is reasonable; instead, it might be what is reasonable for the individual taxpayer based on their experience, knowledge, competencies and capabilities. For example, an individual migrant might be less capable of understanding our tax system than a large company that is advised by a large firm of advisers. What is reasonable might be different for those two different taxpayers.

Dave Moxham: I agree with that approach.

The Convener: Thank you very much.
Scottish Parliament
Finance Committee
Wednesday 26 March 2014

[The Convener opened the meeting at 09:30]

Revenue Scotland and Tax Powers Bill: Stage 1

The Convener (Kenneth Gibson): Good morning and welcome to the Finance Committee’s 10th meeting in 2014. I remind everyone present to turn off mobile phones and other electronic devices. We have received apologies from Michael McMahon. I had understood that Iain Gray would attend as his substitute, but he is not here, unfortunately.

Agenda item 1 is continuation of our stage 1 consideration of the Revenue Scotland and Tax Powers Bill. I welcome Dr Heidi Poon, who is a First-tier Tribunal (Tax) member and a tax law lecturer at the University of Edinburgh, and Justine Riccomini, who is an independent human resources and employment taxes consultant.

I understand that the witnesses have no statements. As is normal, I will open up with a few questions, and then other committee members will ask questions. My first questions are to Dr Poon and are on the general anti-avoidance rule, but Ms Riccomini can comment, too—when I ask a question of one person, the other person should feel free to come in, as appropriate.

Paragraph 7 of Dr Poon’s submission says: “It is not immediately obvious how a narrowly focused GAAR will necessarily confer greater certainty ... 'What is clear is that, once a GAAR is introduced, the players (government and taxpayers alike) are still at the mercy of the courts.'”

Your thinking on that is different from that of other witnesses, and our tax adviser said that he found your views on the issue refreshing, so I would like to hear a wee bit more about your thinking on the GAAR.

Dr Poon: I did not read other submissions before I produced mine.

The Convener: That is fine.

Dr Poon: I do not know, therefore, what other tax advisers said. The summary of consultation responses is that people’s view is that a more widely drawn GAAR would create more uncertainty. My experience from sitting on the tax tribunal—in particular from a long case that I have been involved in concerning a tax avoidance scheme—is that however widely or narrowly drawn a GAAR is, the process of constructing what the law is trying to say and applying it to the facts of the case must still be gone through.

A higher or lower degree of certainty is not conferred by whether the GAAR is widely or narrowly drawn—certainty is not created at that level. A more principles-based approach would give more certainty than drawing a GAAR widely or narrowly. Is that clear?

Justine Riccomini: I am nodding because I think that what Heidi Poon has said is sensible. More focus needs to be placed on what happens when a problem arises rather than on drafting GAARs. The main problem is the practicalities when it comes to attending tribunals and so on.

The Convener: Dr Poon pointed out that “a more widely drawn GAAR may result in a reduction in the number of Targeted Anti-Avoidance Rules”, of which the United Kingdom has 300. She said that the tax code “has grown considerably in complexity and volume in the period of the recent Labour Government ... There is a correlation between the growth in complexity and the increased number of TAARs.”

How would a more widely drawn GAAR prevent the need to produce all those targeted anti-avoidance rules?

Dr Poon: Current United Kingdom legislation is based on rules, so we try to legislate according to a set of rules or conditions that, if fulfilled, mean that one can apply for an extension or relief. Legislation that is based on rules allows people to find loopholes so that they can tick all the boxes, although they might be going against the spirit of the legislation. Because they are ticking all the boxes, they can get away legally with avoiding tax, which means TAARs are needed.

Inheritance tax is an example. The current legislation was brought in in 1984 and very soon after than we had what is called the gift with reservation, which resulted in a kind of TAAR. People were making gifts during their lifetimes but were retaining the benefits of the assets that they were legally giving away. The gift with reservation suites of legislation came in, so people started doing other things, which led to the pre-owned asset tax charge, which is an income tax charge that was superimposed on inheritance tax. That is how the legislation has grown in complexity from the original Inheritance Tax Act 1984.

If legislative design is based more on principles, it will allow the court wider powers to interpret the legislation and to bring things within the scope of
what is chargeable, rather than having to circumnavigate schemes that get around the rules and defeat the spirit of the law. It is about architecture or design. If you start with rules, you end up with more rules in order to close the loopholes, but a more principles-based approach allows more scope for a GAAR to interpret the legislation on the basis of the principles that are its starting point. That will impinge on how other areas of tax are going to be legislated on.

I think that I read in the Chartered Institute of Taxation submission that this is an opportunity to consider the basis on which Scotland might find a new way of drafting tax legislation, instead of cutting and pasting from the UK’s tax legislation.

The Convener: Yes. I will avoid some of the high-profile cases that I understand you were involved in recently. What you have said is quite important and, in some ways, quite different from what other people have said. It gives the committee food for thought.

Ms Riccomini—do you have anything to add to that?

Justine Riccomini: I completely agree with what Heidi Poon has just said. If you have the opportunity to create a new set of legislation in Scotland, it should be fit for purpose for Scotland and not just copied and pasted from UK legislation, because there are so many instances of its not working. It is just not practical, in reality.

As a tax practitioner and having attended tax tribunals and so on, I know that in many cases there are many hurdles to get over. I have been practising tax for 25 years, and I started off with three or four books that were quite thick, and now I find myself, as a specialist employment taxation practitioner, with books that are at least three times bigger. It has gone beyond a joke. If you can keep things simple and principled, that will be a more intelligent approach.

The Convener: That also makes the system much easier for the public to understand.

Dr Poon: Yes.

Justine Riccomini: Yes.

The Convener: We sometimes wonder how decisions are arrived at. The law might strictly say one thing, but the clear meaning behind it might be something else.

Dr Poon, you state in your submission that an “omission noted is s212 FA2013 regarding ‘Relationship between the [UK] GAAR and priority rules’”, and you go on to discuss that specific point. What do you consider the importance of that omission to be?

Dr Poon: I compared the Scottish and UK GAARs, and I noticed that the Scottish GAAR in the bill follows the UK GAAR very closely in its format; the section headings just follow it, albeit that the Scottish GAAR substitutes the term “abuse” with “avoidance”.

If Scotland is going to follow the same format, there is an obvious question with regard to priority rules. The UK GAAR includes priority rules, which means that the GAAR will take precedence over other provisions in the corpus of legislation. Every year the Chartered Institute of Taxation produces an annotated copy of the Finance Act 2009 for its members and associates, which provides an interpretation of the priority rules. That is a fairly new piece of legislation, so it is a good guide to what we can rely on.

In applying the law, one has to decide, when two provisions come into conflict, which one will take priority. In this case, the bill specifically says that the UK GAAR will take precedence over other priority rules in other areas of legislation. For example, if a scheme has managed to deploy a priority rule in income tax but the GAAR has judged it to be abusive, the GAAR can override the priority rule that has allowed the scope of the scheme to be legal. If the Scottish GAAR does not have that priority rule, and a similar situation arises, how will you resolve it? That is the question behind the omission that I highlight in my submission; I query why there is not a priority rule in the Scottish GAAR.

On another level, with regard to double tax agreements, one can get into an agreement with a contracting state, and domestic law then has to adopt the agreement to ensure that there is harmony. If there is conflict, it must be resolved. The GAAR includes the treaties, and if there is conflict on the international front—if someone has managed, through a double taxation agreement, to do something that is abusive under the GAAR’s interpretation—the GAAR can overrule it. In that context, why is there no priority rule in the Scottish GAAR?

The Convener: We will raise that point with the bill team.

I will switch to Ms Riccomini’s submission. You say at paragraph 3 that you “have concerns about the proportionate ability to pay in terms of the penalty levies and the timescale for payment of penalties.”

Other people have raised the same issue. Can you share some more of your thoughts on that?

Dr Poon: Did you say paragraph 3?

The Convener: I am sorry: I was referring to Ms Riccomini’s paper.
Justine Riccomini: It is to do with the timescale for payment.

The Convener: Yes.

Justine Riccomini: My main concern is that current experience in the recession shows that people are having difficulty paying, so 30 days is quite a short timeframe in which to arrange the administrative side and to sort out what the assets and liabilities are if someone needs to pay a penalty. A person’s being in a penalty situation sometimes indicates that there are wider problems in the business, so they may not be able to afford to pay the penalties, especially within that timeframe, if there is no cash flow in the business. Businesses have gone from expecting immediate payment to arranging for people to pay over 90 or 120 days because no one has good cash flow.

09:45

I would not want revenue Scotland to be entrenched in the huge administrative burden of pursuing debts after 30 days when there would be very few people on the ground to put such a penalty regime into effect. Dealing with penalties requires human input as well as automated handling. One can issue automated penalties like billy-oh, but when people start to appeal against them or to submit reasons why they cannot pay, a human being is needed at the other end to decide whether the reason that has been given is valid or justifiable.

The Convener: A company in my constituency was, because of difficulties that were created under a previous administration, given 48 hours to pay a huge tax bill. I was able to speak to someone and negotiate a timescale of six months. The company, which employs almost 100 people, would otherwise have gone into liquidation, but it has managed to survive and is thriving, so I sympathise with your point.

Are you saying that there should not be a 30-day penalty? Should the timescale be flexible according to individual circumstances? What would the parameters be?

Justine Riccomini: The time period should be extended to 60 or 90 days. We are talking about the payment of a penalty rather than payment of the tax itself. Let us assume that revenue Scotland wants to pursue the actual tax that is due. What do penalties mean with regard to the actual tax take? Is the penalty just a frippery? Are we talking about pursuing people in a particular way?

I will compare the situation with collection of the BBC licence fee. A person who does not pay their licence fee is awarded a criminal record, which is a case of using a sledgehammer to crack a nut. You might want to think about a penalty regime that would encourage people to pay on a timely basis, but would not end up dragging the entire revenue Scotland organisation through the mud and making the task of administration like wading through treacle. Perhaps the timescale should be delayed, or the penalties should be structured slightly differently.

The Convener: You said in your submission—as you have just repeated—that revenue Scotland may become “entrenched in a quagmire of bureaucracy as a result of issuing penalty notices which remain unpaid”.

Justine Riccomini: Yes.

The Convener: That assumes that there will be a high level of non-payment. Is there anything to suggest that there will be?

Justine Riccomini: My point assumes that there is a high level of non-payment, because we have to think about what would happen with a high level. We are not talking about income tax, capital gains tax or anything like that, and whether there will be a high level of non-payment remains to be seen.

Dr Poon: From my tribunal experience, I am aware that quite a number of the cases listed since the new penalty regime came in under the Finance Act 2009 have related to penalties.

When there is an appeal about penalties, it takes up a lot of administration time. In a way, the whole collection process is stalled when there is a dispute. Quite often, penalties are listed and that takes up tribunal time as well. Such cases are also likely to be withdrawn close to the time they are to be heard. I agree with Justine Riccomini that the administrative cost of penalties can be disproportionate to the amount that might end up being collected, when we consider the time and human effort that would be needed.

There is scope for thought around whether it can be made more possible for people to meet the penalty payment. It will also have to be made very clear how the penalties are being applied because, for a business person, the escalation if the payment is not made by a specified time puts great pressure on them in terms of cash flow.

You want the tax to be collected and the penalties are there to encourage compliance. I think someone said that penalties are not another avenue for collecting more money, but they are quite often seen that way just because the escalation can be quite aggressive—very quickly, a businesses can find itself paying 100 per cent of the tax that is due. I have heard cases in which the business has said that if that is required of it, it will go out of business. Such arguments do not have much weight in law, in respect of applying
penalties, so they do not really help businesses in bringing cases to tribunal.

There are issues to go through on the policy-setting level, so that the penalty is commensurate with the cost of collection and so that penalties are seen as a means to encourage compliance rather than as another means to get more tax out of people.

The Convener: So, to extend the time period to 60 or 90 days would mean a smaller burden on revenue Scotland and on the taxpayers.

Dr Poon: Yes. There is also an issue about communication; some cases have been brought to tribunal in which the taxpayers were in penalty but they had not heard about it for four months and so they said, “This is not fair—you didn’t tell me.” The administration must be in place to get notice out to the taxpayer in good time in order to make a fair assessment.

The Convener: Thank you very much. I open up the questioning to colleagues around the table.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Ms Riccomini, in your submission you say that you agree with the establishment of revenue Scotland as

“a non-ministerial department and with its proposed membership”.

A few folk have come to the committee and said that the chief executive and other executives should sit on the board, but you do not seem to think that that is a big issue. Is that right?

Justine Riccomini: If I have not commented on it, then no, I do not think it is a big issue.

Jamie Hepburn: Okay. That is helpful. You also say in relation to the charter that the bill mentions that revenue Scotland should “adhere” to the charter, not simply “aspire” to it. Again, a number of people have commented on the seeming discrepancy between what is required of the tax authority as opposed to what is required of the taxpayer. I am not sure whether you are aware of this but the bill team has, I think, accepted that that wording is not particularly suitable and will look at it again. I presume that you welcome that.

Justine Riccomini: I definitely welcome that. I do not think that there should be any discretion as to how it works.

Jamie Hepburn: Presumably the charter should place both parties on some form of equivalence?

Justine Riccomini: Yes.

Jamie Hepburn: You mentioned earlier that this is a chance to get legislation that is fit for purpose and that we should not just copy the UK legislation. You say in your submission:

“I do not believe that any part of Revenue Scotland’s activities should be exempted from the Freedom of Information Act as currently applies to some of HMRC’s activity.”

I confess that I am not particularly aware of what that relates to. Could you set out for the record what HMRC activities are exempt from FOI?

Justine Riccomini: Let us suppose that an adviser is looking for something in the revenue manuals—perhaps to answer a question from a taxpayer. They want to give the taxpayer some advice, and they search through everything from HM Revenue and Customs that is available online. I am aware that that is currently being changed, as it is being moved over to gov.uk. I am part of the team that is helping out with that.

Lots of bits of information have been redacted, because of the Freedom of Information Act 2000. It is quite frustrating when we are reading something and we suddenly come across a big bit of it that has been taken out—we are not allowed to see it. Even when I worked for HMRC, I could never really understand why that was the case. We were talking about tax, not Government Communications Headquarters. Why does anybody see fit to redact anything at all? There should be complete openness and freedom of information in all aspects of revenue Scotland’s work, and HMRC’s work, for that matter. I cannot see that there is anything that presents some sort of national security issue. If we are asking people to comply, they need every bit of information at their fingertips.

It might be said that some material has been redacted because people could use it to find a way to create loopholes or tax avoidance schemes, but I honestly cannot see that that is the case. They have all been thought of already.

Jamie Hepburn: I am inclined to agree with you. Clearly, I cannot ask you what the redacted bits say—they are redacted, after all—but do you know what areas they relate to?

Justine Riccomini: Many areas have redacted bits—not just one area in particular. If you look at HMRC’s website and consult the manuals, you will see that quite a lot has been redacted. The site says, “This information is not available because of the Freedom of Information Act,” or whatever. We might wonder why. It is rather condescending and irritating, frankly.

Jamie Hepburn: I admit that I am also wondering why, although we have not explored the matter as far as we can.

Justine Riccomini: I am sure that somebody out there with a much bigger brain than I have knows the answer to that question, but I am afraid that I do not understand it.
Jamie Hepburn: In your submission, you talk about
"the power granted to take samples of material from
premises if they are reasonably required to verify a
person’s"—

The Convener: Jamie, remember that the other
witness sometimes wishes to come in.

Jamie Hepburn: I beg your pardon—I
apologise.

Dr Poon: First, on the point about information
and website manuals, one possible reason why
there are constant changes and things are blocked
out is the constant change of practice and
legislation. With every finance act, part of the
existing corpus of legislation is repealed. We are
in constant flux and the manuals cannot keep up
in good time. When I do not see som ething
appearing, that is my first thought.

Secondly, we should be careful about the status
in law of HMRC guidance or manuals. Taxpayers
who have relied on the guidance often come to
court having found themselves in trouble. They
might argue that they had grounds for legitimately
expecting that they could rely on the accuracy of
the manual. It is a matter of how the authority and
the taxpayers use the manual, and of its accuracy.
At the time when it is used, does it reflect the
legislation in force? It is quite a tricky area to get
right. When it comes to an argument in court about
legitimate expectations, that takes the case to a
different level that is not about the tax that is being
disputed but about whether the taxpayer has the
right to rely on the manuals for the interpretation of
their situation.

10:00

I know that revenue Scotland is developing a
website to feed information in. The background to
what will be created in terms of the relationship
between the taxpayer and the authority must be
very clear and must be managed. I often think that
the less that is said in the manuals, the better. If
you are still developing and changing, you do not
want reliance to be placed on manuals to the
extent that you will create trouble for yourself in
the future.

Jamie Hepburn: So the less said, the better—but if you are saying it, do not redact it, because
we want to see what you are saying.

Dr Poon: I am talking about having something
more permanent, rather than something that is so
detailed that you have to keep updating it in order
to get it right. Do you see what I mean?

Jamie Hepburn: You mean a default position.

Dr Poon: Yes. It goes back to what we were
saying earlier. If you have a more principles-based
approach in your design for tax law, you can end
up having something that is much simpler to
communicate to the public and it means that what
you put in the manual does not have the kind of
transience that we are experiencing.

Jamie Hepburn: Okay. Thank you.

My next question is on a reference in Ms
Riccomini’s submission to
"the power to take samples of material from ... premises if"
that
"is reasonably required ... to verify a person’s tax position."

You suggest that a short list of examples of the
samples that might be anticipated should be
included in the bill. I am not clear whether you
mean a list of circumstances for which such
samples might be required or whether you mean
the material itself. Which do you mean?

Justine Riccomini: I mean the material. As an
ex-inspector of taxes, I am very aware of people in
HMRC abusing their powers in certain
circumstances and having their own interpretation
of what can and cannot be removed from business
premises and what they have a right to see.
Generally speaking, HMRC people who visit
premises have sometimes taken things that,
strictly speaking, they are not allowed to take,
which is not in the spirit of the legislation.

My suggestion is that the bill could prescribe
what kind of records could be taken by revenue
officers so that they would be aware of the limit of
what they could take. For example, they would
know whether they could take only records that
had something to do with the issue at hand or
whether they could take anything. Like it or not,
that has happened in the past.

Jamie Hepburn: Is there not a danger that the
short list of examples that you propose could be
interpreted as an exhaustive list? That would
mean that if something was not on the list, it could
not be taken.

Justine Riccomini: It was a thought and a
suggestion. I do not really know whether I have
any particular solutions to that suggestion at the
moment, although I might think of some.

Justine Riccomini: It was a thought and a
suggestion. I do not really know whether I have
any particular solutions to that suggestion at the
moment, although I might think of some.

Jamie Hepburn: But you take my point that
what you propose could be a problem, because
people could assume that anything that was not
on the list could not be taken.

Justine Riccomini: Yes, but the suggestion
has the same context as what I said about the
taxpayers charter, in that we do not want people
abusing their power. I wanted to highlight by my
suggestion that we do not want revenue officers
abusing their power; we need them to stick to the
guidelines so that taxpayers and their advisers know where they stand.

Jamie Hepburn: Thank you.

Gavin Brown (Lothian) (Con): My first question is for Justine Riccomini. At paragraph 9 of your submission, you say that all ministerial guidance “should be fully publicised.” Your comment refers to section 8 of the bill; there is an exemption under section 8(4). Can you expand on your thoughts in that regard?

Justine Riccomini: What is the title of it? Which paragraph did you mention? I do not have numbered paragraphs on my sheet.

Gavin Brown: It is paragraph 9 in our copy—it refers to section 8 of the bill, which is on ministerial guidance.

Justine Riccomini: Is it the paragraph entitled, “The independence of Revenue Scotland”?

Gavin Brown: That is the paragraph title, but in the text you make the point with regard to section 8(3) that “all interactions with Ministers ... should be fully publicised in the spirit of open government.

Justine Riccomini: Yes. That relates to my belief that we need to facilitate a culture in which people should not need tax advisers, although I may well be doing myself out of a job. People should be able to understand and be completely clear about all aspects of what they do. To my mind, technically speaking, the idea behind employing a tax adviser is that the taxpayer does not have time to deal with their tax situation rather than that they do not understand it. That should apply to all aspects of taxation.

The point that I make at paragraph 9—which runs throughout my comments—is that we need a spirit of completely open government. All interactions with ministers on the running of revenue Scotland should be there for everybody to see. There is nothing wrong with that, and it is the way that revenue Scotland should go in terms of how it functions.

Gavin Brown: Dr Poon, you commented earlier that, if the GAAR in the bill makes future TAARs unnecessary, that would be a positive thing. There is probably a degree of consensus on that.

Would anything need to change in the GAAR as it is drafted to ensure that that end—namely, having fewer TAARs—actually happens? Do any amendments need to be made in that respect?

Dr Poon: I welcome that question, and I would like to take some time to consider it. My first thought is that the GAAR is, in itself, a piece of legislation that interacts with other tax law. It does not exist on its own; it is there only to apply to other areas of tax law.

Instead of thinking about how you draft the GAAR to reduce the number of TAARs in future, you could think about how you draft the next piece of legislation to allow the GAAR to be more effective in addressing schemes or arrangements that end up not fulfilling the spirit of the law in the new legislation. The GAAR can come in at that point, if you see what I mean. The GAAR is there to apply to other pieces of tax law and, in order to make it more effective at doing what it is supposed to do, you need to look at the design of your other legislation. That will make the difference.

Gavin Brown: That is helpful, thank you. As you will appreciate, the committee has to produce a report at the end of our evidence taking, so we would welcome any obvious examples, but your answer explains your position quite well.

Dr Poon: Thank you. I can perhaps think of some good examples—I am doing some research that involves comparing GAARs in different jurisdictions, and when that piece of work is done I can pass it on to the committee as further information.

Gavin Brown: Thank you. I want to explore briefly—again with regard to Dr Poon’s submission—the disclosure of tax avoidance schemes. You suggested that you would welcome the introduction of such a provision to the bill either at stage 2 or thereafter. For the record, can you outline your position on the matter?

Dr Poon: I have just produced a case note for an academic journal on a tax case that was brought to the tribunal as a result of the penalties that were imposed on a taxpayer who was using a DOTAS mechanism. The tribunal decided in that case that the penalties were correctly applied because the taxpayer, even in relying on a DOTAS, did not discharge their obligation to make an accurate return. They claimed capital losses when there was no transaction to create that loss in the first place. The use of a DOTAS did not exonerate the taxpayer from a degree of culpability, but it helped in terms of openness. The relevant legislation is schedule 24 to the Finance Act 2007.

That case involved considering the three degrees of culpability. One category of culpability covers a taxpayer being careless and not taking reasonable care; the second includes deliberate error that is not concealed; and the third concerns error that is deliberate and concealed. By concealment we are talking about creating evidence to mislead the tax authority.

Given the three degrees of culpability, a taxpayer would, without using a DOTAS, easily end up being culpable of the most severe offence.
However, if taxpayers make use of a DOTAS, it will allow the dispute to rest at the level of carelessness, which would help to mitigate the penalty imposed.

The use of a DOTAS will also allow the authority to know at an early stage what is around. If they know that something is there, they can take a look at it. If they do that sooner, less time is spent on it, and it is better for the authority because, if the scheme is discovered years later, time bars may apply.

For multiple reasons, the GAAR and DOTA schemes should go hand-in-hand.

**Gavin Brown**: That is helpful, thank you.

**John Mason (Glasgow Shettleston) (SNP)**: I will go back over some of the points that were raised, particularly in the interaction between the convener and the witnesses. On the issue of principles and legislation, you both suggested that you quite like the idea that legislation should be principles based rather than containing incredibly detailed rules.

Some witnesses have suggested that UK legislation is moving in that direction. Do you feel that that is the case? I believe that countries such as the Netherlands take a more principles-based approach.

**Dr Poon**: There is a piece of legislation—I cannot remember which it is—that started going in that direction but ended up going down the rules-based route again. It is to do with employment schemes or something similar to disguise remuneration; I am not exactly sure.

**John Mason**: That is okay; I do not need the exact case. However, you are hinting that you are not convinced that the UK has moved very far.

10:15

**Dr Poon**: Correct. I think that an attempt was made, but it was not carried through. There is a problem when something that involves more of a principles-based approach is being grafted on to the bigger corpus of legislation that is not designed in that way. How can you allow that grafting to be successful? That is what leads to failure.

During his time as chairman of the International Accounting Standards Board, David Tweedie encouraged an approach that would allow international financial reporting standards to be more principles based. That was a decade’s work. The merit of that approach is that it allows the international financial reporting standards to be more manageable in size, because people do not have to try to work in the US way, which involves thinking of all possibilities, scenarios and contingencies and making a complete set of rules. It also allows more of an element of comparability. That is important for the global economy because, if an accountant or an investor is trying to make a decision about two companies in different jurisdictions that do not have comparable standards in their accounting reporting, how are they to know whether one company is doing better in one area than the other? The principles-based approach, when it has the adherence of more countries, will allow people to compare two sets of accounts. Given that each country has its own set of rules, taking a rules-based approach makes life incredibly difficult.

**John Mason**: I take that point. The argument around principles applies to countries as well as companies. How does the bill that we are discussing fit into that? Is it more principles based? It is claimed to be.

**Dr Poon**: I think that the bill is quite similar to what we are getting in UK tax legislation.

**Justine Riccomini**: I think that it is a reasonable place to start. However, as we have said, it might need to look at things in a slightly different way—almost in a philosophical way. As Heidi Poon has said, if you try to think of every scenario in which someone could possibly avoid paying tax, you will be on a losing streak, because you cannot think of everything that everybody will ever do. People will always find a way around things. That is what tax advisers are employed to do, generally.

If the regulations were more principles based rather than trying to be more prescriptive, that would be a much better place to start. It would probably be a good idea for the Scottish Parliament to consult people such as the gentleman whom Heidi Poon mentioned, and the Office of Tax Simplification in England. I have a lot of dealings with a guy called John Whiting who works there. I am on a committee of national employment tax experts that works with the Office of Tax Simplification to change employment taxation completely so that it is easier to administer. At the moment, with all the share schemes, the expats and everything else, it is exceptionally complicated. Such an approach would also introduce some consistency of reporting with companies and individuals. Making things simpler would make it easier for everyone.

To add to the point that you made at the beginning, I am not sure that the simplification of the tax regime in the UK is necessarily working. In trying to simplify everything, we seem to be making the system more complicated—it is growing arms and legs. We need to be chopping off its arms and legs and trying to contain it. I think that that is happening because we are still trying to
tax everything that moves instead of looking at things from a more philosophical point of view.

**John Mason:** I have a huge amount of sympathy with what both of you are saying, although other witnesses have said that they like the slight move that is being made towards principles but that they do not want what we do to be too different from what the UK is doing, because some taxpayers operate in both systems and they might get confused if the two systems were too different. Is that a danger?

**Dr Poon:** It is about having a system that is simple enough to understand. Quite a radical rethink is necessary. I will give an example of what I am talking about.

I might not be right, as I left Hong Kong many years ago, but I think that the tax system there, in what is a small country in land miles, is based on territorial ties. When it comes to international tax law, either a country gets the nexus to tax a source of income because it happens to be in that jurisdiction—it arises in that country—or it taxes according to the residency of the person. Most jurisdictions have a mixture of both, which means that they end up having double taxation relief, because a source of income can be taxed in one country when it is owned by a person who is resident in another country.

As a small place, Hong Kong operates a territorial, source-based tax. The approach there does not involve thinking about where someone is resident. That takes away a suite of legislation for determining where a person is resident. Just the source of the income that arises in the territory—whether it arises from employment, a corporation or consumption—is taxed. That is a simpler system to administer, because it involves dealing with just one nexus and it avoids the complication of another nexus coming in and a decision having to be made about source and residency and who has the right to tax. When there is a competing interest, it is necessary to have another set of rules in order to decide how to give relief and which country to give the primary right to.

That could be a highly effective model for a smaller jurisdiction such as Scotland. It would eliminate all the questions about how to tax a person who is resident in Scotland as well as England, which opens the floodgates on determinations. Would we have the resources to deal with what is an extremely common occurrence? People could just change their residency to suit their tax bill.

**John Mason:** You raise some big issues, which should probably have been raised before the bill was written.

**Dr Poon:** I think that we are at the second stage. I have talked about the GAAR and so on. The issue is how we apply it to other tax legislation.

The committee is thinking about the new law that will bring in a new tax regime for Scotland. That is the time to think about how to use the principles-based approach.

**John Mason:** I do not want to go on for too long, but Ms Riccomini mentioned the idea of openness. You said that there should be more openness and that you are not happy with the present system. We have heard about other countries where everyone’s tax return is published. I believe that some countries even give their top 10 taxpayers a prize at the end of the year. Would you want to go down that route of having complete openness? There is an argument that says that every taxpayer pays money to the state, so every taxpayer should have all their tax returns published.

**Justine Riccomini:** I am not sure about the human rights or privacy side of that. That would need to be thought about before we went to that level of openness.

If Scotland had the opportunity to raise its own taxes, have its own tax jurisdiction and make its own legislation, it could do something revolutionary rather than just following what everybody else is doing. You have the ability to draft legislation differently because it has not been done yet. You are only at the tip of the iceberg. That gives Scotland’s Government the opportunity to present itself as exceptionally open, honest and absolutely transparent, which is very important these days. That is what people want. It is half the reason that people do not turn out to vote and that companies think twice about whether they want to invest in a country or employ people there. They need to understand what a country is all about and how it functions. If the people who live in Scotland’s jurisdiction can see that, it could attract new business to Scotland, attract a different level of compliance from its people and create a new culture that does not exist in the UK because everybody is so disenfranchised.

**John Mason:** That is helpful and interesting. Thank you very much.

**The Convener:** Paragraph 16 of Dr Poon’s submission says:

“There is little in the Bill to suggest what the criteria for selecting a mediator are.”

I ask her to give us some suggestions for what those criteria could be.

**Dr Poon:** Competence in the technical aspects will be one important criterion. The mediator must understand the tax that is in dispute and be able to understand both sides of the argument. I am thinking about something that is a little lower than...
the tribunal but which has the same kind of robustness in technical judgment. The mediator needs to be conversant with the tax law, which gives credibility to the decision.

The mediator must also be independent. They should not be appointed by revenue Scotland. They should also have experience in adjudicating.

**The Convener:** Are there any further points that the witnesses want to bring to the committee’s attention?

**Dr Poon:** I have a point on the simplification of tax law. When John Whiting came to speak to the tribunal judges conference, he mentioned that 100 pages of tax legislation had been removed in two years but, in those two years, Parliament added back 1,000 pages.

**The Convener:** Your submission includes details about the size of the orange and yellow handbooks. You say:

“The publisher Lexis Nexis states the 2012/13 Tolley’s Orange and Yellow Handbooks at 18,634 pages”.

You go on to say how many pages there are excluding the non-statutory and other material. Going through that is complex enough in itself. It is quite mind-numbing. Clearly, it is almost impossible for anyone to have a full grasp of that—if, indeed, it is possible at all, which I doubt. Simplification is an issue that the committee has grasped.

**Dr Poon:** That takes us back to the question of how successful tax simplification has been. It is hard to work with and simplify something that has grown to that size because it is not possible to work on the foundation. In Scotland, we have a chance to work on the foundation and create a different structure that will not grow in that shape.

**The Convener:** Thank you very much for that. On that note, we end the evidence-taking session.
Scottish Parliament  
Finance Committee  
Wednesday 2 April 2014  
[The Convener opened the meeting at 09:30]

Revenue Scotland and Tax Powers Bill: Stage 1

09:30

The Convener: Agenda item 2 is the continuation of our stage 1 consideration of the Revenue Scotland and Tax Powers Bill, as part of which we will also consider the most recent update on the implementation of the Scotland Act 2012. I welcome to the meeting Eleanor Emberson from the Scottish Government, John Kenny from the Scottish Environment Protection Agency and John King from Registers of Scotland.

As I understand there will be no opening statement from the panel, we will go straight to questions. I am sure that all of you know how things are on the committee. I will start off with some questions, after which I will open it out to colleagues around the table.

First, where are we on the cost estimates for the administration of the devolved taxes? We understand that the initial estimate was about 25 per cent lower than the cost from HM Revenue and Customs, which would have meant a saving of around £5 million. However, there have been subsequent estimates of £3.51 million for new activity. Moreover, the joint six-monthly progress update of 4 October stated that revenue Scotland was in the process of

“defining the resources that will require to be in place and trained in time for the collection of taxes to start from April 2015 ... We expect this review ... to be completed by December.”

However, the most recent update states:

“We are currently finalising the expected staffing structure”.

Can you talk us through the costs and where we are in relation to the staffing structure?

Eleanor Emberson (Scottish Government):

Certainly. On the costs, the important thing is the figures that are being compared. The original HMRC estimate was for collecting two taxes for Scotland that were exact equivalents of the United Kingdom stamp duty land tax and the UK landfill tax. That was all that HMRC could have estimated at the time, which was before we had proposals on how the devolved taxes might operate and how they might be different. Some of the cost changes involve estimates for things that would never have been included in HMRC’s estimate, because they are nothing to do with what HMRC was estimating for.

There is an estimate of £1.5 million for expenditure on information technology. We made it clear in the previous financial memorandum that we had not originally made any provision for a
central IT system for revenue Scotland. The fact is that we do not strictly need it; we could proceed as envisaged under the original financial memorandum, with revenue Scotland relying on the IT systems at Registers of Scotland and SEPA. That is absolutely all that we would need for collection.

However, we have all worked together on the design, and we have come to the view that it would be more efficient and effective for revenue Scotland to make additional investment in IT in the expectation that it would allow us to give a better service and, in particular, to do better on compliance and the analysis of data. We would hold all the data and would be able to analyse it in whatever way we wished. That would probably pay for itself over time, because we would expect to recover more tax.

There are two issues here, the first of which is about additional investment. There are other elements in the remaining £2 million that have nothing to do with what HMRC was estimating for. Our view is that the £16.7 million that we quoted as the basic cost of set-up and operation stands; in other words, we could do it all for £16.7 million. However, we would argue that it would be worth while to invest some more money in improving our compliance effort both at revenue Scotland and, as you will have seen from the figures, at SEPA. That investment should more than pay for itself in the extra tax receipts that we would get.

One other element is the cost of the tax tribunal. HMRC would not have quoted for that anyway, because it does not pay the cost of tax tribunals. It was never part of the HMRC estimate.

The Convener: I realise that, even with those additional activities, your costs would still be just over £2 million lower and you would have more robust collection and so on.

Will you answer the second part of my question?

Eleanor Emberson: Of course. We have a much more robust view of how the staffing structures should be, and that is reflected in the revised figures that we have given you. You will have noticed that not only have the figures changed for revenue Scotland and, indeed, for SEPA—I will let John Kenny talk about that in a moment—but we have structured the costs differently, because we have taken a different view on how exactly the teams would be structured and what we would need.

I was merely trying to indicate in my letter to the committee that, as you might expect, with a year to go the staffing structures are not absolutely and completely final. There is still some way to go, but I would not expect the costs to change in any significant way.

The Convener: Okay.

I have to say that your figures of £1 million set-up cost and £100,000 a year running cost for IT sound a bit ballpark to me. If you had said that the set-up cost would be £922,000 and the running costs £87,000 a year, I would take the view that you had drilled down into the figures and had looked at exactly what you need. The £1 million set-up cost and £100,000 running cost figures almost feel like a guesstimate to me. How close are you to giving us more accurate figures for IT? The figures have been relatively unchanged for a number of months now, and I would have thought that as time progressed you would have been able to refine them a wee bit more.

Eleanor Emberson: The figure has been there since December. In putting it together, we took expert advice from IT colleagues in the Scottish Government. You are right that it is, of course, an estimate. Until we have concluded a contract for delivering the system, I will not be able to give you the absolutely precise figure. I expect to have concluded that contract within a few weeks, and we can update the committee on the precise figure in the usual way later on.

The Convener: I would appreciate that.

In your update paper, you talk about the need for “a stronger approach to combating tax avoidance” and, as you point out, the committee is certainly supportive of that. You then go on to talk about the tax gap and say that for land and buildings transaction tax, you “plan to make a modest additional investment” of £230,000, which you hope will cut the tax gap from a potential £9 million to about £4.5 million. Is it right to say, then, that you will be effectively bringing in a minimum of £4.5 million?

Eleanor Emberson: No. I am sorry if we have not explained it properly, but I am afraid that that is not the intention. We were trying to estimate what the tax gap might be for land and buildings transaction tax by looking at the estimate for a Scottish share of the tax gap for stamp duty land tax, which we think is of the order of £9 million. It is difficult to estimate what the tax gap might be for a brand new tax, because, as the committee knows from passing the Land and Buildings Transaction Tax (Scotland) Bill—

The Convener: You hope that there will be less avoidance.

Eleanor Emberson: Exactly—an amount of the avoidance will have been designed out. We took 50 per cent as a very round estimate of how much might have been designed out and said that we think—cautiously—that a £4.5 million tax gap
might be left. What we are saying is that we would spend £230,000 to try to make some inroads into that £4.5 million.

**The Convener**: Okay. I see that you say in your submission:

> “we make a conservative estimate that the tax gap for LBTT could be around £4.5m a year—£22.5m over the period”

and that you now plan to reduce “the expected tax gap”. You are not seeking to clear the entire £4.5 million, but you are hoping to make significant progress in that direction, although obviously I understand that you cannot estimate the exact size of that progress and how far you might go.

In the financial memorandum, you talk about investing a reasonably similar amount—about £210,000—in reducing the potential Scottish landfill tax liability, which if it was charged would be more than £220 million. I might be missing something, but I do not see from the figures what additional revenue you hope to be able to bring in to reduce that liability.

**John Kenny (Scottish Environment Protection Agency)**: There are two potential streams. First, there is the increase from those already in the system who might be misclassifying waste and paying the lower instead of the higher rate. The more significant amount will come from illegal waste sites, which are currently outwith the UK landfill tax regime; if someone does not have a licence, they do not pay the tax. That £210,000 is specifically geared to tackling illegal waste sites. There is a whole stream of people who currently pay no tax, and the new legislation gives us a very powerful tool to bring those people into compliance and to tax them.

**The Convener**: I am aware of that, but how much do you expect to bring in from it?

**John Kenny**: It is very difficult to say, but I can give you an idea of the potential scale. We are dealing with individual sites that might each have a seven-figure liability. It is very difficult to quantify, and it has not been quantified before because there has been no liability. However, we believe that we are talking about a multimillion-pound figure.

**The Convener**: I will now open the session to colleagues round the table.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)**: I have a few questions arising from the evidence that we have taken from outside bodies. First, concern has been expressed by the Institute of Chartered Accountants of Scotland and the Chartered Institute of Taxation—but less so, it has to be said, by the Law Society of Scotland and the Faculty of Advocates—about the additional privilege afforded to the legal profession, but not other professionals. What is your perspective on the matter?

**Eleanor Emberson**: My understanding is that there is a difficulty with bringing tax advisers under the terms of privilege and confidential communication because of the legal definition of tax adviser. A legal definition that already exists in UK law allows people who are not members of professional bodies to be somehow swept up as tax advisers, and we do not want to get into the situation in which someone’s friend, who had happened to talk to them about tax, can somehow claim privilege as a tax adviser. There is a legal difficulty, but as I am not an expert on that, you might want to probe that legal point elsewhere.

**Jamie Hepburn**: That reflects some of the evidence that we have received.

Concern has also been expressed about revenue Scotland's charter and the fact that, under the bill, revenue Scotland has only to aspire to meet the charter’s terms while taxpayers have to meet them. To be fair, I know that the bill team is looking at the issue, but do you accept that there should be equivalence? Can you assure us that revenue Scotland will look to meet the terms of the charter and not just aspire to them?

**Eleanor Emberson**: Yes, I accept that completely. There should be equivalence.

**Jamie Hepburn**: Another issue that has been raised is revenue Scotland’s ability to delegate—people who are not directly employed by the organisation—to exercise some of its functions. How can we ensure that those people do not exceed their remit? Should they have to adhere to the charter? Another issue that we have previously explored relates to people who have been brought in to work for HMRC and who then leave and use their expertise to help other people devise avoidance schemes. Are such issues being considered?

**Eleanor Emberson**: As far as delegation is concerned, we have given undertakings to the committee that, before we go into live operation, it will see the schemes of delegation that we intend to have with Registers of Scotland and SEPA. Regardless of the detail of such schemes, revenue Scotland will ultimately remain liable, which means that, if anyone were to exceed their authority, it would still be revenue Scotland whom you would ultimately hold to account. We will be able to manage all that through the arrangements that we will have with Registers of Scotland and SEPA.

I am therefore comfortable with the way in which the bill is drafted. It gives us room to set down, outwith the legislation, a formal scheme of delegation that we can share both with the committee and publicly to ensure that people know its terms.
As for the point about people leaving and then providing advice to taxpayers on avoidance, the fact is that people who train with HMRC sometimes leave and become private sector tax advisers. I do not think that the situation will be fundamentally different. I do not envisage colleagues from ROS, SEPA or revenue Scotland rushing to leave and give people advice on avoidance, but the fact is that people sometimes leave public bodies.

09:45

Jamie Hepburn: From what you say, it sounds as if those issues are being worked through and the scheme will come back to the committee to give us some assurance that the matter has been looked at and something laid out.

Eleanor Emberson: Surely.

Jamie Hepburn: Finally, an issue has been raised about the structure of revenue Scotland, the board of which will not include executives. Some have suggested that they should be included, while others have not taken a particular view. Do you have a view on that?

Eleanor Emberson: I think that it can be made to work either way. I was previously the chief executive of a non-ministerial department and was a member of the board of that organisation, but I have also seen models work well in which the board holds the chief executive to account. The important thing is that we understand the structure and what it means, so that we know whom the committee would want to invite if you needed to hold revenue Scotland to account.

Jamie Hepburn: So you do not think that it is a big issue.

Eleanor Emberson: Personally, I do not think so—it could work either way.

Gavin Brown (Lothian) (Con): Thank you for submitting the joint update note, which is helpful. I will go through some of it. Under the heading “Policy Development and Secondary Legislation”, you say:

“The current timetables for the RSTP Bill and the secondary legislation should see everything in place in time by 1 April 2015.”

Why did you say “should” rather than “will”?

Eleanor Emberson: The comment relates to the current timetables. I was simply recognising that the committee, as much as anyone else, will dictate the timetable for the secondary legislation. I was just being a little cautious.

Gavin Brown: That is fine—maybe I am reading too much into the comment. Is there anything to suggest that things might not happen by that date?

Eleanor Emberson: No. I am comfortable with the timetable as it stands.

Gavin Brown: Okay. Under the heading “Tax Administration Programme”, the update says that there was a gateway review, which ended in February, and that “The overall assessment of delivery confidence was Amber.”

Will you expand on what that means? I presume that the options are red, amber and green. What are the possibilities and why was the programme described as amber?

Eleanor Emberson: There is a five-point scale that goes from red to red-amber, amber, green-amber and green. The description that goes with amber is:

“significant issues ... exist requiring management attention. These appear resolvable at this stage and if addressed promptly, should not present a cost/schedule overrun.”

In the update, I outlined what we are doing as a response to the gateway review recommendations.

Gavin Brown: What was the previous gateway review grading?

Eleanor Emberson: It was also amber.

Gavin Brown: You are in the middle of a five-point scale, at three. How do you get to green? I presume that the project needs to be green when we go live, or does that not really matter?

Eleanor Emberson: It will be green when we go live. I have run a number of large change projects and programmes and I cannot think of any that was green at this point, given the complexity of what we do. It would be unusual for a gateway review of such a complex change programme to have a green assessment. The gateway reviewers would be saying that there were absolutely no issues and that everything was perfect, which would be unusual at this point. All the previous programmes that I have run were perfectly successful. The critical thing is that we attend to the recommendations that the team has made, which we are doing.

Gavin Brown: So the fact that the project is amber just now is normal or is not a worry in any case.

Eleanor Emberson: It would be a worry if we were ignoring the recommendations, but I assure you that we are not.

Gavin Brown: Under the heading “IT Implementation”, on the third page of your update, you give larger set-up costs for revenue Scotland and identify why those costs are higher than the
now. Is it?

Eleanor Emberson: I have no reason to suppose that it will. As I said, we took expert advice on what we can expect the development costs to be. The project management cost of £230,000 is pretty firm. We took advice on the £1 million development cost. Until the contract is signed, we will not know that cost for sure, but I have no reason to suppose that it will be higher.

Gavin Brown: A similar question goes to Registers of Scotland. The cost description is “Build Cost of new LBTT System” and the set-up cost is given as being £75,000. Is there any prospect that that figure will rise, or is it set in concrete?

John King (Registers of Scotland): In the light of the explanation in the update about the slightly changed approach to IT implementation, we expect the £75,000 to be a maximum. We expect that it will come down and that there might be some reallocation of what would have been our costs to revenue Scotland.

Gavin Brown: A similar question goes to SEPA. The set-up costs that are given for the “Information Systems” cost description are £350,000. Is there any prospect that they could rise, or is that a maximum?

John Kenny: My answer is similar to that of my colleague John King. The costs are expected to reduce, if anything. That figure is a maximum.

Gavin Brown: The final page of the six-monthly update gives us a colourful chart that sets the main areas on which we are focusing against a timeline. On that chart, green shading means that the piece of work is complete and blue shading means that the piece of work is on track. The top line is IT. If I read the chart right, information and communication technology system requirements should be pretty much complete by now. Are they ready to go green?

Eleanor Emberson: They are now green.

Gavin Brown: That is good. The third line concerns staffing, roles and responsibilities. The first element in that line is to “Agree roles and responsibilities with RoS and SEPA”. Is that complete or just about complete?

Eleanor Emberson: It is close to being complete. Colleagues at ROS and SEPA are considering proposals, which the organisations need to sign off formally.

Gavin Brown: The next line concerns process mapping. I am no expert on the subject, but it looks as if that should be pretty much complete by now. Is it?

Eleanor Emberson: Yes.

Gavin Brown: It is complete.

Eleanor Emberson: I have not seen the process mapping, but I understand that it is nearly done.

Gavin Brown: In the line that concerns transition arrangements, one element is “Agreement with HMRC”. It looks as if that should be pretty much complete. Is it?

Eleanor Emberson: I do not think that I have a formal note of agreement from HMRC yet, but all the work has been done. I think that we are close to completion.

John Mason (Glasgow Shettleston) (SNP): We have the £16.7 million in costs that the convener referred to, which HMRC quoted for, and the £3.5 million in additional costs for new activity. If we had gone with HMRC, is it the case that we would still have had the extra £3.5 million?

Eleanor Emberson: I do not know what the HMRC costs would have been by now, because we would have been asking it for an estimate for collecting the two taxes as they are now legislated for. It is difficult to speculate on what HMRC would have charged. It is hard to imagine that the estimated cost would have gone down; I assume that it would have gone up, but I do not know by precisely how much.

John Mason: Yes—that is right. I assume that, if the HMRC estimate for the base work was higher than that of revenue Scotland, its charges for any extra work are likely to have been higher as well.

Eleanor Emberson: Yes, HMRC would not have our advantage of being able to look to colleagues in SEPA to do the compliance work on landfill tax—it would not have the same arrangement as we intend to have—and we would still have faced the tribunal costs. It is hard to speculate, but I do not see that the cost would have gone down.

John Mason: That is fair enough. If somebody disagrees, appeals or has a dispute at the moment, I presume that they go through a system—maybe I should know about that—so will you explain why there is an extra cost for tribunals?

Eleanor Emberson: The extra cost is for setting up the tribunal in Scotland. It is not a revenue Scotland cost. The position is complicated by the fact that the tribunal system is going through changes, but to a different timetable from the one that we have to run to for taxes. I am sorry—I forget the precise deadline for changing to the new Scottish tribunals system, but it is probably 2016. We have to operate sooner than that, so an
interim cost is associated with setting up a Scottish tax tribunal ahead of other set-up arrangements that will be made for separating the Scottish tribunals from the UK tribunals.

**John Mason:** So if somebody goes through the system at the moment, they go to the UK tribunal and that cost is covered by the UK.

**Eleanor Emberson:** There is a budget for HM Courts and Tribunals Service, which is an England and Wales body in relation to courts but a UK body in relation to tribunals. The Scottish tribunals are being merged under the overall leadership of the Lord President of the Court of Session, so the administrative arrangements will also be separated out and managed in Scotland.

**John Mason:** I assume that the UK system will make savings if it no longer has to operate tribunals in Scotland. Does that fit into the picture somewhere?

**Eleanor Emberson:** I am not really—

**John Mason:** I might be asking the wrong person about that.

**Eleanor Emberson:** I am not party to exactly how the conversations have gone on. Some tribunals are already devolved, but the tax tribunal is not one of them. The extra cost is associated with setting up a tax tribunal in Scotland from the start rather than running for a year with a UK arrangement and then having to change that.

**John Mason:** I can maybe ask somebody else about that.

Another area that I am interested in is the extra cost for SEPA. If I understand it correctly, there are two bits to that. One is the work that SEPA will take over from the current system, but I believe that the other bit involves extra work for SEPA. Will you clarify that? Am I right in saying that the two parts of the cost are covered in tables 10 and 13 of the financial memorandum?

**John Kenny:** Yes. The £320,000 cost is to do with the general compliance that we talked about on the sites that are in the system. That is the like-for-like activity that relates to what HMRC does at the moment.

**John Mason:** Will you clarify that? Table 13 shows a cost of £210,000.

**John Kenny:** That is the extra cost from the new powers that relate to illegal waste sites in the Landfill Tax (Scotland) Act 2014.

**John Mason:** That is the extra cost. Table 10 shows a cost of £230,000 and you are referring to £320,000. Is that a different figure?

**John Kenny:** The estimated running cost of £230,000 that you refer to is the total additional compliance cost for revenue Scotland and SEPA. Then there is the £210,000.

**John Mason:** Where is the £320,000? Is it in a different table?

**John Kenny:** The £320,000 is SEPA’s running costs.

**Eleanor Emberson:** It is the total in table 9.

**John Mason:** I see that now. We have the £210,000 and the £230,000. The £230,000 appears in table 1, but the £210,000 does not. Is that correct?

**John Kenny:** The £1.05 million that is shown under “Estimates for New Activity” in table 1 is the £210,000 over five years.

**John Mason:** I am with you there. Thank you for clarifying that.

On the basics, you are already out there finding illegal sites. Why is there an extra cost?

**John Kenny:** We are out there looking for sites where there has been environmental pollution or an environmental offence. Under the new powers, we will have to identify and assess the amount of waste that has been deposited in order to calculate the liability. Under the legislation, SEPA will have to do the assessment; we would not expect illegal operators to do an assessment, because they are outwith the system. Significant new work will be involved in making assessments, identifying how much waste has been deposited and what the tax liability is, liaising with revenue Scotland and subsequently with—

**John Mason:** If you found illegal waste at the moment, I take it that you would not weigh it or whatever.

**John Kenny:** We would find out whether it caused pollution or an environmental offence, but we would not work out the tax liability.

**John Mason:** At the moment, does illegal waste have to be moved somewhere else?

**John Kenny:** That happens if we can find the relevant person to do that and go through the—

**John Mason:** If you cannot find the relevant person, does the waste not still have to be moved to a legal site?

**John Kenny:** Ideally, yes, but it can take a long time to go through the process and identify the relevant person. It might be better to excavate and make the waste safe on site, by putting other barriers in place, rather than move it.

**John Mason:** Does SEPA pay for that?
John Kenny: SEPA does not; it tries to identify the responsible person to undertake that work.

John Mason: That person would have to transfer the waste to a legal site, and it would be measured and paid for at that stage.

John Kenny: That is right. The landfill tax liability could be paid at either point.

John Mason: So there are two bits of extra work. One is measuring and taxing, and I understand that bit. Extra work will also be involved in going out to look for more sites.

John Kenny: That is correct. Environmental crime is a priority for SEPA at the moment, and we put a lot of time and effort into identifying sites. As Eleanor Emberson said, we think that the extra money will pay for itself. We shall go out proactively and use our intelligence and systems to identify sites that might be liable for landfill tax. We think that putting more effort into that will pay for itself over time.

John Mason: Are a lot of sites appearing that you were not aware of?

John Kenny: I do not know whether there are a lot. We have intelligence from partners, from the public and from our systems, but we still come across sites. The money will allow us to put more effort into proactively looking for them, rather than just relying on intelligence from other people.

Jean Urquhart (Highlands and Islands) (Ind): I want to ask John Kenny about Scotland’s zero waste policy. Is that something that you take into account when you are planning the financial running costs?

John Kenny: The landfill tax supports the zero waste agenda, because it diverts material from landfill sites by making them more expensive. It has been successful in achieving that aim, so it goes hand in hand with our approach. The new legislation allows us to tackle illegal waste sites, creating a more level playing field for legitimate business and encouraging the technologies that are required to achieve zero waste.

Jean Urquhart: Historically, have we generally been reducing landfill?

John Kenny: Yes.

Jean Urquhart: Do you see that as being on time for the 2020 target?

John Kenny: The targets get harder as we move forward, and landfill will keep decreasing towards the target of zero biodegradable waste going to landfill in 2020. That is what we are moving towards.

Jean Urquhart: Will the threat of more penalties for people who abuse the system have an effect?

John Kenny: There is a risk that being more on top of the illegal aspect or having increased costs will drive people underground, but we need to tackle the illegal operators and drive towards zero waste and the solution is to have a toolkit such as the one that the legislation gives us, so that there is an effective deterrent for those who do not want to do things properly.

Jean Urquhart: I think I recall that, in the early days of this discussion, the Office for Budget Responsibility’s figures were very far out, but that has been corrected. Looking forward to 2020, what impact will there be on the staff, the IT systems and so on that are in place now? Will they automatically be used for other taxes should Scotland be raising more taxes of our own?

Eleanor Emberson: Is the question directed to me at revenue Scotland?

Jean Urquhart: Yes.

Eleanor Emberson: On the costs for SEPA, we are looking ahead on the assumption that, in five years’ time, it will still have to do broadly what it currently does in relation to collecting Scottish landfill tax, because it will still be licensing, regulating and collecting tax from broadly the same number of sites and continuing to clamp down on illegal waste.

On revenue Scotland’s capacity, if we wind up with no landfill tax—I doubt whether we will be at zero tax by 2020—we will cut down our staffing or divert staff to other things.

Michael McMahon (Uddingston and Bellshill) (Lab): When we looked at the LBTT bill, we noted that Registers of Scotland appeared to be quite well advanced in relation to providing help and support but we raised a concern that there might be a requirement for revenue Scotland to get a helpline in place. In response to those observations, the Government pointed out that the three organisations that are giving evidence this morning were

"working together to assess likely demand and plan for the provision of suitable and coordinated support to taxpayers, including via effective helplines."

It also said that we would be updated on that. Can you update us on progress?

Eleanor Emberson: Surely. Our written update contains a brief summary of the arrangements that we intend to put in place. As you will see from that, we intend to provide helpline support. There will be a single number and calls will be passed around as they need to be among the organisations to ensure that people can get an answer to their question without being told to go away and speak to someone else.
Michael McMahon: I suppose my question is about how advanced that is. Are you discovering any problems or is progress being made towards having the service in place by the time it is required?

Eleanor Emberson: We are well on track to have it in place. We do not have the single telephone number yet, but the arrangements are well developed among the organisations and we expect to have everything in place in advance of 1 April.

Michael McMahon: That is fine.

The Convener: That concludes questions from committee members. I will ask a further question as I realise that Mr King is feeling somewhat neglected, given that no questions have been directed to him. I will ask you a wee question based on Ms Emberson’s submission. It states:

“Although RoS’s role in IT build and maintenance will now reduce, it will be represented on the joint IT Implementation Project Board and Team. This will support the development of a one-stop-shop for the taxpayer for registration of property transactions and the collection of any associated tax.”

Will you expand on that a wee bit?

John King: Yes. At the time of our original appearance before the committee, ROS was looking to develop and build the LBTT collection system. However, the new IT solution has moved the situation on and it avoids ROS building the system and revenue Scotland duplicating it. We are looking for a more streamlined build, into which our ROS systems will integrate.

Taxpayers should see no difference. There will still be an online facility for submitting a tax return and payment of tax, and there will be various ways into that. It is envisaged that one of them will be through the current Registers of Scotland e-portal, which will link up with some of the other activities that taxpayers or their representatives might want to carry out in relation to the registration of the property transaction in question. The process will still be seamless for the taxpayer and it will be more efficient behind the scenes, particularly for revenue Scotland but also for Registers of Scotland.

The Convener: Thank you for that clarification.

As our witnesses have no further points to make to the committee, I thank them for their attendance this morning and for responding to our questions. We will have a five-minute suspension to allow for the changeover of witnesses.

10:10

Meeting suspended.

10:18

On resuming—

The Convener: We continue to take evidence on the Revenue Scotland and Tax Powers Bill. I welcome the Cabinet Secretary for Finance, Employment and Sustainable Growth, who is accompanied by Eleanor Emberson and Colin Miller, from the Scottish Government. I thank the cabinet secretary for coming early for this part of the meeting and invite him to make opening remarks.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Thank you, convener. The bill is the third Scottish tax bill that the committee has considered since November 2012; the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 are now on the statute book and are the first pieces of tax legislation that the Scottish Parliament has agreed in more than 300 years.

The Revenue Scotland and Tax Powers Bill has three main purposes. First, it establishes revenue Scotland as the tax authority that will be responsible for the collection and management of the first two devolved taxes. Secondly, it sets out in one place the statutory framework in which revenue Scotland will operate, including the constitution of revenue Scotland, the relationship between the taxpayer and the tax authority, revenue Scotland’s investigatory and enforcement powers, and a new, distinctively Scottish approach to tax avoidance. Thirdly, it provides a clear and robust tax management framework, which could readily be adapted in the event of the Scottish Parliament taking on more responsibility for taxes.

It is therefore important that we get the bill right. The committee’s evidence sessions over the past few months have made an important contribution in that regard, as have the comments of experts such as Professor Sir James Mirrlees and John Whiting, and witnesses from the legal and tax professions.

The task of preparing the bill was not easy. We benefited from a great deal of input from a wide range of stakeholders, whose contribution was much valued. Most of the witnesses who have given evidence have supported our general approach and I am confident that we have got the fundamentals of the bill correct. However, in an area as complex as this there will certainly be scope for improvement at stage 2. The committee has received positive suggestions for improvements from witnesses; we will reflect
carefully on those points. I look forward to the committee's stage 1 report and recommendations.

The committee has looked closely at how to combat tax avoidance. I have made it clear that we intend to take the toughest possible line on tax avoidance—I mean “avoidance” and not just the most extreme cases of abuse.

With that in mind, the bill provides, in a general anti-avoidance rule, power for revenue Scotland to take robust action against artificial tax avoidance schemes. We chose to provide two definitions of artificiality to ensure that our approach is as comprehensive as possible. Revenue Scotland will be able to take counteraction where the tax avoidance arrangement “is not a reasonable course of action ... having regard to” the principles and policy objectives on which the relevant tax legislation is based, and where “the arrangement lacks commercial substance.”

The bill sets out a number of indicators that might suggest that an approach lacks commercial substance.

The approach that we have adopted is based on straightforward, commonsense tests, which ordinary taxpayers would endorse. I was pleased that Michael Clancy, when he gave evidence to the Economy, Energy and Tourism Committee on behalf of the Law Society of Scotland, said, in relation to the anti-abuse rules in the UK Finance Act 2013:

"the Scottish GAAR provisions are much better ... less complex and should prove to be more effective."—[Official Report, Economy, Energy and Tourism Committee, 19 March 2014; c 4205.]

Of course, the bill does more than combat tax avoidance. It provides what we think is a fair, efficient and transparent approach to the administration of taxes and it seeks to balance the public interest in collecting taxes with the reasonable expectations of individual taxpayers, for example by making provision for reviews, mediation and appeals in relation to decisions that revenue Scotland takes.

I know that all members of the committee share our objective in relation to the bill, which is to ensure that it provides the best possible framework for the collection and management of the first two devolved taxes when they come into force on 1 April 2015 and a firm foundation on which we can build in the event of this Parliament becoming responsible for a wider range of taxes. I look forward to discussing the issues with the committee.

The Convener: Thank you, cabinet secretary. You said that you will take “the toughest possible line” on tax avoidance, which is very positive. You mentioned principles. Can you confirm that the Scottish Government’s approach to the GAAR is a principled one rather than a rules-based one?

John Swinney: It is a principles-based approach—that is perhaps the best way to sum it up. The policy intention is clear: we are taking all steps, through the bill and the approaches that revenue Scotland will take, to proactively send the message that tax avoidance is unacceptable. In its focus, approach and operational activities, revenue Scotland will act in the spirit of that principles-based approach on that question.

It is clear that there are choices to be made in such areas of policy. It is possible to be very specific and prescriptive about what is in and what is out, but the danger of such an approach is that it creates the incentive to find ways of operating at the margins. The principles-based approach that is enshrined in the bill is designed to signal very clearly that that type of practice will be unacceptable.

The Convener: Some witnesses have talked about the difference between the general anti-abuse rule in the UK and the general anti-avoidance rule in Scotland. It is interesting that the many witnesses who favour having certainty did not point out that some 300 targeted anti-abuse rules have had to be introduced south of the border to pin it down because a principles-based approach was not taken. What would you say to organisations such as ICAS and the CIOT that have urged that there be certainty in the legislation rather than the approach that you have taken?

John Swinney: There is a clear assurance of certainty in the legislation: do not get involved in tax avoidance. I do not know how more certain it needs to be.

The Convener: Thank you.

Witnesses have suggested to us that an anomaly in the bill is that some penalties are on the face of the bill and some are not. Why is that the case?

John Swinney: As I said in my opening remarks, we have been looking carefully at the evidence that the committee has been hearing, including the points that have been expressed about penalties. We have come to the conclusion that the provisions in the bill on penalties are not as clear and consistent as they could be. We will look further at that question in the light of the committee’s report. We will have an opportunity in the stage 1 debate to reflect on some of our responses to the points that have been raised before we get to stage 2. I imagine that I will lodge amendments at stage 2 to try to put a great deal more consistency into the penalty arrangement regarding what is on the face of the bill and what is in secondary legislation, with a greater emphasis
on what will be in the bill in the light of the evidence that the committee has heard.

The Convener: I have one further question before I open it up to committee members. Eleanor Emberson answered a question in the earlier evidence session on the structure of revenue Scotland. What is your view of the structure? A number of witnesses have said that the job of the revenue Scotland board is to hold the executives, including the chief executive, to account. Their view is that members of the executive team being members of the board will muddy the waters.

John Swinney: There is a variety of choices to be made here—well, I suppose that there are probably two choices: either members of the executive team are on the board, or they are not. I do not suppose that it is any more complicated than that. Either model can work, although one has to be careful because members of the executive being part of the board might create difficulties just through proximity and board members feeling that they are very much part of the same team as the chief executive, which might mean that the element of challenge that is required is eroded.

We have public bodies in which the chief executive is a member of the board and we have public bodies in which they are not a board member. In general, I think that the proposed arrangements retain the critical element of challenge, which is what the topic that you have raised turns on. I do not think that the factor of executives being on the board is definitive one way or the other. However, we would want to ensure that arrangements are in place to ensure that board members are able to properly and fully exercise their responsibility to challenge executive recommendation and practice, and to take the appropriate decisions at board level about the operation of revenue Scotland.

The Convener: Thank you for that. The first committee colleague to ask questions will be Malcolm Chisholm, to be followed by Jamie Hepburn.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I want to go on to the issue of the GAAR, but I will deal first with the minister’s last point. Isobel d’Inverno—I cannot remember what body she represents, but somebody will look it up for the Official Report—said:

“There are so many technical issues that revenue Scotland would have to be involved in—in relation to the administration and collection of taxes, policy and so on—that it makes a lot more sense for the chief executive, who has the greatest knowledge of those things, to be on the board.”

In the arrangement that you propose, will the chief executive still attend board meetings and be able to give such information? One of the fundamental objections seems to be about that.

10:30

John Swinney: The chief executive would have to be at board meetings, but the issue turns on whether the chief executive is a full, defined member of the board. To get down to the sharpest point, the issue at its crudest is that if the chief executive is a board member, it is difficult for the board to have a conversation that does not involve them. It is difficult to ask the chief executive to leave the room if they are a board member.

If we decided that the chief executive was not to be a board member, they would still have to attend board meetings to provide the specialist advice and information that are required. I do not see how the system could work effectively without that. However, that model gives the board the ability, without any discomfort, to have discussions that do not involve the chief executive.

Malcolm Chisholm: You said in your introduction that we would have a new and distinctively Scottish approach to tax avoidance, on which we have heard a lot of different views. We have been pulled in opposite directions by the Chartered Institute of Taxation and ICAS on the one hand and by the Scottish Trades Union Congress on the other. It would be interesting to get a concrete sense of how the approach will differ.

One concern of ICAS and the chartered institute is that the bill should say that tax avoidance is the main purpose rather than “one of the main purposes”.

John Whiting gave an interesting concrete example in relation to that. I am sorry that I will quote again; I will try not to quote too much. He said:

“I used the example of incorporation. If I advise someone on incorporation, one of the purposes of the advice is to enable them to take into account tax considerations. I would not be doing my job if I did not explain that aspect to them. Giving someone advice on incorporation is, therefore, immediately within the ambit of the provision, whereas nobody would say that the sole or main purpose of advice on incorporation is tax avoidance.”—[Official Report, Finance Committee, 5 March 2014; c 3741-2.]

Is it an implication of your proposal that incorporation would automatically be regarded as tax avoidance in Scotland, whereas that is not the case in the UK? A lot of people use incorporation to reduce the amount of tax that they pay.

John Swinney: Sustaining that point would not be reasonable. We have put in two essential factors to specify the approach on the general
anti-avoidance rule. One is artificiality, which is not very relevant to the example that John Whiting cited. The other is commercial substance, which will be closely connected to incorporation as a consideration. Mr Chisholm asked whether the very act of considering incorporation issues would fall foul of the bill. I do not think that it would, because of the commercial substance of the advice that the adviser offered the organisation involved.

I have listened carefully to the debates that Parliament has led on the subject and considered elements of the debate that have arisen in our consideration of the two previous tax bills and in questioning opportunities in Parliament. Given the temperature of the debate in Scotland, I have taken what I describe as a maximalist position on tackling tax avoidance, which we have translated into the two tests on artificiality and commercial substance to define the scope of how advisers should act.

Malcolm Chisholm: We heard quite a lot of interesting comments about the double reasonableness test in the UK, but we will not go there. Perhaps a concrete manifestation of that is the recent creation of a UK advisory panel to provide quasi-objectivity—I do not know whether that is the right term. It provides an external view in addition to the view of HM Revenue and Customs. Have you considered setting up such a panel in Scotland?

John Swinney: Much of this goes back to the point that the convener raised with me at the outset about where the principles lie. Unless I have misinterpreted where it is on these questions, I think that Parliament has a maximalist position on tackling tax avoidance. That is how it feels to me in answering questions from members of the Parliament on the subject.

If we are discussing solutions such as having an independent review panel, it feels as if we are trying to devise a mechanism to undermine the principle that we are all trying to develop, which is to attack tax avoidance—we are almost trying to approve of, condone or find a way of accepting tax avoidance initiatives. If we are going to be principled about it, why are we bothering to do that? Why are we not telling people, “This is how we do it here—just pay your taxes”? Let us not go through all sorts of elaborate activities to find ways of not paying tax.

Malcolm Chisholm: You are probably right, in that a lot of people come from that position but, moving on to my last topic, I think that it would still be right—

John Swinney: I am sorry but, if you will forgive me, I should add that there are other steps that a taxpayer could take to challenge the decisions of revenue Scotland. If revenue Scotland takes a decision and a taxpayer does not like it, there are mechanisms of challenge that they can pursue, which give a statutory force to the right of individuals to say that they think that the wrong conclusion has been reached.

Malcolm Chisholm: That is what my question was going to be about. Some points have been raised about the appeal system. A couple of them were about the fact that—as I understand it—there will be some restriction on the right of appeal, although I am not entirely clear about the details. That point was made by the Faculty of Advocates and possibly the Law Society of Scotland, too. Another point relating to appeals was made by the Law Society, which was concerned that the upper tribunal could have a single member judging the appeal at its second hearing, which is different from the current arrangement. The general impression that we got from those two legal bodies was that there were some significant changes to the appeal system. Given that you are moving to a more vigorous approach to tackling tax avoidance, it could be argued that it is even more important that we have a transparently fair appeal system.

John Swinney: On that point, I would be open to considering whether the arrangements that we have in place pass the test that Mr Chisholm has just raised, which is a fair one. The basis of appeal would have to be on a point of law, which I do not think is a particularly new requirement for accessing the appeal system. That is commonplace in mainstream court arrangements.

On the second point that Mr Chisholm raised, about whether or not the tribunal had sufficient breadth of overview and whether more members were required, that is a point of detail that I am happy to consider in the light of the evidence that the committee has heard. Whatever the committee’s judgment is on that point, I will consider the matter carefully.

On the principled point that Mr Chisholm is making that, if we are not having an independent body essentially to second-guess revenue Scotland, we will use the formal system, I accept unreservedly that the appeal mechanism must be fair and must be seen to be fair, in the interests of taxpayers as well as revenue Scotland.

Jamie Hepburn: This follows on from the questions from the convener and Mr Chisholm. I hope that it is helpful to bear in mind that only a few witnesses raised the matter of the structure of revenue Scotland and whether the executives are on the board. Most witnesses have not particularly taken a view—they are pretty relaxed about what is proposed. I hope that the committee and the Government will bear that in mind.
My areas of questioning are pretty straightforward. At a previous meeting, Mr Miller gave an undertaking to look again at a couple of issues, so I wonder whether we could have an update on those. First, the bill team was going to consider whether it is possible to more tightly define the privilege that is given to the legal profession. Secondly, I think that there was an acceptance that the drafting in relation to revenue Scotland’s charter is not particularly brilliant, so could we have an update on that?

John Swinney: Legal advisers generally think that their professional privilege will be properly protected under the bill. I think that it is tax advisers in the accountancy and advisory sector who are perhaps slightly less comfortable. The issue is not easy, because we might have difficulty defining precisely who would be acceptable to give tax advice. In the unlikely event of my offering Mr Hepburn tax advice, I suppose that I could loosely be described as a tax adviser.

Jamie Hepburn: It would be straightforward.

John Swinney: I am sure that, given Mr Hepburn’s complex financial arrangements, he would need my advice.

That highlights some of the difficulties of terminology in providing a comparable arrangement between the legal profession and the tax and accountancy profession. If we extended the privilege to tax advisers, we would probably include individuals who have no professional qualifications and who do not belong to a professional body, although some tax advisers have professional qualifications and belong to a professional body. However, we will consider whether there is a way of making progress on that question, although I fear that it might be administratively demanding. We have tried to strike a fair balance by recognising legal professional privilege, which is a well-established principle, but I think that it would go too far to extend privilege to anyone who presents themselves as a tax adviser. We will look further at the issue and, obviously, we will listen carefully to what the committee says on it.

There appear to be a couple of issues on the charter. The first is whether revenue Scotland should be required to consult externally in preparing or updating the charter of standards and values. We probably should put a duty on revenue Scotland to do that, so we will lodge amendments at stage 2 to substantiate that. The second issue is that the bill is a bit out of balance in that it says that revenue Scotland will aspire to live up to the charter, but that we expect people to aspire to it. That is an uneven playing field, which we will rectify at stage 2.

Jamie Hepburn: That is helpful, and I think that it will be welcomed across the board.

I totally accept your point about privilege, but the issue is more about whether it is possible to tightly define the circumstances in which privilege extends to the legal profession. My understanding is that it is not a blanket provision. Mr Miller suggested that that could be looked at, but I do not know whether that is possible.

John Swinney: We will explore the issue further to satisfy ourselves that we have the balance right, but the dangers and difficulties that I highlighted in my earlier answer are very real considerations that we have to reflect on.

Jamie Hepburn: Malcolm Chisholm raised the issue of appeals, which brings me on to an issue that was raised by the Faculty of Advocates. The faculty suggested that the tribunals that are set up should have distinctive names so that they will not be confused with UK ones. That seemed kind of trivial at first but, in evidence to the committee, Philip Simpson pointed out that it is not a trivial matter, because litigants could be confused about which tribunal they should appeal to. The amount of tax involved could be quite small for the taxation fraud people but, to the litigant, who might be a low-income taxpayer, it could be quite a lot. To help our colleagues in the official report, I note that that evidence was given on 12 March. Could that issue be looked at?

10:45

John Swinney: We will consider that point carefully. Our objective is to avoid any confusion about which is the relevant body, so we will make sure that the terminology that is used is precise. If there is a need to lodge amendments at stage 2, we will do so.

Jamie Hepburn: The Faculty of Advocates has helpfully made some suggestions, but I cannot remember what they are just now.

The Faculty of Advocates also pointed out that the bill refers to other acts of Parliament by year. The faculty makes the point that, if we have greater competence and if there are other tax acts in the future, that could become quite confusing. Should the references include an acronym as well? Again, that seems a trivial point, but for the future interpretation of legislation the issue could be more important than it seems at first glance.

John Swinney: Again, we are happy to look at the operational impact of such a provision.

John Mason: As Mr Hepburn has raised the issue of the professions, let us go there again. I should declare that I am a member of ICAS. I see from The Herald this week that there are 14 MSPs with a background in the legal profession.
However, I may be the only one with an accountancy background, so I am in a minority here.

Your first point was that it would be difficult to pin down what constitutes tax advisers. We have a variety of professions. The Law Society of Scotland largely regulates lawyers and solicitors, and ICAS, the Chartered Institute of Taxation and other groups regulate their members. To create an even playing field, would it be possible to specify the institutes? We have received evidence that lawyers in Scotland are not using their privilege to market themselves, whereas in London there is evidence that lawyers go out to the public and say, “Come to us and you’ll get more confidentiality than if you go to an accountant or some other adviser.”

John Swinney: As I said, I will reflect on the point. We might be able to design an approach that properly addresses the issue that I am concerned about, which is that we must be absolutely clear about the quality and nature of the advice that is being offered to individuals by accountancy and tax practitioners. We can be very clear about that in the legal profession, as the members who are covered by professional privilege are regulated by the Law Society of Scotland and it is pretty clearly defined in that context. I will see whether it is possible for us to arrive at a comparable definition in the tax and accountancy sector. However, we must be mindful of the fact that there would have to be a very disciplined test of regulation for us to come to a conclusion on that point.

John Mason: I echo what Jamie Hepburn said. My preference—and probably the preference of other committee members—would be to restrict privilege rather than extend it. That might be an easier answer. I would personally find it acceptable if the legal profession’s privilege was restricted tightly to legal matters that other advisers would not get involved in. If a matter was clearly in the tax realm, there would then not be privilege for anybody.

John Swinney: If the committee would care to reflect on those issues, as I have indicated already—and as I undertook to do with regard to the Land and Buildings Transaction Tax (Scotland) Bill and the Landfill Tax (Scotland) Bill—I will await the outcome of the committee’s deliberations before forming a view on what steps the Government needs to take to address those points.

John Mason: That is great. Thanks very much.

We have already touched on anti-avoidance measures, uncertainty and other issues of that nature. A lot of people to whom we have spoken have asked for certainty. You have already commented that that can provide a loophole or a means by which people can get around the requirements. I do not know whether you agree with me, but my feeling is that certainty is good for good taxpayers but not good when it comes to bad taxpayers, by which I mean those who try to avoid paying tax. How can we get the balance right? We need to have a fair degree of certainty so that people do not get trapped by the process.

John Swinney: The message that I am trying to convey to the committee, which I have tried to convey throughout the bill process, is that I see the bill as a set of legislative provisions that we have to get precisely right as we take them forward, but it is also about signalling a change of culture. There is a culture that says that it is quite all right to deploy an endless amount of creativity to find a way of avoiding paying tax. It is no secret that the minute that the Chancellor of the Exchequer sits down after his budget speech, various people run off to find a way of undermining whatever tightening of tax provisions the Chancellor has just announced. That is just a practice that is in common currency. What I am saying is that, as we embark on the first process of exercising tax management and collection responsibilities in Scotland in 300 years, we should start off on the right footing. The right footing is that we expect people to pay their taxes and not to invest heavily in trying to find ways of avoiding doing so. To enable us to do that, we are giving that cultural expectation a legislative form with the general anti-avoidance rule, and we are trying to set the bar as high as we possibly can.

When I have been discussing the formulation of the provisions in the bill with my officials and with the tax consultation forum, that is what has been in my thinking. I have approached those discussions with a firm idea of where I judge Parliament to be in relation to these questions. I am certainly regularly questioned in Parliament about ensuring that individuals and organisations pay the taxes that they are due to pay.

In this legislation, we will signal a difference of culture, and we will reinforce that with the measures on the general anti-avoidance rule. I do not think that there is much cause for concern on the part of good, faithful taxpayers that they will inadvertently find themselves in a difficult position, because good, faithful taxpayers will be paying their tax anyway. For people who seek to find creative ways of avoiding paying what is due to be paid, the signal is that that is not the way that we are doing things here.

John Mason: One of the professional advisers said that most taxpayers want to pay the correct amount of tax. I have to say that I was not completely convinced of that—I was slightly more sceptical. Do you have a view on that?
John Swinney: The Church of Scotland report, “Imagining Scotland’s Future: Our Vision”, which came out following the church’s imagining Scotland’s future exercise, spoke about the “joy” of paying tax. With no disrespect to the Church of Scotland, I thought that that was slightly on the optimistic side. However, I know the point that it is making, which is that we should confidently and comfortably pay tax because it is for a good purpose and contributes to a system of wider policy objectives that are broadly supported by our civic community. However, I am not sure that people take a sense of joy from paying tax. With regard to the question of whether people will minimise their tax obligation if there is a way in which they can do so, I think that I share Mr Mason’s scepticism. Therefore, I think that we should set out a clear agenda with regard to how these issues will be taken forward.

John Mason: One of your arguments, which I have to say I agree with, is that we should move to a more principles-based approach, rather than the letter of the law, which would be a slight move away from Westminster. We have had evidence that other countries are even more radical in some aspects and, for example, publish all the tax returns for everybody. Some countries even give prizes, awards and incentives to the top 10 taxpayers. We seem to be staying quite close to the tradition of confidentiality and privacy. Will you comment on that?

John Swinney: If we were to go to open publication of tax information, given the tax responsibilities that we currently have, I do not think that it would give a particularly informative picture. I am not sure that publication arrangements are necessary or whether they would inform the debate sufficiently to enable best practice in tax paying to emerge. What I have set out to the committee and what is in the bill is designed to create the best practice of tax paying within Scotland. I am pretty confident that that approach and that structure will create good practice within the tax-paying population.

John Mason: Mr Chisholm said that he was not going to discuss the reasonableness test, but I quite like it, so let us have a wee go at it. Mr Whiting gave evidence on it. One of the contrasts that was made by some professional groups is that we use the word “reasonable” only once, but in the UK there is a double reasonableness test. However, it struck me that you could use the word “reasonable” three times in one sentence, and Mr Whiting suggested that you could use it four times. I suppose that it is a question of degree, but did you have a particular reason for using the word “reasonable” just once, as compared to the UK legislation, where it is used twice?

John Swinney: The word “reasonable” once is consistent with the style and standard of the legislation that we are proposing. It is to signal that the degree of flexibility and interpretation that surrounds the payment of taxes will be kept at a minimal level within the tax system in Scotland. We inevitably dilute the principle the first time we use the word “reasonable”; we dilute it further the second time; we dilute it even more the third time; and if we use it a fourth time, I suspect that we have nothing left to dilute.

John Mason: That is helpful.

Earlier, we took evidence on the financial memorandum and, in particular, on the point that, on the basic costs, which I accept were set out some time ago, HMRC’s quote was somewhat higher than revenue Scotland’s. Since then, things have developed and we are doing what I understand to be extra work, which Ms Emberson reported on, so there is an extra cost of £3.5 million. Is it your view that HMRC would not have done any of that work if it had been doing the overall package? Do you think that its costs for doing that extra work would have been higher or lower?

John Swinney: It is important to remember the basis of the original cost estimates that we published. They were made on a like-for-like basis of HMRC essentially continuing with the current provisions on landfill tax and stamp duty land tax. We did not ask for a quote on deviating from the stamp duty land tax proposals—the status quo from the United Kingdom provisions—to the progressive land and buildings transaction tax. If we had asked for that quote, the HMRC number would have been higher, because accommodating that would have involved significantly more system redesign. To begin with, the cost estimates were on the basis of our undertaking the reforms that we wished to take forward and the HMRC provision of the status quo.

11:00

Some of the other costs that have been identified are for entirely new areas of activity, which are a product of the discussions that we have had about our own aspirations in the bill. For example, we want to tackle the illegal depositing of waste. That is not tackled at the moment, so I have to accept that a new cost arises out of that, which has emerged out of our handling of the bill. We are monitoring the cost issues closely to ensure that the core costs that have been explained to Parliament are fulfilled, that we properly account for any additional functions that we take on and that we financially control all of those elements into the bargain.
John Mason: So, if we had used HMRC, the costs would probably have been at least the same or potentially even higher.

John Swinney: The original HMRC cost was higher than the cost estimate for undertaking the system that we are implementing under revenue Scotland. If we had asked HMRC to carry out additional functions, we would have had to pay for them. There would have been a further additional cost beyond the £22.3 million of costs that were estimated by HMRC.

John Mason: One of the extra costs is for the introduction of tribunals. Presumably there will be a saving to somebody if the present tribunal system is no longer being used by Scotland. If there is a saving to the UK system, might that affect the block grant adjustment?

John Swinney: I will have a shot at that. We will see how we get on, but I suspect that the cost difference if Scottish cases come out of the UK tribunals system will be very close to de minimis, given the volume of the case load involved.

The Convener: Gavin Brown has the next question. I apologise to Gavin for implying that this evidence session would start later than it did, which is why he missed the first two or three minutes of the cabinet secretary’s opening statement.

Gavin Brown: Cabinet secretary, I was encouraged by your comments on penalties, with which I agree.

Just for clarity, did you say that you are definitely going to lodge stage 2 amendments, or is it the case that you will review the evidence in our report and may lodge amendments at stage 2?

John Swinney: I will definitely lodge some amendments. The question is, when I look at the committee’s report, how extensive those amendments will be. However, there will certainly be some amendments to change the balance between the emphasis on penalties in primary and secondary legislation.

Gavin Brown: I am encouraged by that. It makes half of my questions redundant.

John Swinney: I am glad to have obliged.

Gavin Brown: We have had some discussion about whether the chief executive of revenue Scotland should be a member of its board. Schedule 1 talks about revenue Scotland having between five and nine members. Does the Government have a view at this stage on how many members there will be for the initial set-up of revenue Scotland?

John Swinney: It is likely to be at the lower end of the spectrum. Obviously, I have to be mindful about the longevity of board members to enable proper retention of corporate expertise over the passage of time. It may edge up beyond that to give us members from which we can generate turnover and new faces coming in to build the corporate knowledge of the organisation.

Gavin Brown: Section 8, “Ministerial guidance”, provides for guidance that ministers will give to revenue Scotland. In the main, such guidance will be published, but there is a get-out clause in that regard. Some people who gave evidence said that there should be a blanket rule that guidance must always be published. As the bill stands, it will not always have to be published, although I suspect that the intention is that it will be. Can you give examples of circumstances in which you think that guidance should not be published? Is the Government listening to the evidence and considering whether all guidance should be published?

John Swinney: My presumption is that I will place greater emphasis on section 8(3), which provides:

“Ministers must publish any guidance given to Revenue Scotland under this section as they consider appropriate.”

Subsection (4) is required in that, given that we are engaging in an area of activity that involves penalties and significant decision making about what is and is not acceptable, we have to reserve the right to some private space in the context of guidance from ministers, particularly in relation to operational matters and, specifically, avoidance measures. However, I assure the committee that my approach will be more heavily vested in subsection (3).

Gavin Brown: We have had a good discussion about the GAAR and you have given your view on an independent panel of experts. Given that the GAAR goes wider than anti-avoidance rules elsewhere, a number of witnesses suggested that there should be a pre-clearance procedure with revenue Scotland, which might be formal and binding or informal and informative. Does the Government have a view on that suggestion?

John Swinney: I am not sympathetic to the suggestion of a pre-clearance arrangement, for reasons that are similar to those that I discussed in response to Mr Mason’s questions. Such an approach runs the risk of undermining the cultural approach to implementation of the bill, which I am anxious to take forward as a consequence of the acquisition of powers and responsibilities in relation to tax. A pre-clearance procedure would potentially undermine our approach.

Gavin Brown: A witness who spoke on behalf of taxpayers who are on low salaries and do not have accountants, lawyers and tax advisers suggested a number of things, including the two suggestions that I have put to you. How will you
ensure that unrepresented taxpayers, if we can so describe them, do not inadvertently fall into the GAAR?

**John Swinney:** I struggle to see where that would be a cause of great concern and where the issue could not be addressed by the support that the Government more widely makes available to financial advisory services in our communities. The relevant ground is likely to be covered by the wider financial advice that is available through a range of organisations that the Government and our local authority partners support.

**Gavin Brown:** Guidance will be read and understood by tax professionals. I was struck by the evidence that that witness gave and I wonder whether the Government will reflect on the issue.

**John Swinney:** I will look at the point in the light of what has been said. The purpose of the bill is not to entrap individuals who are in the situation that you describe. I will consider the evidence that you mentioned and, if the committee expresses a view on the issue, I will carefully consider what it says.

**Gavin Brown:** Thank you.

**The Convener:** Paragraph 66 of the policy memorandum says:

“The UK Government operates a Disclosure of Tax Avoidance Schemes (DOTAS) regime which applies to SDLT (although not to LfT). The Scottish Government does not think that a DOTAS arrangement is necessary in relation to SLfT due to the nature of the tax (tax evasion is the main issue rather than tax avoidance). Further consideration is being given to a DOTAS-type regime in relation to LBTT. Work is continuing to explore this further. It may be decided to bring forward such a scheme by way of amendments to the Bill at Stage 2.”

What is your current thinking on the issue?

**John Swinney:** There is a finely balanced judgment to be made in that regard, for the reasons that I gave to Mr Brown. This all fits into my general argument that I do not want to put in place mechanisms that undermine what is in the bill; such mechanisms are often the downfall of tax legislation.

There is a specific issue in relation to the land and buildings transaction tax, in the context of which we have considered a prior-clearance approach because of the complexity of the issues that are involved and in response to aspirations for more flexibility in that area of policy. All that is balanced against my desire not to open the floodgates. We are looking at the issue carefully to determine how we can strike the balance.

**The Convener:** Does that mean that you have not yet decided whether to lodge amendments on the issue at stage 2?
ANNEXE C: WRITTEN EVIDENCE TO THE FINANCE COMMITTEE

Audit Scotland
COSLA
Chartered Institute of Taxation
Deloitte LLP
Fiscal Commission Working Group
Justine Riccomini
Faculty of Advocates
Heidi Poon
ICAEW Scotland
ICAS
KPMG
Low Incomes Tax Reform Group
Pricewaterhouse Coopers LLP
Professor John Kay
Professor Sir James Mirrlees
Reform Scotland
Scottish Property Federation
Scottish Public Services Ombudsman
STUC
The Law Society of Scotland
UNISON Scotland
Revenue Scotland

1. The Bill makes clear provision for the establishment of Revenue Scotland as a body corporate, for its members to be appointed by Scottish Ministers and for the appointment of a chief executive who will not be a member of Revenue Scotland.

2. The Bill requires Revenue Scotland to prepare a corporate plan for each three year period which must be sent to Ministers for approval and, once approved, laid before the Scottish Parliament. The Bill also provides for Revenue Scotland to prepare an annual report on the exercise of its functions which must be sent to Ministers and laid before the Parliament.

3. Provisions in the Bill prevent Ministers from giving directions to Revenue Scotland about the exercise of its functions although they may issue guidance which Revenue Scotland must have regard to.

4. Once established as part of the Scottish Administration the Principal Accountable Officer will normally appoint the chief executive of Revenue Scotland as its Accountable Officer. The standard terms of appointment of an Accountable Officer as published in the Scottish Public Finance Manual include that the Officer is personally answerable to the Scottish Parliament for the exercise of their functions.

Accounting and audit arrangements

5. The Bill does not explicitly require the preparation of annual accounts or an external audit. However the Explanatory Notes say that “Revenue Scotland will have the status of a non-ministerial department, as distinct from the status of an NDPB. As with other NMDs Revenue Scotland will be a Crown body. Revenue Scotland is expected to have the status of an office-holder in the Scottish Administration, within the meaning of section 126 of the Scotland Act 1998, by virtue of an order under that Act”.

6. In the absence of explicit provisions in the Bill about accounting and auditing it is important that the order is made and applies from the same date as the commencement date for the Bill as a whole. Once the Scottish Government make such an order then Revenue Scotland will fall within the scope of the accounting and auditing provisions of the Public Finance and Accountability (Scotland) Act 2000 (PFA Act) which will require it to prepare accounts and send them to the Auditor General for auditing. This also provides for the conduct of performance audits.

7. Whilst we understand that it has not yet been decided exactly which sets of accounts the taxes collected will appear in, the existing audit arrangements together with those provided as a result of the proposed order will ensure that I am able to report to Parliament on the operation of Revenue Scotland and the devolved taxes.
8. Prior to the Bill coming into effect we will monitor the preparations that are being made for implementation by Revenue Scotland in its current form as part of the Scottish Government through our annual audit work.

**Access to information**

9. As would be expected the Bill provides safeguards for taxpayer information held by Revenue Scotland. However the Bill also provides for circumstances in which taxpayer information can be disclosed and one of those is where other legislation requires or permits its disclosure. The PFA Act requires audited bodies to provide the auditor with such information as they need for the purposes of their audit and therefore auditors will be able to access taxpayer information when necessary.

**National Fraud Initiative**

10. Another purpose for which taxpayer information can be disclosed under the provisions in the Bill is for the prevention and detection of crime. We have discussed the application of the various provisions for disclosure of taxpayer information with Scottish Government officials who have confirmed that the provisions have been drafted with the intention that Revenue Scotland will be able to disclose taxpayer information for the purposes of the NFI.

**Performance information**

11. Whilst it is for Revenue Scotland to determine what performance information it includes in its reporting arrangements I would expect that, in line with the discussions about information on the Scottish Rate of Income Tax, it will include information on collection, enforcement, customer service and complaints as well as any steps being taken to ensure that all tax due is identified.

12. On the basis of the comments above I am content that the Bill addresses the points raised in our consultation response.
Introduction

1. COSLA welcomes the opportunity to comment on the Scottish Government’s Tax Management Consultation. COSLA notes that the Government has brought forward this consultation to consider its approach to taxation in light of the new financial powers conveyed in the Scotland Act 2012. COSLA further notes that the Government plans to introduce a Tax Management Bill to establish a new body, Revenue Scotland, to oversee the new tax powers, following on from the consultation.

2. COSLA has responded to the land & buildings and landfill tax consultations already brought forward by the Government, following the introduction of the Act. As a general point COSLA welcomes a progressive approach to devolved taxes, if carefully managed, and that approaches should be more flexible with, for example, greater responsibility on producers of waste in the case of landfill tax.

3. In responding to the consultation COSLA has elected not to answer the specific questions but rather to set out its view more generally about the position for local government, in the new tax environment, and the importance of controlling resources close to communities, where this is best to do so. The response also comments on local government’s relationship with the new Revenue Scotland and the expertise which Local Government, as a local tax administrator, can bring. Some specific issues of a more technical nature are set out at the end of the response.

The position for local government in the new tax environment

4. COSLA would like to open its response by stating upfront our vision for strengthening local democracy. Our vision places local government at the heart of the governance of Scotland and a key partner with Scottish Government in the democracy of Scotland, in improving the outcomes of people and communities. An essential part of our vision is that local government should have maximum freedom and flexibility to control the resources needed to deliver services locally to communities.

5. The tax raising powers which local government already possesses are a key feature of the resource landscape at the local level and are a key element in our vision for greater local control of resources. COSLA would argue therefore that in the new tax management environment for Scotland, local democratic responsibility for taxation must be a key feature. Just as there is recognition in the consultation proposals that the new devolved taxes should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation.
6. This is not just about recognition of local government’s role in tax management. COSLA would argue that there is a compelling case for greater local revenue raising powers for local government. This could encompass new taxation powers as well as other approaches to raising revenue. In the same way that taxation powers are being devolved to Scotland, in turn COSLA would argue that greater powers to control resources should be devolved to the local level. These are areas which COSLA would seek specific discussions with the Scottish Government as part of wider discussions on the financial landscape and the role of local taxation. The consultation is timely in this regard and COSLA welcomes this as an opportunity to set out the central place of local taxation, as part of our aspirations for enhancing the role and powers of local government.

7. COSLA would also stress that local government is not looking at its role in isolation. To achieve the best outcomes for our communities, we must work in partnership with other stakeholders. COSLA believes that there are great advantages in utilising resources flexibly at the local level in partnership with the Scottish Government, the NHS and other public sector agencies, as well as the voluntary sector and registered social landlords. The strengthening of Community Planning Partnership arrangements, such that all public bodies have a statutory responsibility to work in partnership at the local level, as well as the development of Health & Social care integration, all point to the importance of controlling resources locally through partnership. Co-production of services with direct involvement of communities is at the heart of the way forward. Local taxation can and should play a key part in encouraging this greater local self-determination and should foster an environment where resources are controlled close to communities.

8. COSLA would therefore want to see the principles of localism and local democratic decision making applied to any changes in the tax system going forward.

**Importance of controlling resources locally**

9. Local Government has powers to set and administer Council Tax locally and this provides around 20% of core revenue, with Government grant and non-domestic rates providing the remaining core funding of around £12bn. Councils also collect non-domestic rates, though the rates poundage is set nationally. Additionally 28 Councils with housing stock also set and administer rent income which is managed through statutory housing revenue accounts. Local Government therefore commands a wide range of resources on a significant scale and has considerable experience in setting and collecting taxes at the local level.

10. The advantages of raising revenue locally should not be under-estimated. Whilst there has been a Council Tax freeze in place for several years now and the Tax only provides a proportion of local authority funding, local taxation does create a direct accountability between those responsible for delivering services and those receiving the services. The power to raise taxes locally symbolises the mature relationship of local government with its communities and helps strengthen the bond between citizen and local democracy. COSLA has fought long and hard, with some success, to shift the balance between central control of resources in favour of local democratic control.
11. Constraints to local flexibility come through centrally controlled ring-fencing of funding and central direction, though there has been a significant reduction in the amount of funding ring-fenced in recent years and this is to be welcomed. Equally COSLA would not wish to see any erosion of local tax powers as a result of the changing national tax environment. Rather this should be an opportunity to look again at what works best locally and nationally and in what ways taxes and other charges can be better aligned to reflect the local dimension. COSLA notes the reference in the Cabinet Secretary’s announcement, included in the consultation at para 2.1, that Revenues Scotland could “become responsible for more taxes in Scotland and potentially all of them.” In response to this suggestion COSLA would argue that local democratic control of taxation must remain and not be subsumed by a national centralised approach. To move taxation away from local control would be a retrograde step and COSLA would urge the Scottish Government to view this as an opportunity to enhance local taxation and not the other way round.

Relationship with Revenue Scotland

12. COSLA recognises the need to have a means to manage and administer the newly devolved taxation powers of Scotland. The establishment of Revenue Scotland seems a sensible step to oversee and develop a tax management approach around the new powers. There is a very real risk however that, in setting up Revenue Scotland, this could lead to an additional layer of bureaucracy and a centralisation of powers in the future, with Local Government’s tax powers diminished as a result. This would run contrary to COSLA’s vision for strengthening local democracy, as outlined above, and for resources to be managed by those best placed to deliver better outcomes for communities. COSLA would therefore want reassurance that this is not a move toward centralisation.

13. COSLA welcomes invitations already made to participate in establishing the new body and believes that there is a need for Local Government to have a close relationship with Revenue Scotland and a means for high level and meaningful interaction with the new body. To ensure that the relationship is cemented COSLA would argue that Local Government must have a place on the Board of Revenue Scotland. COSLA would therefore welcome early discussions on local government representation.

14. The consultation specifically asks for views on establishing Revenue Scotland as a non-ministerial department and the type of leadership/ governance approach for the new body. COSLA’s view is that Revenue Scotland will become a key player in the Scottish landscape and will have substantial powers available to it. COSLA would agree that the new body should be independent of the Scottish Government, that there is strong accountability to Parliament and that the body is open to interaction with a wide range of stakeholders. A non-executive Board with a chief executive responsible would seem appropriate, this being an understood and effective model for public sector bodies in Scotland. However a decision to go with the preferred approach should be fully tested against the benefit of alternative models.

Expertise which Local Government can bring

15. Local Government has significant experience of managing and administering tax which has been accumulated over many decades. Moreover Local Government
has coped well with the challenges presented by changes to local taxation over the years, this including managing the well documented difficulties of the rapid move from Rates to Community Charge to Council Tax.

16. As local taxation managers, Local Government already exercises many of the powers and obligations which are proposed for Revenue Scotland. These include setting and collecting tax; tackling non-compliance; inspection/ requiring taxpayer information; and managing the rights and obligations of tax payers. By engaging with Revenue Scotland there are opportunities to improve the culture of tax compliance locally and nationally.

17. It is worth pointing out Local Government’s track record in collecting taxes locally. Collection percentage rates for both Council Tax and Non Domestic Rates are in the mid 90s and have steadily increased over the years. This compares with much lower rates of collection of national taxes at the UK level. The importance of effective collection cannot be understated and COSLA would advise that great attention be placed on the considerable expertise that is already available at the local level.

18. The introduction of various welfare reform measures by the UK Government and the impact of these on local government’s collection of revenues locally is a factor which is highly relevant to the topic of tax management. What is clear is that local government is bringing its experience to bear on adapting to and managing these changes, for example introducing a Council Tax Reduction scheme to replace Council Tax Benefit, a Scottish Welfare Fund to replace elements of the UK Social Fund and managing a range of changes to Housing Benefit. This serves to re-enforce the importance of local government’s expertise as many of the issues pertaining to tax management such as ensuring compliance, managing arrears and handling appeals, are features of the changes being brought about by welfare reform.

19. Local Government can undoubtedly bring its experience to bear on the work of Revenue Scotland and COSLA would welcome an opportunity to discuss in what ways it can share experience with the new body.

**Specific issues**

20. Whilst COSLA has chosen not to answer the specific consultation questions, there are however some specific more technical points which COSLA would like to draw out. Many of these points will have been raised in individual local authority responses, but some of the more prominent points are drawn out below.

**Fixed rate penalties**

21. Local Government’s experience of using fixed penalties is mixed at best. As a deterrent fixed penalties can have very limited impact and are also expensive to pursue, with often the cost of administration outweighing the value of the recovery. There are questions as to how effective fixed rate penalties can be and therefore COSLA would argue that the new tax regime should not place over-reliance on such penalties and that the focus needs to be on measures to ensure taxpayers are encouraged to comply in the first place.
Collecting outstanding debts

22. It would be helpful if Revenue Scotland could share data with local authorities to assist in the collection of outstanding debts such as Council Tax and Non Domestic Rates. Employment information would allow more efficient use of earnings arrestments where appropriate.

Resolving tax disputes

23. COSLA notes that there is a proposal to consider mediation to resolve tax disputes if internal review does not resolve the dispute. COSLA would agree that mediation may be a sensible step, however COSLA would also welcome a focus on the tribunal system as a whole. With the introduction of the Scottish Welfare Fund and the Council Tax Reduction scheme, both administered by local authorities, the issue of how to handle appeals has been challenging and, for Council Tax Reduction, is as yet unresolved. Consideration should be given to a more effective appeals system which is flexible enough to cover a range of different appeals cases.
TABLE OF CONTENTS

Executive Summary.............................................................................................................3
Chapter 1 - Introduction and Scope of Review .............................................................7
Chapter 2 - Overarching principles .................................................................................9
Chapter 3 - Balance of funding .....................................................................................15
Chapter 4 - Local Taxation Principles .........................................................................17
Chapter 5 - Critique of Council Tax System .................................................................21
Chapter 6 - Localisation of Non-Domestic Rates .........................................................31
Chapter 7 - Local Discretionary Taxation .....................................................................45

ANNEXES

European Charter of Local Self-Government (Stasbourg, 15.X.1985)....................51
EU Comparisons ..............................................................................................................53
Executive Summary

Scope
Given the constitutional debate and the new powers to Scotland provided through the Scotland Act 2012, it is considered an important juncture for Scottish local government to have a clear statement of its ambition for Scotland. This ambition must include the framework in which local government is funded. The purpose of this review therefore is to provide a clear statement from COSLA on the structure of local government funding.

This review has been led by COSLA’s Resources and Capacity Executive Group and the approach taken has been to identify and develop principles which should form the basis of any local government funding arrangement. Specifically the scope of the review is to:

*Develop a set of principles that would underpin the funding framework for local government going forward, with specific reference to: the balance of funding; local taxation; and non-domestic rates.*

The focus of the review is on structures for local government funding rather than the quantum of local government funding. Past reviews undertaken by COSLA have focussed on overall level of resources and therefore this review does not attempt to duplicate that work.

Summary of Recommendations
In line with the scope, the recommendations of the review are summarised below:

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<th>Recommendation 1</th>
<th>The local government funding framework in Scotland should meet the 7 overarching principles as follows:</th>
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<td>• Overarching Principle 1: For both revenue and capital funding, local government must be funded on an adequate and sustainable basis;</td>
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<td>• Overarching Principle 2: There should be a fair and reasonable balance between resources provided nationally and those raised locally which is based on an appropriate level of risk.</td>
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<td>• Overarching Principle 3: A local taxation system must have the freedom to raise additional resource in a way that recognises the local needs of communities.</td>
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<td>• Overarching Principle 4: Local government should have freedom to expend their resources in a way that recognises that local is better, with no direct restrictions imposed by central government other than those defined in statute.</td>
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<td>• Overarching Principle 5: Local government funding should create an environment where Community Planning can thrive.</td>
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<td>• Overarching Principle 6: Local government should be funded in a way that drives forward the prevention and early</td>
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<td>Recommendation 2</td>
<td>Localisation of non-domestic rates is the only realistic means, in the short term, of addressing the current imbalance of funding.</td>
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| Recommendation 3 | The system of local taxation in Scotland, be it domestic or non-domestic should meet the 6 local taxation principles:  
  - LT Principle 1: Local taxation should be fair and easy to understand.  
  - LT Principle 2: Local taxation should be administratively efficient and difficult to avoid.  
  - LT Principle 3: Local taxation should have regard to the stability and buoyancy of the underlying tax base.  
  - LT Principle 4: Local taxation should be determined locally in order to establish/maintain democratic local accountability. This includes the local setting of rates.  
  - LT Principle 5: Local government should have the discretion to determine whether rates and reliefs are set nationally or locally.  
  - LT Principle 6: Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax. |
| Recommendation 4 | In terms of council tax, there should be a wholesale revaluation with regular revaluations thereafter. |
| Recommendation 5 | The council tax current bands should be extended at both the top and bottom ends including a restructuring of the bands widths. |
| Recommendation 6 | The current exemption to pay council tax for garages and lock ups should be reviewed to assess the appropriateness of this policy today. |
| Recommendation 7 | Non-domestic rates should to be returned, in full, to local control. |
| Recommendation 8 | If full localisation cannot be met in the shorter term, then it is recommended that measures are introduced which seek to retain as much of the benefits of full localisation as possible, whilst providing sufficient safeguards for both local and Scottish Government. As a minimum these measures should have the following characteristics:  
  - Allow Councils the ability to vary the rates poundage, albeit within agreed parameters. These parameters should be subject to agreement between the Scottish Government and... |
local government.

- Allow Councils greater power to set reliefs and discounts locally, building on the Government’s proposal for local powers over NDR reliefs.
- Crucially local government would not be required to seek approval from Scottish Government for implementing the above measures, within the agreed parameters.
- Should local authorities wish to explore the opportunity for cross boundary measures then local government would be empowered to do so without explicit approval from the Scottish Government, again within mutually agreed parameters.

**Recommendation 9** Individual Local Authorities have the discretion to raise additional income by levying a tax, in addition to Council Tax and Non-Domestic Rates, on either residents, occupants, property owners or visitors in the Local Authority or within a discrete area of the Local Authority.

- The power will enable Local Authorities to introduce tax(es) without the need to seek approval from Scottish Government.
- The rates and reliefs will be determined locally.
- The Local Authority will be granted powers to ensure that those on which the tax is levied have a legal obligation to pay.
- The Local Authority has the discretion to determine how the additional revenue is expended.
Chapter 1: Introduction and Scope of Review

Reason for undertaking the review

1.1 The Calman Commission on Scottish Devolution in 2009 understandably focussed on strengthening devolution from the UK Parliament to the Scottish Parliament. The Scotland Act 2012 has subsequently brought in a range of new devolved powers to the Scottish Parliament, including a Scottish rate of Income Tax, new borrowing powers for the Scottish Government and powers over a number of former UK taxes, all of which will bring changes to the funding landscape in Scotland in the next two to three years. Clearly there are changes happening to the funding structures for the Scottish Government and, in turn, this has some bearing on the current funding landscape for local government.

1.2 In line with this COSLA’s response to the Scottish Government’s Tax Management Consultation earlier in 2013, which asked for views on the creation of a new body (Revenues Scotland) to oversee taxation in Scotland, highlighted that it would not want to see an erosion of local taxation powers. COSLA argued that rather than diminish local powers this should be an opportunity to look again at what works best locally and nationally. Whilst not going into a detail at that time, the response set down a marker that there is a case for greater local revenue raising powers for local government, which could encompass new taxation powers, as well as other approaches to raising revenue.

1.3 This is an opportune time therefore for COSLA to develop its thinking in this area and to look at the funding landscape for local government. In doing so it is important to have a clear statement of what COSLA stands for in relation to the framework of local government funding. This review, led by COSLA’s Resources and Capacity Executive Group, therefore attempts to do that.

1.4 In line with the broad statement of greater local revenue raising powers for local government, the focus of the review has been to embody and further COSLA’s Vision for local government and particularly the four main principles of the Vision as set out below:

- Empowering local democracy: giving local decision making an unequivocal place in Scotland’s constitutional future.
- Integration not centralisation: bringing power closer to communities not centralising it.
- Outcomes not inputs: flexibility to focus on what makes the biggest difference locally.
- Local choice and accountability: protecting local democratic decision making and making sure that services reflect what communities want.

Scope of the review

1.5 The focus of this review has been to consider the structures of local government funding and whether they sufficiently empower local government and meet the principles of the COSLA Vision. In doing so there are a number of key areas for the review to address including consideration of the balance of funding between central and local government.
1.6 The review does not look at, or offer views on, the quantum of local government funding. A review of the quantum of funding, at the present time and into the future, was carried out in detail in 2010, when COSLA, in conjunction with the Scottish Government, undertook a comprehensive evidence based piece of work on the financial landscape. This work outlined the scale of the funding gap facing local government over the coming years. This work was used to support COSLA’s responses to both the Scottish Government’s Independent Budget Review (IBR) and the Christie Commission on the Future Delivery of Public Services in 2010. More recently this work was used to support evidence to the Scottish Parliament’s Finance Committee on demographic change. This review does not intend to repeat any of that work as it still very valid today and as such COSLA continues to use it as a strong piece of evidence.

1.7 Given the purpose of this review is to provide a clear statement from COSLA on the structure of local government funding, the Executive Group has approached this review on the basis of identifying and developing principles which should form the basis of any local government funding arrangement. In line with this the specific scope of this review is to:

*Develop a set of principles that would underpin the funding framework for local government going forward, with specific reference to: the balance of funding; local taxation; and non-domestic rates.*

1.8 This review, led by COSLA’s Resources and Capacity Executive Group, has been supported by officers from local government, including representatives from SOLACE (Society of Local Authority Chief Executives), Directors of Finance and Revenue practitioners.
Chapter 2:
Overarching principles

Introduction

2.1 The purpose of this chapter is to develop and set out the overarching principles. Overall the funding framework should enable local government to achieve better outcomes for communities and improve lives of citizens. The principles have therefore been developed with the COSLA Vision at their core and their aim is to act as a baseline in which any funding framework can be tested against.

Areas considered in developing the overarching principles

2.2 In addition to the Vision a range of other areas were referenced in order to develop the overarching principles, summarised as follows:

- The European Charter of Local Self-Government
- ‘Place’ and the reform agenda
- Prevention and early intervention
- National funding versus local funding
- Expenditure of resource
- Fairness
- Capital

2.3 These areas, and how they impact on a funding framework, are discussed in more detail below.

The European Charter of Local Self-Government

2.4 The European Charter of Local Self-Government was considered as a starting point for developing the overarching principles. COSLA’s Convention had already opened up discussions on the proposal to place a duty on Scottish Government Ministers, while exercising their functions, to observe and promote the European Charter of Local Self-Government. Article 9 of the Charter sets out principles of how local government should be resourced and a full copy of Article 9 is attached at Annex 1.

2.5 Whilst all principles set out in the Charter are absolutely pertinent to what should be sought from a funding framework, the first two principles in particular articulate the basic, but fundamental, premise that in order to deliver services, local government must be adequately funded and should have the freedom to dispose of their resources. Were these principles to be adopted then it was recognised that this would need to be bolstered by stating that resources also need to be sustainable. Principles 3 and 4 cover the structure of a framework and articulate that local government should operate in a framework where they have a level of control over their resources and are not wholly reliant on another sphere of government.

The reform agenda

2.6 It could be argued that the EU Charter is too focussed on local government as an institution. The current reform agenda, as described in the Vision, is about how services
are delivered to improve outcomes for communities. It would be easy to define principles based on local government now but it was felt that the principles should be more ambitious and support the future direction of local government services in light of the reform agenda. There is a need to consider what funding should look like where local government is seeking to drive forward radical change to the way services are prioritised and what type of services are delivered locally by all public sector partners.

2.7 With the above in mind, it was considered necessary to strike a balance between being detailed enough so that principles are meaningful but not so detailed that they are too prescriptive and inhibit the reform agenda. For example a focus could be on a principle that local government should maintain at least a third share of the Scottish Block Grant, but this is a subjective and arbitrary number as it does not reflect the principles in the COSLA Vision and could in fact be counter to them focussing on outcomes and delivery of more services locally.

2.8 A key advantage of having an explicit principle about public service reform and the strengthening of community planning, would be to put an onus on other public sector partners to bring resources to the table to enable joint priorities to be met at the local level. As part of the Scottish Government budget 2013, an agreement on joint working on community planning and resourcing has been signed and this places clear expectations on local government, the NHS and public bodies to share budget and resource planning assumptions with each other, at an early stage, and to work together through Community Planning Partnerships (CPPs) to deploy resources towards the jointly agreed priorities set out in each CPP’s Single Outcome Agreement. This agreement has been signed by the Cabinet Secretary for Finance and Sustainable Growth, the Cabinet Secretary for Health and Wellbeing, the COSLA President and the Chair of the National Community Planning Group. Given this joint agreement it is important that this is recognised in the principles.

Prevention and early intervention

2.9 Integral to the reform agenda, is the principle of prevention and early intervention. Both Christie and the IBR highlighted the need to shift to a framework that supports this agenda. Again there should be reference to this agenda in the principles, or at very least to ensure that any framework allows for a shift in the focus to prevention and early intervention.

National versus local funding

2.10 A question that should be asked in the debate around local government funding and, in particular the balance of funding, is whether there is a need for central government funding at all? The alternative would be 100% funding from local taxation. COSLA carried out a detailed review of local government finance back in 2001 called: ‘Putting the Local into Local Government Finance’, which considered this question and concluded that there is a case for national funding. That report concluded that it would not be appropriate to expect the whole cost of providing local authority services in each area to be met solely by the local tax payers of that area. This reflects continuing policy that services that are national in character should be provided at an acceptable standard country-wide whether or not the tax payers of a particular area can afford to pay for them. Furthermore, where national government places statutory and legislative requirements on local government, then these should be paid for. Specifically the report concluded that there are three main arguments for national funding:

- Compensating for differences in expenditure needs between local authorities;
- Compensating for variations on local authorities taxable resources
- Appropriateness of paying a proportion of expenditure out of national taxation,
given that many of the main local authority services reflect national policy such as minimum standards of service.

2.11 Whilst the public sector has moved on since 2001, the arguments presented in favour of national funding are still very much valid today. The Vision does not argue against national government setting national policy, rather it argues that policies are outcome focussed and that local government has the flexibility to deliver these services in a way that achieves these better outcomes.

2.12 The question that then needs to be answered is why is there a need for local funding? The European Charter states that part of resources should be derived locally and that local government should have the power to determine the rate. For local government’s principles to carry currency it is important to argue the case for why local taxation is important.

2.13 The Vision argues that services are better if delivered locally. There needs to be a greater link between local democratic accountability and local financial accountability and, in recognition of the place local government has, it should not be in a position where another sphere of government holds all the financial levers. If we are arguing that local democracy and service delivery are better, it can also be argued that local taxation can and should play a key part in encouraging greater local self-determination and should foster an environment where resources are controlled close to communities. Fundamentally local government should have the ability to easily vary its total spending. With that in mind the current local revenue base is simply too small.

2.14 Another argument against the existing balance of the local revenue base centres around the arguments of gearing, whereby a small percentage in spending, if not matched by an equal increase in grant, leads to a disproportionate increase in council tax.

2.15 The question therefore remains, what is the appropriate balance between national funding and local funding? To solely focus on a number would be misleading, as the key objective is to have local control over the ability to raise and expend resource. Without these freedoms, the balance of funding discussion is rendered redundant. On the basis that there is a principle that reinforces the need for local control over the raising and expenditure of funds, the debate does return to the balance of funding.

2.16 The fourth Principle in the European Charter also states that resources available to local authorities should be sufficiently diversified and buoyant to enable them to keep pace with the real costs of carrying out tasks. This therefore articulates the need to have a mix of funding resource to balance the risk of being too heavily reliant on one source.

2.17 The analysis of European countries highlights that Scotland is heavily reliant on central government resource and with the current council tax freeze, it can be argued that 100% of resource is controlled centrally and that local government has no income raising levers to use at its discretion. The current position is clearly not one that sits well with the Vision, but it is also difficult to arrive at a definitive position, numerically, of where the balance should lie that stands up to scrutiny. There are strong arguments for retaining a centrally funded share of local expenditure and there are strong arguments for local taxation. In order to move the debate on from an exact figure it was felt that the principle should focus on the assertion that there should be a fair and reasonable balance between resources provided centrally and those raised locally. This should be the aim if there is to real accountability between a Council and its electorate and an effective relationship with central government.

Risk

2.18 Fundamentally risk should feature in the principles and a recognition that a funding
framework must be based on an appropriate level of risk for local government. This appropriate level must acknowledge the ability of local government to absorb and respond to risk.

Expenditure of resource

2.19 Any funding system must allow local government to raise its own resource. It must also allow it to have freedom over how it expends its resources. Again, this is covered in the European Charter under the Principles 1 and 7 and this fundamental principle is articulated in the overarching principles.

Fairness

2.20 Whilst issues like distribution are out with the scope of this piece of work, it is appropriate to state that a funding framework must recognise the variation across local government and individual council’s ability to raise resource. This has been covered, to an extent, above under the arguments for central government funding, but it is worthwhile considering the concept of fairness as an explicit principle on which local government funding should be based.

2.21 Principle 5 of the EU Charter covers this concept as well as the issue of additionality of local resource. It was considered however that these are two separate and explicit principles.

Capital

2.22 The focus must be on local government funding as a whole, and it should be highlighted that the principles relate to both revenue and capital in terms of freedom and flexibility to raise and expend resources.

2.23 At present, with the introduction of the Prudential Code and the removal of ring-fencing for capital there is a framework around capital that meets a number of core tests. Local Government would not want to see this framework eroded and therefore it was considered important to include a principle relating to capital and the flexibility afforded by the Prudential Code.

Overarching Principles

2.24 Taking account of the Vision for local government and drawing from the areas considered above, the Executive Group identified the overarching (O) principles as follows:

- O Principle 1: For both revenue and capital funding, local government must be funded on an adequate and sustainable basis;
- O Principle 2: There should be a fair and reasonable balance between resources provided nationally and those raised locally which is based on an appropriate level of risk.
- O Principle 3: A local taxation system must have the freedom to raise additional resource in a way that recognises the local needs of communities.
- O Principle 4: Local government should have freedom to expend their resources in a way that recognises that local is better, with no direct restrictions imposed by central government other than those defined in statute.
- O Principle 5: Local government funding should create an environment where Community Planning can thrive.
• O Principle 6: Local government should be funded in a way that drives forward the prevention and early intervention agenda.
• O Principle 7: For the purposes of borrowing, local authorities should continue to work within the principles of the Prudential Code.

2.25 It is intended that these overarching principles inform local government’s view on any form of proposed or current local government funding and will provide a strong guiding framework to assist local government in formulating and asserting their position regarding the funding of local government.
Chapter 3: Balance of funding

Introduction

3.1 A key strand of the funding review, as defined explicitly in the scope, is to look at the balance of funding between central and local government. The right balance between the two featured as a key area in the development of the overarching principles and Overarching Principle 2 states that ‘there should be a fair and reasonable balance between resources provided nationally and those raised locally which is based on an appropriate level of risk’. To reiterate, the focus in the balance of funding debate is not therefore about a number but on an appropriate balance. It is important to focus on the principle of local control and flexibility rather than ratios and explicit figures.

3.2 This review therefore needs to focus on whether the current system does have a reasonable balance and if not how that can be addressed.

Current situation

3.3 Over recent years the balance of funding has moved to 85% central government, 15% local government (a move from 78% Scottish Government and 22% local government in 2001). In 2013/14 the balance was readjusted to 80% central government, 20% local government due to the removal of police and fire. Overall, local government’s dependency upon Scottish Government is increasing, particularly given the current council tax freeze, and in reality this means that local authorities have little financial leverage over its resources. What can be concluded from this is that the current system does not offer an appropriate balance. The focus therefore needs to be on how the funding structure can be changed to achieve a more appropriate balance of funding.

Options to address the balance of funding

3.4 COSLA looked in some depth at this area in 2001 as part of the ‘Putting Local into Local Government Finance Review’. This review recommended that moving closer to a 60:40 relationship seemed a more principled position. Whilst the current review is consciously not focusing in on an exact number, the 2001 review did highlight that in reality, and certainly in the short term, the only way to alter the existing balance of funding would be to either: significantly increase domestic local taxation (which would then require a readjustment to the Scottish block grant if the overall quantum of funding was not to increase); or transfer non-domestic rates to local control.

3.5 Another obvious option is to remove a service form local government with the corresponding grant funding being removed. This could move towards addressing the balance of funding, by reducing the share of central grant funding but, as can be demonstrated by the removal of police and fire from the local government settlement, this only manipulates the numbers and does nothing to financially empower local government. Therefore removal of a service is clearly and fundamentally counter to the Vision and this therefore again emphasises why the sole focus cannot be on be addressing the numbers.

3.6 It is also considered unlikely that there is sufficient political appetite, at this time, to significantly increase the quantum that domestic taxation can raise and therefore the only realistic option, in the short term, to address the balance of funding, is the
localisation of non-domestic rates.

3.7 Whilst emphasising again that numbers should not be the main focus, the control of non-domestic rates at a local level plus the current level of local domestic taxation (council tax) could see the balance of funding change to approximately 62% central government and 38% local government. The localisation of non-domestic rates is considered further in chapter 5.
Chapter 4:  
Local Taxation Principles

Introduction

4.1 The seven overarching principles, detailed in chapter 2, set out the baseline for a local government funding framework. Given local taxation forms a key part of the funding framework, it needs explicit consideration as part of this review and this is reflected in the review’s scope. Past reviews have focussed on looking at the various options for local taxation and compared these against each other with a view to identifying a preferred option. This review does not attempt or indeed intend to do that as there are differing political views on what is a preferred option for local taxation. The focus therefore is on the development of a set of principles against which any form of local taxation can be ‘tested’ against.

4.2 As mentioned, the constitutional landscape in Scotland is at a key juncture and in recognition of this it is important that local government has a clear statement of what it would like from a local taxation system. The aim of having local taxation principles is to set out what local government wants from a local taxation system. This allows local government to have a clear position on any future debate on local taxation without being drawn into selecting a particular model.

4.3 The principles are drawn from the overarching principles and in determining these, there is no attempt to distinguish between domestic and non-domestic tax as it is deemed appropriate that both types of taxation should meet the principles. Further chapters will aim to critique both the current forms of domestic and non-domestic taxation schemes against these principles and offer recommendations on how the current systems can be better aligned to the principles.

4.4 The section below highlights the key areas the local taxation principles should encompass.

Fair and easy to understand

4.5 As a starting point, any local taxation system must be fair and related to a person’s ability to pay. Local taxation systems should be impartial as taxpayers want a system which is fair and equitable and not subject to discretion.

4.6 The system as a whole and the resulting tax bills must be easily understood by those required to pay the tax. In addition to this, and importantly, those paying the tax must understand the reason and need for the tax and the benefit the tax confers. Both these aspects of understanding are critical to ensuring the credibility of the tax system.

Efficient and difficult to avoid

4.7 Any system of local taxation should be administratively efficient. The system should enable straightforward collection at a relatively low cost to ensure that the income generated from the tax is available to fund core services.

4.8 Local taxation systems should be developed and set up to ensure that it is difficult for tax payers to evade and avoid. If it is seen that there is scope to avoid and evade pay the tax then this can reduce the credibility and fairness of the tax system.
Stability and buoyancy of the underlying tax base

4.9 Crucially, a local taxation system must provide local government with a degree of certainty around current and future funding levels. Therefore, the system must be stable and buoyant to provide this certainty. In terms of the arguments around the balance of funding and the objective to have a reasonable balance between central and local government funding, local taxation, as a significant source of funding, must not expose local government to an unmanageable degree of financial risk. Therefore having these elements included as a principle is considered essential.

Determined locally

4.10 In determining the overarching principles it was highlighted that there needs to be a clear link between local accountability and financial accountability within the funding framework for local government. Fundamentally, local authorities need to be accountable for local taxes. If local government is to respond to local needs and be effective it needs a significant base of responsibility for its finance. There needs to be democratic accountability to the local electorate as per Overarching Principle 3 and 4. Ultimately autonomy over local taxation affords local authorities the ability to respond to communities.

4.11 There are two elements to this autonomy: local authorities must be able to set the rates of a local taxation system; but must also be able to influence the corresponding reliefs system too. Therefore, to be truly local, local government needs to have ownership of local taxation from the setting of rates to control of any reliefs or discounts. Without ownership the local authority loses its democratic accountability and fails to take account of differences between local authorities as referenced in Overarching Principle 7.

Empowering local government

4.12 In the context of the Vision and the overarching principles, the local taxation principles need to go beyond consideration of the administrative aspect and end user perspectives. The principles need to fundamentally consider and articulate the empowerment of local government. The emphasis on accountability and the need for rates and reliefs to be determined locally offer a good starting point, but this needs to be bolstered.

4.13 Fundamentally each local Authority area has different needs and priorities. Empowerment for local government requires a flexible system of local taxation which allows local authorities to raise additional funding for local projects, if required, as explicitly stated in Overarching Principle 3. Specifically, individual local authorities should be empowered to introduce additional local taxes, at their discretion, to raise additional resource. Such taxes would be truly local and developed by individual authorities.

Local taxation principles

4.14 In consolidating the points raised above, the following sets out the principles of a local taxation system:

- **LT Principle 1:** Local taxation should be fair and easy to understand.
- **LT Principle 2:** Local taxation should be administratively efficient and difficult to avoid.
- **LT Principle 3:** Local taxation should have regard to the stability and buoyancy of the underlying tax base.
- **LT Principle 4:** Local taxation should be determined locally in order to establish/maintain democratic local accountability. This includes the local setting of rates.
• LT Principle 5: Local government should have the discretion to determine whether rates and reliefs are set nationally or locally.

• LT Principle 6: Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax.
Chapter 5: Critique of Council Tax System

Introduction

5.1 This chapter looks at the current council tax system and undertakes a critique of council tax against the local taxation principles. As part of the critique, opportunities for better alignment with the principles are identified.

5.2 It is important to note that the scope of this review and critique is not to offer detailed commentary on council tax or make a case for or against council tax compared to other forms of local domestic taxation, either property or income related. Any Government would need significant time and consultation to make fundamental changes to the current tax system and therefore the focus of this chapter is to look at how the current system can be better aligned to the local taxation principles.

Overview of Council tax system

5.3 The Council Tax system was introduced in 1993 and replaced the community charge, which in turn replaced domestic rates. The council tax raises around £1.9 billion every year across Scotland. The amount that households pay in council tax depends on their band (A to H) which is based on the value of the property in 1991, and is worked out from the Band D rate. Billing authorities decide each year on the level at which band D bills will be set in their area, with bills for all other bands then charged at a fixed proportion of the Band D amount. The band values are nationally set.

5.4 Special provisions, including those for single person households, disabled persons and students exist, which may allow people in those groups a discount on their council tax. In addition to these discounts, people with low incomes may be eligible for assistance through Council Tax Reduction, which is a means tested system, and is administered by local authorities. The Council Tax Reduction Scheme replaced the Council Tax Benefit Scheme in April 2013.

Council tax critique

5.5 The critique of the current council tax system against the principles for local taxation (LT) is set out below.

LT Principle 1: Local taxation should be fair and easy to understand

5.6 The first principle includes both the subject of fairness and ease of understanding under the one heading. However the analysis below considers these under two separate areas given that the issues pertinent to their critique are quite distinct.

Fairness

5.7 Fairness is a principle that has been looked at widely in relation to council tax and other forms of taxation over the years. The 2007 Lyons Inquiry into Local Government in England highlighted that fairness is generally accepted as meaning ‘ability to pay’ but also highlighted that other important dimensions of ‘fairness’ include the link between tax and property value and the perceived benefits of local services to taxpayers.

5.8 In terms of ability to pay, the Executive Group agreed that for the majority of households,
property values are deemed to be a reasonable reflection of ability to pay. There is however recognition that for some households with the lowest incomes, they are liable to pay a higher amount of tax in relation to their income. This is offset to a significant degree by the Council Tax Reduction System which replaced the benefits system. It has been argued that any property related tax is regressive in nature but in the case of council tax, the reduction scheme is there to adjust a household’s liability to pay.

5.9 As stated, the council tax reduction scheme was introduced in April 2013, replacing the council tax benefits system. The reduction system was designed to ensure that the council tax payer would receive a similar level of assistance to that under the benefits system. One of the key principles used to develop the new scheme was ability to pay and it was felt that the reduction scheme, as it is, offered the strong link with ability to pay. Like its benefit predecessor, council tax reductions are available to households on low incomes and may reduce all or part of a household’s bill. There are around half a million household recipients of Council Tax reduction in Scotland, accounting for around 25% of households. Of these, around three quarters receive 100% benefit and therefore have no net council tax bill to pay.

5.10 Table 5.1 below shows that in 2010, the majority of benefit (as it was in 2010/11) was paid out to those in bands A and B. This also strengthens the assertion that property values are a reasonable reflection of ability to pay as those in bands F and above receive very little benefit.

<table>
<thead>
<tr>
<th>Council Tax Band</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
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<tr>
<td>Share of Households in Band</td>
<td>47%</td>
<td>31%</td>
<td>12%</td>
<td>5%</td>
<td>3%</td>
<td>1%</td>
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5.11 A further point in relation to fairness is that Council tax liability applies to occupiers of property rather than owners. This relates to the principle that all residents in an area should contribute to the funding of local services. Some argue that council tax is not fair as they do not directly use all local services and particularly those in single households use less than a household of multiple occupants. The single persons discount has been introduced to reduce this concern whereby households of single occupancy receive a 25% discount. In 2012 there were 948,208 dwellings in receipt of the single person’s discount.

5.12 In terms of ease of understanding, the structure of the council tax is relatively straightforward. Each household is issued with a single bill that reflects both the banded value and the effect of any reduction arrangements. The council tax system has strong collection rates and this can be viewed as an indicator that households are aware of their tax and what they are required to pay.

5.13 Councils do however jointly bill council tax and water and sewage charges on behalf of Scottish Water. This can sometimes make the billing process, not the system itself, subject to an element of confusion where there are different increases to the individual elements. For example, water charges have recently risen and council tax bills have not. What individual households will see is that their overall bill has increased. This may be confusing when they are told that there has been a council tax freeze.

LT Principle 2: Local taxation should be administratively efficient and difficult to avoid

5.14 The council tax system has been in place for over 20 years and is fully operational. The system is relatively straightforward to collect and high collection levels are reported
annually as can be demonstrated in the table 5.2 below.

Table 5.2: In year collection rates for Council Tax in Scotland (1998-2013)

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<tr>
<td></td>
<td>87.2%</td>
<td>91.7%</td>
<td>93.8%</td>
<td>94.4%</td>
<td>95.2%</td>
</tr>
</tbody>
</table>

5.15 An element of evasion can exist in the form of reductions or discounts, under false pretences. Councils do however have anti-fraud campaigns in place and there is increased data sharing to identify potential fraudulent claims.

5.16 The system is also considered to be administratively efficient. In the absence of revaluations, the maintenance of the council tax valuation list involves only very modest levels of expenditure. In summary therefore it is considered that the council tax performs strongly against this principle.

LT Principle 3: Local taxation should have regard to the stability and buoyancy of the underlying tax base

5.17 The underlying tax base of the council tax system is considered to be stable. The system is based on allocating a bill to each household (or more accurately chargeable dwelling) within a local authority area. Local authorities can therefore reasonably predict their expected income from council tax as the number of chargeable dwellings varying only relatively modestly year to year to reflect new houses and deleted properties.

5.18 The system is also considered to be buoyant as the tax base is growing each year. Both the areas of stability and buoyancy are demonstrated in table 5.3 below which shows that the tax base has steadily grown over the 16 years from 1996 to 2012 by 12%, with steady movement year on year.

Table 5.3: Council Tax - Number of Band D Equivalents dwellings - 1996 to 2012

<table>
<thead>
<tr>
<th>Year Number of dwellings</th>
<th>1996</th>
<th>2000</th>
<th>2004</th>
<th>2008</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,793,759</td>
<td>1,851,169</td>
<td>1,921,528</td>
<td>2,005,947</td>
<td>2,060,964</td>
</tr>
</tbody>
</table>

5.19 In summary it is considered that the council tax system performs strongly against this principle.

LT Principle 4: Local taxation should be determined locally in order to establish/maintain democratic local accountability. This includes the local setting of taxes.

5.20 When it was introduced, the intent was that the council tax would be set and collected locally. The system has therefore been developed to allow each individual local authority to set their band D rate on an annual basis. Therefore in principle there is a strong link with democratic accountability.

[However since 2007, it can be argued that the council tax has not been operating at a local level with the introduction of the council tax freeze. Whilst each individual council still sets the council tax, the financial penalties in place mean that councils would only get a financial benefit if the council tax is increased in excess of 3%. The freeze does not sit well with Principle 4 or the overarching principles of how local government should be funded. It is however a political issue for Scottish Government and local government to]
5.21 It is however important to note that, out with the freeze, the Scottish Government does have the power to cap council tax increases. Whilst this power has not been used, it existence does not sit well with principle 4.

5.22 The current Council Tax Reduction Scheme is a nationally set scheme without local discretion. This was however the preferred position of both Scottish and local government as there was the option, and still is to an extent, to replicate the position in England and introduce local schemes.

5.23 In summary, the intent of the council tax system is that it is set locally.

LT Principle 5: Local government should have the discretion to determine whether rates and reliefs are set nationally or locally.

5.24 At present there is little local discretion over rates and reliefs and where there is, these relate to discounts which can vary between 0% and 100% in relation to empty properties (unoccupied and unfurnished up to 6 months) and properties undergoing major repair. The Local Government Finance Act 2012 does not allow local authorities to vary any other discount rates and there is no discretion over the large discounts and reliefs relating to single person’s discount, disabled persons and students etc.

5.25 Whilst the current system does not meet this principle, the Executive Group are of the view that local variation in this area may not be desirable at the current time. Both COSLA and the Scottish Government agreed that the Council Tax Reduction Scheme should be a nationally set scheme and that local schemes would not be an efficient course at this time.

LT Principle 6: Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax.

5.26 This principle does not directly link to the core local taxation system and is more directed at the ability to introduce local discretionary taxes, which is considered separately at Chapter 7. It is however important to acknowledge that the current council tax system would not act as any barrier to such local discretionary taxes being introduced.

Summary of critique

5.27 The table below aims to summarise the critique as discussed above. In line with this it is concluded that the council tax system is sound overall, against the local taxation principles. There are however anomalies in the system that require to be addressed and these anomalies are detailed further in the section below.
Table 5.4: Summary of critique

<table>
<thead>
<tr>
<th></th>
<th>Principles</th>
<th>Yes</th>
<th>No</th>
<th>Partial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Local taxation should be:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Fair;</td>
<td>Y</td>
<td></td>
<td>P</td>
</tr>
<tr>
<td></td>
<td>• Easy to understand.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Local taxation should be administratively efficient and difficult to avoid/evade.</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Local taxation should have regard to the stability and buoyancy of the underlying tax base.</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Local taxation should be determined locally in order to establish/maintain democratic local accountability. This includes the local setting of rates.</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Local government should have the discretion to determine whether rates and reliefs are set nationally or locally.</td>
<td>N</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax.</td>
<td>N</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Anomalies of the current council tax system

5.28 In critiquing the council tax system, anomalies were identified which do not negate the conclusions of the critique, but if addressed, could improve the robustness of the council tax system against the principles and in particular Principle 1 relating to fairness and ease of understanding. The anomalies are set out below along with recommendations as to how these anomalies could be addressed.

Relating current property values to 1991 prices

5.29 There is a degree of difficulty for tax payers to see how their council tax liability relates to the current value of a property. The current banding structure of 8 bands is based on the value of a property as it would have been in 1991. Assessors do not have a straightforward methodology for linking the value of a property today with its value in 1991, and valuation can be particularly complex where regeneration has taken place or where new housing estates have been developed since 1991. New types of housing also exist now which did not in 1991. Furthermore, when a property is improved (e.g. an extension is built), legislation prevents the revaluation of that property until a relevant transaction, which is essentially a sale, has taken place. Once a sale has taken place then Assessors have a statutory power to revalue the property. This means that two houses of quite different values (due to the added value from the extension) can be paying the same in council tax before any sale transaction.

5.30 The council tax regulations do not have a requirement of a regular revaluation and therefore positive action is required to introduce this, whereas non-domestic rates have in place a 5 year revaluation cycle and positive action is required to prevent this. It is also worth noting that no revaluation has taken place in England, however a revaluation was carried out in Wales in 2005 and Northern Ireland carried out a revaluation in 2007.
Banding structure

5.31 Not only are house values considerably higher than they were in 1991, the range of prices has also significantly broadened. The current banding structure of 8 bands, which has been nationally set since 1993, effectively introduces a ceiling and floor to the amount of council tax a household will pay. The research undertaken has not been able to identify why 8 bands were initially chosen but what is clear twenty years on is that there is a large range of property values, even at today’s prices, in the highest band H. Further, the research from the 2007 Lyons review shows that before council tax benefit, the correlation between property value and ability to pay is strongest at the higher bands, suggesting that there is scope for broadening this band.

5.32 As can be seen in table 5.5 below, properties in band H only pay twice the amount of households in band D and three times the amount in band A. In addition there is disproportionately a greater number of households in bands A and B. Many reviews of the council tax system, including the 2007 Lyons review, have recognised these issues and recommend that they should be resolved.

Table 5.5: Council tax bands and values

<table>
<thead>
<tr>
<th>Band</th>
<th>Value (£) (as at 1991)</th>
<th>Rate of Band D</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Up to 27,000</td>
<td>6/9</td>
<td>67%</td>
</tr>
<tr>
<td>B</td>
<td>27,001 to 35,000</td>
<td>7/9</td>
<td>78%</td>
</tr>
<tr>
<td>C</td>
<td>35,001 to 45,000</td>
<td>8/9</td>
<td>89%</td>
</tr>
<tr>
<td>D</td>
<td>45,001 to 58,000</td>
<td>9/9</td>
<td>100%</td>
</tr>
<tr>
<td>E</td>
<td>58,001 to 80,000</td>
<td>11/9</td>
<td>122%</td>
</tr>
<tr>
<td>F</td>
<td>80,001 to 106,000</td>
<td>13/9</td>
<td>144%</td>
</tr>
<tr>
<td>G</td>
<td>106,001 to 212,000</td>
<td>15/9</td>
<td>167%</td>
</tr>
<tr>
<td>H</td>
<td>212,001 and over</td>
<td>18/9</td>
<td>200%</td>
</tr>
</tbody>
</table>

5.33 In addressing the anomalies identified above, the updating of the tax base, with a regular revaluation cycle, and an extension on the banding structure at both the lower and upper ends could promote stronger understanding and fairness of the system. Without these actions, there is a risk that the credibility and integrity of the council tax system could be eroded. There are a number of ways of doing this, as set out below, and the advantages and disadvantages of each have been explored.

Revaluation

5.34 Three types of revaluation have been explored: automatic revaluation; partial revaluation and wholesale revaluation.

Automatic Revaluation

5.35 Northern Ireland has implemented a computer assisted appraisal system to help implement revaluations. The tax system uses discrete property values rather than bandings and the charging mechanism is considered to create a more progressive taxation. This is broadly accepted by taxpayers who are able to understand the level of charge as it relates to the value of their property. Property values are however capped at £400k which is quite low and negates the progressive nature intended. Whilst such a system could be introduced in Scotland this could be an expensive option if significant changes to current systems were required. This would also mean a move away from a
banded system, which is the basis of the council tax, to a discrete value system more closely aligned to a domestic tax.

Partial revaluation

5.36 A partial revaluation would require defining as it would introduce certain parameters on which the revaluation would focus. This in itself could reduce the integrity of the system. A partial revaluation could look at properties where there have been significant improvements undertaken which have increased the value. Currently, unless they have been sold, such properties remain in the band they were originally valued in which could go against the fairness principle. New properties could also be looked at under a partial revaluation. New properties have to be referred back to 1991 valuations regardless of their current value and this affects the ease of understanding and opens up the risk of appeals, given that the Assessor has had to make a judgement on which banding the property should reside in.

5.37 The disadvantage of partial revaluation is that it creates a twin track system which would have the effect of generating more 'losers', as the properties affected would most likely be valued upwards. There is also the question of maintaining a revenue neutral system and how this could be made to work. Partial revaluation – difficult to define as parameters would need to be introduced that would reduce integrity of the system. This would also result in significant cost.

5.38 Further, partial revaluation would require virtually all of the overheads of updating survey data without achieving the same degree of benefit of a full revaluation.

Wholesale revaluation

5.39 The ethos of fairness in property taxation exists by the establishment of a single point in time at which all valuations are set. Any other arrangement such as partial or automatic would not achieve this. A wholesale revaluation is considered to be the best option for ensuring credibility and integrity in the system whilst improving fairness and ease of understanding. In taking forward a wholesale revaluation the following points would need to be considered:

- an initial revaluation should be followed by regular revaluations thereafter. These would encourage a better understanding of the value of a property and would lead to more stability in the longer term.
- a wholesale revaluation would also enable the introduction of more bands. It would not be possible to introduce a restructuring of the bands without a wholesale revaluation.
- In terms of timing, a first revaluation would need time and would have significant resource implications, particularly in surveying properties and reference work.
- The mechanism for appeals might also need to be looked at given that this is currently undertaken through Valuation Appeal Committees whose members are lay volunteers. The appeal system for non-domestic rating is being reconsidered at present by the Scottish Government and it may therefore be appropriate to consider both in tandem.
- It is estimated that for any revaluation, at least 2 years is needed for preparation and then up to 3 years to address appeals. The timing of appeals could be looked at with a view to making the time for submission of appeals tighter (currently it is 6 months and at the last Revaluation all appeals had to be submitted by 30th November from a 1st April introduction).
- It is recommended that a regular revaluation cycle is introduced. The exact timing of this should be subject to further consideration but should recognise that stability and integrity of the system need to be considered in determining the cycle duration.
In terms of resources, it is estimated that a revaluation would cost in the region of £7m to £10m for an initial revaluation. The cost of revaluation includes costs of survey work (which is estimated to account for at least half), the cost of appeals and any associated costs to local authorities. A cost benefit analysis would need to be undertaken but in relative terms the amounts seem relatively modest split over 5 years compared to an annual income generation of £1.9bn. If revaluations were undertaken on a regular basis then this would also reduce the resource implications of subsequent cycles.

5.40 In summary, it is recommended that a wholesale revaluation should be undertaken to address the anomalies in the council tax system and that after an initial revaluation, a regular revaluation cycle should be introduced.

Restructuring of the bands

5.41 It has been stated that an extension of the bands at both the lower and upper ends would improve the fairness and integrity of the council tax system. A restructuring of the bands and both ends would result in a redistribution of the tax burden with those in higher valued properties paying more and those in the lowest valued properties paying less. Since many of the households in the lowest bands received either full or partial council tax reduction, it could also translate into reduced costs of the Council Tax Reduction Scheme which has been devolved to Scotland with a 10% funding reduction.

5.42 Whilst the Lyons report suggested that an extension of the bands and the upper and lower ends could be undertaken without a full scale revaluation it was deemed to be practically challenging. The conclusion in this review is that it would be very difficult to decouple a revaluation from a restructuring of the bands as the two are so closely linked and it would mitigate the impact to do one without the other.

5.43 Modelling work was undertaken with councils to determine the impact of a rebanding exercise. The model was developed in one council area and then tested in 3 others. This initial modelling highlighted that:

- It is difficult to add on extra bands without restructuring the existing bands widths.
- The outcome and impact of the extension and rebanding is dependent on the number and width of bands chosen.
- The impact will vary between local authority areas depending on the number of properties councils have in each of the bands.
- It may be the case that an initial survey would be required before setting the bands to determine the desired outcome and impact.
- The impact on the tax base of individual authorities would also vary across the country and therefore there would need to be some form of equalisation with the settlement.
- Transitional relief would need to be a consideration.
- Any revaluation would require a legislative change. A revaluation would only require secondary legislation but any changes to the band widths or number would require primary legislation. The revaluation and rebanding could be more smoothly introduced if people know their proposed bands well in advance of the changes being effected through billing.

5.44 This is by no means a definitive list of observations and issues to consider and there are potentially other areas that the officer group has not identified that would require to be looked at on further examination and modelling. If the recommendation to undertake a
revaluation and rebanding is pursued, then detailed modelling work would be required to determine both the number and width of the bands. What is clear however, from the initial modelling, is that there is considerable scope to build in desired policy objectives when determining the number and width of bands.

5.45 In summary, it is recommended that there is an extension of the number of bands and a restructuring of the bands widths to improve the fairness of the council tax system. This would require further modelling work before setting out the number and widths.

Potential to raise additional income

5.46 In terms of improving the integrity of the system, revaluation and rebanding have been looked at on an income neutral basis so that the same amount of council tax is raised overall, but with the tax burden distributed differently between households. There would be scope to do this on an income generation basis should that be the desired result. This could also be looked at in terms of covering the costs of the system alongside raising additional revenue for local government to spend on services. A greater proportion of income generated through the council tax could also make moves in the right direction towards addressing, although not significantly, the balance of funding.

Impact on water and sewage charges

5.47 It is also important to acknowledge that any rebanding would need to consider the impact on the current arrangements with Scottish Water. The current charging arrangements and formula in place to calculate the level income collected relating to water charges, and therefore the amount to be passed over to Scottish Water, are based on the current system and specifically are dependant on the existing banding structure.

Garages and stores

5.48 Another anomaly in the system that has been highlighted is that garages and stores are currently exempt from paying council tax. There are currently 106,000 garages/stores in the council tax list as exempt properties. It is recommended that this is something that needs reviewed to assess whether this exemption is still relevant today.

Conclusions and recommendations

5.49 In summary, the conclusion of the council tax critique against the local taxations principles is that the council tax system, in conjunction with the reduction and discount systems in place, can be viewed as reasonably fair and easy to understand. The council tax system performed well against the other principles with the exception of the ability to set rates and reliefs locally. However it is considered that this is something there is currently little appetite for in local government.

5.50 That being said, there are anomalies in the system that if addressed could improve the robustness of the council tax system against the local taxation principles and particularly in relation to LT Principle one. Specifically it is concluded that fairness and ease of understanding could be improved by updating the base data of the system and restructuring the banding arrangements. Specifically it is recommended that:

- A wholesale revaluation is undertaken with regular revaluations introduced thereafter;
- The current bands are extended at both the top and bottom ends including a restructuring of the bands widths.
- The current exemption for garages and lock ups is reviewed to assess the appropriateness of this policy today.
Chapter 6: Localisation of Non-Domestic Rates

Introduction

6.1 Non-domestic rates (NDR) forms a core element of the funding for local government. NDR income for 2013/14 is budgeted at £2.44bn which accounts for around one fifth of local government funding (including Council Tax). Since 1990 the non-domestic rates poundage has been set nationally by the Government (the Scottish Government since devolution), but prior to this each local authority set its own rate. Therefore it has now been over two decades since local government last had substantial control over NDR.

6.2 As highlighted in Chapter 3, in the short term, the return of non-domestic rates (NDR) to local control is considered to be the only realistic way to address the balance of funding and meeting the aims of the Vision of greater powers for local government. However, whilst full localisation of NDR is viewed as the only option, there is a need to consider further the implications of having local government control of non-domestic rates, specifically, considering what the risks would be and how these risks could be mitigated.

6.3 Encompassing this is a recognition that empowerment comes through local government engaging more effectively with local businesses to bring about economic development. This is in line with the view from the Lyons Inquiry. Localisation should not therefore be considered in isolation of the need for local authorities to have a greater say over wider local economic development in their areas.

6.4 A critique of the current non-domestic rates system and the implications of returning NDR to local control has therefore been undertaken. This involved assessing the merits and weaknesses of the current NDR system and the benefits and the risks of moving to full localisation, against the local taxation principles. By critiquing both the current NDR and full localisation against the local taxation principles, this determined the extent of local control and thereby the extent of the balance of funding. This then also allowed the related risks and benefits to be drawn out. The critique then considered how any risks of full localisation could be mitigated.

6.5 It is important to note that the critique is of the NDR system of taxation and local control of NDR. The intention of the local government funding review is not to propose, for example, an alternative property tax. It is worth highlighting however that such a debate was raised at the time of the Burt Review in 2006 which proposed an alternative property tax based on a percentage of property value, this being a position supported by the Institute of Revenues, Rating and Revaluation (IRRV) at the time.

6.6 This chapter therefore looks at the following sections in line with the scope of the review:

- Section A: A critique of the current NDR system.
- Section B: A critique of full localisation of NDR.
- Section C: Summary comparison of current NDR and full localisation

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1 The Lyons Inquiry into Local Government in 2007 concluded that, whilst localisation in principle should not be ruled out, there would need to be a different relationship between local authorities and businesses built on mutual trust and shared objectives. Lyons was in favour of a local business supplement.
- Section D: Measures to mitigate the risks of full localisation of NDR.
- Section E: Conclusion and recommendations.
Section A: Current non-domestic rates system

6.7 NDR (often referred to as business rates) is a property tax for which owners or occupiers of most non-domestic properties are liable. This normally covers shops, factories and offices as well as public buildings and other amenities. There are exemptions for areas such as agricultural land and places of religious worship.

6.8 Each property has a rateable value based largely on the annual market rent for the property as assessed by professional valuers. Property revaluations normally take place every five years, though it is worth noting that the revaluation due in 2015 has been delayed by the Scottish Government for two years to 2017, following a similar delay applied in England.

6.9 The rates liability for each property is determined by taking the rateable value and multiplying by a rates poundage. The table below provides the non-domestic rates income over the past few years; the poundage rate; and the total rateable value for each year. The poundage for 2013/14 is 46.2p which is in line with the Scottish Government’s commitment to match the English poundage.

Table 6.1 - Non-Domestic Rates Income, Total Rateable Values and Poundage Rate
(source Scottish Government)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non Domestic Rates Income (£m)</td>
<td>1,924</td>
<td>2,010</td>
<td>2,138</td>
<td>2,252</td>
<td>2,362</td>
<td>2,435</td>
</tr>
<tr>
<td>Total Rateable Value (£m)</td>
<td>5,296</td>
<td>5,299</td>
<td>6,612</td>
<td>6,678</td>
<td>6,718</td>
<td>-</td>
</tr>
<tr>
<td>Poundage Rate (pence)</td>
<td>45.8</td>
<td>48.1</td>
<td>40.7</td>
<td>42.6</td>
<td>45.0</td>
<td>46.2</td>
</tr>
</tbody>
</table>

6.10 The table shows that rates income and rateable value have been increasing year on year and, over the years since 2008/09 it is worth noting that total rateable value has increased by 27% (with the rates income slightly lower due to the variations in poundage over the time). Even in real terms this suggests that there has been substantial growth in the business rates base in recent years.

Reliefs and discounts

6.11 Various reliefs and discounts are available to those liable to pay NDR. The main relief is the Small Business Bonus Scheme which is aimed at supporting small to medium enterprises and business start-ups. The Scottish Government introduced additional empty property reliefs from 2013/14 to assist new occupants of empty properties and for new builds which are empty for a period of time, in order to encourage empty properties back into use and encourage speculative developments. Other reliefs include reliefs for charitable properties and properties in rural areas. The Scottish Government has also introduced a large business supplement from 2013/14 of 0.9p and is continuing to apply a public health supplement to certain business, such as tobacco related, of 13p. Agricultural land is generally exempt from NDR and the Government has signalled its intention to continue with this practice.

6.12 In its recent response to the consultation on business rates (Supporting Business Promoting Growth), the Scottish Government indicated that it intends to allow local
government to introduce local reliefs and will develop this in partnership with local government. This intention has recently been re-stated in the Government’s consultation on the Community Empowerment (Scotland) Bill.

**NDR pooling**

6.13 Currently the total rates income in Scotland is pooled on an annual basis and funding is distributed by the Scottish Government to each local authority as part of the local government settlement. The Scottish Government forecasts the total rates pool and determines the income “target” for each local authority. Within this is an assumed level of buoyancy. If an individual Council does not reach its share of the targeted income level then the Government will compensate for this through general revenue grant. Similarly if a Council exceeds the targeted income level then this will balance against the general revenue grant provided. If the overall target is exceeded then the Scottish Government retains the additional income (buoyancy). If the overall total is not reached then the Government bears the risk, though it is worth noting that the target has exceeded year on year (as noted above the rates base has been growing substantially) and the Government has not had to step in to cover an overall shortfall.

6.14 Whilst this has been the arrangement a change to this was agreed from 2013/14 onwards under the Business Rates Incentivisation scheme (BRIS). BRIS allows a Council to keep 50% of any rates growth above its share of an agreed National Target, with the Government retaining the remaining 50%. If a Council fails to reach its target then Government will step in to cover this in full. The current BRIS is due to be reviewed in 2015.

6.15 The recent Scottish Government commissioned External Advisory Group report “Community and Enterprise in Scotland’s Town Centres” has put forward recommendations for a BRIS+ scheme. This would entail 100% of NDR collected in town centres being retained for re-investment into town centres. Such a recommendation would need to be considered in light of the recommendations set out in this chapter.

**Tax Increment Financing**

6.16 In recent years there have also been moves to look at ways to use additional rates income in more flexible ways to meet local requirements. Notably Tax Increment Financing projects (TIF) are being piloted on a limited basis in 6 local authority areas. TIFs allow local authorities to designate areas of development, whereby the rates income can be retained to help repay the cost of the development for a period of years, as agreed with the Scottish Government. In recent years the concept of TIF and other innovations for funding development have fallen within the wider concept of Enterprise Areas (15 of which have now been set up across Scotland) which look more thematically at ways to bring about development, for example in the low carbon sector. These are however restricted to quite specific large-scale developments and do not confer wider powers to local government to control NDR. Crucially all TIF pilots required the agreement of the Scottish Government.

**Critique of current non-domestic rates system**

6.17 The current non-domestic rates system has been critiqued against the local taxation principles and this is set out below.

**Principle 1: Local taxation should be fair and easy to understand.**

6.18 As with the critique for Council Tax the critique for NDR considers fairness and easy to understand under two separate areas.
6.19 The liability to pay NDR is entirely linked to discrete property values and therefore broadly reflects ability to pay. A uniform poundage across the country ensures that businesses should not feel disadvantaged by their location. Reliefs ensure that there are supports available for example to small businesses and charitable organisations.

6.20 NDR is generally understood and accepted by the Scottish business community and the concepts of rateable value and rates poundage to determine liability are well established.

6.21 The current NDR system therefore meets this principle quite strongly and this is one of its advantages.

6.22 NDR is administratively straightforward and easy to collect. Collection rates are high, suggesting that the tax is not easy to avoid/evade.

6.23 This principle is well met by the current NDR system.

6.24 The underlying tax base is broadly stable and buoyant as is demonstrated in Table 1 above. This is a key feature of the current NDR system. Periodic revaluations ensure that the link between liability and property value is maintained. However the buoyancy of the underlying tax base is only partially recognised at the local level through the Business Rates Incentivisation Scheme (BRIS).

6.25 The current system of NDR does not facilitate democratic local accountability as it is a centrally set tax, with no scope for local authorities to determine the taxation locally. Councils act solely as a collection agency and there is no link between businesses and local democratic decision making as a result of the NDR system.

6.26 Lack of local democratic accountability is therefore a fundamental weakness of the current system of NDR, which does not meet this principle.

6.27 Currently local authorities have no power to introduce local taxes under the current NDR system and only have highly limited powers to vary the relief on charitable organisations. This may change, to some extent at least for reliefs, with the Scottish Government’s proposal for more local control of reliefs, though the detail and extent of this is as yet undetermined.

6.28 This principle is not met by the current NDR system.

6.19 The liability to pay NDR is entirely linked to discrete property values and therefore broadly reflects ability to pay. A uniform poundage across the country ensures that businesses should not feel disadvantaged by their location. Reliefs ensure that there are supports available for example to small businesses and charitable organisations.

6.20 NDR is generally understood and accepted by the Scottish business community and the concepts of rateable value and rates poundage to determine liability are well established.

6.21 The current NDR system therefore meets this principle quite strongly and this is one of its advantages.

6.22 NDR is administratively straightforward and easy to collect. Collection rates are high, suggesting that the tax is not easy to avoid/evade.

6.23 This principle is well met by the current NDR system.

6.24 The underlying tax base is broadly stable and buoyant as is demonstrated in Table 1 above. This is a key feature of the current NDR system. Periodic revaluations ensure that the link between liability and property value is maintained. However the buoyancy of the underlying tax base is only partially recognised at the local level through the Business Rates Incentivisation Scheme (BRIS).

6.25 The current system of NDR does not facilitate democratic local accountability as it is a centrally set tax, with no scope for local authorities to determine the taxation locally. Councils act solely as a collection agency and there is no link between businesses and local democratic decision making as a result of the NDR system.

6.26 Lack of local democratic accountability is therefore a fundamental weakness of the current system of NDR, which does not meet this principle.

6.27 Currently local authorities have no power to introduce local taxes under the current NDR system and only have highly limited powers to vary the relief on charitable organisations. This may change, to some extent at least for reliefs, with the Scottish Government’s proposal for more local control of reliefs, though the detail and extent of this is as yet undetermined.

6.28 This principle is not met by the current NDR system.
6.29 Whilst this principle is focussed on local discretionary taxation and therefore does not apply to NDR as a core form of taxation, it is worth noting that local government does not have power to raise funding for local priorities under NDR. However, as with Council Tax, this does not prevent discretionary taxes from being implemented.

**Summary of critique of current NDR system**

6.30 Table 2 summarises the critique by answering whether the principle is met or not or whether it is partially met.

**Table 6.2: Summary of critique of current NDR system**

<table>
<thead>
<tr>
<th>Principles</th>
<th>Yes</th>
<th>No</th>
<th>Partial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Local taxation should be</td>
<td>Y</td>
<td>Y</td>
<td></td>
</tr>
<tr>
<td>• Fair.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>• Easy to understand.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2 Local taxation should be administratively efficient and difficult to avoid.</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Local taxation should have regard to the stability and buoyancy of the underlying tax base.</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Local taxation should be determined locally in order to establish/maintain democratic local accountability. This includes the local setting of rates.</td>
<td>N</td>
<td></td>
<td></td>
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<tr>
<td>5 Local government should have the discretion to determine whether rates and reliefs are set nationally or locally.</td>
<td>N</td>
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<td></td>
</tr>
<tr>
<td>6 Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax.</td>
<td>N</td>
<td></td>
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</tbody>
</table>

**Conclusion on the current NDR system**

6.31 In overall terms, whilst the current system of NDR may meet some of the more administrative principles for local taxation, fundamentally this does not address principles around ownership by local government and local democratic control which are at the core of the balance of funding and Vision local government. NDR is a centrally controlled tax and local government’s powers are limited to collecting and administering the tax.
Section B: Critique of full localisation of NDR

6.32 In order to meet the vision for local government and address the balance of funding, which are found to be deficient in the current system of non-domestic rates, full localisation of NDR is the option which needs to be considered. However, in undertaking the critique, it is important to define what full localisation means.

6.33 Full localisation of NDR means that local authorities have the power to set the rates poundage locally. This is an important point because, in the past, the debate about returning control of non-domestic rates locally has tended to focus on tax buoyancy. The arguments previously focussed on Councils’ ability to retain additional rates within their local area by growing their rates base. The last time this was debated in 2008, this led to the introduction of the Business Rates Incentivisation Scheme (BRIS). Fundamentally however, in order to be able to state that NDR is truly controlled locally, the setting of business rates must be at the core, along with the ability to set reliefs and exemptions. This is the only way in which local government would have full control and ownership of the system.

6.34 With this in mind the critique of full localisation of NDR against the local taxation principles is set out below.

Principle 1: Local taxation should be fair and easy to understand.

Fairness

6.35 As the nature of the taxation system would not change there is no reason to suggest that localisation of NDR would be any less fair. However there is a risk that localisation would not be as easily accepted by local businesses where, for example, neighbouring authorities were setting radically different rates. Nonetheless, whilst the local business communities may be reluctant to support local variation of rates, this would offer the scope for them to be able to influence the rate which could be seen as improving fairness. This point is re-iterated under Principle 4 below.

Easy to understand

6.36 Equally, as the tax system itself is not changing, then it should be no less understandable. There is an added benefit that the body collecting rates is also then responsible for the tax which should strengthen this principle. Clearly a change from a national scheme to a local one would require explanation, particularly around variations in rates across the country.

Principle 2: Local taxation should be administratively efficient and difficult to avoid.

6.37 Again as the tax system would not be changing the benefits should follow the current system in being straightforwardly administered and effectively collected. The possibility arises that businesses’ perception of Councils having power over setting rates may impact on collection, as well as businesses seeking tax efficiency potentially by relocating to a neighbouring lower charging authority.

6.38 Nonetheless it is not considered that there would be collection issues and therefore it is considered that this principle is met by full localisation.

Principle 3: Local taxation should have regard to the stability and buoyancy of the underlying tax base.

6.39 There would be benefits in terms of this principle that buoyancy is recognised where it is generated. The stability principle carries the highest risk if full localisation is applied.
Whereas, at a local government level, it could be argued that stability would follow the current scheme in that the system of taxation, which is relatively stable, would not change, at an individual Council level it is likely that there would be significant instability in the tax base. The current pooling of NDR at the national level ensures that stability is protected for individual Councils by re-distributing rates from those Councils who can grow their tax base to those who are unable to do so as readily.

6.40 If Councils are not able to reach a targeted level of NDR then the Scottish Government will adjust this by increasing general revenue funding under the pooling arrangements. If this is removed, as would be the case with full localisation, then each Council would need to fully absorb the risk for their area. Trends in total rateable value over the last 5 years indicate that the majority of Councils are either below or in line with the average rateable value growth for Scotland, with some Councils well below the average. Whilst total rateable value only gives one indication and could change over time, it is clear that different Councils would be exposed to varying levels of risk, with the potential that many could lose potentially significant income, if there is a move to full localisation.

6.41 An additional factor is that there are different industries across different Council areas, with some areas being highly dependent on one industry. Changes to those industries, for example a major closure, could have a significantly disproportionate financial impact on the affected Councils. There is a question therefore of whether local government has sufficient capacity to be exposed to risk in this way and whether full localisation carries too high a risk.

6.42 A good example of the national impact of NDR occurred recently with the threatened closure of Grangemouth, which would have had substantial implications for the viability of the NDR funding pool. It is unlikely that such an impact, had it happened, could have been contained by the local authority concerned or, for that matter local government as a whole, under full localisation.

6.43 Equally consideration would need to be given to those Council areas where NDR is currently collected for one company or industry sector which operates nationwide, for example utility or telecom companies. Full localisation could imply that the NDR income falls to that one Council, in contrast to the current arrangements whereby NDR targets are adjusted to reflect this position.

6.44 For the reasons outlined above this principle is only considered to be partially met and, importantly, the risk that there could be significant instability for individual Councils needs to be highlighted.

Principle 4: Local taxation should be determined locally in order to establish/maintain democratic local accountability. This includes the setting of local taxes.

6.45 Localisation of NDR would achieve this principle by placing the decisions for setting rates closer to local business communities. This should open up the opportunity for businesses to engage more effectively on how NDR impacts on them locally and for local authorities to be able to respond to the needs of local business communities. This would also allow for NDR decisions to be taken alongside economic development decisions within a local authority area.

Principle 5: Local government should have the discretion to determine whether rates and reliefs are set nationally or locally.

6.46 Localisation would meet this principle by enabling Councils to raise their rates locally and consequently raise additional revenue, as well as varying the reliefs provided in accordance with local priorities.
Principle 6: Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax.

6.47 Whilst recognising that this principle is focussed on local discretionary taxation and therefore does not apply to NDR as a core form of taxation, this principle would be met insofar as local government would have power to raise funding for local priorities under full localisation of NDR.

6.48 Table 6.3 summarises the critique of full localisation and demonstrates that full localisation largely meets the local taxation principles.

Table 6.3: Summary of critique of full localisation of NDR

<table>
<thead>
<tr>
<th>Principles</th>
<th>Yes</th>
<th>No</th>
<th>Partial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  • Local taxation should be Fair.  • Easy to understand.</td>
<td>Y</td>
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<td>N</td>
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</table>
Section C: Summary comparison of current NDR and full localisation

6.49 In overall terms, full localisation of NDR meets the local taxation principles. Fundamentally it gives local government more control over its share of total resource and in doing so empowers local government to have greater choice over its income base. As highlighted it also creates a closer link with local economic development. Whilst not undermining these significant benefits, it is important to note two significant issues:

Issue 1: risk to local government

6.50 The first of these is the potential risk that partial alignment with Principle 3 represents. Stability and buoyancy of the underlying tax base is a fundamental principle. It is not to say that this carries more weight than the other principles but it is important to consider whether local government, as a whole, or at individual council level, has the capacity to manage the exposure to risk that full localisation represents. Particularly in relation to some Councils’ exposure to changes to industries, such as a major business closures.

6.51 In terms of risk, Chart 6.1 summarises the current NDR system with full localisation showing how the two systems compare in terms of principle versus risk. This spells out that on the one hand the current NDR system is low on risk but also does not confer the benefits of meeting the local taxation principles. On the other hand, full localisation is better aligned to the Vision and principles but is high on financial risk for local government.

Chart 6.1: Chart of risk against principles of full localisation of NDR compared with the current NDR system

Issue 2: Willingness of national government to localisation NDR

6.52 The second issue which must also be considered is the likelihood of the Scottish Government’s willingness to give up national control of NDR, given its significant influence over economic development at the macro level. It is likely that full localisation, certainly in the immediate term, would be a significant ask of the Scottish Government, regardless of which political party is in power.

6.53 In recognition of these issues, options to mitigate these were explored and are set out in the next section. Mitigation focuses on reducing the financial risk for local government but as Chart 6.1 demonstrates, the more risk is reduced, the further you move from the benefits of meeting the principles.
Section D: Measures to mitigate the financial risk of full localisation of NDR

6.54 A range of measures which could mitigate the financial risk of full localisation of NDR have been identified and, for each measure, the benefits and risks are highlighted. In setting these measures out it needs to be recognised that there could also be a number of variations, in addition to or even between the identified measures. This is not to say therefore that they are necessarily mutually exclusive, or that one measure would stand out as being preferred compared with another.

**Localise NDR but local government collectively agrees the national rate poundage and reliefs.**

6.55 This would see local government coming together to agree the national rates poundage and reliefs for NDR collectively, with no local variation, rather than the Scottish Government having control over this. There would be scope for local government, for example, to agree a different incentivisation scheme from the current BRIS; to develop more flexible TIF arrangements; or to develop different reliefs than those currently in operation. This measure would not give power to individual Councils to set their own local rates and the economic and financial benefits this could confer locally would not be offered by this measure, although local government as a whole would have the power to determine a national rate. There would need to be collaborative arrangements in place between Councils and a means for local government to make decisions collectively.

6.56 Such a measure would give greater power to local government and would go some way to address the balance of funding, whilst offering similar protection to Councils as with the current pooling arrangement.

6.57 The key risk is that the ability of local government to reach collective agreement could be highly challenging, particularly as this could be perceived as just a replication of the existing arrangements, without the current protections offered by Scottish Government over the total NDR funding pot.

**Fix the level of NDR at a point in time, so that Councils receive a guaranteed allocation.**

6.58 With this measure the level of NDR within the local government settlement would be fixed at a point in time, such that all Councils would receive their share of NDR within the settlement, thus offering the degree of protection afforded by the settlement at that point. All Councils could then vary their rates and grow their rates base beyond the fixed point.

6.59 This would protect the share of NDR income for Councils, based on a given historic position, and would then give Councils complete control over setting rates beyond the fixed point and to take advantage of future buoyancy. There is however no guarantee of future buoyancy which, in any case, would not apply to all Councils evenly, with some councils less able to grow their tax base than others. Future growth in the NDR pool is factored in to the Local Government Settlement so there would need to be recognition that the Settlement would be lower than with the NDR pool in operation and those Councils less able to grow their rates base would need to make up the difference locally.

6.60 Importantly, whilst moving closer to full localisation over time, in the short term this approach would differ from full localisation in that the level of buoyancy already factored into each Council’s share of NDR would remain with them. Under full localisation those Councils which are more likely to generate buoyancy would retain this in their local area whilst others who are less able to generate buoyancy would need to make up any shortfall locally. Therefore this approach would afford a degree of protection to those Councils which would not be available under full localisation.
Allow Councils to group together to operate local NDR pooling.

6.61 A measure could be to localise NDR but allow Councils themselves to group together to have local pooling arrangements. Councils would have the choice whether to join with other Councils or go it alone.

6.62 This would offer control of the NDR pool to Councils locally ie full localisation. Those Councils who were then looking for protections offered by pooling could then agree collectively with other Councils how best to operate pooling arrangements.

6.63 The key risk would be how easy it would be for those Councils seeking protection to be able to come together with other Councils, who are more likely to benefit from localisation, and to define and agree the pooling arrangements.

Retain the existing pooling arrangements but allow Councils to opt out if they wish.

6.64 This measure would retain the existing pooling arrangements but, for those Councils who wish to have greater control, they would have the option to opt out and control their own NDR. Any Council opting out would have their NDR allocation fixed, but would then have flexibility to vary their rates/ grow their rates base beyond the fixed point, whilst accepting the risks around local control.

6.65 This would retain protections for those Councils preferring the safety net afforded by the current pooling arrangements, whilst offering greater control of NDR to those Councils who want it.

6.66 The risk under this measure is that this could lead to significant disparity between those Councils who are able to take advantage of opting out and those who are not. This would only result in shifting the balance of funding for some Councils and would not meet the vision for local government as a whole.

Keep the national scheme but allow Councils to vary rates within set parameters.

6.67 Under this measure NDR would be retained as a national scheme however the Scottish Government would set parameters within which Councils could vary their rates locally. For example a parameter could be 3p in the pound above or below a nationally set poundage. There would be a pooling arrangement with a nationally set rates poundage, and Councils would be required to absorb the financial risk for the equivalent movement from this.

6.68 This measure could be attractive as it could allow local flexibility over setting of rates which could be coupled with other local flexibilities such as reliefs, BRIS and TIF. However fundamentally this would not address the issue of full local control over NDR.

6.69 There is a risk that displacement could occur as some Councils may be better able to influence their rate locally than others.

Keep the national scheme but look to enhance existing measures locally.

6.70 This measure would be the furthest away from full localisation but may offer some scope to increase powers for local government over NDR in some areas.

6.71 The Scottish Government has signalled that it is looking to introduce local rates reliefs in conjunction with local government, as a result of its review of business rates consultation. This therefore offers some increased flexibility from the current NDR system which will need to be explored further. An extension of this could be for local government to have powers to introduce local supplements. Business Improvement Districts (BIDs) whereby local businesses pay an additional rate to support town centre improvements perhaps sets a precedent for this.
6.72 There could also be scope to look again at flexibilities around the current BRIS and TIF schemes, to give far greater control of these to local government. This would offer the opportunity to draw from some of the benefits of these existing measures and to build on them with a much greater local dimension.

6.73 It would however need to be recognised that this measure could only offer some additional control at the margin, whilst protecting the safeguards in the current NDR system, and fundamentally this would not confer significantly greater power over NDR for local government.

Conclusion on approaches to mitigate the risks of full localisation of NDR

6.74 The measures outlined above offer a range of mitigations against the risks of full localisation but most of these measures also carry many of the risks of full localisation, particularly around the different levels of risk exposure between Councils. Whilst some Councils would be able to take better advantage of these mitigations, local government would need to collectively afford protection to some Councils and protect the overall rates base, without the intervention of the Scottish Government, and this could be highly challenging.
Section E: Conclusion and recommendations

6.75 The overall conclusion of this chapter is that the full localisation of NDR would realise a number of significant benefits for local government. Full localisation largely meets the local taxation principles and could substantively readress the balance of funding. In meeting these key objectives, the outcome is greater empowerment of local government. It is therefore the primary recommendation that non-domestic rates be returned, in full, to local control.

6.76 This Chapter has however also identified that full localisation could present significant financial risk for local government, as a whole and/or at individual council level, by exposing the stability and buoyancy of the underlying tax base. There may be measures which can mitigate some of the risks, whilst seeking to retain as much of the benefits of full localisation as possible. A number of options have been set out. This is not an exhaustive list of options but what is clear from identifying and critiquing these options is that the further the move to mitigate risks, the further this moves away from the local taxation principles and ultimately the Vision for local government. It was also highlighted that any Scottish Government may be unwilling to relinquish control of non-domestic rates in its entirety.

6.77 To some extent these risks are greater if an immediate move to full localisation was taken. Therefore in recognition of this, but without wanting to lose the benefits of greater empowerment for local government, the following is offered as a pragmatic solution, in the shorter term, that could allow local government to move forward on a partnership basis with the Scottish Government. The recommendation below builds on the benefits local government would wish to see from full localisation but recognises that pragmatically there needs to be space to negotiate with Scottish Government. This however is not to negate the longer term ambition of full localisation.

6.78 If full localisation cannot be met in the shorter term, then it is recommended that measures are introduced which seek to retain as much of the benefits of full localisation as possible, whilst providing sufficient safeguards for both local and Scottish Government. As a minimum these measures should have the following characteristics:

- Allow Councils the ability to vary the rates poundage, albeit within agreed parameters. These parameters should be subject to agreement between the Scottish Government and local government.
- Allow Councils greater power to set reliefs and discounts locally, building on the Government’s proposal for local powers over NDR reliefs.
- Crucially local government would not be required to seek approval from Scottish Government for implementing the above measures, within the agreed parameters.
- Should local authorities wish to explore the opportunity for cross boundary measures then local government would be empowered to do so without explicit approval from the Scottish Government, again within mutually agreed parameters.

6.79 Importantly this package would need to be worked up in partnership with the Scottish Government and would need to have regard to issues such as State Aid rules. Equally recognition would need to be given to the issue that certain Councils collect rates, for example for all utility or telecoms companies nationwide.

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2 Article 107(1) of the Treaty of the Functioning of the European Union (TFEU) lays down general prohibition on the provision of State aid by Member States. Tests would be required to see if any proposed measure on NDR benefits the economy generally or would confer advantage to one part of the market over another, this being prohibited.
Chapter 7: Local Discretionary Taxation

Introduction

7.1 The overarching principles state that individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. In line with this, an explicit principle was created under the local taxation principles.

7.2 Local Taxation Principle 6 states:

‘Local taxation should allow for local flexibility, empowering local authorities to raise local funding for local priorities. Specifically, individual local authorities should be empowered to introduce local taxes, at their discretion, to raise additional resource. Individual local authorities should have discretion over the rate and discount and relief arrangements for this tax’

7.3 In terms of revenue raised, local discretionary taxation will not have a major impact upon the balance of funding. However, regardless of the revenue raised, the power to levy local discretionary taxes will have a substantial impact, empowering local government by affording local authorities discretion at a local level to meet local needs. This would be a significant and positive change for local government in Scotland.

Current Taxation Powers in Scottish Legislation

7.4 A review of the current legislation available to local authorities in Scotland was undertaken to assess whether local government had an existing power to meet this principle. The section below sets out the legislation that was looked at.

The Power to Advance Wellbeing

7.5 In the main, the most significant power for raising revenue independently available to local authorities is through the power to advance wellbeing. The power to advance wellbeing is contained in The Local Government in Scotland Act 2003 and allows a local authority to impose a charge, so long as it is reasonable, in return for services provided.

7.6 Section 22 of the Local Government in Scotland Act 2003 stipulates the limitations on the power to advance wellbeing. The power to advance wellbeing does not enable a local authority to raise tax. Section 22(7) of the Local Government in Scotland Act 2003 specifically prohibits local authorities from levying any tax other than council tax. In order for local authorities to raise discretionary taxes under the power to advance wellbeing, section 22 would need to be repealed or amended.

The Difference between Taxes and Charges

7.7 In this context, it is important to note the differences between taxes and charges. A charge is a fee, toll or other type of assessment in exchange of particular goods, services, or use of property. These are generally not considered taxes, as long as they are levied as payment for a direct benefit to the individual paying. It is clear therefore that local authorities have several avenues under which they can levy charges. However, this funding review is specifically concerned with the ability of local authorities to raise taxes.
7.8 A tax is defined as per accounting practice as a financial charge or levy imposed upon a taxpayer (an individual or legal entity) by a state or the functional equivalent of a state (in this case a local authority) such that failure to pay is punishable by law.

7.9 In practical terms, a tax offers local authorities more discretion than a charge with regard to how it is levied and that there need not be a direct link between the revenue raised and how it is spent. Taxation is therefore a more empowering financial lever for local government.

7.10 In conclusion, while some individual pieces of legislation confer specific powers of charging, such as road user charges under the Road Traffic Act, there is no existing legislation enabling local authorities to introduce local discretionary taxation. In fact exactly the opposite is true as taxation by local authorities, other than Council Tax, is specifically prohibited.

7.11 From this it is clear that local authorities in Scotland do not have the power through current Scottish legislation to raise local discretionary taxes. Given this, and the fact that Scotland is covered by additional legislating bodies, alternative legislatures were considered. In particular, the review considered UK and European legislation.

**Current Taxation Powers in UK and EU Legislation**

7.12 Currently, there is no UK or EU law which would enable local authorities in Scotland to raise charges or taxes where the power to advance wellbeing does not already do so.

**English Comparisons**

7.13 For reasons of comparison, the English Localism Act 2011 was considered in order to ascertain if this makes any powers of local discretionary taxation available to English local authorities. However, it can be concluded that the Localism Act 2011 has not provided a statutory basis for extending powers of taxation to local government in England, so while this is a useful starting point for possible charges that local authorities may wish to consider, it is not helpful at laying a foundation for discretionary taxation in Scotland.

**Individual European State Comparisons**

7.14 Again, for reasons of comparison, individual European state legislation was considered. Before comparing individual European states, it is important to clarify exactly what is being compared. The taxation systems across Europe are vastly different, and like for like comparison is extremely difficult. In this specific instance, the tax legislation of a number of states from within the European Union have been considered, while the system of government and the services that are provided have been set aside. This enabled the focus to be on the taxes that are levied at local government level and what exists to empower local government to do so. A detailed summary of the findings can be found at Annex 2.

7.15 European states can be loosely categorised into a number of different government models. For the purposes of taxation both the Scandinavian model and Civil Law model, which covers the bulk of states within the European Union, were considered. Broadly, Scandinavian models give a greater degree of taxation freedoms compared to other EU states. However, this tends to focus around the ability to collect and set rates of tax rather than a general power to levy a discretionary taxation. Civil law models give less freedom of taxation than the Scandinavian model. States following the civil law model tend toward national legislation which covers a list of ‘acceptable’ charges that local government can set up should they wish. It does contain an element of discretion, in that local government can chose whether or not to impose the charge, but this is very limited as the desired charge must be covered by the approved list. The key to this
model is that any list is sizeable and general, giving local government a large margin within which to work.

7.16 In the main, local government within Europe does not have a general power of taxation. Most forms of taxation are explicitly defined in national legislation, or at devolved level, and are uniform, so not do not involve any element of local discretion, which is a key element of what this review is specifically interested in. In practical terms, it is clear that there is not an easy parallel for Scottish local government to draw on from within Europe.

**The European ‘Tourist Tax’ Example**

7.17 Initial expectations centred on drawing on some examples of specific local discretionary taxes from Europe. In particular, the concept of a tourist tax had been repeatedly referred to on an anecdotal basis. Research has shown that while a number of European countries do have a tourist tax in place, in each instance there exists a specific piece of legislation enabling the tax to be levied and that this legislation does not give rise to any further local discretionary taxation.

7.18 In summary, having examined the current powers available to local government in Scottish, UK and EU legislation it is clear that there is not currently a mechanism to enable local government in Scotland to levy local discretionary taxation. Furthermore, in practical terms, there is no easily identifiable equivalent to provide a blueprint for this, requiring local government to work up their request from scratch.

**Moving Forward**

7.19 In order to enable local government to raise local discretionary taxes there requires to be a change in legislation. On this basis a number of factors were considered, not least setting out exactly what local government’s definition of what a local discretionary tax is. The explicit outline of how a power of local discretionary taxation should work for local government is set out below:

**Permission**

7.20 Scottish local authorities should be able to levy a local tax without having to ask permission from Scottish Government. Ultimately this would be a political decision taken by elected members locally. In line with Local Taxation Principle 6, local authorities would hold the power individually of each other so that it would be an entirely local decision.

**Additionality**

7.21 Any local discretionary tax levied should be entirely additional to other forms of taxation. The power to levy local discretionary taxation should remain, regardless of whether local authorities chose to use the power. Conversely, there is no limit to the number of local taxes that could be levied either at the same time or over a period of time.

**General power**

7.22 So as not to be prescriptive, or place limitations on the discretionary nature of the taxation power, a list of possible local discretionary taxes has not been developed. The power proposed is a general power and this is key to the empowerment of local government, enabling taxation to be used by local decision makers to address local issues in line with Local Taxation Principle 6. Given this local discretion, it follows that any proposed taxes and associated political will to vary from local authority to local authority. A tax levied in one area may not be suitable for another, leading to variation across Scotland.

7.23 Given that the aim of local discretionary taxation is to empower local government to address local issues, local authorities would be able to apply local taxation both
domestically and non-domestically. In terms of domestic tax, this encompasses residents and property owners within the local authority area. This power extends to incorporate visitors to the local authority. This would be a useful tool for councils that wish to raise additional revenue, but do not want to add to their resident’s tax bill, instead taxing visitors or businesses in their area. Local government would remain mindful of Local Taxation Principle 1, that local taxation should be fair and easy to understand.

7.24 There would be no limitations on what local authorities choose to do with the revenue raised from a local discretionary tax. Unlike revenue raised via a charge, tax revenue does not require to be spent in a prescribed way that is directly related to what is being taxed. Therefore a tax being levied to address a specific local issue could be used as a deterrent to a type of behaviour, or to raise funds for a specific project, or other local need. This is in stark contrast to any powers that local government currently hold.

Rates and reliefs
7.25 The rate of tax would be decided and set at local level. Accordingly, the local authority would also be able to set any related discounts and reliefs. For local discretionary taxation to be a tool of empowerment for local government, they must have complete ownership of the tax. Given this complete ownership, local authorities would choose the area over which a tax was levied, be that the whole area or a defined area, adding another level of local control and affording them the flexibility to target or protect certain groups within their local boundary as set out in Principles 4 and 6.

Efficiency
7.26 As per Local Taxation Principle 2, the discretionary tax should be administratively efficient and difficult to avoid. When imposing and collecting a tax, local government needs to be mindful about the sanctions in place for those who chose not to pay. A key part of the definition of a tax is that failure to pay is punishable by law. There must therefore be a legal framework which ensures that people pay, written into the corresponding legislation.

7.27 The administration and collection of local discretionary taxes would obviously have an associated cost. This would be taken into consideration whenever a local discretionary tax was being considered. Councils already deal with the collection of a number of revenue streams such as council tax, water and sewerage charges and non-domestic rates. They have a good track record for high level collection rates for these areas and already have the knowledge and ability to collect levies.

Proposed Definition
7.28 In summary, encompassing all of the above, the proposed definition of local discretionary taxation is:

“Individual local authorities have the discretion to raise additional income by levying a tax, in addition to Council Tax and Non-Domestic Rates, on either residents, occupiers, property owners or visitors in the local authority or within a discrete area of the local authority.

- The power will enable local authorities to introduce tax(es) without the need to seek approval from Scottish Government.
- The rates and reliefs will be determined locally.
- The local authority will be granted powers to ensure that those on which the tax is levied have a legal obligation to pay.
- The local authority has the discretion to determine how the additional revenue is expended.”
**Legislative Process**

7.29 This recommendation seeks a specific piece of legislation that enables local authorities to levy local discretionary taxation. This would not require a significant change to the current legislation as set out below.

7.30 As stated, under Section 22(7) of the Local Government in Scotland Act 2003, local authorities are explicitly prohibited from levying taxes other than council tax. Without this specific prohibition, local authorities would have the ability to levy local discretionary taxes under the power to advance wellbeing. **On that basis the Scottish Government could simply repeal the relevant words in Section 22(7).**

7.31 **Alternatively, the Scottish Government could amend Section 22(7) to explicitly enable local authorities to impose local discretionary taxation, using the definition of local discretionary taxation proposed above.** While this review recognises that the decision over the legal terminology will lie with the Parliamentary draftsmen, this definition of local discretionary taxation seeks to demonstrate the broad intention for discretion and flexibility.

**Conclusions and Recommendations**

7.32 Local discretionary taxation presents a significant opportunity to empower local government in line with the COSLA vision for local government. Taxes offer local authorities more discretion than the charges currently available, with particular regard to how they are levied and how revenue is expended, and are therefore a powerful financial lever. Local discretionary taxation is not overly concerned with the revenue raised in terms of tipping the balance of funding, but instead empowering local government to address local issues at a local level, decided by locally democratically accountable elected members without requiring permission from national government.

7.33 On the basis, it is recommended that:

*Individual Local Authorities have the discretion to raise additional income by levying a tax, in addition to Council Tax and Non-Domestic Rates, on either residents, occupants, property owners or visitors in the Local Authority or within a discrete area of the Local Authority.*

- The power will enable Local Authorities to introduce tax(es) without the need to seek approval from Scottish Government.
- The rates and reliefs will be determined locally.
- The Local Authority will be granted powers to ensure that those on which the tax is levied have a legal obligation to pay.
- The Local Authority has the discretion to determine how the additional revenue is expended
European Charter of Local Self-Government
(Strasbourg, 15.X.1985)

Article 9 – Financial resources of local authorities

1) Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

2) Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3) Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4) The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5) The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

6) Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7) As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8) For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.
EU Comparisons

Sweden
Local government has the right to levy taxes. Most of the tasks of the local government are regulated in legislation. They largely finance themselves through means of local taxes and fees paid by citizens for various services. Taxes are income based and local government can set their own rates. There is some national government grant. Overall the local taxation rate is approximately 30%.

Finland
While local government has some ability to levy taxes, they cannot levy taxes that are not previously legislated for on a national basis. While they have control of the tax rate, which varies from complete freedom for income tax to very limited ranges for property tax, national government decides the level of relief available. National government retains overall control.

Iceland*
While local government have the autonomy to determine fees and can set income tax between a nationally defined tax band, the constitution makes it clear that sources of revenue are defined by national law. Furthermore, there is a national equalisation fund, in the form of non-ring-fenced funds, to ensure parity between areas.

Netherlands
All taxation in the Netherlands is based on national legislation. While local authorities can determine the rate of real estate tax, the level of variation is so low, there is little additional revenue powers available in real terms.

There is a Tourist Tax in the Netherlands. This is found in national legislation and is specifically legislated for by national government.

France
French local authorities are able to set the rates of four taxes (built property, non-built property, inhabited property and professional taxes), but only within the proportional variance dictated by national law.

France does have a Tourist Tax. It is applicable in certain towns recognised as a tourist resort. It has been enshrined in national legislation since 1919, and the proceeds must reinvested in promoting tourism in the local area.

Italy
The Italian Constitution was changed to establish fiscal federalism. In Italy’s case, this provides revenue and expenditure autonomy at all levels of government including independent financial resource. In order for this to work in practice, it is necessary to specify in legislation the means by which fiscal autonomy is secured, which will ultimately result in the abolition of national government grant. Many aspects are still to be implemented or developed, however in March 2011 there was a transfer to local government a portion of national taxes to
compensate for the removal of a national grant.

Italy also has a Tourist Tax, which was reintroduced in 2011, under the fiscal federalisation legislation. The tax is collected and passed onto the city authority by the Hotelier. The proceeds of this tax must be reinvested in local tourism and the protection of cultural and environmental heritage.

**Spain**

Spanish local authorities levy a number of taxes, including discretionary taxes. This ability to impose discretionary taxes is done through national legislation. In line with this, Spanish local authorities could choose to levy a Tourist Tax. In Catalonia there is a separate Tourist Tax that has been previously set up by the devolved governments of Catalonia and Balearic Islands. The devolved governments in Spain do, unlike Scotland, have some taxation powers, but this is at devolved government level, not local government level.

**European Law**

The European Court has no role in taxation unless there is discrimination proved on the grounds of nationality. In most continental countries local government has the right to judicial remedy in order to secure free exercise of their powers and respect for local self-governance as this is either enshrined in their constitution or domestic legislation. Taxation at local government level would be covered by this.

*Please note that we are aware that Iceland is currently only in accession negotiations to join the European Union and not yet a full member state. However, given that Iceland has been a member of The European Free Trade Association since 1970, has a bilateral Free Trade Agreement with the European Economic Community since 1972, two thirds of Iceland's foreign trade is with EU Member States and as the information was available to us, we felt it appropriate to include them here.*
FINANCE COMMITTEE CALL FOR EVIDENCE

REVENUE SCOTLAND AND TAX POWERS BILL

SUBMISSION FROM CHARTERED INSTITUTE OF TAXATION

Introduction
1. We have had various meetings with the Bill team during the development of the RSTPB and welcome the dialogue we have established. We think that the RSTPB has been developed in a good, consultative manner and commend the Bill team for their open approach and recommend that this approach be adopted for future tax legislation.

2. Overall, we congratulate those responsible for the RSTPB: this has been a major undertaking that has been delivered well and needs relatively few adjustments to make it of even higher quality.

Key principles for taxation
3. We reiterate our key principles to be borne in mind in the design of tax systems:

- Certainty;
- Simplicity;
- Fairness;
- Stability; and
- Consultation.

4. We note that the policy objectives include the intention for the RSTPB to reflect Adam Smith’s four maxims, which partly overlap with the principles mentioned above: certainty, convenience, efficiency and proportionate to the ability to pay.

5. Our comments are made with the aim of helping to ensure that the RSTPB reflects all the aforementioned principles and maxims. This is in line with the CIOT’s aims of working for a better tax system for the benefit of all those involved: as a charity, our work has as its main objective the public interest. Our contributions draw upon the knowledge and experience of both our members in practice and our in-house technical team. In addition, we have considered how to ensure that the tax system is appropriate to Scotland – this means that we do not always agree that direct borrowing from the equivalent UK provisions is the best approach for Scotland.

Comments on the RSTPB

General points
6. The language of the RSTPB is clear and comprehensive though there are some gaps in its coverage. We are a little disappointed with the number of areas where regulatory powers are granted: whilst we can understand the pressure the Bill team has been under, as we note below there are some aspects that we think should be in primary legislation. The aim must be to have all the main tax rules in primary legislation. Although statutory instruments will be subject to Parliamentary oversight,
they should be used for administrative and procedural matters, not important principles and rules.

7. Traditionally, UK tax law has been written in great detail, leading to complexity and (at times) loopholes. We think there is merit in trying principles-based drafting. Whichever route is followed, guidance will be needed and the key is to see that as ‘dynamic’, ie the tax authority keeps it up to date and develops it in line with experience as part of its service to taxpayers.

**Subjectivity**

8. As a general point, there are many instances of the term ‘reasonable’ in the Bill. This is a subjective term, and therefore until the practice of Revenue Scotland (RS) has been established, which will take time and experience, there will be a degree of uncertainty for the taxpayer and advisers as to what this term means in the Scottish context. Whilst there is plenty of judicial precedent on the meaning of the term in various contexts, it is not really possible to discern a universal meaning. The fact that cases continue to arise shows it is not certain; we suggest that RS needs to develop guidance as to how far UK (and other jurisdictions’) cases will be taken as providing legal precedent.

**The independence of Revenue Scotland and delegation of powers**

9. The provisions of s4 governing delegation of powers are sensible, particularly subsections (4) and (7). With regards to delegation\(^1\), we make the suggestion that the RSTPB contains an explicit provision to the effect that a delegatee cannot go beyond RS powers in carrying out delegated tasks. We understand that this is an accepted principle and implicit in the powers laid down in the RSTPB, but consider that an explicit provision would be a further safeguard and also ensure that Scottish taxpayers are aware of this protection. It would also send out a positive and encouraging message to business about the ethos of RS. For example, there could be a provision explicitly applying the Charter to delegatees.

10. The provisions about independence of RS in s7 and s8 are absolutely vital. The composition of RS, as set out in schedule 1, complements these important sections and we just wonder about the way the Chief Executive of RS is not a member of RS. We appreciate that the Chief Executive will be an office holder under the Scotland Act; but we think it would be better if the Chief Executive (and their deputy) were formally a member and so part of the ‘Board’ to ensure proper liaison/interaction.

11. We note that the RSTPB provides for exceptions allowing ministers for example not to publish their guidance to RS. What are the exceptions envisaged that might permit this?

**Charter**

12. We welcome the provision for a Charter on the face of the RSTPB. We are concerned that RS only has to aspires to the behaviours and values contemplated; we think it would be better framed in terms of the ‘behaviour and values expected of

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\(^1\) These delegation powers go beyond the two instances specified in s4: see s111.
Revenue Scotland’. It would be appropriate to frame the expectations of taxpayers similarly.

13. We suggest that consideration be given to including a duty for RS to consult and engage with interested parties in the development of the Charter, and any revisions. This is no doubt contemplated, but should be laid down.

14. We also suggest that the RSTPB should include a provision to the effect that RS must publish an annual report on the Charter and its performance against it. In addition, there should be explicit provision for the Scottish Public Services Ombudsman to exercise guardianship over the Charter.

**Operation of the Tribunals**

15. We are concerned to ensure that the President of the Tribunals is independent and that their decisions can be made in an independent manner. We are sure this will be the case but note the provision for the President to be appointed by Scottish Ministers yet we are not clear whether the President has the security of the five year term set out in paragraph 11 of schedule 2.

**Tax avoidance: the general anti-avoidance rule**

16. We fully accept the decision to include a general anti-avoidance rule (GAAR) in the RSTPB. Our concern is balancing the desire to protect the tax system against the need of taxpayers for certainty in their tax arrangements, one of the four maxims of Adam Smith. It is important that the GAAR provisions do not interfere with or delay commercial decisions. Our comments about the draft clauses are aimed at increasing certainty. Our view is that the best way of countering avoidance is to make the legislation and its effect as certain as possible.

17. The GAAR starts with a wide definition of avoidance, which is then qualified by further clauses. We are concerned that the use of the phrase ‘one of the main purposes’ means that there is a very low threshold for deciding that a transaction is concerned with avoidance and so within the ambit of the GAAR. We can see that the link to ‘artificial’ in s59 is helpful but would have preferred the test to be phrased in terms of ‘sole or main purpose [being avoidance]’.

18. A clearance system for taxpayers concerned about the applicability of the GAAR would clearly be helpful and welcome. There is an argument that these might need to be formal, with full forms and procedures, though in practice we see little difference in effect between formal and informal clearances (as circumstances can change rapidly). Clearances could be used to develop guidance. However, we have concerns about the administrative burdens this would place on RS and think that other routes will need to be used to deliver the necessary certainty.

19. Suggestions that we think might assist in providing certainty include the publication of guidance by RS as to what is and is not caught by the GAAR. As RS’s experience grows, they could update the guidance. Similarly, cases where the GAAR has been applied should be used to add to the guidance (suitably anonymised of course). It should be noted however, that to be helpful, there needs to be some guidance at the outset, that is, from April 2015.
20. We note that the UK GAAR has an Advisory Panel and we think that this should be emulated in Scotland. The aim would be to help RS develop guidance, ensure the Scottish GAAR is applied with commercial experience and generally build confidence in its application among taxpayers. The GAAR provided for in the RSTPB leaves the taxpayer in an uncertain position, as RS guidance must be followed by the courts and the RS guidance will not be subject to parliamentary scrutiny: involvement of an Advisory Panel would balance this.

21. A further concern in relation to the GAAR is the fact that the approach departs from that of the EU, which accepts that some forms of avoidance are not abusive. Although the initial taxes to be policed by the Scottish GAAR are not ones that the EU is mainly concerned with, EU principles can apply to all taxes and the RSTPB should demonstrate that Scotland intends to comply with EU law in this area.

**Taxpayer duties**

22. The range of taxpayer duties in s68 onwards is reasonable. However, we note that there is no equivalent set of duties for RS. This makes the Charter even more important.

**Tax agents and tax advisers**

23. There is little detail on the rights, duties and obligations of agents and advisers. This was covered at some length in the consultation that led up to the RSTPB, in terms of how respondents thought RS should interact with agents, when such interactions should take place etc. As might be expected, the CIOT’s view is that there needs to be a clear procedure for dealing with agents to ensure that the Scottish tax system, RS and taxpayers benefit as much as possible from taxpayers’ use of agents.

24. This is probably a subject best dealt with in the planned Charter, but it emphasises the importance of our earlier comments about including in the RSTPB more about the Charter’s structure and more requirements about how it is to be effected.

25. We note that the RSTPB contains provisions protecting legal advisers and auditors, but not tax advisers and accountants. We accept the point that someone can set up as a tax adviser or accountant without having any professional qualifications and without membership of a professional body. However, those advisers and accountants who have obtained professional qualifications and who are members of professional bodies, such as the Chartered Institute of Taxation, can be disciplined by those bodies for malpractice.

26. We are strongly of the view that legal professional privilege (LPP) should attach to advice given by any adviser. The aim should be a level playing field: it

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2 It should be noted that there are two distinct ways of acting for a client – firstly, as an independent adviser in relation to certain taxes or areas; secondly, undertaking compliance for the client (i.e. preparing and submitting their tax returns).

3 The history and purpose of LPP shows that the qualification of the adviser is unimportant – the important point is that they need to be able to put themselves in the client’s shoes. Litigation privilege applies, regardless of the status if the adviser represents the client in litigation. Since advice privilege is an adjunct of litigation privilege, it is logical that privilege should apply to independent advice.
would not only be wrong but also bad for the tax system if taxpayers were prevented from seeking advice from a tax adviser because they felt compelled to balance the protection of privilege against the best advice available. In essence, our argument is that the privilege should stem from the nature of the advice, not the profession of the adviser giving the advice. We believe that it is in the interests of good taxation and of RS in particular that taxpayers be free to seek the best advice available to them. In addition, we note that recent case law\(^4\) indicates that changes to LPP is a matter for Parliament – so that the Scottish position can be laid down separately by the Scottish Parliament.

27. Concerns that LPP might be exploited for abuse can easily be dealt with by providing appropriate exceptions when privilege will not apply and for procedures to ensure that claims of privilege can be both challenged and defended without detriment to subsequent substantive proceedings.

**Penalties**

28. This is one of our main areas of concern with the RSTPB. Our view is that the principles of penalties for tax offences should all be in the primary legislation: the circumstances, the amounts\(^5\), appeals and enforcement. Secondary legislation should be used for procedural and administrative matters.

29. We commend the proposal in s154 for reductions in penalties by RS and the provision for suspension in s155. However, the legislation should be explicit on the possible amounts (presumably in percentage terms) and conditions involved. This will help ensure consistency.

30. We also note that with regard to special reductions, it is not equitable to simply say that inability to pay is not an adequate reason to grant a special reduction. Consideration of the ability to pay should take into account why the taxpayer is unable to pay.

31. A key point of penalties is that innocent errors should not be penalised. We are pleased to see provisions such as s157 (reasonable excuse) and s160 (3) (deliberate/careless) in this regard.

**Power to appeal**

32. The general powers regarding appeal rights, mediation and RS review are appropriate. Nevertheless, we are concerned that the provisions in the RSTPB are not currently adequate for further taxes that may be added in the future.

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\(^4\) Notably the Supreme Court in the *Prudential* case. In *Agassi*, Lord Justice Dyson commented

‘Specialist accountants such as Mr Mills may well have far greater expertise in esoteric areas of tax law and practice than solicitors.’

\(^5\) Especially as s170, quite sensibly and appropriately, allows the amounts of penalties to be inflation-adjusted by secondary legislation.
33. In order for RS to have the authority to use mediation, and to make taxpayers more aware of this option, we suggest that clear provisions should be included in the RSTPB. Equally, in order to ensure a consistent and independent approach to internal review and mediation, the RSTPB should include provisions requiring RS to publish details of their approach, and reviews of their performance in these matters.

34. We welcome the inclusion of a provision in s210 giving RS the power to postpone the collection of tax when an appeal is made. We suggest that this provision should require RS to give proper regard to hardship when considering whether or not to postpone collection of tax. This relief should not be excessively difficult to obtain. That could usefully be included in the primary legislation.

**Enquiries**

35. We have a concern that the system adopted by the RSTPB, which is based on UK direct tax legislation, may not be entirely appropriate for indirect taxes and could create difficulties in the management of tax compliance. Currently, the two devolved taxes being provided for are indirect, so it is important that the provisions cater for them.

36. The enquiry deadline set out in s76 relates to the due date for the submission of a return. This effectively encourages taxpayers to delay the submission of returns to the latest possible date, and could lead to a concentration of submissions around the due date. This could be difficult for RS to manage efficiently.

**Consultation on secondary regulation**

37. As we have intimated, we have some concerns about the number of areas where regulatory powers are granted. The Delegated Powers Memorandum that accompanies the RSTPB is helpful, particularly in the way that it sets out the expected Parliamentary procedure to effect the regulations. We welcome the intention of the team responsible for the RSTPB to consult on the secondary legislation. We suggest that there should be a commitment to consult on secondary legislation.

**The Chartered Institute of Taxation**

38. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. 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. 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.

39. 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. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
The CIOT’s 17,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
In summary:

GAAR

1. We note that the GAAR is a General Anti-Avoidance Rule, rather than just being concerned with "Abuse". As such it has a significantly wider scope than the UK's recently-introduced GAAR. We are concerned that, as drafted, the GAAR could introduce significant uncertainty as well as additional compliance costs for many transactions that are not tax motivated. We believe that the Scottish Parliament should carefully consider both a clearance mechanism and the introduction of a GAAR Advisory Panel to provide important safeguards between the interests of taxpayers generally and the interests of individual taxpayers in obtaining certainty about their tax affairs and in undertaking legitimate tax planning. All these points will become more important if further taxation powers are transferred to Scotland.

Detailed Tax Administration provisions

2. Under this heading we include: Tax returns, enquiries and assessments (Part 6); Investigatory Powers (Part 7); Penalties (Part 8); Interest on payments (Part 9); Enforcement (Part 10); and Reviews and appeals (Part 11). In general we consider that the legislation has been well drafted; in many respects the provisions are easier to understand than the corresponding UK provisions. However, businesses, individuals, Revenue Scotland and the courts will all be left in doubt as to the extent to which the differences in wording are intended to lead to differences in effect. We think publication of a note on how the Bill's proposals differed from the UK equivalent legislation, and why, would be a great help.

3. Many provisions are left to regulations to be made by Scottish Ministers. Clearly for points of detail where taxpayer's rights and obligations are not unduly affected such an approach is appropriate. However many of the proposals listed in the Appendix below are basic requirements and should be set out in legislation, rather than left to regulations.

4. Our detailed comments are set out in the Appendix.
Appendix

General Anti-Avoidance Rule (GAAR) - Part 5

(1) We note that the Scottish Government has made a deliberate policy choice to introduce a General Anti-Avoidance Rule that "will take a wider and therefore more rigorous approach to tackling tax avoidance" than the UK General Anti-Abuse Rule that is noted to be "narrow in scope".

(2) It is important to reflect on the principles that led the UK to make that choice; essentially UK tax law has evolved to set out in detail the tax rules which apply in a wide range of commercial circumstances. Accordingly, a narrow anti-abuse rule ensures that the proscriptive legislation operates as intended. By contrasts a broader anti-avoidance rule works best with principles-based legislation and is much harder for the tax authority, taxpayers and the judiciary to apply in relation to more detailed law.

(3) We understand that there is a need to protect the tax system and that this needs to be balanced against the needs of taxpayers for certainty. In assessing the trade-off, the protection of the tax system should not overly impinge on commercial transactions. Our comments are aimed at increasing certainty for taxpayers so that commercial transactions are not discouraged.

(4) Arrangements are in scope of the counteracting measures if "it would be reasonable to conclude that obtaining a tax advantage is the main purpose or one of the main purposes, of the arrangement". This wide definition will potentially affect a large number of transactions. This is important in the context of the two currently devolved taxes to which the GAAR measures will apply but will be of much greater significance if Scotland acquires additional taxing powers, which might then be expected to come within the scope of this GAAR.

(5) It is important to emphasise why we consider that the Bill could affect a very large number of transactions. We would expect a taxpayer undertaking a significant transaction to consider its tax consequences in advance and it is common that there may be alternative approaches which could result in different tax results. It would be unusual for a taxpayer to choose an alternative that resulted in a greater tax liability in preference to an alternative that delivered a similar economic result and a lower tax liability. In this case though, it is possible that the GAAR could be applied notwithstanding that the transaction as a whole is not motivated by a tax purpose. We do not believe that the purpose of the GAAR should be to oblige taxpayers to arrange their affairs to pay the maximum tax possible; but we are concerned that this could be the effect. Even if the GAAR is applied so as not to impose an additional tax burden, the lack of certainty that this could introduce to a large number of transactions would be unfortunate. Our preference would be to use a "sole or main purpose" test, which we understand is the approach adopted by Australia.

(6) We foresee that certainty for taxpayers will be a significant issue since the Bill does not provide explicitly for clearances. The Policy Memorandum explains that it is not thought that clearances are necessary for the two devolved taxes and that a clearance system would place significant additional administrative burdens on
Revenue Scotland. We note from the consultation that 72% of respondents favoured a narrowly-targeted GAAR and there was no support for a more widely-drawn provision. We expect that this response is a result of concerns that a widely-drafted GAAR will lead to uncertainty for taxpayers (and Revenue Scotland). By contrast, the UK GAAR was able to rule out clearances due to its design.

(7) The combination of a widely drafted GAAR and no clearance mechanism is also a potentially significant issue for compliance purposes—particularly if additional taxes were to be brought into scope. The lack of a clearance mechanism means taxpayers who want to undertake a transaction which they are concerned may be thought by Revenue Scotland to be artificial are likely to incur additional compliance costs, both before the transaction (as noted above) and when considering how to file the tax return.

(8) Whether or not there is a clearance mechanism, it is essential that Revenue Scotland publishes guidance on the practical application of the GAAR. This should be updated as further experience is gained and as additional taxes come within its ambit. Although it may be implicit, in our view the UK GAAR— and not the Scottish GAAR— should apply to income tax devolved under the Scotland Act and we think that this Bill should make that clear.

(9) We note that operational safeguards such as a GAAR advisory panel would assist both Revenue Scotland and taxpayers to understand whether a particular course of action by a taxpayer is (for example) normally employed in reasonable business conduct. This is one important indicator that a transaction lacks commercial substance and is therefore within the scope of the GAAR. Review of Revenue Scotland’s guidance by such an advisory panel would be a valuable reference point for all in determining how the GAAR should be applied and therefore provide greater certainty. We would recommend that consideration is given to setting up an advisory panel.

(10) Revenue Scotland appears to have significant discretion over operation of the GAAR. We do not support giving those responsible for the assessment of tax wide discretion over whether or not tax should be levied. It is for Parliament to set out the law, the tax authority to collect tax in accordance with the law and for a Tribunal or Court to adjudicate on disputes between taxpayers and the tax authority. If an Authorised Officer decides that a transaction lacks commercial substance, in the absence of a GAAR advisory panel or other authority, it may be difficult for a taxpayer to convince the Officer otherwise and the court or tribunal is instructed to take into account Revenue Scotland guidance on the matter. This appears to give significant extra statutory powers to Revenue Scotland. We are concerned that there is too great a concentration of discretionary power in Revenue Scotland, which would be harmful both to taxpayers and the tax authority alike. How should a tax authority exercise discretion?

(11) Some of the terms used in the Bill are not familiar terms. One example is "legal substance" (s59(4)(b)). We recommend this concept be explained in the legislation.

(12) If the legislation gives an odd or counter-intuitit(e) tax charge, and the taxpayer seeks to avoid this charge, we think this should not be within the scope of the GAAR,
even if artificial. Accordingly we think the law should make clear that arrangements should not be regarded as "artificial" if the tax paid is as would be expected given the economic effect of the transaction. This is similar to the spirit of s207(4) FA 2013.

(13) Additionally, s59(2)(a)(ii) provides that the policy objectives of the tax provisions in question should be taken into account when considering whether a tax avoidance arrangement is artificial. We think it possible that not all potentially difficult points would clearly fall within the policy objectives set out. (Some of the legislation replicates the SOL T legislation and the policy objective behind the original SOL T legislation may have become obscured with time). Thus the "policy defence" may not always help. It may help to make clear that relevant corresponding HMRC guidance and UK case law in relation to equivalent SOL T or other UK tax law could be used as a point of reference. This is also relevant to s62(3) of the Bill where a court or tribunal may take into account the "established practice" at the time a tax avoidance arrangement is entered into. Perhaps this is implicit in the "or anyone else", but if not then it should be made explicit

Tax returns, enquiries and assessments (Part 6, 567 to 5109)

(14) S69(1) (Duty to keep and preserve records) starts: "A person who is required ... ". This may not have the intended purpose if the taxpayer has not yet been issued with a return. The corresponding UK legislation is FA 1998 Sch18 para21(1) which starts "A company which may be required to deliver a company tax return ... ".

(15) S76 gives Revenue Scotland three years from the filing deadline to open an enquiry, which is longer than the UK equivalent, 12 months. There is nothing about "white space disclosure", which is perhaps understandable given the litigation this has led to. However, three years is a long period for taxpayers to be uncertain as to whether Revenue Scotland wishes to open an enquiry.

(16) S84(2) states "A closure notice must be given no later than 3 years after the relevant date". In principle we support rapid investigation of returns and closure of enquiries based on the information supplied and the taxpayer's explanations. However in some cases three years may not be long enough. We note that there is no equivalent time limit in the UK legislation.

Investigatory Powers of Revenue Scotland (Part 7, s110 to s147)

(17) S116 enables Revenue Scotland to require production of information from third parties in certain circumstances. The geographic scope of this provision is not clear. In particular could an information notice be issued to a person not resident in Scotland with no permanent establishment there? Some clarity on this point would be helpful.

Penalties (Part 8, 5148 to s181)

(18) S157 sets out the reasonable excuse defence for late payments or filing of returns. This is perhaps best described as a restricted reasonable excuse defence. We think TMA 1970 s118(2) is preferable. It is a more general version which does not include an equivalent to s157(3)(a) (insufficiency of funds) or (b) (reliance on
another person). We don't think either of these should be included. In the case of (a), we think this is an artificial exclusion which should be omitted. In the case of (b) we think this is implicit so does not need to be mentioned.

(19) S174 comprises a reasonable excuse defence for failure to comply with, for example, an information notice. As with s157 (noted above) this includes a "restricted" reasonable excuse defence. For the reasons noted above we prefer a reasonable excuse defence based on TMA 1970 s118(2).

Interest on payments due to or by Revenue Scotland (Part 9. S182 to 185).

(20) S185(2) enables Scottish Ministers to make regulations about rates of interest, including the amounts. This is similar to the UK approach, but it's not clear why the legislation can't set out how rates should be determined, at least in principle. For example compare this approach to s187 (fees for payment); in that case s187(3) in summary limits the fees charged by Revenue Scotland for use of a payment method to be reasonable having regard to the costs incurred by Revenue Scotland.

Enforcement of payment of tax (Part 10, s186 to 5196).

(21) S192 enables Revenue Scotland to require, in summary, third parties in business to be required to provide contact details of Revenue Scotland debtors. This could be quite onerous: in particular as there is: (i) no limitation to Scottish companies or companies which have a permanent establishment in Scotland (in general the geographic scope of the Revenue Scotland and Tax Powers Bill in this respect is not clear); (ii) no requirement to provide relevant information to the third party to help then get the contact details; (iii) no limitation to contact details which cannot readily be ascertained by other means from information held by the designated officer.

(22) The right of appeal (5194) is restricted to "unduly onerous" grounds, which we think is too narrow, as other reasonable grounds of appeal exist, as mentioned in the previous paragraph.

Mailers left to regulation in Parts 6 to 11

(23) The Bill includes a number of provisions which are left to regulations to be made by Scottish Ministers. Clearly for points of detail where taxpayer's rights and obligations are not unduly affected such an approach is appropriate. However many of the proposals noted below are basic requirements and should be set out in legislation, rather than left to regulations. In particular provisions, such as s73(2), which allow the Scottish Ministers to make regulations which may modify any enactment, including the Revenue Scotland and Tax Powers Act itself, seem far too wide.
Some of these provisions are listed below.

(a) S73 (date by which tax return must be filed) and s74 (date by which the taxpayer can amend returns);
(b) 73(2) "Regulations under subsection (1) may modify any enactment (including this Act)"
(c) S113(2) (definition of what is and is not a business);
(d) S150(2) (penalties for failure to make returns);
(e) S150(4) enables such regulations to modify any enactment;
(f) S151(2) (penalties for failure to pay tax on time);
(g) S151(4) enables such regulations to modify any enactment;
(h) S160(7)(penalties, including the amounts);
(i) S162(4) (penalties for errors attributable to another person, including the amounts);
(j) S163(3) (penalties for failure to take reasonable steps to notify Revenue Scotland within 30 days of an under-assessment, including the amounts);
(k) S181 (2) (penalties for failure to register for tax, including the amounts); and
(l) S210(2) (postponement of payment of tax during a review or appeal).
1. On behalf of the Fiscal Commission Working Group (FCWG), I welcome this opportunity to submit a summary of the group’s work and findings to the Finance Committee to assist in their enquiry into the Revenue Scotland and Tax Powers Bill.

2. The FCWG was established in early 2012 to oversee the work of the Scottish Government on the design of a macroeconomic framework for an independent Scotland. Crucially, we also see our work as providing a vital contribution to help inform the wider debate on constitutional reform.

3. To this aim, we have published a series of papers on Scotland’s macroeconomic framework, including issues such as the choice of currency, financial stability, the management of oil revenues, fiscal policy and taxation.

4. Taken together, I believe that our work programme and comprehensive examination of key issues has enabled us to set out a coherent set of proposals and recommendations for a workable macroeconomic framework for Scotland in the event of a yes vote.

5. Across all our work, we have taken a holistic and whole economy approach, concentrating on the strengths and key challenges in the Scottish economy and its unique economic structure and circumstance.

6. Our analysis highlights the importance of establishing a robust and credible framework, with a commitment to long-term stability, transparency, and sustainability.

7. A credible fiscal framework is an essential part of this overall approach. Two publications in particular – ‘Principles for a Modern and Efficient Tax System’ and ‘Fiscal Rules and Fiscal Commissions’ – have set out a practical and workable fiscal framework for an independent Scotland.

8. Putting a successful framework in place would provide Scotland with a major competitive advantage – and crucially a tool for promoting economic growth, competitiveness and tackling inequalities across Scotland.

9. The Working Group’s proposals and recommendations are relevant in the context of the transfer of additional fiscal powers contained in the Scotland Act 2012, and as such are hopefully of value to the Committee.

10. I would like to extend my thanks once again to the members of the FCWG whose time and input has been extremely valuable and informative.

Crawford Beveridge (CBE), Chair Council of Economic Advisers, February 2014
Summary

11. The Fiscal Commission Working Group (FCWG) is a sub-group of the Council of Economic Advisers tasked with assisting the Scottish Government in the design of a robust and comprehensive macroeconomic framework for an independent Scotland.

12. The group is chaired by Crawford Beveridge, and the members are Professors Andrew Hughes Hallett, Sir Jim Mirrlees, Frances Ruane and Joseph Stiglitz.

13. The Fiscal Commission Working Group have produced a series of publications focusing on the design of a macroeconomic framework for an independent Scotland. These papers looked at:

- Stabilisation and Savings Funds for Scotland (October 2013, http://www.scotland.gov.uk/Publications/2013/10/7805)
- Principles for a Modern and Efficient Tax System (November 2013, http://www.scotland.gov.uk/Publications/2013/10/4839)

14. The two papers detailing the principles for a modern and efficient tax system and fiscal rules and fiscal commissions – together with the other work of the Group – provide a clear blueprint for a comprehensive fiscal framework for an independent Scotland.

15. The framework includes both the principles and the institutional infrastructure that should be employed in order to help deliver essential elements of a successful independent country - fiscal sustainability, sustainable economic growth, resilience and fairness.

16. We recommend that the Scottish Government should take a system wide approach to taxation policy, taking account of key inter-linkages with wider policy objectives and guided by four clear principles – simplicity, stability, neutrality, and flexibility. This will allow the Scottish Government to meet its objectives in the most effective manner.

17. A credible and long term commitment to fiscal sustainability needs to be built upon the foundations of effective fiscal rules and monitoring – this is reflected in the Working Group’s recommendations to establish one or more Fiscal Rules, as well as an independent Fiscal Commission, responsible for delivering impartial and transparent assessments on the sustainability of the public finances.
18. Overall, this framework could represent both a significant international advantage for Scotland and an improvement over the current framework.

Remit of the Fiscal Commission Working Group
19. In 2009 the Council of Economic Advisers (CEA) recommended the establishment of an independent Fiscal Commission to help inform the future direction of Scottish fiscal policy. Scottish Ministers accepted this recommendation, agreeing to the establishment of a Fiscal Commission alongside moves to greater autonomy.

20. The creation of Fiscal Commission Working Group was announced in March 2012 (http://www.scotland.gov.uk/News/Releases/2012/03/fiscal-commission25032012). The Working Group was tasked with overseeing the design a robust macroeconomic framework for Scotland post-independence.

21. The constitutional future of Scotland is a political decision, and it the not the task of the Fiscal Commission Working Group to offer an opinion on independence. Instead the aim of the group is to use its expertise to provide advice and guidance to the government and to offer options for reform should a vote for independence be forthcoming.

22. The Working Group was tasked with:

• Oversee the Scottish Government’s Office of the Chief Economic Adviser’s work on establishing a macroeconomic framework for an independent Scotland;
• Support the engagement with key institutions and external experts to help develop the Scottish Government’s proposals;
• Identify any external academic expertise or consultancy work required to provide analytical rigour to the Scottish Government’s proposals.

The outputs of the Fiscal Commission Working Group represent a collective view from the membership of the group.

Membership of the Fiscal Commission Working Group
23. Membership of the Fiscal Commission Working Group is drawn from the First Minister’s Council of Economic Advisers. The Chair is Crawford Beveridge CBE.

Crawford Beveridge CBE (Chair) – Crawford Beveridge is a technology industry veteran with more than 35 years of experience. This included working as an Executive at Sun Microsystems for over 15 years. In 1991, Beveridge left Sun to become Chief Executive of Scottish Enterprise. Beveridge returned to Sun in April 2000 as Executive Vice President of People and Places and Chief Human Resources Officer. In addition to being the Non-Executive Chairman of the Board of Autodesk, Beveridge is Chairman of Scottish Equity Partners Ltd, and a Non-executive board member of eSilicon and Iomart Group PLC. He was awarded a C.B.E. in the New Years Honours list in 1995.
**Professor Andrew Hughes Hallett** - Professor of Economics and Public Policy at George Mason University in the US, visiting Professor at Harvard University and Professor of Economics at the University of St Andrews. Professor Hughes Hallett specialises in international economic policy and has acted as a consultant to the World Bank, the IMF, the Federal Reserve Board, the UN, the OECD, the European Commission and central banks around the world.

**Professor Sir James Mirrlees** – Professor Emeritus at Cambridge University and distinguished professor-at-large at the Chinese University of Hong Kong. In 1996 Sir James was awarded the Nobel Prize for his work on economic models and equations about situations where information is asymmetrical or incomplete. In 2010, he led the Mirrlees Review of taxation which examined the principles and characteristics of a good tax system for open developed economies in the 21st century.

**Professor Frances Ruane** – Professor Ruane is Director of Ireland's Economic and Social Research Institute and Honorary Professor of Economics at Trinity College, Dublin. She has published widely in the area of international economics and industrial development.

**Professor Joseph Stiglitz** – Professor Stiglitz is Professor of Economics at Columbia University. He won the Nobel Prize in Economics in 2001 and was a member of the US Council of Economic Advisers (CEA) from 1993-95, serving as CEA Chair from 1995-97. He was Chief Economist and Senior Vice-President of the World Bank from 1997-2000. In 2009 he was appointed by the President of the UN General Assembly as Chair of the Commission of Experts on Reform of the International Financial and Monetary System.

**Meetings and Minutes of the Fiscal Commission Working Group**

24. Since February 2012, there have been regular engagement between the Fiscal Commission Working Group and Scottish Government Ministers and officials. This has taken the form of regular meetings, teleconferences and ad-hoc correspondence, with secretariat support provided by the Office of the Chief Economic Adviser.

25. Over this period, the topics that have been comprehensively discussed include:

- Currency options and the choice of Sterling as the currency for Scotland post-independence;
- Fiscal framework, including the use of fiscal rules and fiscal commissions and the design of an oil stabilisation and long-term savings fund;
- The management of government debt;
- Design of economic institutions;
- Financial regulation and financial stability;
- Economic and competition regulator;
- Economic performance of comparable countries;
- Economic policy opportunities for Scotland post-independence;
- Design of an appropriate tax system for an independent Scotland;
- The transition to independence, and;
• The finalisation of FCWG papers.


28. A further meeting of the Working Group will take place on the 6th March.

Summary of Fiscal Commission Working Group Engagement and Publications

29. The FCWG has produced a series of publications including:


• ‘Assessment of Currency Options’ – is a detailed technical annex which analyses the currency options open to an independent Scotland. (February 2013, http://www.scotland.gov.uk/Resource/0041/00414366.pdf)

• ‘Stabilisation and Savings Funds For Scotland’ – focusses on the optimal framework to best manage revenues from Scotland’s oil and gas reserves both in the short-term through the creation of a stabilisation fund and over the long-term through a savings fund to invest for future generations. (October 2013, http://www.scotland.gov.uk/Publications/2013/10/7805)

• ‘Principles for a Modern and Efficient Tax System’ sets out four principles – simplicity, stability, neutrality, and flexibility – that could shape the design of a modern and efficient tax system for Scotland. It also examines out the opportunities, responsibilities and choices that an independent Scotland would face in setting tax policy in the 21st Century. (November 2013, http://www.scotland.gov.uk/Publications/2013/10/4839)

• ‘Fiscal Rules and Fiscal Commissions’ discusses the options for managing Scotland’s public finances and in particular, the effective use of fiscal rules and the establishment of an independent Scottish Fiscal Commission. (November 2013, http://www.scotland.gov.uk/Publications/2013/11/4732)

30. Taken together, these papers provide a holistic and whole of economy approach to a macroeconomic framework for an independent Scotland. Alongside this, the Working Group also issued an update of analysis in May 2013 crystallising the arguments in favour of a currency union with the rest of the United Kingdom.
31. Summaries of and recommendations from the two papers directly addressing the transfer of additional fiscal powers contained in the Scotland Act 2012 - ‘Principles for a Modern and Efficient Tax System’ and ‘Fiscal Rules and Fiscal Commissions’ - are in the following Annexes.
Annex A: Principles for a Modern and Efficient Tax System in an Independent Scotland

32. Available at: [http://www.scotland.gov.uk/Publications/2013/10/4839](http://www.scotland.gov.uk/Publications/2013/10/4839)

**A.1 Introduction**

33. The Scottish Parliament is currently responsible for around 7% of all taxes raised in Scotland. This will rise to 15% with the introduction of new responsibilities flowing from the Scotland Act 2012. Independence would provide responsibility for taxation with autonomy over tax design, collection and implementation.

34. It follows that an independent Scotland will have to develop its own taxation system. This provides an opportunity to consider what such a system might look like in a small modern country, and in particular consider Scotland’s specific circumstances and context. By not being bound by historical precedent, a new system – fit for the 21st century – could represent a major competitive advantage for an independent Scotland as well as a significant improvement over the complex and costly UK tax system.

35. This report from the Fiscal Commission Working Group sets out the principles of a modern and efficient tax system and the opportunities, responsibilities and choices that an independent Scotland would face.

36. The Working Group recommends that four principles—simplicity, stability, neutrality, and flexibility—should guide the design and operation of the tax system of an independent Scotland. This will allow the Scottish Government to use the tax system to meet its objectives—particularly raising revenues, fostering growth and competitiveness, and tackling inequalities—in the most effective manner.

37. Although focused on the tax system—the paper highlights the need to consider a whole system approach in the design of policy, crucially in regards to the interactions with the welfare system.

**A.2 Summary of Principles for a Modern and Efficient Tax System**

38. The report sets out key principles that could shape an independent tax system for Scotland and draws on the experiences of other countries. It provides a series of recommendations for the Scottish Government to consider.

- Chapter 1 introduces the substantial evidence base on taxation and tax reform, and briefly considers the potential advantages of a redesigned tax system for an independent Scotland.

- Chapter 2 reviews taxation in Scotland and the UK. An independent Scotland would inherit the UK tax and benefit system on day one of independence. This system performs broadly in line with similar economies in terms of international rankings, although there are clear concerns over cost and complexity. A key theme articulated in this chapter and throughout the report is that it is essential to consider the entire tax system rather than just one element.

- Chapter 3 provides an overview of the role principles in taxation. A tax system should fund expenditure and other obligations, help to achieve preferred
levels of equality, influence key behaviours, help to smooth macroeconomic fluctuations and support growth, employment and a diversified industrial base. A tax system which is simple, transparent and stable will minimise costs and maximise tax revenues, investment and growth. In this regard, a well-designed tax system could represent a major advantage for an independent Scotland.

- Chapter 4 summarises international trends in taxation. Despite widespread variation in tax systems, some underlying patterns have emerged. For example, taxes targeted toward general consumption (such as VAT) has become more prominent alongside a broadening of the tax base. Meanwhile, revenues from corporate taxes have fallen as a proportion of total revenues raised, and headline rates of tax have decreased. The Scottish Government can learn from specific examples of tax reforms in other countries – both successful and unsuccessful reforms. Evidence highlights the importance of timing and transition and the benefits of independent experts and extensive consultation in the reform process.

- Chapter 5 looks at the range of choices, opportunities and responsibilities that an independent Scotland would face. Independence would allow for the redesign of the tax system according to specific Scottish circumstances and needs. Taxation is a key lever in competitiveness, economic growth and tackling inequalities and plays a key role in a robust and successful macroeconomic framework.

- Chapter 6 sets out the conclusions and recommendations of this work. The Working Group recommend that a Scottish tax system should be clear and principles based, designed as part of the wider fiscal and macroeconomic framework focussed on addressing key priorities. The Scottish Government should build on the experiences from the implementation of tax powers in the Scotland Act 2012 in order to assist with the transition to a redesigned system.

A.3 Recommendations from Principles for a Modern and Efficient Tax System

39. The Working Group set out recommendations to Scottish Ministers based around 5 themes: a modern tax system; effective macroeconomic framework; competitiveness, economic growth and equality, transition and implementation; and the European and international context.

Designing a modern tax system

40. **Recommendation:** A Scottish system should be clear and principles based – any exemptions and tax reliefs should be carefully targeted

41. **Recommendation:** The government should set out and develop a transparent framework for policy making – based around clearly defined objectives and principles of a good system, with decisions based on a robust and analytical assessment of costs and benefits

42. **Recommendation:** A Scottish system should be built to ensure that there is a whole view approach to consumer and business taxation – including the use of unique identifiers to aid simplicity, transparency and compliance
43. **Recommendation:** Scotland should look to have an efficient government structure and institutional landscape to maximise the effectiveness and efficiency of tax policy design and tax collection and links with wider socio-economic policies

**Delivering an effective macroeconomic framework**
44. **Recommendation:** The Scottish Government should consider tax policy design as part of the wider fiscal and macroeconomic framework, including the use of fiscal rules and the establishment of an independent fiscal commission

45. **Recommendation:** High levels of integrity and transparency should be brought to the system through the establishment of a tax policy forum – using independent experts would ensure that vested interests did not unduly influence the design

**Promoting competitiveness, economic growth and tackling inequalities**
46. **Recommendation:** The Scottish Government should design a tax system built around Scottish circumstances and preferences to help increase productivity and economic growth while meeting the needs of the people of Scotland

47. **Recommendation:** The tax and welfare systems are key levers for tackling inequality – both are strongly interlinked and should be considered as fundamentally part of the same system. Welfare and tax policy should therefore be developed in tandem to ensure policy integration and alignment

48. **Recommendation:** Appropriate tax rates maximise receipts by creating the optimal level of economic activity and revenue raising potential. The Scottish Government should assess the optimal balance of tax rates and bases for key taxes, such as business and employee taxes, and levels of government spending.

49. **Recommendation:** An open and consultative approach with the industry, independent experts, employer groups, and the general public, should be adopted when designing and reviewing the effectiveness of tax administrative policy to ensure the system is comprehensive, inclusive and maximises compliance

**Transition and implementation**
50. **Recommendation:** The Scottish Government should build upon the experiences and lessons from the implementation of the tax powers in the Scotland Act 2012 to assist with the transition and implementation of further new powers

51. **Recommendation:** The government should focus on identifying key priorities and consider what can practically be achieved by the following milestones
   - Independence day;
   - The short run (e.g. initial 5 years following independence);
   - Medium to long run (e.g. beyond 5 years).

52. **Recommendation:** The Scottish Government should build up skills and capacity over a carefully planned transition period – but should also communicate clearly and early on the direction of travel it intends to take

**The European and international context**
53. **Recommendation:** The government should put the issue of globalisation at the heart of its tax system - including how to tax modern multinational companies
and considering how best to collect tax in a world of international supply chains and e-commerce. International agreement is critical to ensuring companies pay the appropriate level of taxation and the government should work with key international partners to ensure the fair collection of taxes due.

54. **Recommendation:** As part of this, the government should also use any new influence to support international bodies – including the EU and OECD – in their drive for greater tax cooperation, transparency and collection.

55. **Recommendation:** The government should liaise with other governments, including the UK, around defining and measuring core elements of the tax system, including what constitutes taxable income. This could minimise compliance burden, ensure fairness and avoid inefficient shifting of activities for tax purposes, particularly across the Sterling Area. Crucially, tax rates, thresholds, and allowances would remain the domain of the separate jurisdictions.

**Annex B: Fiscal Rules and Fiscal Commissions**


**B.1 Introduction**

57. Crucial to the success of any macroeconomic framework is the fiscal framework which underpins it. Ensuring that a country’s public finances are stable and sustainable, with the correct checks and balances, is key to fostering economic growth and resilience.

58. This report builds on the recommendations from the Working Groups First Report to develop a fiscal framework focussing on both the use of fiscal rules, and the establishment of an independent fiscal commission.

59. Public sector borrowing is one of the most important and valuable tools of macroeconomic policy open to any independent government. Used effectively, it has the potential, not only to improve the long-term productive capacity of the economy by supporting investment, but also to provide valuable support during economic recessions.

60. However, too often borrowing has been used to offset a long term shortfall between tax receipts and public expenditure. Therefore, effective management of public sector borrowing is only one side of fiscal sustainability – sound management of taxation and expenditure is just as vital.

61. The report reviews recent fiscal trends, and draws on international examples of fiscal rules and fiscal commissions in order to highlight best practice. It then sets out a series of options for fiscal rules and commissions and puts forward a number of recommendations for the Scottish Government to consider.

62. The Working Group recommends that:

- The Scottish Government should set one or more fiscal rule(s), made on the basis of cautious oil price forecasts and to be monitored against the countries long term fiscal position. The Working Group suggests employing a balanced budget and a net debt rule, with a view to maintain the sustainability of any Sterling Area.
• The Scottish Government should establish an independent, transparent and accountable Fiscal Commission to assist in the management of the public finances. This Fiscal Commission should focus on advice on the government’s economic thinking and monitor adherence to its fiscal rule(s).

• As part of this, the Working Group welcomes the commitment by the Scottish Government to establish an independent Fiscal Commission in time for the transfer of fiscal powers under the Scotland Act 2012.

B.2 Summary of Fiscal Rules and Fiscal Commissions

63. Scotland will face a challenging fiscal position irrespective of the constitutional settlement chosen in 2014 as adjustment continues to restore the public finances to health. Under independence, establishing credibility will be a key objective.

64. This report sets clear parameters within which fiscal rules for an independent Scotland could operate, something that is not borne out of necessity, but rather a strategic objective to signal a long term commitment to fiscal sustainability.

65. Fiscal commissions can strengthen the incentives for fiscal discipline by helping to deliver transparent independent macroeconomic and fiscal forecasts as well as impartial assessments of government policy on the sustainability of the public finances.

• Chapter 1 provides a brief introduction to fiscal rules and fiscal commissions, reviewing their role in ensuring fiscal sustainability and enhancing the credibility of the public finances.

• Chapter 2 looks at trends in public finances at a UK and international level. Over the long term, many advanced economies have built up large levels of public debt, with the financial crisis having a significant negative on the public finances. Despite the presence of two fiscal rules, UK public finances deteriorated rapidly over the past decade.

• Chapter 3 looks at the theory behind fiscal rules, and international examples of their use. There are four types of fiscal rule – balanced budget rules, debt rules, expenditure rules and revenue rules. The use of rules has grown rapidly in recent years. The design and oversight of these rules is critical to their success. The Working Group identify three characteristics of success: a clear link between the rule and the end objective, sufficient flexibility to respond to shocks and a pre-defined institutional mechanism to monitor rules and take corrective action when they are broken.

• Chapter 4 summarises the theory underpinning Fiscal Commissions, and looks at international experiences. These commissions are increasingly viewed as vital enhancing the credibility of the public finances. Successful commissions tend to have high levels of technical competence, local knowledge and effective communication. In terms of governance, an unambiguous mandate, accountability to the wider public and independence from government, have been associated with successful outcomes.

• Chapter 5 considers the evidence from previous chapters in a Scottish context. With a view to fiscal sustainability underpinning the Sterling Area monetary union, a Scottish Fiscal Commission would help support the...
successful operation of fiscal rules in Scotland. The Working Group suggests this could take the form of two rules, one governing the short to medium-term path for net borrowing and the other governing the medium to long-term limit on net debt.

- Chapter 6 presents the recommendations of the Working Group, covering the introduction of one or more fiscal rules and a permanent fiscal commission. The Working Group recommend that fiscal rules should form part of a Sterling Area fiscal sustainability agreement, and should be forward looking and focus on the budget balance and net debt. The Working Group recommend that the Scottish Fiscal Commission should assess Scotland’s long-term fiscal position and the Scottish Government’s adherence to its fiscal rules. The Scottish Government should ensure that this commission is independent from government and that reporting structures encourage transparency and accountability.

A.3 Recommendations from Fiscal Rules and Fiscal Commissions
66. The recommendations from Fiscal Rules and Fiscal Commissions are grouped under two key themes:

Fiscal Rules
67. Recommendation: the Scottish Government should introduce one or more fiscal rules as part of its fiscal framework to set out the parameters in which it will operate and to signal its long-term commitment to fiscal sustainability in an independent Scotland.

68. Recommendation: the Scottish Government would have a wide range of choices when establishing its fiscal rules. The Working Group believes that there is clear merit in establishing forward looking rules which focus on the budget balance and net debt. These should be designed as part of a Sterling Area fiscal sustainability agreement.

Fiscal Commissions
69. Recommendation: the Scottish Government should establish an independent Scottish Fiscal Commission and ensure that it is in place by the time key tax powers are fully transferred as a result of the Scotland Act 2012.

70. Recommendation: drawing upon the examples of the Swedish Fiscal Policy Council and the Irish Fiscal Advisory Council, the Scottish Fiscal Commission should assess Scotland’s long term fiscal position and the Scottish Government’s adherence to its fiscal rules. Such assessments should pay due attention to the resilience of overall economic performance in so far as this can impact on the sustainability of the public finances.

71. Recommendation: the Scottish Government should take the necessary measures to ensure the Scottish Fiscal Commission’s independence in order for it to function credibly and effectively, and design its reporting structure in a way that encourages transparency and accountability.
FINANCE COMMITTEE CALL FOR EVIDENCE
REVENUE SCOTLAND AND TAX POWERS BILL
SUBMISSION FROM JUSTINE RICCOMINI

About Justine Riccomini:
1. I am a partner in a newly-formed independent tax and HR advisory business, based in central Scotland. Prior to this I held senior positions in firms of accountants in Scotland and England and was previously employed by HMRC.

General comments:
2. Thank you for asking me to submit my comments on the general principles of the Bill. My comments below are my own view on the proposed structure and scope of the proposed legislation.

3. I largely agree with the proposals, but I do have concerns about the proportionate ability to pay in terms of the penalty levies and the timescale for payment of penalties. I also have concerns about the ability of Revenue Scotland to handle the relevant administration which this penalty regime would impose upon it. In addition to the everyday work of running Revenue Scotland’s day to day business, appeals, penalties and enforcement are exceptionally time consuming and difficult to automate. HMRC knows this and is currently experiencing the same issues with Real Time information penalties, for example, which is why they have been postponed - no doubt a significant additional cost and embarrassment to HMRC.

4. As Revenue Scotland is in its infancy and can only grow, I would also like to see some reference made to which body will oversee, regulate and monitor Revenue Scotland - presumably this will be Audit Scotland. In this day and age I believe it is important to have transparency of government and the public wish to know that their money is being spent efficiently, and that departments are fully accountable and effective.

Specific Comments:
The Scottish Government’s overall policy objectives in introducing the Bill and whether the Bill reflects—
“Adam Smith’s four maxims with regard to taxes: certainty, convenience, efficiency and proportionate to the ability to pay.”

5. My comments regarding the ability to pay (penalties) are set out in the penalty section below.

The proposed approach to the establishment and constitution of Revenue Scotland as a non-Ministerial Department and its membership;
6. I agree with the proposals to make Revenue Scotland a non-ministerial department and with its proposed membership.
The functions of Revenue Scotland;
7. I agree with the proposed functions of Revenue Scotland. Obviously, there are not very many staff in the department at present but this may change over time as SRIT and other potential devolved taxes begin to take shape. The introduction of other devolved taxes may or may not be affected by the Scottish independence referendum on September 18th 2014 and this could potentially influence the taxes being dealt with and the staffing levels required to handle these taxes.

8. Regarding Part 2, s.10 (2) (a) and (b) I would wish to see the word “aspire” changed to “adhere”. It is not enough for the charter to set out aspirations - there must be clear codes of conduct and behaviour which cannot be open to subjective interpretation.

The independence of Revenue Scotland;
9. I agree with the proposed independent setup of Revenue Scotland. I also believe that with reference to Part 2, s.8 (3) all interactions with Ministers as to the running of Revenue Scotland and its remit and responsibilities should be fully publicised in the spirit of open government. I do not believe that any part of Revenue Scotland’s activities should be exempted from the Freedom of Information Act as currently applies to some of HMRC’s activity. There is no threat to national security - it is merely a taxation regime.

The investigatory powers of Revenue Scotland;
10. Part 7, Ch.4, s.140 refers to the power to take samples of material from the premises if the officer has reason to believe the taking of the sample is reasonably required in order to verify a person’s tax position. Please would it be possible to offer a short (not exhaustive) list of examples of what kind of samples could be obtained in this regard?

The proposed approach to the Scottish tax tribunals;
11. I have no comments to add to the proposed set up of the Scottish tax tribunals. I agree with the proposals.

The General Anti-Avoidance Rule;
12. I agree the proposals for the general anti-avoidance provisions.

The proposed approach to tax returns, enquiries and assessments;
13. Under Part 6, Ch.2, s. 69, subsections 5-8 is specific to land transactions rather than to “devolved taxes”. Perhaps another sub-section should be inserted to deal specifically with matters as has been done at s.72 of the same chapter (i.e. concerning LBTT). Otherwise, if the general powers are extended in future to other taxes, these sections will have to be changed at that point.

14. Part 6, Ch.7, s.98 is somewhat misleading as it is entitled “Overpaid tax, etc.” when in fact the section refers to overpayments or excessive determinations specifically where the taxpayer believes the tax not to be due, as opposed to general overpayments. Perhaps the chapter and section should make reference to cases where the “taxpayer believes the assessment or collection to be excessive or not due”.

2
The proposed approach to penalties;
15. In general I agree with the penalty determinations but I consider that the ability to pay a penalty within 30 days could present problems in certain circumstances. It may be the case that Revenue Scotland finds itself entrenched in a quagmire of bureaucracy as a result of issuing penalty notices which remain unpaid by taxpayers. As a result, Revenue Scotland could find itself spending more time on the non-compliant taxpayers than on the compliant ones. The penalty regime and its enforcement need to be thought through carefully to avoid the mistakes of HMRC.

The proposed approach to interest on payments;
16. I have no comments to make and generally agree with the proposals.

The proposed approach to enforcement;
17. I broadly agree with these proposals and have no further comment to make.

The proposed approach to reviews and appeals;
18. I agree with these proposals.

The financial implications of the Bill as estimated in the Financial Memorandum (FM).
19. I have not had the chance to review these details in any great depth due to existing commitments, but I would like to see some reference made to how accountability, effectiveness and efficiency are measured and by which body said measuring will be independently carried out - i.e. Audit Scotland on behalf of Ministers.
FINANCE COMMITTEE CALL FOR EVIDENCE

REVENUE SCOTLAND AND TAX POWERS BILL

SUBMISSION FROM FACULTY OF ADVOCATES

General
1. It is understood that the intention is to enact provisions that will be suitable not only for the taxes currently devolved (namely land and buildings transaction tax and Scottish landfill tax) but also for any other taxes for which the Scottish Parliament acquires competence. It is suggested that before the enactment of any provisions relating to such future taxes, a consultation process takes place as regards the extent to which the current Bill, as enacted, requires amendment to be suitable for the management of those future taxes.

Independence
2. The Faculty welcomes the proposal that Revenue Scotland should be independent of Ministerial control. 1. Delegation of powers.

3. The Faculty recognises the efficiency gains that may be realised by the delegation of certain functions relating to land and building transactions tax and Scottish landfill tax to, respectively, Registers of Scotland and the Scottish Environmental Protection Agency. However, it may be appropriate to identify specifically which of Revenue Scotland’s functions may be delegated. For example, it would seem appropriate that matters of exercising investigative powers, imposing penalties, making assessments, and undertaking review decisions ought not to be delegable, whereas the current draft of the Bill would permit all of these to be delegated.

Confidentiality of taxpayer information
4. It is suggested that clause 15(2) be expanded so as to refer expressly to an individual exercising functions on behalf of a person to whom Revenue Scotland has delegated any of its functions (the point is probably already covered, but the amendment would remove any room for doubt).

Tax Tribunals
5. The Faculty welcomes the establishment of specialist first instance and appellate tribunals for tax matters.

6. It is suggested that names other than the ‘First-tier Tax Tribunal for Scotland’ and the ‘Upper Tax Tribunal for Scotland’ be used. Using these names is likely to cause confusion with the First-tier Tribunal (Tax Chamber) and the Upper Tribunal (Tax and Chancery Chamber), both of which are generally known by the same names as it is proposed should be used for the Scottish tribunals (respectively, the First-tier Tribunal and the Upper Tribunal). It is almost inevitable that some appeals will be commenced in the wrong forum. This will lead to delay and increased expense and in some cases possibly the loss of any appeal rights.
7. Alternative names might be, for example, the Tax Tribunal and the Tax Appeal Tribunal.

Upper Tribunal decisions
8. It is suggested that consideration be given to enabling the Upper Tribunal to sit with more than a single member in individual cases (see clause 28).

Appeals to the Court of Session
9. The Faculty recognises the policy issues behind restricting appeals to the Court of Session to cases raising important issues of principle or practice, or in which there is some other compelling reason for allowing the appeal to proceed. However, the Faculty is concerned that this may unduly restrict the right of individual litigants to have access to the supreme court in Scotland. It is in general unlikely that large numbers of cases would have to be considered by the Court of Session. For example, in any recent 12 month period there have been only around 50 or 60 decisions made by the First-tier Tribunal (Tax Chamber) sitting in Scotland, and far fewer by the Upper Tribunal (Tax and Chancery Chamber) sitting in Scotland. The Faculty suggests that the restriction of appeals to points of law, coupled with the need for permission and the condition that the appeal has arguable grounds, are adequate restrictions on the possibility of appealing to the Court of Session.

Expenses
10. On its face, clause 44 would permit Tribunal rules to provide that counsel may be made personally liable for wasted expenses. At general law, this is considered not to be competent. There are sound policy reasons for this, involving broadly the need to avoid secondary litigation. It is suggested that the reference in clause 44(3)(c)(ii) to a ‘person’ should be replaced by a reference to a ‘party’. The Faculty of course recognises that if a party’s representative has done something leading to a wasted costs order being made against a party, that party may have a right of relief against that representative.

Powers of Tribunal to make rules (clauses 46 to 52)
11. It is not clear whether the powers conferred on the Tribunal to make rules include power to impose fees on parties to appeals before the First-tier or Upper Tribunal.

12. It is suggested that parties should not be required to pay fees to the Tribunal in relation to appeals. It is suggested that this be made clear in the Bill.

General anti-avoidance rule
13. The Faculty recognises the policy behind the proposed general anti-avoidance rule.

However, the Faculty suggests that an Advisory Panel similar to that established by Finance Act 2013 in relation to the general anti-abuse rule should be established. Inevitably, the application of a general anti-avoidance rule is difficult to predict. The establishment of an independent body with powers to provide guidance would assist in making the application of the general anti-avoidance rule more certain for both taxpayers and Revenue Scotland.
Taxpayer duties
14. Clause 68 might be interpreted as including UK taxes. It is suggested that the terms ‘tax’ and ‘taxable activities’ be defined so as to be restricted to devolved taxes.

Returns
15. The period for Revenue Scotland to correct obvious errors in returns is three years (clause 75). It is suggested that this is too long a period. Revenue Scotland should be able to correct obvious errors within a much shorter time frame, for example 12 months. Indeed, the equivalent period in relation to income tax returns is nine months for HMRC to correct obvious errors: Taxes Management Act 1970, section 9ZB. Allowing Revenue Scotland a period four times as long does not seem to be justified, in particular by reference to Adam Smith’s principle of certainty.

16. Similarly, it is submitted that the period in which Revenue Scotland has power to open an enquiry is too long, being three years (clause 76). There does not seem to be any reason why returns relating to transactional taxes should be able to be enquired into for such a long period. Again, this is not consistent with Adam Smith’s principle of certainty. It is understood that the policy behind this is to avoid litigation about when a ‘discovery’ has been made enabling an enquiry to be opened after the expiry of a shorter window, such as 12 months. But the period of three years does not sit well with annual taxes for which the Scottish Parliament may in future acquire competence; creating such a long enquiry window not subject to any ‘discovery’ requirement will discourage taxpayers from providing additional information in tax returns; and the absence of any discovery requirement seems to put Revenue Scotland in a much better position than HMRC without any corresponding benefit being conferred on the taxpayer.

Referrals during enquiry
17. Given that the decision on a referral during an enquiry is binding as between the parties, it is suggested that the designated officer should ‘give effect to’ the determination rather than merely ‘take it into account’ in reaching conclusions on the enquiry (clause 82).

Relief for overpayment
18. It is suggested that the term ‘claimant’ in clause 100 should be replaced with ‘recipient’, so as to clarify that the defence is directed to the position of the person to whom the repayment would actually be made.

The possibility of a repayment claim where a tax charge is contrary to EU law is welcome (clause 104(11)). However, the Faculty has a concern that the definition of circumstances in which a tax charge is contrary to EU law is too narrow. For example, a tax charge may be contrary to EU law if it breaches the general principles of EU law, such as effectiveness, equivalence, proportionality, and non-discrimination. It may be better to leave the term ‘contrary to EU law’ undefined.

Information powers
19. The Faculty welcomes the proposal to provide expressly that Revenue Scotland’s information and investigation powers under chapter 2 of part 7 should not be exercisable once a review or appeal is pending (clause 128(1)(a)).
20. It is suggested that the wording of clause 130(1)(b) be changed so as to make it clear that where a document is privileged in part only, that part need not be disclosed.

21. It is suggested that a person from whom a document is removed should be entitled to a copy of the document on request, regardless of the purpose for which the copy is required. For example, there does not seem to be any reason why a person should not be entitled to a copy simply for that person’s own records. It is therefore suggested that clause 142(3)(b) should be re-worded accordingly.

Penalties
22. The Faculty does not agree that the regulation of penalties should be left largely to secondary legislation. The details of penalties should be provided for in primary legislation. Specifically, the matters set out in clauses 150(2), 151(2), 160(7), 162(4), 163(3), and 181(2) should be provided for by primary legislation. The Faculty welcomes the penalty suspension provisions in clause 155. The Faculty would suggest that Revenue Scotland publicises these provisions in particular to Citizens’ Advice Bureau and other organisations whose services are aimed at low income individual taxpayers, and also to trade associations for dissemination to their members.

23. The Faculty welcomes the power conferred on Revenue Scotland to reduce, remit or suspend penalties (clause 156).

Reviews and appeals
24. The Faculty generally welcomes the proposals regarding reviews and appeals. However, it is suggested that the provisions relating to postponement of tax pending a review or appeal should be set out in primary legislation. These provisions are of crucial importance to taxpayers wishing to challenge decisions of the taxing authority.

Interpretation
25. It is suggested that other terms be used as references to the Land and Buildings Transaction Tax Act (Scotland) 2013 and the Landfill Tax (Scotland) Act 2014, for example ‘LBTTA13’ and ‘LTA14’. This will make it easier to read the provisions referring to these statutes. It is also a form that is better able to cope with future ASPs enacting Scottish taxes. For example, it is easy to imagine that a range of taxes could be implemented in a single year. In that event, some means of referring to them other than by year would be essential.

Composition of tribunals
26. It is suggested that a time limit be put on the disqualification arising from previous insolvency, disqualification as a company director, or disqualification as a charity trustee (Schedule 1, paragraph 2).

27. The Faculty is concerned that status as a solicitor or barrister in England and Wales or Northern Ireland confers eligibility for appointment as President of the Tax Tribunal or as a legal member of the First-tier or Upper Tribunal. The Tribunals will be dealing with matters of Scottish tax law. There does not appear to be any reason for appointing individuals not qualified to advise on it as Tribunal members. Although
the Faculty is aware that in the UK tribunal system individuals qualified only in England and Wales or Northern Ireland sit on the First-tier and Upper Tribunals when hearing tax matters in Scotland, this is possible because of the UK nature of the tax law in respect of those tribunals have jurisdiction, and is in any event unusual in practice.

28. The Faculty also questions why eligibility should be able to be broadened by regulations. If this is indeed necessary, the Faculty would in any event suggest more specific provisions as regards what regulations may provide, for example that regulations may provide that a person may be eligible for appointment on the basis of experience in the law and practice relating to Scottish taxes.

29. The Faculty welcomes the provisions concerning the term of office and re-appointment of members of the First-tier and Upper Tribunals (Schedule 2, paragraphs 11 and 12).
Introduction

1. This is a response to the invitation by the Finance Committee to submit evidence in respect of the Bill. This submission focuses on four aspects, namely:

- Appointment to the Tribunals;
- The General Anti-Avoidance Rule;
- Mediation as an option to reviews and appeals; and
- The financial implications of the Bill as estimated in the Financial Memorandum.

The response for these areas draws on my professional experience as a chartered accountant (ICAS) and a chartered tax adviser (CIOT), and my judicial experience as a member of the Tribunal system since 2000 (of the former VAT and Duties Tribunal and then the First-Tier Tax Tribunal). It has also been informed by research undertaken in connection with an LLM course on the Principles of International Tax Law, which I have been teaching as an external lecturer at the School of Law, the University of Edinburgh.

Appointment to the Scottish tax tribunals – Part 4 of the Bill

2. The present UK system has an additional qualifier to eligibility to include ‘any person who in the Lord Chancellor’s opinion has gained experience in law which makes them as suitable for appointment as if they satisfied these criteria’. The inclusion of this qualifier must have been for good reasons. The absence of similar provisions in the current Bill needs to be examined, that it is a deliberate exclusion for good reasons and not a mere omission. Furthermore, where Sch 2 Part 1, 1(3), 2(2), 3(2a) refer to ‘the person qualifies under this sub-paragraph if … the Scottish Ministers consider appropriate’, should it not be more appropriate for the Lord President of the Scottish Judiciary to assess judicial eligibility?

3. Apart from the qualifier, it is also stated in the Bill that ‘the Scottish Ministers must appoint’ (e.g. Sch 2 Part1 2(1)). Whether these judicial offices are best to be made by the Scottish Ministers (as representatives of the legislature) deserves some scrutiny. Constitutional democracies with a presidential system, such as the United States, hold ‘the separation of powers’ of the legislature, judiciary and executive as fundamental to good government. In contrast, the UK Constitution has sometimes been described as one where there is a ‘fusion of powers’. However, in the last decade, significant policy initiatives have resulted in a more formal separation of powers of the judiciary, most notably in the passing of the Constitutional Reform Act 2005, which has led to, inter alia, the creation of an independent Supreme Court, and the Judicial Appointments Commission (JAC).

4. The JAC was set up in April 2006 as an executive non-departmental public body sponsored by the Ministry of Justice under the Constitutional Reform Act in
order ‘to maintain and strengthen the judicial independence by taking the responsibility for selecting out of the hands of the Lord Chancellor’ (per JAC’s official website). There is an emphasis on JAC’s independence in selecting office holders for courts and tribunals, including the President, legal and ordinary members of the UK Tax Tribunals.

5. The Board of JAC Commissioners is drawn from a wide range of candidates, with the selection process conducted by the JAC itself, and appointment of Commissioners is on a fixed-term basis to ensure a regular turnover in its composition. It is not clear from the Bill whether the Scottish Ministers’ responsibility for appointment of Tribunal members is intended to be delegated to an independently constituted body like the JAC. It is an aspect worth considering, as fairness (and the perception of fairness), does depend on judicial appointments being independent of the legislature and above party politics. Whether Scotland votes ‘Yes’ or ‘No’, this Bill will become the founding legislation for a tax administrative system of either a new nation or a much more devolved tax regime, and the principle of separation of powers that lies at the heart of good government, should be part of that foundation.

The General Anti-Avoidance Rule – Part 5 of the Bill

6. The UK tax code has resisted having a statutory anti-avoidance rule until recently. On balance, a statutory GAAR is probably preferable so that judges can interpret the legislation for ‘acceptable’ or ‘unacceptable’ tax avoidance within the framework of a statutory GAAR, which in turn mitigates the perception that judges are making law by creating judicial anti-avoidance doctrines. However, it is not to say that a GAAR will create greater certainty for the taxpayer or for the Revenue to know what is acceptable tax planning and what is unacceptable tax avoidance. As Brian Arnold, Professor Emeritus of Tax Law and Senior Adviser to the Canadian Tax Foundation observes: both approaches [judicial and statutory] inevitably rely on the competence of the judges to parse the tax legislation rigorously, to understand the tax system as a whole and the purpose of its constituent elements and, finally, to have an appreciation of sophisticated commercial transactions.¹

7. In comparison with the UK GAAR, the Policy Memorandum (paragraph 70) has noted a finding from the Consultation that there is ‘no support expressed for a more widely-drawn provision’; that the ‘main attractions of the narrow focus were greater certainty for businesses and maintaining Scotland’s attractiveness as a location for businesses and employment’. It is not immediately obvious how a narrowly focused GAAR will necessarily confer greater certainty. From the perspective of a taxpayer or a practitioner advising clients, ‘certainty’ sits on the level of interpreting the legislation to see how it may apply to the transaction concerned. However widely or narrowly a GAAR is drawn, that process of interpretation has to be gone through. John Tiley, a member of the Advisory Committee to the Aaronson Report on the UK GAAR, has remarked: What is clear is that, once a GAAR is introduced, the players (government and taxpayers alike) are still at the mercy of the courts.² Certainty is

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more an issue about interpretation of the legislation as applied to the transaction concerned, than how widely or narrowly a GAAR is drawn.

8. It may be argued that a more widely drawn GAAR may result in a reduction in the number of Targeted Anti-Avoidance Rules (TAARs) being legislated in the Scottish tax regime, and that can only be a desirable 'trade-off' for having a more widely drawn GAAR. The UK tax code is one of the longest (if not the longest) in the world. It has grown considerably in complexity and volume in the period of the recent Labour Government, and the current legislation carries over 300 TAARs. There is a correlation between the growth in complexity and the increased number of TAARs. The average practitioners in Scotland will have to be conversant not only with the UK tax code but the Scottish tax legislation, and it will be a welcome prospect that the Scottish tax code can develop a more encompassing approach to anti-avoidance that may lead to a significant reduction in TAARs.

9. What would appear to be a pertinent concern in relation to the UK GAAR is how it may interact with the Scottish GAAR. Will the UK and Scottish GAARs deliver the same judicial outcome on an identical tax avoidance scheme subscribed to by two different taxpayers north and south of the Anglo-Scottish border? Does the UK GAAR determination have any force of precedent on the ruling of the Scottish GAAR? If Scotland has greater devolution instead of independence, can a transaction fall under both jurisdictions? If so, how will the two jurisdictions deal with the transaction? Are these issues covered by the existing terms of the proposed Bill?

10. The legislative structure (ie: the drafting format for the provisions) of the Scottish GAAR has much in common with the UK GAAR, notwithstanding the crucial difference in focus of the Scottish GAAR being on ‘avoidance’ to give it a wider scope than the construction of ‘abuse’ under the UK GAAR. Under s206(3) FA2013, the taxes to which the UK GAAR applies is listed; it is a restrictive list that excludes taxes and duties governed by Community Law, such as VAT and alcohol and tobacco duties. Compared with the structure of the UK GAAR, the equivalent place in the Scottish GAAR is taken by s57(3) of the Bill which defines ‘authorised officer’. In terms of the current state of the devolved tax regime, it can be deduced that the Scottish GAAR can only apply to LBTT and the Landfill tax. However, clarity in respect of which taxes the GAAR is to apply to, and the basis on which further taxes will be added is a relevant consideration at this stage given the foundational nature of the Bill.

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3 The publisher Lexis Nexis states the 2012/13 Tolley's Orange and Yellow Handbooks at 18,634 pages, excluding preliminary pages and indexes. Compared to 1996/97, when the Handbooks were at 4,998 pages long, the UK tax code has grown exponentially in size in 15 years. According to the breakdown analysis by the Office for Tax Simplification (OTS) in early 2012:
(a) The actual number of pages in the Yellow and Orange books 2010/11 (ignoring blank pages at the start and end and introductory pages), was 17,795 pages
(b) But excluding non-statutory material this becomes 11,173 pages
(c) Further excluding duplicated and repealed legislation the length is 6,960 pages
(d) Removing further duplications and some footnotes (they explain the criteria in the paper) the "actual substantive direct and indirect UK tax legislation is about 6,102 pages, or 34.3% of the Yellow and Orange Books."
The like-for-like comparison with the Lexis Nexis figures in the OTS’ breakdown is 17,795 for 2010/11. Lexis Nexis figures do not have the breakdown to arrive at the comparable figure under (d) for 6,102 pages. Data by courtesy of Andrew Pickering, Technical Director at CIOT.
11. Another omission noted is s212 FA2013 regarding ‘Relationship between the [UK] GAAR and priority rules’. In essence, s212 provides that the UK GAAR takes priority over any other part of the legislation applying to the taxes covered by the GAAR; (hence, referential to the list of taxes under s206(3)); ‘[t]his is so even if other legislation expressly states that it takes priority over anything else.’ Are there good reasons why priority rules are not relevant for LBTT and SLfT? Even if that is the case with the two devolved taxes, priority rules will surely become relevant when it comes to interacting with other UK tax legislation and with Double Taxation Agreements (DTAs) in a more devolved tax regime.

12. It is noted that DOTAS (Disclosure of Tax Avoidance Schemes) may be discussed at Stage II of the Bill’s progress through the Parliament. It is important to note that DOTAS helps to promote a culture of transparency between the tax authorities and the taxpayers and should be encouraged. DOTAS does not, however, confer any certainty on the taxpayer as regards whether a tax-avoidance scheme entered is effective in law. The benefit of DOTAS is that if a scheme is disclosed, then it can be examined by Revenue Scotland at an early stage and that in turn will help to mitigate the consequences of late payment of tax and penalties in the event that the scheme is found ineffective. In this regard, it is worth noting that HMRC has published recently (24 January 2014) the ‘Accelerated Payments Condoc’ in relation to the new powers sought to pursue upfront payments of tax where the tax is disputed under DOTAS or where GAAR may apply. Similar powers should probably be considered in conjunction with DOTAS, whether for this Bill or at a later stage, as the two aspects are likely to become administratively connected in the UK regime.

Mediation as an option to reviews and appeals – Part 11

13. For certain disputes, resolution by mediation can be much more cost-effective than settling the dispute through the tribunal route, and should be encouraged and properly supported. It is good to see that this intermediate stage of mediation (i.e.: between internal review and tribunal hearing) is being formalised by the Bill, and this would appear to be a new policy direction for Revenue Scotland compared with the current practice under HMRC. The type of disputes that lend itself well to mediation and arbitration is likely to concern the quantum of an assessment rather than a point of law. The assessment can be in relation to penalties and interest, or for under-declared tax assessed to the ‘best judgement’ of the investigating officer. The ‘best-judgement’ kind of assessment often involves lengthy hearing of evidence to ascertain how the officer has based his calculations in a situation where business records are inadequate to enable the quantum of an assessment to be categorically stated.

14. When a taxpayer wants to appeal to the Tribunal against the above-mentioned type of assessment, the amount of tax in dispute can often be disproportionate to the costs involved in giving the case a tribunal hearing and the delivery of a written decision. This type of cases also have a higher tendency of a last-minute withdrawal from a scheduled hearing date, making them an administrative inconvenience for the booking of venue and members’ time.

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15. If the mediation process is actively taken up by taxpayers for the settlement of the type of disputes mentioned, it will lead to overall savings in resolving disputes if fewer cases are dealt with at the Tribunal level. However, for the mediation process to work effectively, the independence of the mediator from Revenue Scotland is paramount. The taxpayer has to perceive mediation as a cost-effective alternative to a fair hearing at the Tribunal. In other words, the mediation process must be akin to the tribunal procedure in terms of the independence of the arbitrator, and not be perceived as a second stage of Internal Review.

16. There is little in the Bill to suggest what the criteria for selecting a mediator are. In the Policy Memorandum at paragraph 124, it is stated that, 'The mediator will be an independent third party appointed by Revenue Scotland.' It is not clear to what extent the appointment being made by Revenue Scotland may compromise the taxpayer’s perception of the mediator’s independence. More details on how the independence of the mediator (eligibility, criteria of selection, terms of service) is assured will give this important policy direction more weight and facilitate its promotion to the public.

17. From what I understand, there is an In-Court Adviser and Mediation Service at Edinburgh Sheriff Court, with the Mediation Service being co-ordinated by Citizens Advice Bureau. It may be appropriate to evaluate whether the existing expertise from the Mediation Service at the Sheriff Court can help to develop the mediation service envisaged by Revenue Scotland.

The financial implications of the Bill – Financial Memorandum

18. The estimated costs for the various functions in relation to the Scottish Tax Tribunals are summarised in Table 12 of the Financial Memorandum. The notes in paragraph 54 afford some indication of the various parameters used in the costing, and they are read as not meant to be exhaustive to allow a complete tallying of the components to reach the total for each category. For example, in respect of the Set-up of Tribunals, the total of £120K includes IT system (£18K), recruitment and training (£36K), administrative staff during the set-up phase (£26K), leaving a balance of £40K budgeted but not detailed in the notes.

19. The total cost of £730K comprises:
   (i) the initial set up costs of £120K,
   (ii) lead-in period of running costs at £70K (a deduced break-down, not explicitly stated in the table), and
   (iii) 4 years of annual costs at steady state of £135K.

The following paragraphs concern the estimate of annual running costs at £135K.

20. In terms of **fixed** annual running costs, the principal category will be administrative staff costs. Presumably, the staff costs consist of one B1 and one A3 to continue after the set-up period for the 5-year budget. It is noted that premises costs do not form part of the annual costs as the Scottish Tribunal Service will administer both Tribunals and allow their premises to be used for hearing with no fees being charged.
21. The **variable** components of the annual running costs concern the hearing and decision process related to appeals. The principal variant comes from the number of appeals that will be heard, and it is budgeted on the basis that both Tribunals will sit for two days per month. Appeals for LBTT are more likely to be on a point of law involving a scheme and determination of a lead case will settle other similar cases stayed on the outcome of the lead case. With SLfT, appeals are more likely to concern the operational aspects of assessing the tax and will probably lead to more evidence-based type of hearing to determine the quantum of tax compared with cases concerning a point of law. Evidence-based type of hearing tends to be lengthier than cases seeking determination on a point of law.

22. Averaging over 4 years, to budget for both Tribunals to sit for 2 days per month is a fair estimate. What needs to be ascertained though, is whether the budget has allowed for associated fee costs for the presiding member in relation to the budgeted hearing costs of 2 days per month:

- Case-management hearing;
- Pre-case reading time prior to the actual hearing;
- Writing time in delivering the decision.

23. It is not uncommon for case-management hearing(s) to precede the actual hearing (the 2 days per month budgeted for). Case-management hearings (CMHs) are for the purpose of ensuring the actual hearing can be conducted efficiently by delineating the scope of evidence to be admitted, narrowing down the issues to be addressed at the actual hearing, and dealing with any preliminary issues which are related to an appeal but do not form part of the appeal. Written directions are issued to the parties following each case-management hearing by the presiding member. Each CMH and the writing time for directions can cost up to a day of the presiding member’s time. Some complex cases can take more than one case management hearing, and the fee costs need to be factored into the equation in respect of CMHs. The general guideline for writing up decisions is every day of hearing is one day of writing time. For complex cases, additional time for pre-case reading and writing time of 1.5 days to a day’s sitting can be claimed with leave from the President. At the very minimum, therefore, there are the two days per month of writing time at the same rate as sitting time for the presiding member to be included in the budget.

24. Apart from the fee costs of the presiding member outwith the actual hearing days, the current system also allows for expenses incurred by tribunal members (presiding and panel) to be reimbursed in relation to travel expenses for the days of hearing, and in some circumstances, subsistence and accommodation if hearings take place at venues that involve overnight stay.

25. It is worth examining whether the costing of £135K annual running costs have covered all the necessary constituent elements, especially in respect of the variable component for the time incurred by the presiding member at the pre-hearing and post-hearing stages that will be translated into fees. Furthermore, for a 5-year budget, it may be prudent to build in an element of inflationary increase for the overall costing.
FINANCE COMMITTEE CALL FOR EVIDENCE
REVENUE SCOTLAND AND TAX POWERS BILL
SUBMISSION FROM ICAEW

Introductory Comments

ICAEW welcomes the opportunity to comment on the Finance Committee’s call for evidence on the Revenue Scotland and Tax Powers Bill.

ICAEW is an international body based in the UK and operates under a Royal Charter, working in the public interest. The regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council.

As a world-leading professional accountancy body, ICAEW provides leadership and practical support to over 140,000 members in more than 160 countries. Strengthened by the expertise of our whole membership, particularly those in the UK/EU who are interacting with government and institutions on similar economic issues, ICAEW is working with governments, regulators and industry in order to ensure the highest standards are maintained.

We believe in acting responsibly, in the best interests of our members and the general public. We act with integrity, creating effective partnerships with organisations and communities worldwide to ensure the highest technical, professional and ethical standards.

ICAEW is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. ICAEW ensures these skills are constantly developed, recognised and valued.

ICAEW Scotland serves over 1400 ICAEW members across the private and public sectors in Scotland and represents the views of ICAEW members who work in Scotland for local, national and international organisations.
Part 1: General Comments

The ICAEW Tax Faculty has developed ten tenets for a better tax system. A tax system should be:

1. **Statutory**: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. **Certain**: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. **Simple**: the tax rules should aim to be simple, understandable and clear in their objectives.

4. **Easy to collect and to calculate**: a person’s tax liability should be easy to calculate and straightforward and cheap to collect.

5. **Properly targeted**: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. **Constant**: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. **Subject to proper consultation**: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. **Regularly reviewed**: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. **Fair and reasonable**: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. **Competitive**: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.
Part 2: Comments on the Revenue Scotland and Tax Powers Bill

1. The following comments have been compiled by ICAEW Scotland member Mike Holland, who has recently retired from his position as tax manager for a US multi-national group. The comments deal with specific areas within the Bill, which raise issues or may require further examination or clarification.

2. Overall the Bill is clearly worded and concise.

3. Cl.7 prohibits Scottish Ministers giving directions or seeking to control Revenue Scotland (RS). Cl. 8 permits Scottish Ministers to give guidance to RS about the exercise of its functions and RS must have regard to the guidance, which must be published unless Ministers consider that the publication would prejudice the effective exercise by RS of its functions. It is not difficult to envisage situations in which the distinction between directions and guidance will be, at the very least, questionable. If Ministers give guidance that is not published they should have to declare each time they do so and such guidance should be reviewed by an independent arbiter, for example the President of the Tax Tribunals, to ensure that it does not amount to a direction.

4. Cl.10 requires RS to publish a Charter but gives no time frame. The Charter should be prepared and published within a specified time frame. RS should consult with interested parties on the detailed content of the Charter.

5. Under Cl.2 of Sch. 2 Ministers will prescribe by Regulation the eligibility criteria for Ordinary Members of the First-Tier Tribunal. There are similar provisions for the eligibility criteria for legal members of the First-tier and Upper Tribunals. The tribunals are an important safeguard for taxpayers against the power of RS, but the Regulations regarding eligibility criteria for members are subject only to the negative procedure in the Scottish Parliament prior to becoming law (Cl.218). The draft Regulations should be published for consultation and subject to the affirmative procedure.

6. Cl.7 of Sch. 2 covers disqualification from office. The disqualification criteria should include having been convicted of any criminal offence or having made a monetary settlement with RS or HMRC in connection with civil procedures for dealing with fraud under COP 9 (2005) or its equivalent.

7. Part 4 Sch. 2 contains provisions for establishing a fitness panel to investigate and report whether an ordinary or legal member of the Tax Tribunals is unfit to hold office on the grounds of inability, neglect of duty or misbehaviour. The panel’s conclusion is not appealable. As the panel’s finding against a member would almost certainly lead to dismissal, and adversely affect the member’s personal reputation, there should be a right of appeal to the Court of Session.

8. Cl.44 allows the FTT and UT to award expenses according to tribunal rules that are to be drawn up by the Court of Session (Cl.46). To give taxpayers an effective right of appeal unconstrained by the fear of an adverse award of expenses, the tribunal rules should require each side to bear its own costs unless (a) the appeal
is judged to be vexatious or without merit or (b) there is prior agreement to the contrary between the parties.

9. Cl.50 envisages the possibility of private hearings before both tribunals ((2)(a)(ii)) and the imposition of reporting restrictions ((2)(g)). In the interests of justice being seen to be done, these sub-clauses should be removed. If, however, they are retained, the tribunal rules should only permit private hearings and reporting restrictions in wholly exceptional circumstances (defined).

10. The publication of the decisions of the tribunals is to be subject to tribunal rules (Cl.51(4)). In the interests of justice being seen to be done, all tribunal decisions should be published, particularly as the possibility of private hearings is envisaged. Anonymisation of the taxpayer’s identity could be allowed in wholly exceptional circumstances.

11. Part 5 (the General Anti-avoidance Rule) raises issues. It gives an authorised officer of RS the power to decide what is an artificial tax avoidance arrangement (Cl.63). Condition A of what defines “artificial” (Cl.59(2)) is so broad that an authorised officer could view almost any transaction that does not maximise the tax take as artificial. This definition should be reviewed.

12. Having decided that a tax advantage has arisen to a taxpayer from a tax avoidance arrangement that is artificial, the authorised officer must, if the advantage is to be counteracted, issue a notice to the taxpayer telling him what adjustments to make (Cl.64).

13. The taxpayer has the right to have an appeal against the notice heard by the tribunals and court in connection with the GAAR, at which RS must show that there is a tax avoidance arrangement that is artificial (a low hurdle) and that the counteraction adjustments are just and reasonable (Cl.62). A court or tribunal must take into account any guidance published by RS about the GAAR (Cl.62(2)). It would be open and reasonable for RS, therefore, publish a wide range of guidance about what it considers artificial and the court or tribunal must take this into account. Although, presumably, they need not agree with the guidance, the fact that RS have given their view is likely to influence the tribunal’s decision.

14. Overall, the conditions to trigger the use of the GAAR are completely subjective and the manner of its use against the taxpayer is weighted too heavily in favour of RS. To quote from Para. 50 of The Briefing from the Adviser accompanying the publication of the Bill “………. the use of the double reasonableness test in Condition A would confirm that the test is intended to be objective, not subjective, and the introduction of an advisory panel of independent persons with relevant financial and commercial experience would help ensure that Conditions A and B are judged in an unbiased way.”

15. Para. 7 of the Policy Memorandum on the Bill states “In a statement to the Parliament on 7 June 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth set out his approach for a tax system for Scotland based on Adam Smith’s four maxims with regards to taxes: certainty, convenience, efficiency and proportionate to the ability to pay. The Bill has been prepared to reflect these
maxims.” As regards the Canon of certainty, the GAAR fails completely. This is no climate in which to encourage business investment and growth, particularly if further taxes are to be devolved, or enacted in an independent Scotland.

16. Cls. 76(2)(b)&(3) permit an enquiry into a tax return to be opened up to three years after, usually, the filing date. A one year period would better deliver certainty.

17. If an enquiry into a return is opened, Cl. 84(2) states that it must be completed within three years (to which we propose amendment: paragraph 16 above refers) of the “relevant date” which, according to Cl. 76(3) is, usually, the filing date. It appears that RS have three years from the filing date to open an enquiry, but it appears that it must also be completed by the same date.

18. Cl. 86 and Cl. 94 give RS five years from filing dates in which to raise, respectively, Determinations and assessments. If the taxpayer has died, RS have three years after the date of death to raise an assessment where the filing date for the return was up to five years before the date of death (Cl. 94(4)), i.e. an eight year window. These are further examples of the disregard of certainty for the taxpayer and should be reduced to a more reasonable period, for example three years from the filing date.

19. Part 7 of the Bill covers investigatory powers. A designated investigation officer, defined in Cl. 111 as, in normal parlance, a specialist investigator, must obtain the approval of a tribunal to issue a notice to a third party in respect of a named individual (Cl. 117(4)). However, no such approval is required where the name of the taxpayer is unknown to the officer, or the notice relates to a class of taxpayer whose individual identities are unknown to the officer (Cl. 119). Although the name(s) may not be known to the officer, it may be obvious to the third party who the individuals are. Indeed, presumably the notice may require them to be named. This type of notice can, therefore, be as sensitive as a notice in respect of a named individual. All third party notices should require the approval of a tribunal in order to give taxpayers equal protection.

20. Cl. 130 gives protection from disclosure to privileged communications between legal advisers and clients. Using the same arguments that were advanced in the Prudential case, the principle of privileged communications should be extended to communications between clients, chartered accountants and other tax advisers who are members of regulated bodies.

21. A designated investigation officer has the power to inspect business premises at any reasonable time without notice (Cl. 135). This is a power that could have significant ramifications for the taxpayer’s relationship with customers, suppliers and employees; it should be subject to approval by the tribunal.

22. A penalty for failure to make a return may be reduced for disclosure, the reduction depending on the usual prompted/unprompted disclosure, co-operation, etc. criteria (Cl. 154). To ensure consistency between RS officers, and thus equality of treatment of taxpayers, the penalty abatement percentage bands should be fixed by regulation. The same comment applies to penalty reductions under Cl. 165.
23. Clauses 156 & 164 permit RS to reduce penalties under Cls.150 &151 and Cls.160-162, respectively, because of “special circumstances”. By their nature, special circumstances cannot be specified and, therefore, the penalty reductions attributable to them would be at the discretion of RS officers. To ensure consistency, so far as possible, and to avoid any suggestion of “sweetheart deals”, a proposal by an officer to reduce penalties in special circumstances should be subject to the approval of a panel consisting of three members of RS.

24. Cl.4 permits RS to delegate any of its functions relating to LBTT and SLfT to Registers of Scotland and SEPA respectively. To ensure consistency in the application of penalties across all taxes for which SR has management responsibility now or in the future, the imposition and mitigation of penalties should not be delegated.

25. Scottish Ministers have the power to change by order the amount of certain penalties “if it appears to them that there has been a change in the value of money since the last relevant date” (Cls.170 & 196). Ministers should be required to state in the order how the change has been measured e.g. increase in the CPI or RPI.

26. Scottish Ministers are to specify in regulations the rate of interest payable on overdue tax, penalties and repayments (Cl.185). The regulations should state the basis for setting rates e.g. x% above base rate on a particular date.

27. A taxpayer may request a review by RS of an appealable decision made by them (Cl.199). Cl.203(2) establishes that “the nature and extent of the review are to be such as appear appropriate to RS in the circumstances”. For the protection of the taxpayer, and RS if the review is appealed to the tribunal, the legislation should state that the review may not be carried out by any officer of RS who made, or assisted in the making of, the appealable decision.

28. Cl.204(1) requires RS to notify the appellant of the conclusions of the review within specified time limits, but sub-clause (3) states that if RS does not notify the appellant within the time limits the decision is taken as upholding RS’s view. This provision appears to give RS the opportunity to deliberately delay notifying the appellant within the statutory time limits or, indeed, to not carry out a review at all, and have their appealable decision upheld. It should be removed and a provision substituted that requires RS to agree with the appellant a date by which the review will be carried out and the conclusions notified.

29. If Cl.204 remains unaltered, the wording in Cl.205(1) should make it clear that the conclusions that the review is treated as having reached are also appealable, for instance by altering the first line of (1) to read “If RS gives notice of the conclusions of a review (see section 204(1) & (4))……”

30. Cl.211 deals with settling matters in question by agreement. Cl.211(1) starts “In relation to a review, mediation or appeal……”. Mediation is also mentioned in Cls.205(2)(a) and 207(2)(d). There are clauses in the Bill covering how reviews and appeals are to be requested and conducted but there is nothing similar for mediation. The Bill should cover these aspects of mediation, including the appointment of external (to RS) mediators and which party should bear the cost.
FINANCE COMMITTEE CALL FOR EVIDENCE
REVENUE SCOTLAND AND TAX POWERS BILL
SUBMISSION FROM ICAS

About ICAS
1. The Institute of Chartered Accountants of Scotland ("ICAS") is the oldest professional body of accountants, and is a public interest body. ICAS represents around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices, many with expertise in a range of tax areas.

Introductory comments
2. ICAS welcomes the opportunity to give evidence to the Finance Committee at Stage 1 of the consideration of the Revenue Scotland and Tax Powers Bill.

3. ICAS commends the pragmatic approach to the Bill, with its use of existing UK tax powers that have been tailored to meet the requirements of Land and Buildings Transaction Tax (LBTT) and Landfill Tax, which will be devolved to the Scottish Parliament from April 2015.

4. ICAS also notes the significant time and effort that has been made by Revenue Scotland and the Bill team to consult and meet with interested parties throughout the period of drafting. Earlier discussions with stakeholders are reflected in the drafting of the Bill, which provides a clear and helpful framework for the management of taxes in Scotland. The comments below are put forward to enhance the effectiveness of the Bill.

5. In terms of priority, the most important area of the Bill to consider further is the General Anti-Avoidance Rule (GAAR). This is discussed in detail below.

6. There are a number of provisions, for example the penalty regime, where powers are delegated. However the delegation of powers beyond the administrative essentials reduces the legislative clarity, reduces the certainty that taxpayers might otherwise experience, and diminishes the role of Parliament in scrutiny. It would be helpful to include the key penalty principles and provisions in this Bill to address such concerns.

Achievement of policy objectives
7. The Bill establishes a legal framework for a tax system in Scotland, yet the taxes to which it is to apply in 2015 are not yet legislatively complete, the procedural model for the delegation of powers in particular is not yet finalised, and legal recourse is to a Tribunal system that is still being shaped. Whilst additional detail around intentions is included in the Policy Memorandum, it has no statutory force. The Bill therefore is a core framework only.
8. It is an understandable result of the parliamentary process and practicalities of timescale that the Bill consultation process is being launched now, but the consequence is that any Bill passed before those matters are finalised may need amendment or enhancement before implementation.

9. Whilst it is appropriate that minor administrative matters within Revenue Scotland should be dealt with by the general “collection and management” power it is given under section 3, we do not consider the extent of delegated powers or regulations, nor their piecemeal consideration, are necessarily appropriate for the most fundamental decisions to be made in establishing the foundations of a tax system for the first time in this Parliament.

10. A solution for both of these concerns may be to consider a timetabled, formal, review of the accumulated devolved tax legislation, regulations, guidance, operational plan and IT systems in their entirety, around September 2014. ICAS has suggested in the past that effective legislation is derived from properly testing draft provisions. It would be a positive step to include such testing in plans for a future review as it is generally the consideration of practical situations which highlights any gaps and weaknesses. This would allow time for considered remediation before 1 April 2015. That might best deliver the Parliament’s aims and the Scottish Government’s objectives for the Revenue Scotland and Tax Powers Bill.

The establishment and membership of Revenue Scotland and its functions

11. If Revenue Scotland is expected to deliver according to the Adam Smith maxims, but is to be independent of Ministerial interference, we question whether the draft Bill provisions around its purpose and directions are sufficiently specific. The Bill contains no direction, only providing for “functions of collection and management” without specification as to principles of conduct or taxpayer expectations; in particular a requirement around publication of Revenue Scotland’s equivalent of HMRC Manuals, or other guidance, would provide essential additional clarity. Section 10 describes a Tax Charter in principle, but it is to be an aspirational matter established by Revenue Scotland alone, with no accountability obligations or scrutiny; only that the Charter must be laid before Parliament. The duty on taxpayers broadly to pay the right tax at the right time is included at section 68 so it is perhaps anomalous that mirrored obligations for the tax authority are omitted.

Possible drafting amendments for discussion

12. It would be beneficial to have the duties and principles for Revenue Scotland specified and these could include:

- a duty to collect the right tax at the right time
- delivering on commitments to taxpayers and treating them fairly
- ensuring the security of customer data
- taking account of any hardship and/or other circumstances of taxpayers
- ensuring penalties are proportionate to the tax loss

13. Section 10, or a supporting schedule, could specify the Tax Charter essentials, to complement the rights and duties of taxpayers. Section 16A Commissioners for Revenue and Customs Act 2005 offers a template that could be used. The principles are for Parliament to decide but could include the following
expectations of Revenue Scotland, its staff and those to whom it delegates its functions:

- Treating taxpayers with respect, courtesy and consideration
- Helping and supporting taxpayers to get things right by providing appropriate information
- Treating the taxpayer as honest (unless there is a good reason not to)
- Treating all taxpayers even-handedly
- Being professional and acting with integrity
- Tackling people who deliberately break the rules and challenge those who bend the rules
- Protecting taxpayers information and respecting their privacy
- Accepting that an agent can represent the taxpayer
- Keeping the cost of dealing with the authorities as low as possible.

14. The Bill is silent on the requirements and processes under which Revenue Scotland will, or may be, accountable to the Scottish Parliament and it might be expected that appropriate provisions would be included in the Bill. This is particularly the case when there is to be extensive and immediate use of delegated authority to SEPA and the Keeper.

15. The Bill is also silent on the approach to consultation on future legislative proposals that would be expected, and it would be appropriate to set out statutory obligations in this regard; this would also scope the role of Revenue Scotland staff in tax policy development.

16. The Policy Memorandum states that the majority of respondents to the consultation preferred the Board of Revenue Scotland to comprise both executive and non-executive roles, but this is not reflected in the Bill and should be reconsidered. The risk of a Board not being sufficiently aware of the detailed issues would be avoided; the benefits of a mixed Board also include a greater alignment of the executive team to the Board’s objectives and enhanced accountability of staff. The Bill is also silent on the core skills or qualifications that the Board of Revenue Scotland should include, which will be particularly important in the early years of operation.

The proposed approach to the Scottish Tax Tribunals

17. The draft legislation in the Bill replicates much of the Tribunals (Scotland) Bill which has completed Stage 1 and, very recently, Stage 2. It is not clear whether Part 4 of the Bill should be considered as a standalone draft or whether there has been a policy decision simply to replicate provisions from the Tribunals (Scotland) Bill. Amendments to the Tribunals (Scotland) Bill have been made at Stage 2 and it may be that the same amendments should be made in due course to the Revenue Scotland and Tax Powers Bill. The tribunals will also operate substantially on the basis of the Scottish Tax Tribunal Rules which also need to be drafted.

18. The UK tax tribunals system offers the administrative efficiency of categorising appeals to the First-tier Tribunal into the four categories Default paper, Basic, Standard, and Complex according to the issue, with the tribunal complexity increasing accordingly. A number of “presiding members” are authorised to decide
Default Paper and Basic cases alone. It is not clear whether this is intended for the Scottish tax tribunals.

19. The administrative arrangements for a new, separate, Scottish Tax Tribunal to be established should be clarified, particularly around the judicial staff, i.e. judges and members with appropriate experience of judicial skills, taxation (ideally SDLT/LBTT) and anti-avoidance provisions.

20. Of particular importance to the interpretation of the new legislation, this Bill might also be expected to provide clarity around the role and precedent of UK tax case law on the same wording and principles, as applied with regard to the devolved taxes.

The General Anti-Avoidance Rule (“GAAR”)

21. The rule has been introduced to provide a counteraction measure to “artificial tax avoidance arrangements”. It is wider than the UK regime; it is worth considering firstly the drafting approach, before commenting on the possible consequences and effectiveness of the rule.

22. Firstly, the definitions and drafting are substantially copied from the UK General Anti-Abuse Rule in the UK Finance Act 2013. Both rules have a test requiring the respective tax authority to conclude the tax planning arrangements were not a “reasonable course of action”, however in Scotland an additional test catches any transaction which “lacks commercial substance”.

23. The UK has a second “reasonableness” test, in that a “reasonable view” needs to be taken in regard to the wider prevailing business practice, which the Scottish provisions have incorporated as an example rather than a separate test, for “reasonable business conduct”. “Reasonableness” at a UK test has been criticised as being too subjective, but certainty was offered instead by the appointment of an independent General Anti-Abuse Rule Advisory Panel. It will provide advance interpretative guidance and a “reasonableness” opinion to taxpayers and HMRC alike in disputes which must be taken account of in the courts. The current Bill does not have a second “reasonableness” override provision, nor does it establish an Advisory Panel for Scotland, but leaves instead the view on what might have been “reasonable business conduct” and “lacks commercial substance” essentially to Revenue Scotland to determine and challenge alone. This generalised drafting in the Bill lacks balanced safeguards.

24. There is a further requirement in the Bill that the Scottish courts “must” take into account non-statutory, not yet written, guidance in interpreting “reasonableness” “and “lacks commercial substance” as well as the wider provisions of this GAAR. Overall then, Revenue Scotland will make the detailed law, decide when it is to be applied and this Bill binds the courts to take Revenue Scotland’s view into account. The lack of parliamentary or other scrutiny on the scope and application of the law and the lack of independence of the courts in this matter is less than would be expected in this opportunity to establish a fresh, high quality approach to tax legislation. It also results in there being no certainty at the moment on the real impact of the GAAR, thus failing that maxim.
25. The uncertainty resulting from the Bill’s drafting causes concern to taxpayers undertaking commercially motivated transactions and could be a disincentive to do business. There will be greater tax uncertainty for transactions undertaken in Scotland when compared to the rest of the UK and uncertainty gives a less competitive business environment. It will be important to consider the proposed impact of these provisions on the attractiveness of the Scottish property market, another matter that could be considered in a pre-implementation review as discussed above.

26. The Policy Memorandum recognises the Bill’s statutory uncertainties, and suggests that taxpayers could ask for a non-statutory, non-binding opinion, falling short of a clearance system and at the discretion of Revenue Scotland. There is however no such route in the Bill so this does nothing to adequately resolve the uncertainty concerns.

Possible drafting amendments for discussion

27. The need for certainty suggests that there should be an amendment to the “must” provision, or a statutory clearance system, and/or an Advisory Panel, particularly in the early years of operation of the new GAAR.

28. Clause 59(3) of the draft Bill identifies as able to be counteracted, any arrangement that “lacks commercial substance”. The identification of these is down to Revenue Scotland alone. It is difficult to see that Revenue Scotland staff will necessarily have the commercial property market and legal experience to operate the judgement necessary, so either this test B should be removed, or if it is to stay, the preferred route might be that an Advisory Panel be appointed to assess the commercial substance and reasonableness of the arrangements under challenge.

29. Clarity on the precedent value of UK case law on the relevant taxes and on the UK Advisory Panel’s opinions on similar transactions should be provided.

30. The effectiveness of any anti-avoidance provision depends on the tax authority concerned having the right level of resource to deal with the complexity and scale of the legislative obligations placed on it. As regards the GAAR, this requires the right level of commercial knowledge to assess the applicability of the provisions and understand the property market (for LBTT) and tax planning environment. We understand from Scottish Government officials that, contrary to the explanatory notes, no Disclosure of Tax Avoidance Scheme (DOTAS) regime will support the operation of the GAAR.

31. The Bill contains no provisions requiring the GAAR to be monitored, and the effectiveness of the provision reviewed and reported on at set intervals to assess its effectiveness; balancing the prevention of tax avoidance and creating sufficient business certainty.

The proposed approach to tax returns, enquiries and assessments

32. A provision missing from this Bill is one to give taxpayers a specific statutory right to appoint a tax agent to act on their behalf and for Revenue Scotland to respect that. For the Bill to be clear and comprehensive, the tax agent’s duties and responsibilities should be outlined in legislative powers, rather than subsumed under
general “collection and management” powers in section 3. There is recognition in various provisions that someone may act on a taxpayers behalf, indeed it is core to the practical operation of LBTT that the return is likely to be completed by an agent (the solicitor undertaking the legal work on the land transaction). It is also core to the efficient and convenient operation of UK and international tax systems that a taxpayer’s agent can be involved.

Proposed drafting amendment for discussion

33. It should be specifically recognised in the Bill that a taxpayer can appoint an agent. Finance Act 2012 Schedule 38 paragraph 2 offers example wording for who is a ‘tax agent’ that could be replicated in this Bill.

34. It is noted that sections 100 – 104 have a range of defences to claims for overpayment of tax but it is questionable how some of these defences could relate to the two devolved taxes. It is not clear on what basis the state is entitled to keep money not owed to it. If taxpayers must pay the right amount of tax, the state must not keep the wrong amount.

35. The provisions relating to information notices in part 7 contain an interesting divergence from UK legislation, around professional privilege and documents. The UK legislation at present supports a level playing field across the service sector in relation to tax advisory advice, in that advice between a tax adviser (whatever professional background) and client is regarded as subject to privacy protection and a statutory exclusion from certain tax information notices. This is consistent and works well with a tax system where obligations are clear, views on interpretation may diverge and a clear appeal and tribunal framework is in place.

36. The Policy Memorandum explains that such privacy protection will only apply to a professional legal adviser (not defined in the Bill but apparently only solicitors in Scotland, who will undertake practically all LBTT transactions. Nevertheless, one of the difficulties with the Legal Services (Scotland) Act 2010 is that ‘legal services’ is sufficiently widely defined that it arguably could include accountancy practitioners. Clarity and consistency across Scottish legislation would be beneficial to all concerned). The Memorandum says that to do otherwise - that is to extend such protection to tax advisers - would “unduly hinder efforts to tackle tax avoidance in Scotland”, which is unsubstantiated, misplaced and anti-competitive. This is because the greatest challenges a tax system can put to hinder tax avoidance in Scotland is to have a comprehensive package of measures which ensure the law on tax avoidance is certain, there are disclosure obligations on taxpayers and scheme promoters and there is a properly resourced compliance and enforcement regime. The weakness in the legislation is discussed above; the second point has been ruled out by the government and the third is as yet not visible; progress is needed on all of these areas rather than attempts to divert in this information notice point.

37. A vibrant professional services community needs a level playing field; it is widely recognised that tax advisers do much to support tax compliance and ICAS members in particular are governed by a professional standards code which gives specific prohibition to acting or advising clients to act in ways that seek to avoid or evade tax by non-disclosure to the tax authorities. It is also the case that some lawyers currently put forward their position regarding privilege as a competitive edge.
when offering for advisory work on tax matters, particularly where international businesses with different regimes give a different expectation. To keep a level playing field and tax services competition open in particular to those already adhering to professional standards, supports the argument for a replication of the UK provisions in this Bill.

**Proposed drafting amendment for discussion**

38. Finance Act 2008, Schedule 36 paragraph 25 should be replicated in the Revenue Scotland and Tax Powers Bill so that there is a clear statutory authority regarding the position of tax advisors in terms of privilege.

39. There is also a need to define an auditor, being an office that meets the requirements of the Companies Act 2006.

**The proposed approach to penalties**

40. The Bill reflects an imbalance in the approach to penalties; those for errors are described in outline but those for late returns and late payments of tax are delegated to Ministers. Tax enforcement powers are so significant to the tone and impact of a tax powers Bill that it is a considerable weakness that these cannot be considered in the Bill as a whole.

41. Whilst it may be the case that for future devolved taxes it may be desirable to adopt a different approach, that is not a credible reason for failure to specify the levels, structure and shape of the penalties regime now for the known devolved taxes. The penalties sections included in the Bill are copied from UK provisions so it appears that only a policy decision has prevented a more comprehensive copying, or direct replacement for differences of approach. This fails to deliver a clear package for Parliamentary consideration and consultation.

42. The main concern arises from the possibility that penalties would be based on the UK provisions of VAT default surcharge, which can have an extremely harsh and disproportionate effect, where increasing penalty levels are imposed where repeated late payment arises, even for example from a business having cash flow difficulties and even where only a day is involved. The penalty level under those provisions is at up to 15%, more recent provisions such as for PAYE are at up to 4%.

**The proposed approach to interest on payments**

43. Although a direct copy of the UK stamp duty land tax provisions, it is not clear why a delay of 30 days will be provided for before interest on late payment of tax is charged as a general principle, particularly when a penalty can be charged on the same amount (depending on secondary legislation yet to be published). If delay in payment has no cost consequences, taxpayers may be tempted to delay payment accordingly, reducing the efficiency of the collection system.

44. It is appropriate that the rate of interest may vary according to market conditions, but it seems inconsistent to provide that fees payable with online/credit card transactions are capped by what is reasonable in relation to the costs incurred, yet no reasonable reference point is established for interest rates.
The proposed approach to reviews and appeals
45. It is disappointing that the principle of payment before review or appeal is established without condition or circumstances being statutorily required to be taken into account. ICAS provided detailed evidence to the Scottish Government on a workable alternative proposal, yet the whole issue has again, inappropriately, been left wholly to the secondary regulations. Amendment is necessary to require Revenue Scotland and Ministers to take account of hardship and specific financial consequences.

Proposed drafting amendment for discussion
46. Value Added Tax Act 1994, section 84(3B) offers precedent wording to insert after the Bill section 210(1), where HMRC or the Tribunal (failing HMRC) are "satisfied that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship."

47. ICAS is interested to have confirmed that the Scottish Public Services Ombudsman will operate in relation to Revenue Scotland and the devolved taxes.

Other matters: gaps and inconsistencies, drafting details
48. The content of the Bill replicates a number of provisions in existing UK legislation but there are a few places where there are gaps or inconsistencies. These are:

- The use of varying terms for Revenue Scotland and its staff, for example, section 15 refers to ‘Revenue Scotland official’, section 57 to an ‘authorised officer’, section 78 and 89 to a ‘designated officer’, and section 111 to a designated investigation officer
- The use of the term ‘tax’ where it should be defined as ‘devolved taxes as in section 3(3)’ and this is required in sections 68, 77(1)(b) and 92.
- The use of the term ‘reasonable’, which has been widely used in the Bill. Concerns arise over this because it is a subjective term and, as yet, there is no Scottish legal precedent as to its interpretation, nor is there UK precedent. It is generally left to the courts to determine, based on the circumstances of the particular case.
Introduction
1. KPMG LLP (“KPMG”) is a global network of professional firms providing audit, tax and advisory services. KPMG’s Scottish offices are located in Aberdeen, Edinburgh and Glasgow.

2. We welcome the opportunity to participate in the Finance Committee’s call for evidence in relation to The Revenue Scotland and Tax Powers Bill (“RSTP Bill”), introduced to Parliament on 13 December 2013.

3. Please note that, given the restriction placed on the length of written responses, our responses are necessarily at a high level.

Call for evidence
The Committee is seeking views on the general principles of the Bill and in particular the Scottish Government’s overall policy objectives in introducing the Bill and whether the Bill reflects “Adam Smith’s four maxims with regard to taxes: certainty, convenience, efficiency and proportionate to the ability to pay.”

4. We welcome the stated objectives of the RSTP Bill, however, we are of the view that it will be difficult to ascertain whether the RSTP Bill, and other Devolved Taxes legislation, meets Adam Smith’s four maxims until Devolved Taxes are implemented.

5. The Finance Committee may wish to consider whether it would be appropriate to include provision in the legislation which makes it clear that the implementation of any Devolved Taxes should respect these principles.

The proposed approach to the establishment and constitution of Revenue Scotland as a non-Ministerial Department and its membership;
6. We have no preference for an alternative legal structure and accountability model to that proposed.

The functions of Revenue Scotland;
7. We consider the proposed general function of Revenue Scotland, being the “collection and management of the devolved taxes”,¹ to be appropriate.

8. We understand that this corresponds with the responsibility for collection and management of revenue given to the UK Commissioners of HMRC in the Commissioners for Revenue and Customs Act 2005, and has the same meaning as references to care and management in older tax statutes. The intention is that this

¹ Section 3, RSTP Bill
power should provide Revenue Scotland with the power to operate with a certain amount of discretion and flexibility.

9. The Finance Committee may wish to consider if the bill as drafted gives Revenue Scotland the power necessary to exercise discretion in relation to cases of exceptional hardship for businesses and individuals.

**The independence of Revenue Scotland;**

10. As stated above, we have no preference for an alternative legal structure and accountability model to that proposed.

**The investigatory powers of Revenue Scotland;**

11. We agree that Revenue Scotland should have powers to request information from taxpayers limited to what it reasonably believes to be relevant to determination of the tax position. We agree that Revenue Scotland’s powers to request information from third parties who are auditors should be limited. UK legislation also limits the power of HMRC to require information from third parties who are tax advisers. This helps to ensure candour between clients and advisers and avoids imposing excessive burdens on advisers.

13. This is subject to certain exemptions to ensure that factual information can be obtained from tax advisers where there is no other way of obtaining that information. We agree that Revenue Scotland should have no right to obtain information that is subject to professional privilege.

14. We therefore consider that it would be reasonable to extend professional privilege to advice on Devolved Taxes received by taxpayers from suitably qualified advisers regulated by an appropriate professional body (such as, for example, the Chartered Institute of Taxation, the Institute of Chartered Accountants of Scotland, and the Institute of Chartered Accountants in England & Wales) who are not members of the legal profession.

15. It is worth emphasising that professional privilege benefits the taxpayer and not the adviser. Whilst we envisage that in most circumstances taxpayers who have obtained professional advice on Devolved Taxes in support of their position would have no particular reason to withhold that advice from the tax authorities, it remains the case that on occasion negotiations between a taxpayer and Revenue Scotland may have a legitimately adversarial nature.

16. We consider it would be inequitable that a taxpayer who had obtained assistance from a chartered accountant in relation to his position could be required to disclose information to Revenue Scotland that another taxpayer, who had obtained identical assistance from a lawyer, could not be compelled to disclose.

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2Section 112, RSTP Bill
3 Section 131, RSTP Bill
5 Section 130, RSTP Bill
The proposed approach to the Scottish tax tribunals;
17. We recognise that the provisions for Scottish Tax Tribunals are intended as an interim measure until the Scottish Tribunals structure is put in place by the Tribunals (Scotland) Bill. The expectation is that all devolved tribunals will merge into the new structure in 2016. As such, we have no comment on the proposed approach to the Scottish tax tribunals.

The General Anti-Avoidance Rule;
18. KPMG recognises the right of taxpayers to arrange their affairs in a tax efficient manner\(^6\) (e.g. structuring *bona fide* commercial transactions in a tax efficient way), but accepts in principle the need for the Scottish Government to tackle highly abusive and artificial tax planning arrangements.

19. We consider that any Devolved Taxes General Anti-Avoidance Rule (“GAAR”) should be consistent with the Scottish Government’s governing principles on Devolved Taxation as to certainty; convenience for the taxpayer; and efficiency.\(^7\) If taxpayers are concerned that a widely-drawn Devolved Taxes GAAR could adversely affect *bona fide* commercial transactions where tax efficiency is one of the considerations, it could potentially reduce the competitiveness of the business environment and hamper job creation by encouraging investment to be directed outwith Scotland.

20. We consider that certainty for the taxpayer and Revenue Scotland would be improved by the introduction of a principle similar to that of the “double reasonableness test” used in relation to the UK GAAR. We recognise that condition A, being that the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances\(^8\), requires that the ‘reasonableness’ of an arrangement is considered. However, a statutory requirement that such consideration is made from an objective position would provide greater certainty for both taxpayers and Revenue Scotland.

21. We recognise that condition B, being that an arrangement is artificial if it lacks commercial substance\(^9\), is a more objective test.

22. Where arrangements have as their *sole* purpose the reduction or avoidance of a charge to a Devolved Tax, this should be reasonably clear (e.g. as in *Mayes v Revenue and Customs Commissioners*).\(^10\)

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\(^7\) Consultation Document, p. 7, 1.4

\(^8\) Section 59, RSTP Bill

\(^9\) Section 59, RSTP Bill

\(^10\) [2011] STC 1269
23. However, the position may be less clear when the relevant arrangements have an overriding non-tax purpose, but have also been specifically designed to be tax efficient. In addition the possibility of the Devolved Taxes GAAR applying to any arrangements that are not “normally” employed or entered into for commercial purposes could discourage the innovative and commercially driven structuring of transactions for non-tax reasons.

24. It might be that the officers of Revenue Scotland will not be best placed to determine what is and what is not ‘commercial’, given that this will require extensive experience of how such arrangements are structured in practice, and the various non-tax factors that influence that structure.

25. We recommend that an advisory panel of independent, impartial experts is established, similar to the UK GAAR Advisory Panel, to improve certainty for taxpayers. We are of the view that such a panel would be better placed to make an objective and informed assessment as to whether an arrangement is ‘reasonable’ and/or ‘commercial’, than the officers of Revenue Scotland.

26. We note that no provision has been made for an advance clearance procedure or formal process of disclosure preventing against risk of a later assessment outwith the standard enquiry window (similar to the UK DOTAS regime).

27. Certainty in tax affairs is a key requirement for all taxpayers, whether businesses or private individuals. A statutory clearance mechanism could mitigate the risk of uncertainty created by a Devolved Taxes GAAR impeding bona fide commercial transactions and reducing the attractiveness of Scotland as a place for the creation and transmission of wealth.

28. We note the statutory requirement that in determining matters in connection with the Devolved Taxes GAAR a court or tribunal must take into account any guidance published by Revenue Scotland about the Devolved Taxes GAAR (at the time the tax avoidance arrangement was entered into).

29. We recommend that Revenue Scotland publishes clear, unambiguous, and definitive guidance on how any Devolved Taxes GAAR would be applied in practice and that Revenue Scotland be itself formally bound to follow that guidance. It is likely that circumstances which could be foreseen and addressed in the initial version of such guidance would represent the most common transactions that taxpayers are likely to enter into where the Devolved Taxes GAAR could potentially be in point. Additionally, Revenue Scotland’s experience could inform regular updates to the published guidance, thus extending its scope and reducing uncertainty for the taxpayer.

The proposed approach to tax returns, enquiries and assessments;

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11 We use the phrase “non-tax purpose” in preference to “commercial purpose” as transactions in the normal course of family or domestic relationships may include acceptable tax planning but are unlikely to have any commercial purpose.

12 Section 62(2), RSTP Bill
30. We welcome the introduction of clear time limits for both the taxpayer and Revenue Scotland in relation to amendments, enquiries and assessments.

31. There does not appear to be any clear justification for allowing Revenue Scotland to amend a tax return up to the 3 years from the date of submission, whilst allowing taxpayers only until the 1st anniversary of the date of submission to amend the return.

32. We are of the view that the ability of Revenue Scotland to open an enquiry into a Return up to three years from the filing date (or filing the Return if this is later), could result in uncertainty for taxpayers and could, potentially, discourage the fullest voluntary disclosures being made to Revenue Scotland on the basis that this would not bring forward the point in time at which the taxpayer’s affairs could be considered settled.

33. The proposal to allow Revenue Scotland to raise assessments over periods of up to 20 years in cases of fraud by the taxpayer is in line with international practice and appears to be reasonable.

**The proposed approach to penalties;**

34. We recognise that much of the detail of the penalty system is to be specified by Scottish Ministers.

35. We consider that it is appropriate that Revenue Scotland has the ability to exercise discretion and vary penalties by way of remission, suspension or compromise, where there is a ‘reasonable excuse’ for a failure to make a return or pay tax. We note that penalties can be varied to recognise voluntary disclosure, the seriousness of the offence and the co-operation of the taxpayer in putting matters right.

**The proposed approach to interest on payments;**

36. We have no comment on the proposed arrangements for interest on payments.

**The proposed approach to enforcement;**

37. We have no comment on the proposed arrangements for collecting unpaid tax.

**The proposed approach to reviews and appeals;**

38. We welcome the introduction of an internal review process by Revenue Scotland in relation to contentious decisions and recognise that this has the potential to minimise the time spent in disputes and lower costs for both taxpayers and Revenue Scotland by potentially reducing recourse to the tribunals and courts.

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13 Section 75, RSTP Bill
14 Section 74, RSTP Bill
15 Section 94, RSTP Bill
16 Section 157, RSTP Bill
39. We also suggest that Revenue Scotland considers an internal review process as a matter of course before initial decisions are reached (i.e. an initial analysis of a taxpayer’s position reached by one Revenue Scotland officer is reviewed by an appropriate colleague to test the robustness of the conclusions before the initial decision is made).

40. We welcome the publication of specific time limits within which Revenue Scotland must conduct an internal review.\(^{17}\)

As a general observation at this stage, we note that an internal review process must be, and must be seen to be, completely independent in order for there to be confidence in the system. This could potentially be demonstrated by a dedicated review team that does not work directly with taxpayers, although we recognise that resource constraints may make this unrealistic (particularly when Revenue Scotland is expected to have responsibility for only 2 Devolved Taxes at the outset).

41. We welcome the proposal to encourage voluntary use of mediation as a lower cost initial alternative to litigation at the taxpayer’s request.

The financial implications of the Bill as estimated in the Financial Memorandum (FM).

42. We have no comment on financial implications of the Bill as estimated in the Financial Memorandum.

43. We welcome the Scottish Government’s approach to consultation on new Devolved Taxes legislation and the associated Revenue Scotland guidance prior to enactment of that legislation and adoption of the guidance.

\(^{17}\) Section 202-204, RSTP Bill
Executive Summary

1. The LITRG welcomes the opportunity to respond to the Scottish Finance Committee’s call for evidence on the Revenue Scotland and Tax Powers Bill (RSTPB).

2. Overall, we think that the RSTPB has been drafted well, is worded clearly and reflects the consultative approach that the Scottish Government has adopted for the purpose of designing Revenue Scotland (RS) and the tax administration framework. In particular, it has been helpful to engage early and closely with the draftsmen of the legislation, and we hope that this pattern will continue.

3. We note that the Scottish Government’s policy objectives include the intention for the RSTPB to reflect Adam Smith’s four maxims with regard to taxes: certainty, convenience, efficiency and proportionate to the ability to pay. Our comments are made with the aim of ensuring that the RSTPB reflects the aforementioned maxims. In addition, we have considered how to best ensure that the tax system is appropriate to Scotland and its values.

4. We think that there are a few gaps in the RSTPB; in particular, there are some areas, such as penalties, where we think that powers should be contained in the primary legislation, where currently they are to be in secondary regulations. We would urge some consideration be given to this, particularly in respect of penalties, where safeguards are crucial.

About Us

5. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

6. LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

7. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.
General points

8. The LITRG is an initiative of the CIOT; we support the CIOT’s separate submission. Our response focuses on points of concern for the low income taxpayer.

9. We note over eighty instances of the term ‘reasonable’ or similar. This is subjective and it will require time and experience for taxpayers to understand the meaning of the term in the Scottish context and the practice of RS. This means that there will be a degree of uncertainty for taxpayers (and their advisers). We suggest that it would be helpful if RS published guidance as to the approach that Scotland will adopt, for example, the extent to which the tribunals will treat UK case law as providing a precedent.

10. There are a number of areas, for example, penalties, where regulatory powers are granted by the RSTPB to RS. The Delegated Powers Memorandum is helpful in setting out the expected Parliamentary procedure to effect the regulations. We welcome the intention of the team responsible for the RSTPB to consult on the secondary legislation and suggest that there should be a public commitment to consult on secondary legislation.

11. Given the fact that the majority of taxpayers who will be liable to devolved taxes under the framework of the RSTPB are used to the current UK taxes and framework, we think that RS should be slow to depart from precedents set by the UK without very good reason. It would hinder cross-border mobility if minor matters like how long one should retain records for were to trip up otherwise compliant taxpayers. It would be sensible for RS to adopt the position that tax and administrative burdens should be no more onerous than those in the rest of the UK and that any divergences should be in favour of the taxpayer. In addition, any variances must be publicised well, in order to ensure that RS is fair to the taxpayer in general and to the unrepresented taxpayer in particular.

12. We are mainly concerned with unrepresented taxpayers; however, we are also aware that many taxpayers obtain voluntary, temporary and ad hoc assistance with their tax affairs (‘informal’ agents). We would have expected to see more provisions in the RSTPB relating to the rights and duties of tax advisers and agents and the relationship between RS, agent and taxpayer. We suggest that there is clear guidance for both formal and informal agents on procedures to follow to enable them to deal with RS on behalf of the taxpayer they are representing. See further our comments on the Charter at 4.3 below.

13. We suggest that references to legislation should not simply be ‘the 2013 Act’ as currently stated in s216. This terminology is obscure and could create complications in the future when more than one Act, to which reference is required, is passed in a year. An alternative might be to use acronyms, for example, ‘LBTTA 2013’ and ‘LTA 2014’ for the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 respectively.

Revenue Scotland
Functions and delegation

14. We welcome subsections (4) and (7) of s4. We suggest that the RSTPB make explicit the fact that a delegatee cannot exceed RS powers in carrying out delegated functions, for example, with regard to use of taxpayer information. We recognise that this is an accepted principle, but feel that an explicit provision would ensure taxpayers are aware of this vital safeguard. In addition, we suggest that the RSTPB contain a provision applying the Charter to delegatees.

Independence

15. In s8, we note that there is provision for exceptions allowing ministers not to publish their guidance to RS. We wonder what the exceptions are that this section envisages.

Charter

16. We welcome the provision for a Charter in the RSTPB. This is a particularly important document for all taxpayers but particularly to unrepresented taxpayers, as it should help them to understand how they can interact with RS. It therefore plays a particularly significant role in framing the relationship between RS and unrepresented taxpayers. In view of this, we are concerned that there is only a need for RS to aspire to the values and behaviours of the proposed Charter, especially given the emphasis on taxpayer duties throughout the RSTPB. We would prefer to see an expectation placed on both RS and taxpayers to uphold the values and behaviours of the Charter.

17. We suggest that the RSTPB include a duty for RS to consult and engage with interested parties in the development of the Charter. In addition, RS should be required to publish an annual report on the Charter and their performance against it. As a further safeguard for the taxpayer, we would like to see explicit provision in the RSTPB for the Scottish Public Services Ombudsman to exercise guardianship over the Charter.

18. We think that the requirement for RS to review the Charter ‘from time to time’ in s10 is too vague; the requirement should specify a time period, of not more than every three years.

Investigatory powers

19. In s111 it would appear that a ‘designated investigation officer’ could be a member of staff of an agency to which this task has been delegated. As a safeguard, we suggest that the RSTPB make explicit the fact that designated investigation officers cannot exceed RS powers in carrying out their functions. In addition, we suggest that the RSTPB contain a provision applying the Charter to designated investigation officers.

20. In s142, there is provision for a taxpayer to request a receipt or copy of a document that an officer removes. We suggest that there should be an explicit provision requiring the designated investigation officer to inform the taxpayer of these rights (or to ask the taxpayer if they would like a copy or receipt) prior to removal of the document. In the event of loss or damage of the document by RS, we
think that subsection 6 should explicitly extend to compensation for consequential loss.

21. We wonder whether there is a drafting error at s147 ss2(b) and at s172 ss2(b) as these sections seem to suggest that a taxpayer does not commit an offence if they conceal or destroy documents following receipt of an information notice.

Scottish tax tribunals

22. We believe that the judicial system should be open to all taxpayers, whether represented or unrepresented: our comments reflect this position. There is no legal aid system for most tax cases and yet tax is an area where individuals most need access to justice.

23. We are concerned that the RSTPB as drafted might not ensure the independence of the President of the Tribunals and their decisions. In particular, we are concerned by the provision for the President to be appointed by Scottish Ministers and the lack of explicit confirmation that the President has the security of the five-year initial term granted to members of the tribunals by paragraph 11 of schedule 2.

24. As it will take time for the Scottish tax tribunals to build up a body of their own case law, it might assist taxpayers, with regard to certainty, if RS were to publish guidance as to how far they will treat UK cases as persuasive or binding.

25. The LITRG have a concern that judicial review should be available to all people, including those on a low income, because there are likely to be problems with the administration of taxes that can be cured only by judicial review. There has been a UK Ministry of Justice consultation on this remedy recently to which LITRG responded. We believe that rather than restricting judicial review, it should be extended. Although we are advised that there are protected expenses orders in Scotland, these do not assist low income taxpayers if they are unaware of them. It is important that representative bodies have the ability to bring judicial review cases – a point that the UK Ministry of Justice has now accepted. We also suggest that where appropriate lower courts and tribunals should have the ability to hear judicial review cases, as this will make judicial review less costly and burdensome. This process needs to be publicised widely and properly so that all taxpayers are aware of it. It would be helpful for example for s40 to explain when judicial review can apply – the draft provision is not helpful in explaining the remedy to the ordinary taxpayer.

26. We think that there should be a duty in s41 for the tax tribunal to ensure that the hearing venue is reasonably accessible to the taxpayer, in particular if they have a disability, subject to cost constraints.

1 The LITRG response can be found on our website at http://www.litrg.org.uk/submissions/2013/131101_Judicial_Review_LITRG. The Ministry of Justice has now published its response to the consultation: http://www.litrg.org.uk/News/2014/JR_mixed_reception
General Anti-Avoidance Rule

27. We recognise the need to include a General Anti-Avoidance Rule (GAAR) in the RSTPB. We agree that the tax system must be protected; equally, we are mindful of the need for certainty for taxpayers when arranging their tax affairs – this is especially important for unrepresented taxpayers under a self-assessment tax system. If legislation is clear and its effect is certain, then the system itself counters tax avoidance to a large extent. The suggestions below are made with a view to increasing the certainty of the GAAR, in line with one of Adam Smith’s four maxims.

28. We suggest that at s58 the phrase ‘sole or main purpose’ is used, rather than the wider and less certain ‘main purpose, or one of the main purposes’. At s64, we suggest that a notice of counteraction of tax advantage should also be required to set out any rights of appeal the taxpayer has. RS should publish guidance as to what is and is not caught by the GAAR; they should update the guidance as their experience grows (for example with anonymised cases), but it is essential that there is guidance available from April 2015. The RSTPB does not provide for a clearance procedure; if RS are able to offer a non-statutory clearance procedure, they must publicise this. Thought should also be given to providing for an Advisory Panel with commercial experience, similar to that for the UK GAAR.

Tax returns, enquiries and assessments

29. The range of taxpayer duties set out in s68 is reasonable. We think that there should be an equivalent set of duties for RS. It would be helpful if the RSTPB contained a definition of ‘taxable activities’ as referred to in s68.

30. There is a duty for taxpayers to retain records in s69 for five years. As this is a different, and importantly a longer time period than for UK taxes, it is essential that RS publicise this information properly to affected taxpayers.

31. We note that the enquiry deadline set out in s76 relates to the ‘filing date’, that is, the due date for the submission of a return. This effectively encourages taxpayers to delay the submission of returns to the latest possible date (or deters them from filing returns early) and could lead to a concentration of submissions around particular dates. This could be difficult for RS to manage efficiently.

32. We would make the general point that deadlines should be publicised and notified to relevant taxpayers clearly and properly, for example, the deadline of two years in s99 for a claim for repayment of tax if an order changing the tax basis is not approved.

Penalties and interest

33. We have a major concern that too many of the principles and powers of penalties are absent from the RSTPB. Our view is that the principles of penalties should be contained in the primary legislation. This includes the circumstances that can lead to a penalty, the amounts of penalties, when taxpayers can appeal and enforcement. Secondary legislation should be used only for administrative and procedural matters.

34. We welcome the provisions in s154 and s165 for reductions in penalties by RS and the provision in s155 and s161 for suspension of penalties. We think the
RSTPB should contain explicit provision for the amounts of reduction (in percentages) and conditions. This will help ensure consistency of treatment for taxpayers and therefore certainty. We also suggest that other factors should be taken into account in order to make the system fair, for example, whether a failure is deliberate or negligent, the amount involved, the reason for a delay and the length of a delay. We would expect the decision of RS concerning penalty reduction to be appealable by the taxpayer; currently the RSTPB does not include provision for this.

35. In s156, there is provision for special reduction of a penalty. We welcome the inclusion of this provision, but note that it is inequitable to simply deny special reduction in circumstances where the taxpayer is unable to pay. The RSTPB should expand this provision, to ensure that RS must take into consideration the reason why the taxpayer is unable to pay. Development of this provision may also be a more pragmatic and effective approach, since the reason for the inability to pay, for example, flooding, may in itself constitute a reasonable excuse or a basis for special reduction.

36. We welcome s157 relating to reasonable excuse and s160 applying penalties to deliberate or careless errors, as it is important that taxpayers are not penalised for innocent errors.

**Enforcement**

37. We note that under s187 RS may charge a fee in connection with certain methods of payment. We question whether there should be limitations on the power to charge a fee, for example, if a taxpayer is unable to pay using a fee-free method because of a disability? This is a point which ought to be considered as part of the Equality Impact Assessment.

**Reviews and appeals**

38. This is an area of particular importance for the unrepresented taxpayer, to ensure that they are treated fairly and have full access to justice. We think that the general powers in relation to appeal rights, mediation and RS review are appropriate.

39. We think that the RSTPB should make more explicit provision for mediation: to ensure taxpayers are fully aware of this option and RS have the authority to use it. It would also be sensible for the RSTPB to explicitly require RS to publish details of their approach and performance in relation to mediation.

40. We welcome the inclusion of a provision in s210 giving Ministers the power to make regulations allowing the postponement of tax collection when an appeal is made, as otherwise s210 ss1 is unfair to the taxpayer. In particular, it should be noted that interest may not be sufficient compensation in some cases for the loss of use of funds, if the taxpayer paid the tax and it turns out that the tax is not due. It is essential that such provisions are made and that they require RS to give proper regard to hardship when considering whether or not to accept an application to postpone collection of tax. The possibility of postponing tax should be publicised properly and the relief should not be unduly difficult to obtain. We would prefer such provisions to be in the RSTPB rather than secondary legislation.

41. We suggest that RS publish guidance on their approach to internal reviews. This will hopefully encourage taxpayers to use them, by showing that they are a
worthwhile, low cost and accessible means of resolving a dispute. In particular, it is likely that RS will need to demonstrate to taxpayers how they can guarantee independence.

Revenue Scotland guidance

42. RS guidance will always be required in respect of all taxes and management of taxes. For the unrepresented taxpayer, RS guidance will explain the tax system and the approach of RS – they are unlikely to read the legislation behind the guidance. It is essential that RS guidance is written with the unrepresented taxpayer in mind as its audience. The guidance must be written in plain English; while it must be easy to understand, it must not simplify the law to such an extent that is misleading or incorrect. Taxpayers should be able to rely on RS guidance, provided they have acted in good faith.

43. Access to guidance is also of prime importance. Not all taxpayers will be able to access guidance on the RS website. It is essential that RS considers properly how to ensure that unrepresented taxpayers in particular can obtain RS guidance easily.
Overall Policy objectives: Adam Smith’s four maxims

1. In terms of administration, the key maxims are the first three: certainty, convenience and efficiency. We would stress the need for early, continuous and genuine consultation as a key principle in promoting certainty and building trust in the tax system. These are also important factors in preventing avoidance and supporting efficiency both for tax payers and Revenue Scotland.

2. Key to achieving those aims and delivering an efficient and convenient system are appropriately trained personnel and appropriately designed and implemented technology. For example, a modern electronic payments system is clearly desirable but cannot be delivered without appropriate resources. This is also a significant issue when powers and responsibility are delegated to other bodies.

The independence of Revenue Scotland

3. We note that whilst Scottish Ministers must not give directions to Revenue Scotland (s7), they can provide guidance to Revenue Scotland on how it exercises its functions and Revenue Scotland is required to have regard to such advice and must provide information to Ministers if asked (ss8 and 9). It would be helpful to clarify the limits of where guidance stops and direction begins. It should also be clear that such guidance will relate to policy matters rather than to individual taxpayers or groups of taxpayers.

The investigatory powers of Revenue Scotland

4. We note that investigatory powers are to be exercised by ‘designated investigation officers’, who will not necessarily be officers of Revenue Scotland. We believe that it is important for investigations into, and disputes over, taxpayer’s tax liabilities to be managed by appropriately-trained and qualified staff who are familiar with both the regulatory framework and the taxes which they administer. Any investigation into a taxpayer’s return needs to be focussed on the tax liability associated with that return. Our experience is that any investigation process which is managed by staff who are unfamiliar with the taxation issues tends to be less focussed and more time-consuming for both taxpayer and tax authority. More particularly, a Revenue Scotland officer would have a clear understanding of the relevant tax provisions and so be able to determine whether, and how, to exercise the investigatory powers detailed in the Bill appropriately.

5. As a result, we would expect such investigations to be undertaken by appropriately-trained and qualified officers of Revenue Scotland.
The proposed approach to the Scottish Tax Tribunals

6. As noted in our response in 2013, we welcome the inclusion of internal review and mediation as initial steps in the process and believe that these measures will contribute to the efficiency of the system.

General Anti-Avoidance Rule

7. We understand the policy objective and support the Scottish Parliament’s aim to tackle artificial tax avoidance.

8. The proposed Scottish general anti-avoidance rule (Scottish GAAR) will apply initially only to the land and buildings transaction tax (LBTT) and the Scottish landfill tax (SLfT), but may ultimately apply to a wider devolved settlement, or indeed to a wider Scottish tax system in the longer term. Initially it will effectively apply only to LBTT, as (per the Policy Memorandum para 66) the main issue with SLfT is tax evasion, rather than tax avoidance.

9. We support a narrow general anti-abuse rule like the UK general anti-abuse rule (UK GAAR), which came into force from 17 July 2013. Despite the majority of respondents to the consultation in 2013 favouring a narrow rule for Scotland, similar to the UK GAAR, the proposed Scottish GAAR is a broad spectrum anti avoidance rule. A broad spectrum was considered and rejected for the UK by Graham Aaronson’s Study Group; it was not thought to be beneficial for the UK tax system as it would undermine the ability of businesses and individuals to undertake “sensible and responsible tax planning”. The introduction of a broad spectrum anti avoidance rule for Scotland is likely to put Scotland at a disadvantage when compared to the rest of the United Kingdom, making it less attractive to businesses. We believe that the impact of the inevitable uncertainty (real or perceived) that such a broad spectrum rule will generate for business, incoming investment and individuals (heightened by the absence of a clearance system for taxpayers) will be detrimental to Scotland.

10. Under the proposed Scottish GAAR, a tax avoidance arrangement must meet one of two conditions in Clause 59 to be an artificial tax avoidance arrangement, as follows:

- **Condition A** - this focuses on the underlying principles on which the provisions are based, the policy objectives and whether the arrangements are intended to exploit shortcomings in the legislation. This is familiar from the UK GAAR, and will require Revenue Scotland to set out policy clearly and coherently at the earliest stage of any legislative process, otherwise our concern is that the Scottish GAAR may have an adverse impact on the stability and certainty of the tax regime due to policy uncertainty.

- **Condition B** – this will be met if a transaction “lacks commercial substance”. Whilst this may be appropriate whilst the Scottish GAAR is limited to LBTT and
landfill tax only, the condition may not be appropriate as and when the number of
taxes covered by the Scottish GAAR increases beyond those met in a business
or commercial context. There are a number of non-commercial situations that
could be caught by this test in the future which are entered into for valid reasons,
unconnected with tax avoidance, for example establishing a trust or making an
interest free loan.

11. We are concerned that, in contrast to the UK GAAR, there are insufficient
taxpayer safeguards in the proposed Scottish GAAR. Due to its inherent uncertainty,
it will not always be clear whether or not it will apply in specific cases. We suggest
that establishing an independent panel to review individual cases where Revenue
Scotland seeks to invoke the GAAR would be appropriate, and this is in line with the
Advisory Panel, a key safeguard in the UK GAAR. We would also welcome guidance
notes on the application of the Scottish GAAR, which should improve taxpayer
certainty; these should be reviewed and approved by an independent panel, again
following the model of the UK GAAR Guidance Notes.

The proposed approach to tax returns, enquiries and assessments

12. The proposals for a self-assessment regime, with specific powers for
Revenue Scotland to make enquiries into returns within prescribed time limits and to
make amendments to returns as a result of those enquiries ought to be broadly
familiar to taxpayers and their advisers. We agree that the proposals form an
acceptable and workable framework for the administration of the devolved taxes.
However, we have a number of specific observations and comments.

13. The 3-year period for enquiry into a return does not provide taxpayers with the
same level of certainty as is available under the Self-Assessment regime, which
enables taxpayers to regard their tax position as settled within a shorter period (9
months for SDLT returns) unless the level of disclosure in the return is not adequate.
We believe that there should be symmetry between filing and disclosure obligations
in Scotland and the rest of the UK, not least because a number of clients are likely to
have filing obligations under both systems. Additionally, as a matter of principle, we
would expect Revenue Scotland to propose a mechanism which would encourage as
full a disclosure as possible on tax returns, thereby enabling both taxpayers and
Revenue Scotland to obtain certainty over the tax position as early as possible. We
would therefore encourage Revenue Scotland to consider a short enquiry time-limit
along with a further provision that amendments could be made within the 3 year
period if they could not have been aware that tax had been under-assessed. We
agree that extended time-limits for deliberate or careless errors are appropriate.

14. We welcome the approach to tax payer information remaining confidential and
only being disclosed in prescribed circumstances. We are disappointed that the
opportunity to address the issues around Legal Professional Privilege in the context
of tax advice has not been taken. An approach which is based on what is broadly
considered to an unsatisfactory position appears inappropriate. The leading judgement of Lord Neuberger in the House of Lords decision in Prudential makes clear that there are a number of compelling reasons why the protection afforded to legal advice provided by lawyers should be extended to non-lawyers. Although the House of Lords declined to extend the protection afforded by Legal Advice Privilege to non-lawyers, this was principally because it was felt the decision to do so was best left to Parliament. In light of the views of the House of Lords in Prudential, we would expect Revenue Scotland to wish to consider the position carefully before deciding on whether to adopt this approach. Additionally, we do not understand the justification for the approach as laid out in the Policy Memorandum, that such a measure might hinder legitimate efforts to tackle tax avoidance.

15. We note that the enquiry regime does not appear to provide for amended time-limits to take account of amendments to returns. We would assume that, for consistency, Revenue Scotland would wish to extend the enquiry time limits in these circumstances. The provisions allowing amendment, at clause 74, enable taxpayers to amend their returns within a period of 12 months from the end of the relevant filing date. At present however, there does not appear to be any impact on the enquiry period of 3 years. We would have expected the making of an amendment to extend the enquiry period, and for this provision to be included at clause 76(3).

The proposed approach to penalties

16. We would encourage Revenue Scotland to publish details of appropriate penalty levels as soon as possible. For most taxpayers, the level of penalties will be the most important feature of the regime. We would also encourage Revenue Scotland to apply penalty ranges which mirror the ranges utilised by HMRC for non-devolved taxes. We do not believe there to be a clear policy justification for penalties at different levels to those across the UK. In the absence of such justification, the clarity and certainty which a harmonised approach provides should be the determining factor.

17. As was discussed at the Devolved Taxes Collaborative meeting (DTC) on 16th August 2013, the level of fixed penalties can be disproportionately high for small businesses. The other matter discussed at the DTC was the level of discretion Revenue Scotland will have over reducing or waiving penalties and we welcome the inclusion of such discretionary powers as well as guidance as to how this discretion could be used, to ensure clarity for the taxpayer.

The proposed approach to interest on payments

18. We note that Revenue Scotland have concluded that the differential between overpayment and underpayment interest is justified on the basis described in the policy memo. The differential between underpayment and overpayment interest arose in periods before 2009, and we have seen no evidence that taxpayers have behaved in the way described at paragraph 118 of the Policy Memorandum. We
believe that any differential in interest rates is both unjustified in principle and likely to have a distorting impact on taxpayer’s decision-making.

19. On a general note, we value the fullness and clarity of the Explanatory Notes accompanying the Bill and would like to acknowledge the efforts made by the drafting team in consulting during the process.
1. ‘Revenue Scotland’ is a grand title for a body that administers two modest taxes. I am assuming that the present discussion takes place on the basis that we are beginning to define a tax policy to be operated by a body that might in future have more extensive responsibilities than it has today.

2. Two broad considerations should be fundamental to all discussion. Throughout the world, most tax revenue comes from three sources
   - an income tax on income from both employment and (some) savings
   - a general sales tax applied at one or two rates to a wide range of goods and services
   - a tax on earnings paid by both employers and employees

3. In the UK today, these are income tax, VAT and national insurance. For a government to raise significant revenue, or to have a substantial revenue department, it needs to be involved with at least one of these.

4. My second general comment is that experience suggests that the level of government at which it is most efficient to raise revenue tends to be higher than the level of government at which it is most efficient to plan expenditures. For example, given the extent of cross border activities of many companies it would be sensible to operate corporation tax at a European - or better still a global - level, and until we move in this direction measures to attack tax avoidance and evasion by multinational companies are hardly serious. A European single market really requires a Europe wide VAT regime while the proliferation of state sales taxes in the US creates an inefficient mess.

5. In consequence, there is almost always and everywhere central government funding for local authorities and within a federal system there is usually redistribution to the states. One implication is that decentralisation of tax policy and administration is probably likely to reduce the efficiency both of administration and of the system itself. Against this there is an opportunity to create from scratch a regime more effective than one that has accumulated barnacles over many years. Experience within government of systems designed from scratch to replace existing structures has often, however, been one of unfulfilled promises, especially where IT is involved.

6. Smaller units of government are best placed to levy taxes which can be clearly associated with a specific place, and where it is costly to move the location to a different physical place, which is how Calman settled on property transactions and landfill. Using these criteria, Calman did not have many choices.

7. While it is entertaining for Scotland to look to Adam Smith’s canons of taxation, we should perhaps recognise that in Smith’s day the overall tax burden was only a small fraction of what it is today. I suggest that our core concerns should be efficiency, fairness and administrative feasibility. These are not separate criteria, and are often complementary rather than, as often suggested, conflicting; for example, poorly
administered taxes are a source of unfairness, and taxing essentially similar activities at
different rates creates both inquiry and economic inefficiency.

8. In my view, efficiency in tax collection should follow the maxim ‘first do no harm’. We should not hold out many hopes that the structure of taxation (as distinct from the revenues from it) will make the world a better place. Fiscal neutrality - which means that as far as possible business and personal decisions should be the ones people make in the absence of taxation - should be a general principle, with exceptions carefully considered, well designed, and rare. Much of the complexity of tax structures, which leads to violations of both efficiency and fairness, is the product of well-intentioned attempts to promote widely agreed social goals. The tendency across the world in recent decades has been to favour fewer, simpler rate structures and I agree with this thinking.

9. Fairness in taxation has both a horizontal dimension - people similarly placed should pay similarly - and a vertical dimension - what people pay should properly reflect their different circumstances. Horizontal equity, in this sense, contributes to economic efficiency, and administrative effectiveness is a precondition for it. I think that Smith’s ‘proportionate to ability to pay’ is inadequate even as a starting point for vertical equity. And there is a difference between a tax system that collects perhaps 3% of national income and one that collects perhaps 40% of national income. We should always remember, in reviewing taxation history, that until the Second World War most people paid no direct taxes and not much tax of any kind. “Ability to pay” is not a precise, and perhaps not a helpful concept. Consider, for example the tension in determining the tax and benefit status of families, the tension between the two approaches of “tax should reflect the whole of an individual’s circumstances’ and ‘people have a right to be taxed as individuals”. Should tax reflect peoples’ choices? Perhaps not, but what if they are bad choices? Is having children, or undertaking higher education, a choice? If not, what is? My belief is that these decisions are not well made by people advocating abstract principles rather than pragmatic assessments.

10. In thinking about fairness, I believe we should focus on the fairness of the system as a whole rather than of each individual component. For example, we could give VAT the appearance of progressively by elaborate differentiation of commodities by reference to their apparent luxuriousness. But the goal is much better achieved, in every possible way, with a simper VAT and a progressive income tax.

11. I offer only one general observation on administrative efficiency. It is difficult to collect any tax which requires people to consciously make a tax payment. Tax is efficiently collected when the payment is combined with some other beneficial transaction - receiving a wage or salary, shopping, buying a house- and preferably if the tax is small relative to the benefit.

12. I shall end this note with brief observations on the two specific taxes this committee is considering. Stamp duty land tax and its successor is a bad tax by most criteria. It has two virtues - location specificity makes it a useful local tax, and it is the least unpopular way of taxing property ownership. It is a poor mechanism for achieving progressively, though it may be one of the hardest to avoid and the only one the Scottish Government has.

13. Landfill tax, as a tax on externalities, is a rare case of a tax with the potential to increase economic efficiency. I hope the Committee will resist the thought that ever more
elaborate attempts at engineering its complexity would make it better still. Such exercises too often achieve the opposite of the intended result.
1. The Finance Committee seeks views on the general principles of the Revenue Scotland and Tax Powers Bill. Since I am an economist, most of whose work on taxation has been theoretical, I shall comment mainly on the bearing of general economic principles of tax policy on the bill, and then add some remarks on particular points in the administrative and legal arrangements to be established by the Act that seem to me particularly interesting. I devote particular attention to evasion.

2. Besides being a Professor of economics, I am a member of the Council of Economic Advisers to the Scottish Government, and a member of its Fiscal Commission Working Group. That subcommittee produced a report ‘Principles for a Modern and Efficient Tax System’, in which we set out our recommendations for the institutions and forms of a tax system. I refer to that report below.

3. The Bill is explicitly to create an agency, Revenue Scotland, to collect two taxes, the tax on land and buildings transactions and the landfill tax, devolved under the Scotland Act 2012. Revenue Scotland will also advise the government on tax matters. It has in other respects potentially larger and wider responsibilities. Whether Scotland becomes independent or not, Revenue Scotland will have other taxes to administer as more taxes, perhaps all, are devolved. It will have to follow principles appropriate to a wide range of taxes, and it will have to build up an expertise able to deal with increasingly complex tax rules and regulations.

4. The Scottish Ministers have said that Scotland’s taxes should satisfy Adam Smith’s famous criteria, to have certainty, convenience, and efficiency and be proportionate to the ability to pay. It is not to be expected that all these requirements, if accepted, can be satisfied perfectly and simultaneously. Our biggest decisions, what career to follow, where to live, how much to save, are taken on the basis, in part, of what we expect to happen years later. It makes no sense to suggest that a government should, even if it could, fix tax rates ten years from now. Good auditing of taxpayers, necessary if tax is to be well-related to income, conflicts with convenience. But we understand that these aspirations could guide tax designers. The system should not sacrifice one of the criteria without gain to another.

5. The proposed form of Revenue Scotland is, in many respects, an acceptable compromise among the four criteria. True, it provides little certainty now since actual tax rates and penalties are to be determined by regulation, and they are at this stage therefore quite uncertain. But it is inevitable that tax rates will be changed from time to time, and probably best that when a change is required, for instance because of a change in the macro-economy, that change can take place quickly. The Bill seeks to make that possible, and I think is right to do so.

6. The use of digital tax-returns makes report of transactions convenient, and certainly the two devolved taxes under explicit consideration should be convenient to
report and pay, though perhaps not to audit. For some other taxes, the design of tax return forms for convenience is an art which cannot be easily fixed by an act of parliament. The American requirement that the Internal Revenue Service state how much time they estimate it will take to complete the tax return, on average, seems an example that could with advantage be copied. One might be able to think of other measures of convenience that could be imposed on the tax agency. Thinking of future tax possibilities, it might have been good to have had such requirements in the Bill.

7. Efficiency is a concept that, for economists at least, means something more precise and restrictive than it did for Adam Smith. As a (joint-)author of an “efficiency theorem” in tax theory, I am strongly attached to this property, but it is a property of the whole production of the economy, as influenced by the tax system as a whole. A main requirement is that there should not be taxes on transactions between producers, except to counter externalities such as atmospheric pollution and congestion. While there is nothing in the proposed Act that need hinder the principle, one of the devolved taxes, the land and buildings transaction tax seems bad for efficiency when a building is created by one business and sold to another. Taxing property transactions is also a source of inefficiency. There is little the Scottish Government or Parliament can do about it, since they have been given so few tax powers.

8. When Adam Smith suggested that taxes should be proportionate to ability to pay, I doubt that he thought that meant proportional. But I believe there are good reasons for having most taxes proportional to the expenditure or receipt being taxed – except for labour income and capital income. That is because the major sources of inequality are associated with labour skills and capital acquisition. (Taxes may also vary with age and household position, but that is another story.) It is reasonable to have progressive taxes on income, at least in the upper ranges; but not on property transactions, even if one must have such a tax. Perhaps that is all outside the remit of the Committee. A proportionality principle could have been inserted in the Bill, though that would have meant going beyond the expressed aim of defining Revenue Scotland, though not beyond the title of the Bill.

9. There could also have been a principle of continuity: no jumps in the tax rate, as will the property transactions tax in the UK at present. I was pleased to see that the Scottish Ministers are proposing to observe that principle in the Land and Buildings Transactions Tax.

10. My other main comment in this submission is about the general anti-avoidance rule. My sympathies are very much with this measure, but I see possible difficulties, which might trouble me less if I had more knowledge of legal practice in this area. The particular clause that caught my attention was in paragraph 58 of the Bill, where one of the criteria for identifying tax avoidance is that “obtaining a tax advantage is the main purpose, or one of the main purposes of the arrangement”. I read that as meaning it is only required to be one of the main purposes, and I wonder if that is too stringent. I know that Brussels recommends such a form of words, but it makes me wonder about buying duty-free goods, for example (not yet concerning a devolved tax, of course).
11. In the case of the land and buildings transactions tax, I would think the Revenue would like to prevent the transaction being split into smaller parts, so as to reduce aggregate tax. Splitting and selling simultaneously would clearly be tax avoidance we want to stop. What about selling part this year, say to a developer, who starts on that piece, and selling the rest next year, so that the developer can continue? How long could the time interval be before the transactions are not “artificial”? If the developer cannot borrow enough originally, I suggest one might not want to penalize. And I do not see how one catches the case of two brothers each buying half the site, then building together.

12. This particular problem goes away if one has proportional taxation. But the Committee may wish to consider whether under other taxes, the proposed rule will penalize too many people. I note that the defence of established practice and prior approval could hardly apply in the first few years, since Revenue Scotland will be starting a new tax history.

13. It is sensible to determine tax rates and penalties by regulation, rather than stating them in the Act. One or two numbers remain the Bill. I noticed that paragraph 169 defines a maximum penalty of £3,000, and paragraph 195 mentions a fine of £300. Should the penalty in paragraph 169 not be proportional to the total tax at issue, so as to be an effective incentive even in large-tax cases? In any case, the figures will need to be adjusted from time to time, and may therefore be best handled by regulation.

14. I do not know what implications the use of regulations has for parliamentary discussion, but assume the Committee will consider that.

15. I would like to comment on the use of search warrants. These are, I am sure, very necessary from time to time. It is a consequence of the legislation being Scottish, I suppose, that it will not be possible to seek a search warrant for any premises or persons outside Scotland. That is some small loss compared to the present situation, for there will certainly be taxpayers, with liability for property transactions, who have business premises in England. The only remedy I can suggest is for the Scottish Ministers to negotiate an arrangement for property entry analogous to extradition or the European Arrest Warrant, but with speed of action built in. I would not be entirely surprised to hear that my point is mistaken and such an Entry Warrant already exists.

16. There may be other aspects of the Bill the Committee would like to discuss with me, but in the main, I found much in the Bill to admire, and nothing else I would want to dispute.
The Revenue Scotland and Tax Powers Bill
1. Thank you for inviting Reform Scotland to submit evidence to the Finance Committee as part of the committee’s consideration of The Revenue Scotland and Tax Powers Bill.

2. Although Reform Scotland has not published its own research on how a body like Revenue Scotland could and should operate, the publication, Scotland’s Economic Future, which we published in 2011, included a chapter I wrote outlining how I thought a Scottish Exchequer, could operate within Scotland. Although this was primarily focused on what would happen in the event of greater devolution, or independence, I think this is relevant when considering the creation of Revenue Scotland and I have included a summary of my chapter below.

Extract from Scotland’s Economic Future, Chapter 11. ‘Is there a need for a Scottish Exchequer?’ By Ben Thomon

3. In creating a new Scottish Exchequer, Scotland has a number of advantages. First, it starts with a blank sheet, so it is not locked into the history of development that leads to idiosyncratic practices. Second, there are plenty of examples to copy from around the world of where treasury functions have been made to work efficiently, as well as learn from the mistakes of those that have not worked. The creators of a new system should be shrewd enough to borrow the best of other systems and learn from the mistakes of others. Third, the Scots have a tradition for being bold and innovative thinkers: it comes as no surprise that President Obama quoted Adam Smith in his speech to the Westminster Parliament in 2011 or that Adam Smith is a favourite author of Deng Xiaoping, demonstrating Scots’ influence on economic thinking in the world. Lastly Scotland’s size with 5 million people should make it much more manageable to implement new systems.

4. If a Scottish Exchequer is formed it should be flexible enough to change as the relationship with the rest of the UK changes and should set the principles that will drive it. Part of the future debate should be about what those principles should be. It is my belief that an effective Scottish Exchequer should be driven by the following four principles:

Integration
5. Many of the functions of Treasury have been divided in the past into different non-ministerial government departments or quangos. The Treasury has already started the process of integrating these into bigger quangos such as HM Revenue and Customs (HMRC) but still struggles with the legacy problems of the separate entities that were merged into it. It would be easier to consolidate the full responsibility for these functions into one central entity from the start so that the system of tax collection and benefits is better integrated. In addition given Scotland’s
population it does not need a separate Companies House, Stamp Office, Registers of Scotland and Inheritance Tax office.

**Simplicity**

6. Tolles guide of tax legislation has doubled in length since 1997 to 11,520 pages, making it one of the longest tax guides in the world. It therefore comes as no surprise that 74% of MPs require accountants to help with their self-assessment tax returns. One does not need to be an expert to understand this is a system that is struggling under its own complexity. A key principle of a new Scottish Exchequer should be to simplify many of the financial structures. There is also an advantage to the rest of the UK, as UK tax guidance would no longer need to explain various Scots law differences in its forms and guidance.

**Transparency**

7. There should be clear and honest reporting that allows ministers and their civil servants to take decisions and incentivises them to be efficient. It should also allow the public to analyse clearly and judge the performance of Scottish government. Adopting, for example, a corporate accounting approach to government with a proper profit and loss account and balance sheet would focus the administration on the difference between long-term capital expenditure and balancing current expenditure.

**Efficiency**

8. There is far too much inefficiency, both between different layers of Government and within each layer of Government. The role of an efficient treasury is to determine clearly the department or level of Government responsible for spending including procurement and provide suitable ways to incentivise efficiency without creating more bureaucracy or centralisation.

9. In summary, The Scottish Exchequer should be driving the finance functions of Scottish government and its ministers, led by the Treasurer, with the task of raising and managing the public sector finances of Scotland.

**The Scottish Policy Unit**

10. One fundamental problem with the Treasury is that it is often in conflict on policy with other government departments and the Prime Minister’s Office. The Treasury has a huge influence on all other ministerial departments to ensure they live within their budgets and this creates a natural and largely healthy tension to ensure efficiency within all parts of government to spend efficiently. However there is also a deeper reason for the tension that is less healthy. At present, economic policy is set by the Treasury and the Prime Minister’s Strategy Unit (now part of the Cabinet Office) as well as each ministry also setting policy for its particular area of responsibility. All of these policy units will have economists determining what effect the impact of their policies will have on the economy and the efficiency of public services. One can understand the logic for this system but it has led to inefficiency and a lack of clear authority on long-term policy creation. This was particularly accentuated in Gordon Brown’s years as Chancellor with the economic unit within the Treasury widening its sphere of influence into departmental policy of other ministries and controlling it through the budget process. In particular there was a
culture of antagonism between the Prime Minister’s Strategy Unit and the Economic Policy Unit of the Treasury.

11. The problem with the Treasury setting policy through the budget process is that it tends to predispose towards a short-term approach to government. The management of government finances is predominantly focused on the next year and does not tend to look beyond a three-year time horizon. The very nature of the Treasury means the type of civil servants who are attracted into the department are those that are risk adverse. This means that long-term reform proposals put forward by other ministries can be, and often are, squashed by the Treasury. Take for instance the policy of Foundation Hospitals supported by the Prime Minister’s Strategy Unit but strongly resisted by Treasury. Another example would be the local income tax proposal by the Scottish government that Treasury opposed.

12. Therefore, in structuring a new Scottish Exchequer it is important to have clear lines on how policy is created and managed between the different departments of government. In order to create integrated policy across government, the economic policy unit should be separated into its own department that should also integrate the policy units in other parts of government ministries.

13. This new Scottish Policy Unit (SPU) would be responsible for setting the government’s long-term strategy and monitoring the delivery of the strategy against both its results on the delivery of public services as well as its effect on the economy. The SPU should be directly responsible to the First Minister. The Scottish Exchequer should have direct input into the SPU as to the financial consequences of policy, including the macro-economic impact on the Scottish economy, but not control policy creation.

14. One of the problems with Westminster and now increasingly at Holyrood is the growth of the number of special advisers. It is partly due to a frustration amongst politicians about delivery on policies that they want from civil servants who are not accountable to the Ministers that they serve. A Scottish Cabinet Minister does not have responsibility for hiring the senior civil servants that report into the Minister. In Scotland senior civil servants are appointed by Westminster. Therefore in order to ensure that political policies are being promoted within government departments, ministers appoint special advisers to represent their political position.

15. The SPU is, particularly at the senior level, highly political; probably more so than any other government department. Therefore, in recognition of this it would make sense for the senior members of the SPU to be direct appointments by the Scottish government in power and subject to change with each new administration. The SPU would work with other departments to set the long term strategy of government, taking into account both the needs of each department but also the financial delivery, economic and social impact. This would integrate policy across all government and provide less potential contradictions between departmental policy and treasury policy. It would also remove the need for many of the special advisers as the party in power can ensure its long-term policies are being implemented through the SPU.
Regulation Department
16. The formation of the FSA and the relationship between government and the banks has been one of the exacerbating factors that caused the financial crash in 2008. The creation of one regulatory unit and its aim of principle-led rather than rule-based regulation was sensible. However, the implementation of so many regulatory mergers created a dinosaur of an organisation that became predominantly rules based. This system of regulation was particularly unsuited to proactive management of systemic risk resulting in lack of controls and quick response to the financial over-leverage in 2007.

17. Scotland already has devolved powers for regulation of the accounting and legal professions. Monetary policy under Home Rule would remain the responsibility of the UK government and the Treasury would also need to have responsibility for regulation of the banks. However, all other professions including private client and institutional fund management, pensions, insurance and broking would be better served by a more local regulatory authority that can better assess risks on a principle rather than rules basis.

18. Therefore a new Regulatory Department would be responsible for the Scottish legal, accounting and tax professions as well as any financial regulation devolved to Scotland.

The Scottish Exchequer
19. Removal of policy and regulation functions would leave the Scottish Exchequer with the functions of revenue collection, borrowing, budget allocation, welfare payments, government accounting and audit at a Scottish government level. The objective of the Scottish Exchequer is to create a balanced budget, matching expenditure with funding within borrowing limits.

20. The Scottish Exchequer would need to liaise both with the Treasury and the finance departments of each local authority to ensure that taxes set and collected at other levels of government were co-ordinated. It would also need to have a proportionate influence on monetary policy, such as setting interest rate levels and ensuring deficit controls and borrowing limits are agreed between different levels of government and properly enforced.

21. The process of revenue collection should be a highly automated service for taxpayers. The responsibility for ensuring that tax is collected should lie with the Scottish Exchequer although it might want to contract out part of the collection process, particularly the IT, to a third party. It should also build on the principles of self-assessment.

22. The Treasurer would be the head of the department directly accountable to the First Minister and Parliament for delivering a balanced budget.

Setting tax and revenue
23. The objective in setting tax is to create a fair system, which helps create an environment for fiscal growth and is simple to administer. For the Scottish Exchequer to be able to create such a system it will need full control over a range of
taxes so that it can use certain taxes as fiscal levers but adjust others to ensure a balanced budget. In addition it would make sense to transfer tax powers that can influence economic growth.

24. The extension of powers under the Scotland Act would make it hard for a Scottish Exchequer to create much in the way of fiscal levers or to simplify the current system of tax. The main proposal is to leave income tax collection and the setting of bands to Westminster and for Holyrood to have a fixed band of 10% that it can increase or decrease. This system will need to be constantly adjusted as thresholds change which will affect the budget formula and put the Treasury into constant negotiation with the Scottish Exchequer. Neither does it create a range of taxes to create a fiscal package suitable for economic growth.

25. The opportunity for a Scottish Exchequer is to create a much simpler tax system particularly for personal taxes such as income tax, capital gains, inheritance tax and corporation tax removing many of the anomalies and attracting business growth. In addition the structure of Home Rule should transfer those revenues that particularly relate to business development in Scotland such as the revenue of the Crown Estate that is a key institution for developing tidal and wave energy. The Scottish Exchequer should be solely responsible for collection of taxes and payment of welfare for Holyrood, but would agree with the SPU how taxes might be made simpler and which taxes should be adjusted downwards to stimulate the economy and which taxes adjusted upwards to ensure a balanced budget.

**Tax and revenue collection**

26. In 2005 the UK did the sensible thing and combined the two separate agencies of HM Customs and Exercise with the Inland Revenue to form HMRC. However, this process could go much further and a Scottish Exchequer could ensure that all revenue responsibility came under its direct control. The HMRC is responsible for about 84% of all revenue raised by Westminster. The merger of the different functions was budgeted to reduce staff by 12,500 (14%) and costs by 8% and in 2011 there was a further reduction of 12,500 staff. However the merger has not been without huge integration problems.

27. It would be most efficient if a Scottish Exchequer were responsible for 100% of all revenue raised directly within the department. Certain functions for the collection of revenue could be raised under contracts with third parties. One huge advantage Scotland has in this respect is that it starts from a clean sheet in creating a tax revenue collection department and can use the benefit of IT created in other countries.

28. Each tax payer, whether corporate or individual should have a unique tax code, mostly logically one’s existing National Insurance number, that is cross referenced across all the system (including benefits) to ensure that tax collection is both efficient and fair. This will be particularly important for income tax to establish residency tests to pay Scottish income tax, and corporation tax to tax profits on the Scottish business of companies.

29. Tax help desks and on line guides should be provided to help the tax payer to easily address any problems that they encounter.
30. Wherever possible, tax should be deducted from source as this tends to meet much less resistance from the tax payer and is more efficient. Tax, benefits and bank accounts should be cross referenced so tax avoidance and benefit scams are reduced to a minimum.

Summary of Recommendations
- There should be a Scottish Policy Unit and Regulation Department separate from the Scottish Exchequer and these departments would replace the Finance and Justice departments. The SPU would be responsible for setting the government’s long-term strategy and monitoring the delivery of the strategy against both its results on the delivery of public services as well as its effect on the economy. The SPU should be directly responsible to the First Minister and the senior civil servants should be appointees made by each new government. The Regulation Department would be responsible for all regulation already devolved and subsequently transferred to Scotland.
- A new Scottish Exchequer should have responsibility for both funding and expenditure directly and not through agencies. A review of all government tax, law and registration services should be undertaken as a first step. If work such as the collection or administration of a particular tax is transferred, it should be on an arm’s length basis whether to another government, third or private sector organisation with a service contract for delivery. In addition, the Scottish Exchequer should be responsible for the delivery of any welfare payments that are transferred to Holyrood.
- One of the aims of the Scottish Exchequer would be to simplify tax collection and benefits whilst improving the quality and availability of guidance. Local tax help centres should be established in each local authority area. Each individual and corporation should have a unique tax and benefits code.
- The Scottish Exchequer should report financially under corporate style accounting standards providing an annual report each year with a full report of the finances for the previous two years including a balance sheet, profit & loss account and cash flow statement.
- There should be a separate internal audit process to review and monitor the Scottish Exchequer.
- The Scottish Exchequer should be responsible for setting broad budgets for the expenditure of governments departments. But departments should then take responsibility for spending to achieve their policy and operational objectives, which would limit ring fencing and detailed budget allocations within departments.
FINANCE COMMITTEE CALL FOR EVIDENCE
REVENUE SCOTLAND AND TAX POWERS BILL
SUBMISSION FROM SCOTTISH PROPERTY FEDERATION

Comments by the Scottish Property Federation

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We welcome the opportunity to comment on the Revenue Scotland and Tax Powers Bill at Stage 1 of its parliamentary consideration. Our comments will dwell in the main on the relationship between the Bill and its relationship to LBTT.

3. Before considering the specific questions put by the Committee we would make the point that while we agree with the IFS that LBTT, the principal focus of our industry with the devolved taxes, is a better tax in structure than the SDLT it replaces, we do feel that in a number of detailed areas the short timescale and pressure of meeting the 1 April 2015 target date has not allowed as full a reconsideration of SDLT measures when constructing LBTT as might otherwise have been achieved with its devolution. This probably heightens the importance of getting the Revenue Scotland & Tax Powers Bill in force with the necessary accompanying guidance, information documents and crucially supporting staff to aid taxpayers and their advisers.

Certainty, convenience, efficiency and proportionate to the ability to pay

4. We have no quarrel with these four principles and we believe that they are a welcome foundation stone for the enhanced fiscal powers of the Parliament. Inevitably there is a large scope for interpretation in how these principles are pursued in practice and this will determine taxpayer perspectives of Revenue Scotland to a certain degree. For example, even without considering the issues of tax rates and thresholds, which will be soon the concern of Scottish Ministers, public support could be lost if administrative procedures and help are not implemented effectively and transparently.

Proposed approach to the establishment and constitution of Revenue Scotland as a non-Ministerial Department and its membership

5. The SPF supported the establishment of Revenue Scotland as a non-ministerial department in previous Scottish Government consultations and we continue to do so. We support also the appointment of a number of independent and
other members of Revenue Scotland. The administration of tax is a sensitive area for the public, taxpayers and businesses and it is appropriate for the tax authority to be at arm’s length from Ministers. This model has generally worked well in other jurisdictions.

The functions of Revenue Scotland

6. We agree with the broad function of ensuring the efficient and effective collection and management of receipts for the Scottish Consolidated Fund. Our only comment in this regard is to question whether a further function of Revenue Scotland is to act as an initial point of reference for those who question whether their tax demands are accurately levied, or whether overpayments have been made.

7. In addition it could also be argued that there should be a formal link between the collective Scottish Assessors, via the SAA and Revenue Scotland in a similar manner to the relationship between the Valuation Office Agency and the Inland Revenue. Non-domestic rates have been devolved since the modern Scottish Parliament came into being and rates are an ever increasing element of the public revenue. It feels as if failure to organise a better link between these revenue collecting functions would be a missed opportunity, as they may be involved in collecting very similar data from the same taxpayers.

The independence of Revenue Scotland

8. As noted earlier we support the arm’s length relationship between Scottish Ministers and Revenue Scotland. However, this is very much operational independence and therefore should not be overly confused with, for example, the independent status of the Auditor General for Scotland. The Bill reinforces this by underlining the need for Revenue Scotland to have regard to guidance to be set out by Scottish Ministers.

The proposed approach to the Scottish Tax Tribunals

9. We have no comments to make here - Law Society of Scotland will no doubt comment extensively. Our only concern would be that there could be more demand for access to the Tribunals than may be anticipated under some of the provisions for commercial lease administration. This is because unlike the pay and forget culture hitherto prevalent under SDLT there will be a continuous reassessment under LBTT and we expect this will be a new experience for most commercial lease taxpayers that will give rise to a number of contested tax assessments if a significant amount is in dispute.

The General Anti-Avoidance Rule

10. There is some scope for this to become confused with the UK’s General Anti-Abuse Rule. The Scottish GAAR appears to be more widely drawn to allow scope for more robust enforcement. The Explanatory Notes offer an idea of the 'tax gap'
between anticipated receipts and actual receipts for UK SDLT which is set at £200mn. It is anticipated that the Scottish element of this is some £9mn and the Scottish Government believes that the exclusion of certain reliefs such as sub-sale relief will reduce this further to some £4.5mn. It is apparent from the tentative nature of these estimates that there is little hard evidence available on the extent or even definition of tax avoidance.

11. With little substantive evidence to comment on the Scottish GAAR it is again important that there is significant forewarning of its approaches and accompanying guidance ahead of the GAAR coming into force in Scotland. Given the relatively short timescale now left this would make it imperative that such guidance quickly follows the passage of the Bill into law later this year.

**The proposed approach to tax returns, enquiries and assessments**

12. Our main concern here is intrinsically tied to the commercial lease provisions of the LBTT Act. Under LBTT taxpayers will be required to comply with three yearly tax reassessments. The outcomes of the reassessments are related to the type of lease agreement that the taxpayer has entered into with their landlord. For example, if they are on a turnover lease then they will have paid LBTT on a best estimate scenario and the reassessment will allow this amount to be adjusted (albeit we understand only upwards adjustments will be accepted!). Other forms of lease include indexation or market rent review. We think it is quite likely that there will be considerable scope for enforcement issues with the requirement for three year reassessments.

13. Given the new procedures to a number of aspects of LBTT we feel that it will be important for a transparent approach to any guidance and protocols devised by Revenue Scotland and the Registers of Scotland. This will enable taxpayers and their advisers to be aware of procedures and interpretations. It would be helpful if any such guidance could be made available as early as possible in order to inform taxpayers about their new compliance processes well in advance of 1 April 2015.

14. A related point is the issue of transitional provisions between SDLT and LBTT. There is considerable uncertainty about how these arrangements will be set and time is now running short – we are aware that professional advisers are already being required to advise businesses clients and investors in this area but unfortunately there is little firm information about how the transition will be managed. One example could be where a lease is agreed now and will come into effect ahead of LBTT but is then adjusted, perhaps on a turnover basis, subsequent to LBTT taking effect. Again this will clearly be an initial test for this Bill and its relationship to the LBTT legislation and indeed there are other commercial arrangements that will test the management of transferring from UK SDLT to Scottish LBTT.
The proposed approach to penalties

15. We would urge caution on the part of Revenue Scotland in relation to imposing penalties at least in the early years of the new arrangements for commercial leases. This will be a very different procedure to that experienced under the previous tax (SDLT) and we believe there will be some administrative challenges for officials and taxpayers to address.

The proposed approach to reviews and appeals

16. Our only interest here is that the taxpayer is allowed a fair shot at review and appeal. Again we expect there may be some early tension with the new commercial lease arrangements and this will, we think be an early test for the new tax management arrangements.

Financial implications

17. There will clearly be costs associated with the establishment and administration of these new tax functions. Inevitably these costs will be shouldered by the Scottish taxpayer. Our focus however is on the costs that may be faced by Scottish businesses in complying with LBTT in particular.

18. First, the intention is that the Registers of Scotland will place as much faith as possible in electronic transfers and in seeking to minimise costs through the use of e-transactions and payments. There will need to be significant progress in systems for this to be widely acceptable to businesses as the experience with ARTL was not initially good according to feedback from a number of members at the time of its introduction.

19. Second, some of the processes to be introduced for the administration of commercial lease transactions in particular will be more onerous than exist for SDLT currently. In particular the three yearly reassessments of commercial leases for LBTT purposes will be a new experience for taxpayers. We have concerns with the practicalities of this process and its understanding by taxpayers, particularly because as ratepayers there is a good chance that many will receive demands for very similar information (rental and lease terms information) from the Scottish Assessors to that which Revenue Scotland will also be seeking. There will undoubtedly be compliance and resource costs therefore for a significant number of taxpayers.

20. We would be pleased to explain our comments in further detail at your convenience.
FINANCE COMMITTEE CALL FOR EVIDENCE
REVENUE SCOTLAND AND TAX POWERS BILL
SUBMISSION FROM SCOTTISH PUBLIC SERVICES OMBUDSMAN

Background
1. The Scottish Public Services Ombudsman (SPSO) is the independent organisation that handles complaints from members of the public about devolved public services in Scotland. This includes almost all of the organisations listed in the schedules of the Bill. Under the Public Services Reform (Scotland) Act 2010, the SPSO was also given a lead role in improving the handling of complaints by public sector organisations in Scotland.

2. This is a detailed and complex bill and I intend to comment on only two points. The first relates to how complaints about Revenue Scotland will be handled and the second to the approach in the bill to reviews.

Revenue Scotland and complaints
3. While the bill is silent on complaints, this is because, as a non-ministerial department, Revenue Scotland will automatically come within our jurisdiction. This means that members of the public will be able to complain to us about actions taken by Revenue Scotland or on their behalf. It also means that Revenue Scotland will be subject to the model complaints handling procedure for the Scottish Government, Scottish Parliament and associated public authorities issued in March 2013 and available here: http://www.valuingcomplaints.org.uk/complaints-procedures/scottish-government-scottish-parliament-and-associated-bodies/

4. The two organisations to which Revenue Scotland intend to delegate certain activities are both already within our jurisdiction and already subject to this model process.

5. As the public will be able to complain as well as ask for reviews and make appeals, it is important that clear signposting should be in place to help the individual decide which route is most appropriate for them. The model procedure already provides for the distinction between complaints and appeal routes to be taken into account and should ensure that individuals are appropriately signposted. We are happy to work with Revenue Scotland prior to their creation to make sure this is as simple as possible.

6. On this point, we have noted that the Financial Memorandum does note that Revenue Scotland will be dealing with complaints, but makes no provision for any impact on SPSO of complaints coming to us. Given that the most likely driver of dissatisfaction will be unhappiness with a decision, and that there is a separate appeal route for this, we do not anticipate a significant impact. However, the Committee will be aware from previous consultations that we are alert to the fact that, over time, a number of small changes can result in SPSO seeing a significantly

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1 The one significant exception is police organisations.
increased workload with no specific provision to handle this. This is something we will continue to monitor closely with the Scottish Parliamentary Corporate Body who are responsible for our budget.

**Revenue Scotland reviews**

7. The Committee has asked for comments on the proposed approach to reviews and appeals. Our comments are limited to the review which most closely parallels a complaints process rather than the more formal appeal process. We are supportive of the general approach of the Scottish Government which parallels many principles that would apply to good complaints handling. This includes the importance of a “getting it right first time approach”; using mediation and involving the taxpayer in the process by offering initial discussions and views.

8. However, I am surprised by how much of the detail of the process is established in primary legislation. There is a benefit in setting some clear legislative limits and ensuring transparency by reporting against published standards, but within this we would recommend that Revenue Scotland are given the flexibility to develop and adapt their review process so that they can respond appropriately to each individual situation. I explain this below using some examples from the legislation.

9. The first example is where the taxpayer will have the option of using the internal review process, including a mediation stage, or going direct to the tribunal. If the review process is to succeed, it needs to be seen as simple, capable of providing quick decisions and overturning decisions where appropriate. As I read the legislation, the timescales allow 30 days for an initial view to be communicated to the taxpayer and a further 45 days from that date for the conclusion of the review. The policy memorandum allows the taxpayer to respond to the initial view if they do so timeously.

10. While we are supportive of involving the taxpayer in the review process, it is not clear why there is a need to set out two parts to this process in legislation. That may be more than is needed for some straightforward cases. In practice, a taxpayer will likely be more irritated by waiting for a formal final view that adds very little or nothing to an initial view.

11. Another example is that, from my reading, mediation is included as a possible option to be included after a review. Mediation can work well, but usually at an early stage before positions become entrenched. It may be only appropriate in a small number of cases, but we would recommend that Revenue Scotland should have the flexibility to use mediation as part of, or instead of, the review process where they consider the individual circumstances merit this and the taxpayer agrees. Over time, they will develop an understanding of what cases are particularly amenable to mediation. It would be unfortunate if the detail in the legislation about how reviews need to be carried out prevented them from using this sooner.

12. This simply highlights to us the difficulties of setting out such a process in legislation. I would argue that it would be more appropriate to put some of this detail in subsidiary regulations or guidance, which allow for the process to be adapted more easily than primary legislation, ultimately based on the experience of how it works in practice. It would be possible to set out, for example, that all reviews must
be completed within 75 days and then use guidance to set out the process which could be reviewed and changed as Revenue Scotland gain an understanding of what works best for the taxpayer and which can respond to individual circumstances. We would also recommend that Revenue Scotland report on the speed with which they are actually completing reviews to demonstrate to taxpayers the realistic time involved, which may be much less than 75 days.

13. More generally on the point of challenges to decisions, we would draw the Committee’s attention to some interesting research in Holland and since repeated in Sweden which has looked at the benefits of what is described as a “pro-active” and “solution-driven” approach to complaints and challenges to decisions by public organisations. The research has seen significant financial savings, a reduction in the use of formal appeals and an improvement in the morale of staff. They have done this by training staff in what are described as mediation-like skills and giving them flexibility when they are dealing with objections to decisions, or complaints. This research further supports the benefits that can be obtained from a review process that is person-focused and flexible.

14. In conclusion, I think the general approach is a good one and one we support. In order to fulfil this in practice and ensure staff have the flexibility to ensure they focus on an appropriate response to individual taxpayers rather than the rules on review process in the legislation, it may be appropriate to have less detail in the Bill than at present.

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3 The approach which emphasises early, personal contact and good listening and communication skills is similar to those which we are helping to develop through the model complaints process and our training modules.
FINANCE COMMITTEE CALL FOR EVIDENCE

REVENUE SCOTLAND AND TAX POWERS BILL

SUBMISSION FROM STUC

Introduction

1.1 The STUC welcomes the opportunity to provide evidence to the Finance Committee on the Revenue Scotland and Tax Powers Bill.

1.2 The STUC has been impressed by the process of consultation undertaken by the Scottish Government on this issue and has been pleased to be involved in the Cabinet Secretary for Finance's consultative forum. The level of engagement and consultation has led to a generally well drafted Bill.

1.3 There are a number of elements of the Bill upon which the STUC does not have the expertise to comment. We will therefore confine our comments to the general principles of the Bill; its application beyond the two taxes currently subject to devolution; the General Anti Avoidance Rule; and the potential workforce issues associated with the future implementation of the Bill.

General Principles

2.1 The STUC recognises and generally accepts the principles of certainty, convenience, efficiency and proportion as the guiding principles for the Bill. It is important that these principles are understood to apply within a system which is as simple as possible whilst maintaining the key principle of fairness.

2.2 In the context of the failures at UK and international tax level to convince the general population that tax is currently fair and transparent, particularly in relation to the activities of multinational companies and rich and powerful individuals, it has never been more important that, notwithstanding the technical issues relating to tax law, public trust is increased on taxation.

2.3 The STUC realises that the current taxes to which the role of Revenue Scotland will apply are limited in terms of monetary size and scope, but recognises the value of building a paradigm and system which can adapt to further tax devolution and redesign. Whilst recognising the difficulties, is the STUC is attracted by a vision of future taxation system which increases the autonomy in revenue raising of local government and in which local taxation is reformed to ensure that a proper mix between service, property, land and income based taxation – a system which takes into account the full picture of local council revenue raising, including charging and which offers a route out the of current centrally directed policy of serial Council Tax freezes. Given the possibility that further taxes will be devolved to Scotland it is entirely right that this should from part of the Committee’s considerations even though the role of Revenue Scotland, in the first instance will be limited.
2.4 The STUC supports the concept of a Taxpayers Charter which must effectively balance the legitimate expectation of taxpayers of the new tax authority, with the legitimate concerns of the general public as to the standards of behaviour expected of taxpayers.

2.5 The STUC has noted a general view that there are a number of aspects of the Bill, particularly penalties and the related issue of appeal and enforcement, which should be the subject of primary legislation. Both in relation to proving certainty for taxpayers and transparency for the general public, the STUC is attracted to amendments which would ensure that this is the case.

**General Anti-Avoidance Rule (GAAR)**

3.1 The STUC has been pleased to be involved in the Scottish Government’s consideration of the inclusion of a GAAR within the legislation and is generally supportive of the Government’s position and in particular its view that a Scottish GAAR should not be narrowly drawn and should reflect elements of the European Union recommendations on tax avoidance. Whilst some will no doubt argue that some forms of tax avoidance are acceptable, this does not meet with public perceptions of what tax avoidance means. The burden of proof on tax avoidance should therefore sit with the taxpayer rather than the tax authority. STUC supports the view, laid out in the response of Unison Scotland to the Committee, that the Scottish GAAR should

- Be applicable to international transactions
- include additional EU criteria for judging tax avoidance artificiality namely:
  - “the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cashflow”; and
  - “the expected pre-tax profit is insignificant in comparison to the amount of the tax benefit”

3.2 The STUC also supports the inclusion in the Bill of a Disclosure of Tax Avoidance Schemes provision.

**Workforce Implications**

4.1 Much of the debate at a UK level on the principles and legislative responses to tax evasion and tax avoidance has taken place in the context of a continuing limitation in the capacity of HMRC to pursue tax dodging, with considerably more resources employed on tackling benefit fraud than pursuing tax underpayment.

4.2 STUC represents unions with members in HMRC and also those in SEPA and Registers of Scotland, for whom an enhanced role can be imagined under the provisions of the legislation.

4.3 There is no reason in principle why the re-organisation implicit in the creation of Revenue Scotland and the potential sharing of function and responsibilities with SEPA and Registers of Scotland cannot be achieved. It would however, be helpful if the committee, and thereafter the Scottish Government, would make clear its
understanding that there are a range of challenges with respect to the redesign of jobs including where:

- officers’ tasks relate to a range of tax administration functions beyond the two taxes to be administered;
- officers currently undertake a tax administration role for a specific tax across different parts of the United Kingdom;
- it is imagined that SEPA and Registers of Scotland staff would undertake new roles; and
- new information systems need to be created to enable data sharing.

4.4 Meeting these challenges, is no doubt possible but will require in-depth consultation with the unions concerned and commitments that adequate funding and staffing levels will underpin both the process of transition and effective operation of the new system.
FINANCE COMMITTEE CALL FOR EVIDENCE

REVENUE SCOTLAND AND TAX POWERS BILL

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Introduction
1. The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

2. These comments have been prepared on behalf of the Society by members of our Tax Law committee (‘the committee’). The committee welcomes the opportunity to respond to the Scottish Parliament’s call for evidence on the Revenue Scotland and Tax Powers Bill and has the following comments to make.

General Comments
3. We acknowledge that the Bill attempts to strike a balance between meeting the immediate needs for existing devolved taxes; and establish the framework which could be extended to more, or all, taxes in due course. In striking this balance, we would urge strongly that priority is given to creating an effective system for the taxes already devolved, rather than attempting to be comprehensive. The restricted legislative time and resources available makes this by far the preferable course.

4. We also acknowledge that the constraints mentioned in the previous paragraph make it inevitable that fairly significant amounts of tax administration legislation will be made under delegated powers. While this is inevitable, it does seem that the Bill attempts to be comprehensive on some aspects (e.g. investigatory powers); and is much more limited in relation to others (e.g. penalties). While accepting the inevitability of a varying approach, it remains the view of the committee that where possible vital matters of tax administration should always be dealt with by primary rather than secondary legislation.

5. Consequently, this qualifies our views on much of the Bill. We therefore feel that at this stage, the Bill cannot be said to have passed Adam Smith’s tests of certainty and convenience. Whether it is efficient and proportionate can only fall to be judged when the complete picture is available.

6. We are wholly in agreement with establishing Revenue Scotland as a non-ministerial department independent of the Scottish government. We note that the Chief Executive is not to be a member of Revenue Scotland. At the time of the consultation, it was proposed that the Chief Executive would be the Accountable Officer for Revenue Scotland. Given that, it is our view that the Chief Executive should sit on the Revenue Scotland board. The role of Accountable Officer does not appear to have carried through to the Bill itself.
Part 2: Revenue Scotland

7. Section 3(2) – we think that the functions of Revenue Scotland should specifically include providing information and assistance to taxpayers, rather than simply having them encompassed in the term “other persons”.

8. Section 4 – we wonder whether it is appropriate that Revenue Scotland is empowered to delegate any of its functions to the two Agencies mentioned. We appreciate the need for wide delegation of powers, but we wonder whether it should be as universal as this.

9. Section 4(6) – in keeping with the number of other provisions, the restriction on the publication of information based on the subjective views of Revenue Scotland seems to vest too much discretion in it.

10. Section 8(3) – again, this gives very wide latitude to Ministers in what they publish.

11. Section 10 – while we support a Charter for Revenue Scotland, we question whether it is in fact appropriate in that such a Charter should also cover those dealing with Revenue Scotland. See further below on “taxpayer duties”.

Part 3: information

12. Section 15(3)(c) – is it appropriate that the restriction on confidentiality extends to civil proceedings in general? Should these not be restricted, as otherwise any court action, by anyone, would seem to allow confidentiality to be breached.

13. Given the likely introduction of an over-arching Scottish tribunal, our preference remains for UK tax tribunals to deal with any cases in the interim. However, the reasons given in paragraph 56 of the policy memorandum for not doing so are noted. We welcome the fact that the arrangements for the proposed Scottish tax tribunal are similar to those of the UK tax tribunals which will have the advantage of familiarity for taxpayers. We do question the purpose of section 29 which appears to suggest that a person whose tax liability might be affected by the outcome of a tribunal hearing is not incapable of acting as a member of the Tax Tribunal.

Part 4: the Scottish Tax Tribunal

14. Section 28 – the first appeal process seems to envisage moving from a First Tier Tribunal possibly consisting of more than one person to Upper Tribunal of a single member. While obviously the qualifications and experience of the members of the different tribunals will be distinct, this does not seem the ideal line of appeal, as it is unusual to have an appeal from a larger to a smaller panel.

15. Section 29 – we feel that this needs to be changed; the heading to this section does not reflect its content. But in any event, we wonder whether this is substantively correct. While it is appreciated that a member of a Tax Tribunal should not be disqualified simply by reason of being a taxpayer in relation to the tax in question, we think that this is too broad; and that a Tax Tribunal member both could and should disqualify himself or herself from participating in relation to an appeal in which he has a direct interest, which certainly could be one of the circumstances envisaged in section 29(1).
16. Section 31 – we wonder whether the need for permission to appeal to the upper tribunal is in fact appropriate; we think that this is much more appropriate only for a second appeal.

17. Also with regard to Section 31, we note that the new system of appeals will bring Scotland into line with England and Wales, in that there will now potentially be four forums for appeal (First Tier Tribunal, Upper Tribunal, Court of Session sitting as the Court of Exchequer and Supreme Court). We do not consider that tax appeals in Scotland have suffered unduly from having one less layer than those in England and Wales and wonder whether perhaps further thought should be given to this.

18. Section 33(4)(b)(i) – the need for there to be “an important issue of principle or practice” before an appeal to the Court of Session seems somewhat excessive. If there are arguable grounds of appeal should that not be enough?

19. Sections 34/35 – we note that the primary remittance by the Court of Session appears to be to the Upper Tribunal. We wonder if this should simply be to the Upper or First Tier Tribunal as appropriate, in that particularly in relation to re-finding matters of fact, one would presume that it was much more likely and appropriate that the remittance would be to a First Tier Tribunal.

20. In Section 35(4) - the word “an” appears to be missing from before the word “appeal”.

21. Section 44 – while this may reflect existing law, it would seem much more appropriate that formally no expenses should be awarded in the First Tier Tribunal unless one or other party has acted “wholly unreasonably”. There is a strong perception of “unfairness of arms” when taxpayers contemplate taking appeals in taxation matters and the removal of the possibility of expenses being awarded – in either direction - in the First Tier Tribunal would be a very desirable development.

Part 5: The General Anti-Avoidance Rule
22. We are concerned at the lack of certainty inherent in the GAAR provisions. We have advocated a formal pre-transaction clearance procedure and regret to note that this has not been adopted. While reference is made to the possibility of informal approaches, Revenue Scotland is not obliged to respond to the same nor would any response be formally binding upon it. Absent a clearance procedure, it is essential that extensive guidance is produced in advance by Revenue Scotland as to the circumstances in which they consider artificial tax avoidance arrangements would exist. It is also regrettable that, in the first instance, Revenue Scotland will, essentially, sit as judge and jury on its own decisions. Under the UK model, an independent panel with expertise – both in the law and in practice – in the particular field sits in judgement. While not wishing to denigrate the quality of the Scottish tax tribunal, the UK approach of calling upon experts in this way is likely to lead to a better quality of decision.

23. Within the GAAR there is reference to “reasonableness” without clarification as to from whose perspective this is tested. By way of example, if a tenant may be negotiating a lease of premises for five years but may not be certain whether he
wants to occupy for longer – it will depend on how well the business develops. He could take a lease for five years with an option to extend, or a lease for say 15 years with break clauses at 5 years and 10 years. Although the LBTT payable in both cases will be the same at the end of the day, since LBTT will be payable on the actual length of the lease, taking the shorter lease with an option to extend would delay the payment of LBTT and this is likely to be the main reason why the tenant would choose the shorter lease with options to extend. Could this be caught by the GAAR? It is to be hoped that Revenue Scotland guidance will make it clear that it is not. There are many similar examples where taxpayers or their advisers may be concerned that the GAAR would apply.

24. Clear and detailed guidance confirming that a range of commonly encountered commercial transactions are not considered to be caught by the GAAR will be absolutely essential to allow the GAAR to operate without introducing too much taxpayer uncertainty which in turn could put Scotland at a competitive disadvantage. Such guidance will also need to be updated frequently to take into account changes to the way in which commercial transactions are undertaken as a result of changing economic circumstances. We believe there should be a requirement in the Bill for Revenue Scotland to produce guidance about the types of transactions which are accepted as according with established practice and which therefore would not be caught by the GAAR.

25. Section 58 – the omission of what has been termed the “double reasonableness” test along with the input of any GAAR panel as compared to arrangements in the rest of the UK, coupled with the alternative definitions of “artificial” in Section 59 does raise questions as to the extent of the GAAR.

26. Section 59(3) – it needs to be made clear that “commercial substance” is extended to include personal arrangements. A very good and simple example would be where an individual taxpayer intends to make a gift; such a “transaction” obviously has no “commercial substance”, but may nevertheless be an entirely reasonable thing to do. It should not be affected (on its own) by any interpretation of a general anti-avoidance GAAR. For the same reason, we would suggest that Section 59(4)(a) is extended to include “business or personal” conduct.

27. With regard to Section 59(2)(b) we think that it needs to be clarified exactly when it could be assumed that there are shortcomings in the relevant legislation. This would have to be clear from the policy of the legislation, rather than a realisation after the event that the legislation as enacted did not go as far as might have been intended by some.

28. It is understood that Revenue Scotland intends to produce a disclosure procedure (“DOTAS”) during the passage of this Bill. Again, if that is the case, it is regrettable that this is not available for scrutiny at this juncture.

Part 6: Tax returns, enquiries and assessments
29. Generally, the provisions regarding returns enquiries and assessments appear sensible. We do question the introduction of a general unjustified enrichment defence for Revenue Scotland across all devolved taxes when, to date, the same has been restricted to specific taxes in the UK context.
30. Section 68 – we question whether this section should in fact be there, particularly in the absence of a similar imposition of duties on Revenue Scotland. As is noted in sub-section (2), and expanded upon in the Explanatory Notes, in fact most or all of those duties will arise under a specific piece of legislation in any event and it does not seem reasonable to impose such duties on taxpayers in a separate “headline” provision.

31. Section 71(2) – We see no reason why the proof required by this provision should absolutely require documentary evidence.

32. Section 72 – While we appreciate that the regulations under this section are still to be made, we question the principle that the preservation of records is required for land transactions which are not notifiable. While we can appreciate the need for this in relation to transactions at or near any level of notifiability (for example), here will be numerous very small land transactions where such record keeping would be an unreasonable expectation.

33. Section 76 – We wonder whether the 3 year time limit is in fact appropriate as, particularly when combined with the wide scope of the GAAR, uncertainty may continue for a considerable length of time, even for a fully compliant taxpayer. More generally, time limits and periods stated perhaps need to be consolidated, as there are instances of the appropriate time limit being variously 2, 3 and 5 years. Doubtless there are good reasons for differing periods both for the taxpayer and the tax authority, but a move to harmonise all or most such periods would be welcome.

34. Section 93 (1) – Does there need to be a definition of partner in this context, as the word is one of very general meaning? (It is assumed that business partner is meant, but perhaps this should be stated.

35. Section 94 (2) – This appears to envisage situations brought about deliberately other than those involving fraud; we would have thought that it was only the latter that should permit the 20 year time limit for assessment.

36. Section 101 – We question whether it is appropriate to have a general defence of unjust enrichment when this is not the position under UK revenue law i.e. it is only permitted in relation to specific taxes.

Part 7: Investigatory Powers
37. Section 137(23) – We wonder whether the “relevant person” should be extended to mean the owner (rather than the occupier) in at least some cases.

Part 8: Penalties
38. The penalty regime again seems sensible but it will be the application of these provisions which will be the true measure of their fairness and further details have yet to be provided.

39. Section 150/penalties generally – we think that the opportunity should be taken to make it clear that penalties should not be exacted where a taxpayer’s failings have led to no loss of tax. This is currently a serious problem in relation to
relatively small penalties in UK legislation (the £100 penalty for SDLT being a very good example), where the costs of putting forward even an overwhelmingly reasonable excuse can far exceed the amount of penalty involved. We do however appreciate that in situations where there is no tax loss will still require to be “policed”; we would therefore suggest that it is appropriate to impose a penalty only in relation to a second or subsequent “offence” where this is no loss of tax.

40. Section 156(2)(b) – We think that the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another should indeed be special circumstances. There are copious provisions in the Bill to prevent “unjustified enrichment” of the taxpayer; we see absolutely no reason why they should not be balanced by provisions against unjustified enrichment to the tax authority.

41. Section 160 – We would welcome clarification as to whether the penalties here can apply directly to agents; the interaction with Section 162 in this respect also requires to be clarified.

Part 9: Interest
42. The interest provisions appear appropriate but, again, without knowing the rates of interest it is difficult to provide definitive comment.

Part 10: Enforcement of Payment of Tax
43. Section 187 – while detail will be in regulations, we question whether this is appropriate in most circumstances. Commercial charges to the recipient of funds for the collection, transmission and handling of money are common and we see no reason why in the general case Revenue Scotland should be empowered to pass on those fees in addition to tax when payment is made by a taxpayer, unless payment is by abnormal means.

44. Section 190(4) – A certificate should only comply with the provisions stated if the contents of it have been inserted reasonably; it should not be possible to obtain a summary warrant simply on the basis that there is a certificate which meets the requirements, unless the onus is put on Revenue Scotland as to the accuracy of the contents of that certificate.

Part 11: Reviews and Appeals
45. While agreeing that a review process is potentially worthwhile, we would observe that the same has not proved to be of significant value in the UK sphere. The fact the taxpayer has the option to dispense with the same and proceed straight to the tribunal is worthwhile. We also note that under section 199 “a person aggrieved by an appealable decision” may request a review by Revenue Scotland. This could mean that persons other than the taxpayer could request a review, and we question whether this is the intention.

46. We welcome the option of mediation where a review does not settle the matter in question. The Policy Memorandum refers to the fact that independent mediators would be used – we believe this, and other details relating to mediation, should be dealt with in more detail in the Bill.
47. Section 210 – we note that the default position is that tax must be paid prior to any review or appeal. We think that this should not apply at all in relation to reviews; with regard to appeals, we question whether this is appropriate at the level of the First Tier Tribunal. We think that provisions about interest and potentially penalties should be sufficient to protect the revenue authority, whereas the burden of paying a disputed tax assessment may in fact be fatal to the taxpayer’s business or personal circumstances.

Schedules
48. Schedule 2, paragraph 12 – We note that this in effect leads to automatic re-appointment of Tribunal members other than in rather extreme circumstances. We wonder if this was intended.

49. Schedule 2, paragraph 16 – We wonder about the reference to “gratuities” in this provision and whether in fact “gratuities” properly so-called are ever an appropriate term for reward for the work of a member of a Tax Tribunal.
FINANCE COMMITTEE CALL FOR EVIDENCE
REVENUE SCOTLAND AND TAX POWERS BILL
SUBMISSION FROM UNISON SCOTLAND

Introduction
1. UNISON is Scotland’s largest public sector trade union representing 160,000 members delivering services across Scotland. UNISON members deliver a wide range of services in the public, community and private sector. We represent members in local government and in the Scottish Environment Protection Agency (SEPA), whose work will be affected by the provisions in the Bill.

General Comments
2. UNISON Scotland welcomes the opportunity to provide written evidence to the Finance Committee on the Revenue Scotland and Tax Powers Bill (RSTP Bill) and we will be giving oral evidence next month.

3. We will restrict our comments to areas of direct concern to our members’ work and to the issue of tackling tax dodging. The latter has been of considerable public interest recently, with many well-known names including Google, Amazon, Starbucks and others managing to pay tiny amounts of tax. And many companies that invest in controversial PPP/PFI projects are registered in tax havens. This is of concern as a matter of principle, but is made even more galling at a time when austerity measures are creating financial hardship for so many, particularly the most vulnerable. The Bill sets out powers, not just for the two devolved taxes, but for further devolved taxes, and so needs to be scrutinised with the possibility of further taxes in mind. We welcome the fact that the adviser to the Committee, Professor Gavin McEwen, says in his report:

“Tax avoidance has become a major concern around the world both with governments seeking to increase revenues and with citizens suffering reduced income and higher taxes as a result of the global recession. Any tax system should try and make the avoidance of tax by means of artificial schemes or arrangements as difficult as possible.”

4. The Scottish Government (SG), to its credit, has tried to go further than the much criticised UK Government’s General Anti-Avoidance Rule (UK GAAR). Finance Secretary John Swinney assured the Tax Consultation Forum in October that the SG is committed to taking a tough stance on tax avoidance. We hope that the Committee will agree that more should and could be done and will suggest toughening up the Bill to make any tax avoidance that comes under the remit of Revenue Scotland as difficult as possible.

1 www.scottish.parliament.uk/S4_FinanceCommittee/Adviser_Briefing.pdf P3, paragraph 14.
SEPA

5. Revenue Scotland (RS) will delegate some operational functions to SEPA in the case of the Scottish Landfill Tax (SLfT) - and to Registers of Scotland (RoS) in the case of the Land and Buildings Transactions Tax (LBTT). UNISON believes it is appropriate for SEPA to do this work, but has concerns about ensuring there is adequate funding (in the face of ongoing budget pressures), and sufficient powers and protocols to allow staff there to do their work properly, in collaboration with counterparts in RS and RoS, and, as appropriate, those in other enforcement work in local government. Clarity is needed about if/how/when information is shared between the different organisations.

6. Among some concerns raised by our members, is the issue of illegal unregulated landfill sites. There was some anecdotal suggestion of instances where currently no action, far less enforcement action, was being taken. As SEPA will be responsible for some compliance work and for processing and administering SLfT from illegal dumping, it is important that SEPA fulfils these obligations vigorously and, of course, has the resources to do so.

7. A basic, but essential point also worth highlighting is ensuring compatibility of information systems - as SEPA pointed out in its 2013 response to the SG Consultation on Tax Management.3 We expect the Committee will want to seek reassurance that all the necessary systems will be fully functioning in time for the April 2015 ‘launch’ of RS as the responsible tax authority for both taxes.

8. Finally, we note that, although SEPA also said in its response to the Consultation that it should have the powers to inspect domestic premises (arguing that “records involving illegal activities may well be held in any premise”), this power has not been included in the Bill. We would urge the Committee to support changes to allow this, providing there are appropriate safeguards and it is not used disproportionately.

Tax dodging

9. The RSTP Bill is of wider importance on tax powers than ‘just’ the administrative framework and powers needed to implement the LBTT and SLfT. As noted above, scrutiny needs to take account of the fact that the SG intends the framework and powers to be suitable for further devolved taxes. One of a range of functions of RS is detailed in section 3(2)(d): “protecting the revenue against tax fraud and tax avoidance”. The Bill includes a General Anti Avoidance Rule (Scottish GAAR) which sets out rules enabling RS to counteract tax avoidance arrangements in relation to the devolved taxes that it determines are artificial.

10. UNISON has been vociferous, along with many others in the trade union movement and beyond, in calling for much tougher action to tackle the estimated £120 billion UK tax gap. We welcome the SG and Ministers’ stated commitments to taking a strong stance on tax avoidance. We do not believe that the UK Government’s action goes anything like far enough to tackle tax dodging. We refer members to strong criticisms of it in the TUC report ‘The Deficiencies in the General

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3 [www.sepa.org.uk](http://www.sepa.org.uk) (search for Consultation on Tax Management)
11. Anti-Abuse Rule\(^4\) (which says it “is likely to be wholly inadequate”), and we will cite recommendations from this report below. We have also called consistently for companies involved to be banned from eligibility for public contracts. We, along with many others, want to see the Procurement Reform (Scotland) Bill amended to that effect.\(^5\)

12. The UK Government should be doing more with stronger anti-tax-avoidance legislation, more tax staff and greater transparency in company accounts. Extending the Scottish and UK Freedom of Information legislation to cover companies delivering public services would also assist greatly. The STUC and others support a ‘general anti-avoidance principle’ that treats all tax avoidance as unacceptable and therefore open to challenge. The TUC says that the UK GAAR will still allow 99% of tax avoidance to continue.\(^6\)

13. In this context, it wouldn’t be hard for the SG to produce a better GAAR and we welcome the fact it has not been swayed by the majority Consultation response preferring a narrowly focused Scottish GAAR (a likely outcome, given those responding). The TUC Report describes what is needed from its recommended General Anti-Tax Avoidance Principle. While some of the recommendations there (much of them based on the European Commission Recommendation on “aggressive tax planning”\(^7\) ) are included in the Scottish GAAR, we would urge the Committee to support strengthening it in a number of ways including that it should cover, as relevant to Scotland now or in future, “international transactions of the sort that have been highlighted as abusive in so many press reports of late, but which are specifically excluded from consideration by the UK’s Rule.”

14. In addition, we suggest including from the EU criteria for assessing whether tax avoidance was taking place or not, two further situations where an arrangement or series of arrangements is artificial if:

“the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows”

“the expected pre-tax profit is insignificant in comparison to the amount of the expected tax benefit.”

15. The TUC Report points out that the EU also says that if the criteria are met, then it is for the taxpayer to prove that the tax authority was wrong to take action, not for the tax authority to prove it was right to do so.

16. However, section 62 of the Bill puts the burden of proof on Revenue Scotland.

17. Finally, we make a small number of comments on specific issues.

\(^4\) [www.tuc.org.uk/sites/default/files/GAAR.pdf](http://www.tuc.org.uk/sites/default/files/GAAR.pdf)
18. **DOTAS: Disclosure of Tax Avoidance Schemes.** The SG says it is considering a DOTAS scheme for the SLfT, via a possible amendment at Stage 2. We would support this.

19. **Tax Amnesty/Compromise Settlements:** The Committee Adviser has suggested the Committee may wish to consider whether the function of collection and management gives clear power to RS to issue a tax amnesty to improve taxpayer compliance, to negotiate a compromise settlement with a taxpayer where there is a disputed liability or provide a specific or general concession where tax legislation has unintended consequences or results in hardship.

20. UNISON Scotland recognises that these types of powers are normal but some high profile cases (e.g. Vodafone\(^8\)) have understandably caused controversy and so this should only be done under close political scrutiny.

21. **A GAAR panel of ‘experts’:** The UK GAAR Rule requires the agreement of a panel of experts, but as the TUC report points out, they are all drawn from the tax avoidance industry, making consent by the panel unlikely in most cases. There may be pressure on Ministers to also include an advisory panel. If so, it must be done in a transparent way with truly independent members.

22. **A Taxpayers Charter:** The Charter of Standards and Values must include strict standards expected of all taxpayers, specifically highlighting some of the types of unacceptable practice by many well-known companies.

**Conclusion**

23. UNISON urges the Committee to recommend that Ministers take on board the widespread public concern about tax dodging and ensure they do everything possible to stamp it out.

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\(^8\) www.theguardian.com/commentisfree/2010/nov/14/vodafone-tax-evasion-revenue-customs
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

4th Meeting, 2014 (Session 4)

Wednesday 5 February 2014

Present:
Gavin Brown                  Malcolm Chisholm
Kenneth Gibson (Convener)   Jamie Hepburn
John Mason (Deputy Convener) Michael McMahon
Jean Urquhart

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Professor Sir James Mirrlees.
Present:
Gavin Brown
Jamie Hepburn
Michael McMahon
Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Jean Urquhart

Apologies were received from Malcolm Chisholm.

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Colin Miller, Tax Management Bill Team Leader, and John St Clair, Senior Principal Legal Officer, Scottish Government;

Nicky Harrison, Chief Operating Officer, Revenue Scotland.

John Mason declared an interest as a member of ICAS.
1. Decision on taking business in private: The Committee agreed to take item 3 in private.

2. Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Crawford Beveridge, Chair, and Professor Andrew Hughes Hallett, Member, Fiscal Commission Working Group;

Professor John Kay.

3. Revenue Scotland and Tax Powers Bill (in private): The Committee further considered and agreed its approach to taking oral evidence.
Present:
Gavin Brown  Malcolm Chisholm
Kenneth Gibson (Convener)  Jamie Hepburn
John Mason (Deputy Convener)  Michael McMahon
Jean Urquhart

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Elspeth Orcharton, Director, Corporate and International Taxation, and Charlotte Barbour, Head of Taxation, The Institute of Chartered Accountants of Scotland;

John Whiting, Tax Policy Director, Chartered Institute of Taxation.

John Mason declared an interest as a member of ICAS.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

8th Meeting, 2014 (Session 4)

Wednesday 12 March 2014

Present:
Gavin Brown
Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Jean Urquhart
Malcolm Chisholm
Jamie Hepburn
Michael McMahon

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Philip Simpson, Advocate, and James Wolffe, QC, Dean of Faculty, Faculty of Advocates; and

FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

9th Meeting, 2014 (Session 4)

Wednesday 19 March 2014

Present:
Gavin Brown     Malcolm Chisholm
Kenneth Gibson (Convener)   Jamie Hepburn
John Mason (Deputy Convener) Michael McMahon
Jean Urquhart

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Dave Moxham, Deputy General Secretary, Scottish Trades Union Congress;
Joanne Walker, Technical Officer, Low Incomes Tax Reform Group.
Present:
Gavin Brown              Malcolm Chisholm
Kenneth Gibson (Convener)   Jamie Hepburn
John Mason (Deputy Convener)   Jean Urquhart

Apologies were received from Michael McMahon.

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Heidi Poon, Tribunal Member and Tax Law Lecturer, The University of Edinburgh;

Justine Riccomini, Independent HR and employment taxes consultant.
Present:
Gavin Brown
Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Jean Urquhart
Malcolm Chisholm
Jamie Hepburn
Michael McMahon

Revenue Scotland and Tax Powers Bill: The Committee took evidence on the Bill at Stage 1 from—

Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, Scottish Government;

John Kenny, Head of National Operations, Scottish Environment Protection Agency;

John King, Director of Registration, Registers of Scotland;

John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth; Eleanor Emberson, Director of Financial Strategy and Head of Revenue Scotland, and Colin Miller, Tax Management Bill Team Leader, Scottish Government.

John Mason declared and interest as a member of ICAS.
Present:
Gavin Brown     Malcolm Chisholm
Kenneth Gibson (Convener)   Jamie Hepburn
John Mason (Deputy Convener)   Michael McMahon
Jean Urquhart

1. Decision on taking business in private: The Committee agreed to take items 3 and 4 in private and to further consider its draft stage 1 report on the Revenue Scotland and Tax Powers Bill in private at future meetings.

3. Revenue Scotland and Tax Powers Bill (in private): The Committee considered a draft Stage 1 report and agreed to consider a revised draft at its next meeting.
Present:
Gavin Brown
Kenneth Gibson (Convener)
Jamie Hepburn
Jean Urquhart
Malcolm Chisholm
Iain Gray (Committee Substitute)
John Mason (Deputy Convener)

Apologies were received from Michael McMahon.

Declaration of interests: Iain Gray indicated that he had no relevant interests to declare.

Revenue Scotland and Tax Powers Bill (in private): The Committee agreed its Stage 1 report.
Briefing from the Adviser

Background

1. The Revenue Scotland and Tax Powers (“RSTP”) Bill has been introduced by the Government to provide the administrative framework and powers required to implement Land and Buildings Transactions Tax (LBTT), introduced by the Land and Buildings Transactions Tax (Scotland) Act 2013, and Scottish Landfill Tax (SLfT), to be introduced by the Landfill Tax (Scotland) Bill. These are the two taxes initially devolved under the Scotland Act 2012 but, as that Act includes power to devolve further taxes, the intention of the Government is that the administrative framework and powers set out in the RSTP Bill should be sufficiently broad to cater for further devolved taxes.

2. The Policy Memorandum introducing the RSTP Bill states the intention in para. 7 that the Bill has been prepared to reflect Adam Smith’s maxims regarding taxes, namely: certainty, convenience, efficiency and proportionate to the ability to pay. These four principles are known as the Canons of Taxation and are widely accepted by economists today, sometimes with the addition of further canons such as simplicity and flexibility. Para. 8 of the Policy Memorandum refers to simplicity as a principle of the tax system designed to deliver certainty. Baldly stated, these canons appear reasonable and uncontroversial but in their interpretation and application there are many issues to be weighed and considered.

3. The most controversial and difficult to apply of Adam Smith’s canons is that a tax should be proportionate to the ability to pay. This canon is generally interpreted today to require that people with equal taxable capacity bear the same tax burden and that people with a higher taxable capacity bear a higher tax burden. The difficulties lie in judging taxable capacity and the relative increase in tax appropriate to an increased taxable capacity. For example, one individual may have a substantial income but few assets while another has substantial assets but little income. Two individuals may have similar income and assets but one has a dependent family while the other does not. Judgements of relative taxable capacity will vary depending on political and social outlook. This canon is important when considering the nature and rules of a particular tax. It is of less relevance when considering tax administration provisions such as those set out in the RSTP Bill.

4. The provisions of the RSTP Bill will meet Smith’s other canons if, taken in the context of the LBTT and SLfT, they provide taxpayers with certainty regarding the amount and timing of payment of tax, with convenience in calculating and paying the tax and with efficiency for both taxpayer and state. Efficiency has several aspects in the context of taxation. A tax is economically inefficient if it changes taxpayer behaviour in unintended ways, perhaps reducing the expected tax take. It is inefficient if the process of administering the tax, including investigations, appeals and enforcement, is costly relative to the amount of tax collected. It is inefficient for the taxpayer if the costs of complying with the rules are disproportionate to the amounts of tax involved. The three canons, certainty, convenience and efficiency, are clearly relevant to a consideration of the RSTP Bill.

5. The two additional canons of simplicity and flexibility mentioned above are worth bearing in mind. Complexity in taxation is often the result of years of accretion
of new provisions and amendments to old ones but even a new tax system can be overly complex if it is based on regulating every potential circumstance rather than enshrining principles that can be applied to novel circumstances. The RSTP Bill is intended to be flexible in its potential application to further devolved taxes. This may mean including provisions that are of little relevance to LBTT and SLfT but could be vital for administering other taxes. This may mean that the Bill is more complex than it need be if it were simply to cater for the two currently devolved taxes.

6. Given the intention that the RSTP Bill will also provide for future devolved taxes it is worth considering the anatomy of tax administration. A liability to tax is generally triggered by a transaction or event, for example, the purchase of a building (LBTT) or a death (Inheritance Tax). The calculation of the liability may be based on transactions or events occurring in a period, for example, an accounting period in the case of SLfT or Corporation Tax or the seven years leading up to death in the case of Inheritance Tax. Modern tax systems normally provide for self-assessment on grounds of efficiency and the timing of the self-assessment and payment of tax will be linked to the triggering transaction or event or the period for which the liability is calculated.

7. Once a self-assessment is received the administering authority will normally have a limited time during which they can inquire into the basis and principles of the assessment. The time limit provides the taxpayer with certainty regarding their liability. The authority on the other hand needs powers to investigate where the taxpayer has failed to make a return or has made an incorrect return and these are normally paired with powers for the authority to amend a self-assessment or make its own assessment. To protect taxpayers, investigatory powers should be tempered by required levels of authority within the organisation or by judicial oversight.

8. Clearly, disputes may arise between the taxpayer and the authority on the existence and amount of the liability or on the right of the authority to assess. Tax systems may provide for administrative measures for disputes resolution but there will generally be provision for the taxpayer to appeal to the judiciary with further appeal by both parties possible in certain circumstances.

9. As well as the procedures for correcting or determining the amount of tax due, the authority should be able to charge interest on late paid tax and also needs power to enforce payment where the taxpayer does not pay voluntarily. As failure to pay may be the result of insolvency, the powers of the authority vis-a-vis other creditors must be considered.

10. Tax systems involve payments by the authority to the taxpayers in certain circumstances. These may be the result of downward adjustments arising from revised self-assessments or as a result of claims which result in reduced liabilities. In Value Added Tax systems, repayments can be the norm for certain categories of trader. There needs to be provision for timely repayment by the authority and interest on late repayment. The authority must also have access to funds to make the repayments.

11. Tax law gives rise to particular problems of interpretation. The traditional view of tax law in the UK was that the canon of certainty required strict interpretation with any benefit of doubt being given to the taxpayers. This gave scope for tax avoidance
which relied on escaping the strict letter of the law while clearly breaching its spirit. With the introduction of Capital Gains Tax in 1965 and income tax rates rising to 98% in the 1970s, the tax avoidance industry grew rapidly.

12. In the case of *W.T. Ramsay v CIR* in 1981, the House of Lords clarified that the principles of interpretation did not require the Court to look at each step in a series of transactions in isolation to determine their tax effect. Where there were a series of transactions which were intended to follow one another and where some of these steps were introduced for no other reason than to reduce tax, the Court was entitled to consider the transactions together in determining their tax effect. Following on from this case, legal interpretation has moved towards a more purposive or substantive interpretation. For example, schemes which pay employee bonuses in the form of dividends and other payments have been found ineffective in avoiding PAYE and NIC in recent years. In the Court of Appeal in 2011, Moses LJ held that, since payments ‘arrived in the hands of employees, as they were intended to do, as bonuses,’ they were taxable as income from employment and not as dividends despite the legal form in which they were paid [*HMRC v PA Holdings Ltd*].

13. Action through the Courts has not eliminated such artificial avoidance despite growing success in tackling such schemes. Her Majesty’s Revenue and Customs (HMRC) currently claims to be winning over 80% of Cases involving tax avoidance. Every Finance Act has introduced new, targeted anti-avoidance rules (TAARs) to eliminate the newest schemes, leading to ever-greater complexity in tax law. In 2004 the Disclosure of Tax Avoidance Schemes (DOTAS) legislation was introduced requiring those promoting tax avoidance schemes to notify HMRC so that counteraction could be taken more promptly. Most recently, the General Anti-Abuse Rule was introduced in 2013. To avoid uncertainty for taxpayers the Rule is narrowly focussed on the most clearly abusive schemes and gives HMRC power to counteract the tax advantage sought.

14. Tax avoidance has become a major concern around the world both with governments seeking to increase revenues and with citizens suffering reduced income and higher taxes as a result of the global recession. Any tax system should try and make the avoidance of tax by means of artificial schemes or arrangements as difficult as possible.

**Part 1 – Overview of Act**

15. Section 1 of the Bill sets out the arrangement of the Parts. Parts 2 and 3 cover the establishment and governance of Revenue Scotland and the establishment and governance of Scottish Tax Tribunals. Part 5 puts in place a general anti-avoidance rule (GAAR) to address the concerns set out in paragraphs 11 to 14 above. Notably, the GAAR is the only provision on the interpretation of tax law. Parts 6 to 11 cover the provisions, other than those specific to LBTT and SLT, which regulate the administration of taxes as set out in paragraphs 6 to 10 above. Part 12 covers general and final provisions.

**Part 2 & Schedule 1 – Revenue Scotland**

16. Revenue Scotland [RS] is currently an administrative Division of the Scottish Government. Section 2 establishes it as a body corporate with its own legal persona
and provides in Schedule 1 for its membership, procedures and staffing. Scottish Ministers are to appoint no fewer than 5 and no more than 9 members of RS and appoint one of them Chair. No particular qualifications are specified but elected representatives, those holding political office and civil servants are disqualified along with the insolvent and those disqualified as directors or charity trustees. Provision is made for RS to pay remuneration and reimburse expenses to its members subject to the approval of Ministers.

17. Provision is made for committees (which may include non-voting non-members) and for the internal delegation of functions to members, committees, chief executive or staff. Delegation does not affect RS’s responsibility for the exercise of its functions. RS is to employ a chief executive who may not be a member. The first chief executive is to be appointed by Scottish Ministers after consultation with the Chair (if one has been appointed) and subsequent chief executives and other members of staff will be appointed by RS on terms to be approved by Ministers.

18. Section 3 of the Bill specifies that RS’s general function is the collection and management of devolved taxes. A devolved tax is any tax specified as such in Part 4A of The Scotland Act 1998 as amended by The Scotland Act 2012, currently LBTT and SLfT. The phrase collection and management is deliberately chosen as it corresponds to the responsibility for collection and management of revenue given to the UK Commissioners of HMRC in the Commissioners for Revenue and Customs Act 2005 (CRCA 2005). That Act also provides at Section 51(3) that references to collection and management of revenue in that or any future enactment shall have the same meaning as responsibility for the care and management of revenue in earlier enactments. This means that existing Court interpretations of the power of care and management of revenue exercised by the Commissioners of Inland Revenue and of Customs and Excise remain relevant in interpreting the new powers of collection and management.

19. In future, if the Courts are called on to interpret RS’s power of collection and management of the devolved taxes, they may have regard to Cases decided on the similar wording in the CRCA 2005 or earlier enactments. One such case in point is R v CIR (ex parte National Federation of Self-Employed and Small Businesses Ltd) HL 1981 where the power of the Commissioners of Inland Revenue to offer a tax amnesty to Fleet Street casuals was challenged. The House of Lords held that the power of care and management of the taxes gave the CIR authority to waive liability in appropriate cases.

20. HMRC and its predecessors also considered that this power provided authority to publish extra-statutory concessions where the statute resulted in unfair or unintended consequences in particular circumstances. The Courts have been ambivalent regarding the publication of extra-statutory concessions. Walton J expressed the view that one should be taxed by law and not untaxed by concession [Vestey and Others v CIR, HL1979] but McNeill J held that issuing such concessions was within the concept of good management or of administrative common sense [R v Inspector of Taxes (ex p. Fulford Dobson), QB1987]. More recently, Lord Phillips MR suggested that the duty of care and management required pragmatism and principles of good management in recovering taxes. Thus concessions can be made where those facilitate the overall task of tax collection. This fits better with tax amnesties and negotiated settlements with taxpayers rather than published
concessions supplementing the Taxes Acts. Perhaps for this reason, Finance Act 2008, s160, provides that the Treasury may by order make provision for and in connection with giving effect to any existing HMRC concession. There is a continuing programme of giving statutory effect to the existing HMRC concessions under this provision.

21. The Finance Committee may wish to consider whether the function of collection and management, understood in the light of existing legislation and judicial interpretation, gives clear power to RS to:

   a) Issue a tax amnesty to improve taxpayer compliance;

   b) Negotiate a compromise settlement with a taxpayer where there is disputed liability; or

   c) Provide a specific or general concession where tax legislation has unintended consequences or results in hardship.

Taxpayers do not always behave as anticipated by legislation and as commerce and society evolve in unanticipated ways RS will need flexibility if it is to fulfil its mandate to collect the devolved taxes. It may be appropriate to specify in the bill that the power of collection and management includes but is not confined to the matters in a) to c) above.

22. Section 4 gives RS the power to delegate functions relating to LBTT to the Keeper of the Registers of Scotland [the Keeper] and functions relating to SLfT to the Scottish Environment Protection Agency [SEPA] but secures both RS’s power to direct how delegated powers are to be exercised and its continuing responsibility for those functions. Except where publication would prejudice the effective exercise of its functions, information on delegations and directions to the Keeper and SEPA must be published by RS and laid before the Scottish Parliament.

23. Section 5 requires that money received by RS must be paid into the Scottish Consolidated Fund but with the power to first deduct repayments and associated interest payments. The importance of the power to deduct repayments was illustrated by my personal experience of a Revenue Authority that was required to pay all receipts into its country’s consolidated fund. It could only make repayments out of an inadequate monthly Treasury budget which created serious dislocation and maladministration of taxes.

24. Section 6 provides that RS may pay a reward to a person for a service which relates to a function of RS. The explanatory notes give as an example a payment for information which leads to the collection of undeclared tax. Paying informers can give rise to legal and ethical issues and could be construed in particular circumstances as inducement to commit criminal acts or breach contractual confidentiality. Nevertheless it is a power that most Revenue Authorities have and exercise.

25. Sections 7, 8 and 9 regulate the relationship between Scottish Ministers and RS. RS’s independence is secured by forbidding Scottish Ministers from directing or otherwise seeking to control RS in the exercise of its functions without explicit
statutory authority. This is tempered by the requirement that RS must have regard to
guidance given by the Scottish Ministers, which guidance must be published unless
publication would prejudice the effective exercise of RS’s functions. Finally RS is
obliged to provide Scottish Ministers with such information, advice or assistance
relating to its functions as Ministers may require. Historically, UK taxes were
collected by Commissioners appointed by but acting independently from government.
In other countries where taxes were collected by a government department or were
otherwise subject to government influence, that power has on occasion been
misused to harass political opponents. Hence, it is important that RS be able to go
about its statutory duties without government direction and control.

26. RS is required by section 10 to prepare, publish and keep up to date a Charter.
The Charter must set out the standards of behaviour and values that RS will aspire
to when dealing with people in the exercise of its functions and conversely the
standards and values which it expects people to aspire to when dealing with RS.
Taxpayers Charters or Codes are an increasingly common feature of tax systems.
Realistically, taxpayers will rarely read or be familiar with the legislation. The Charter
should set out in plain language what the taxpayer can expect of the Revenue
Authority and what the Revenue Authority expects of them. There is no requirement
in section 10 for RS to consult with stakeholders in preparing or revising its Charter.
Given the importance of such a Charter in regulating the relationship between RS
and the public, the Committee may wish to consider whether a statutory duty to
consult would be appropriate.

27. In 2013 the European Commission, as part of its action plan to strengthen the
fight against tax fraud and tax evasion [COM(2012)722 final], consulted stakeholders
with a view to distilling best practice into a European Taxpayer’s Code. A summary
of this consultation was published on 12 September 2013 [TPC Report, TAXUD.D.2
(Ares 2013) 3252439] and reported that respondents from countries where there was
a Code mostly know their rights and obligations whereas those from two countries
that did not have such a Code replied that they did not know their rights and
obligations. A Fiscalis Working Group set up in June 2013 with experts from 12
member states will discuss and prepare a European Taxpayer’s Code.

28. On 9 January 2014, National Taxpayer Advocate, Nina Olson, published her
2013 Report to the US Congress urging the Internal Revenue Service to adopt a
comprehensive Bill of Rights. She commented:

The Internal Revenue code provides dozens of real, substantive taxpayer rights.
However, these rights are scattered throughout the Code and are not presented in a
coherent way. Consequently, most taxpayers have no idea what their rights are and
therefore cannot take advantage of them. A Taxpayer Bill of Rights would serve as
an organizing goal principle for tax administrators in establishing agency goals and
performance measure, provide foundational principles to guide IRS employees in
their dealings with taxpayers, and provide information to taxpayers to assist them in
their dealings with the IRS. [The Tax Times, 9 January 2014, thetaxtimes.blogspot.co.uk]

HMRC published a Taxpayers’ Charter on 12 November 2009. This can be found by
following the link Your Charter at the foot of the Quick Links box on HMRC’s home
The statutory obligation on RS to prepare and publish a Charter should ensure its central role in their dealings with the public.

29. Sections 11 and 12 cover the cycle of planning and reporting. RS must prepare a plan before the start of each planning period and submit it to Ministers for approval. The plan should cover main objectives for the period, measurable outcomes and expected activities. Once approved, after modification if appropriate, the plan must be published and a copy laid before Parliament. The first planning period will be specified by Ministers and thereafter follow a 3 year cycle. Reporting for the Financial Year is an annual obligation with the report being published, sent to Ministers and laid before Parliament.

30. RS is also given a general power to publish reports and information on matters relevant to its functions. For many years, HMRC have published their internal manuals which guide their staff in interpreting and applying the legislation. This has proved very helpful to taxpayers and their advisers in avoiding unnecessary misunderstanding and confrontation. While section 12(3) empowers RS to publish its internal guidance there is no obligation to do so other than in the case of its delegations to the Keeper and SEPA [section 4]. The Committee may wish to consider whether RS should be obliged to publish its internal guidance to staff unless to do so would prejudice the effective exercise of its functions.

**Part 3 – Information**

31. This part of the Bill provides for the use of information held by RS but restricts the disclosure of protected taxpayer information. Revenue Authorities gather information about individuals, businesses and companies of a personal or commercially confidential nature. Clear statutory guidance is necessary as to what the information may be used for, with what public agencies it may be shared and whether and to what extent it may be made public. Different countries have different approaches to this. The Policy Memorandum highlights that in Ireland taxpayers who have not made timely payment of taxes may have their names published while in Norway and Sweden tax returns of individuals are either published or made available on request. The Kenya Revenue Authority publishes a list of the top corporate and individual taxpayers each year and holds a ceremony to honour them. Such measures are adopted as they are believed to encourage taxpayer compliance. In the UK the approach has been to offer confidentiality to encourage full and open provision of information by taxpayers. As a tax adviser, I have from time to time needed to persuade clients that information provided to a Revenue Authority will not be disclosed to their spouse or to business competitors.

32. The Policy Memorandum refers to the Government’s published policy on the privacy of personal information. This policy accords with the traditional UK approach and the requirements of the Data Protection Act 1998 that information should be:

- used fairly and lawfully
- used for limited, specifically stated purposes
- used in a way that is adequate, relevant and not excessive
• accurate
• kept for no longer than is absolutely necessary
• handled according to people’s data protection rights
• kept safe and secure
• not transferred outside the UK without adequate protection.

It is my understanding that the provisions of the Data Protection Act would not prevent the publication of taxpayer information if the RSTP Bill provided for such disclosure. The Policy Memorandum reveals that the Scottish Government considered and rejected the view that such publication would enhance compliance.

33. Section 13 provides that RS may use information held by it in connection with one function in connection with any other function. RS includes for this purpose persons to whom it has delegated functions. So, for example, information about a taxpayer obtained by the Keeper in connection with LBTT could be passed to SEPA to assist it collect SLfT. In the case of persons to whom RS has delegated functions, the definition of function for this section and section 14 is extended to a function under any other statute. This appears to mean that information held by the Keeper or SEPA in connection with any of their statutory functions may be used for any other function of RS, the Keeper or SEPA. This wide power to share information between RS and any persons to whom it has delegated functions is subject to provisions in any statute or agreement prohibiting or restricting the use of information. The agreements in question are those entered into by the UK, Her Majesty’s Government or the Scottish Ministers.

34. The remaining sections of this part, sections 14 to 17, deal with protected taxpayer information. This information may only be disclosed by a RS official in one of seven permitted circumstances. Section 14 defines protected taxpayer information. The inclusion of the word taxpayer in the term being defined is potentially misleading. The information protected is any information relating to a person which RS holds in connection with its functions and which may identify that person. Thus information identifying a person who has provided information on a tax evader would also be protected taxpayer information. Information about internal administrative arrangements of RS is excluded from the definition whether it relates to members or staff of RS or others. Thus information identifying the members of RS, its staff and those to whom it has delegated functions is not within the definition of protected taxpayer information. Identifying information is not only information specifically identifying the individual but also information from which the individual’s identity can be deduced whether alone or in combination with other disclosed information.

35. Section 15 prohibits the disclosure of protected taxpayer information by an official of RS except in the seven specified circumstances. A RS official means any individual who is or was a member of RS or one of its committees, its chief executive or member of staff or is an individual exercising functions on behalf of RS. The Bill does not prohibit disclosure by any other person. For example, a visitor to the premises of RS, the Keeper or SEPA who reads protected taxpayer information left
on-screen will not commit an offence under the Bill by disclosing it nor will a newspaper that publishes such information. Indeed RS itself as a body corporate is not forbidden from disclosing protected taxpayer information except to the extent that such disclosure could be interpreted as disclosure by an officer or officers of RS.

36. The seven circumstances in which disclosure of protected taxpayer information is permitted are:

a) When made with the consent of the person to whom the information relates;

b) When made in accordance with statutory provisions requiring or permitting disclosure;

c) If made for the purpose of civil proceedings;

d) If it is made for the purposes of a criminal investigation or criminal proceedings or for the purposes of protection or detection of crime;

e) Where disclosure has been ordered by a court or tribunal;

f) When it is made to a person to whom RS has delegated functions and for the purposes of those functions; and

g) When it is made to a person (other than one mentioned in (f)) who is exercising functions on behalf of RS and for the purpose of those functions.

Examples of (f) and (g) might be disclosure to SEPA and to an advocate representing RS at a tribunal hearing respectively.

37. Exchange of information between taxing authorities is an increasingly important feature of the fight against tax evasion and abusive avoidance. The exchange of information provisions in the UK’s many tax treaties and tax information exchange agreements will presumably provide statutory grounds under (b) above permitting the disclosure of protected taxpayer information. Similarly, (d) may permit release of information to HMRC as well as the police in many circumstances. An eighth category of permitted disclosure could be considered, namely, disclosure under an agreement for exchange of information between fiscal authorities entered into by the UK Government or Scottish Government for the purposes of preventing the avoidance or evasion of tax. This would put the legitimacy of such information exchanges beyond doubt and avoid the need for a case-by-case consideration of whether the conditions in (b) or (d) above applied.

38. Sections 16 provides for RS officials, in the broad sense of section 15, to make a declaration acknowledging the confidentiality of protected taxpayer information. Section 17 creates an offence if confidentiality is breached and provides for criminal penalties.

**Part 4 & Schedule 2– The Scottish Tax Tribunals**

39. Reading the Bill, a striking contrast is that RS is set up in 11 sections and a Schedule of 9 paragraphs while setting up the Tax Tribunals takes 39 sections and a Schedule of 42 paragraphs. These provisions for Scottish Tax Tribunals are intended
as an interim measure until the Scottish Tribunals structure is put in place by the Tribunals (Scotland) Bill. The expectation is that all devolved tribunals will merge into the new structure in 2016. If viewed as a standalone tribunal structure to handle LBTT and SLfT appeals, the provisions of the RSTP Bill appear heavily over-engineered but the structure set out is effectively that of the multi-purpose Scottish Tribunals into which the Scottish Tax Tribunals will be merged.

40. Part 4 and Schedule 2 follow the provisions of the Tribunals (Scotland) Bill closely and there are essentially no provisions specific to RS or to taxes in general in this Part and Schedule. The Lead Committee for the Tribunals (Scotland) Bill is the Justice Committee and the Finance Committee considered the Bill on 5 June 2013. The Bill concluded Stage 1 on 7 November 2013. There seems little need to consider these provisions for Scottish Tax Tribunals further.

Part 5 – The General Anti-Avoidance Rule

41. Paragraphs 11 to 14 above briefly outlined the development of anti-avoidance judicial principles and legislation in the UK. The Courts, when applying tax laws, now place more emphasis on the substance of transactions, rather than focus exclusively on their legal form. The express intention of the Government is to include anti-avoidance rules targeted at specific abuses of the rules of the devolved taxes [TAARs]. Given these circumstances, we should consider whether the proposed GAAR is a worthwhile addition to the armoury or whether it will create uncertainty and confusion in tax compliance.

42. The most common argument against a GAAR is that it creates uncertainty and inhibits taxpayers who may fear that novel or unusual transactions will be attacked under the GAAR as tax avoidance. It is commonplace that the same commercial end can be achieved by different routes which will often have different tax consequences. For example, a controlling shareholder and director of a company wishing to withdraw money from it has the choice of taking a bonus, paying a dividend or taking a loan, each of which has a different tax consequence for the individual and the company. It is simply unrealistic to suggest that the individual must chose one of these three without taking note of the tax consequences. It is equally unrealistic to suggest that the revenue authority should be able to demand the tax that would arise from whichever of the three courses resulted in the largest tax take. If the director pays himself a salary that is commensurate with the company’s circumstances and his duties, then factoring the tax consequences of taking the additional money into his choice of method is surely acceptable tax planning. However, if he pays himself the statutory minimum wage despite his experience, hard work and the profitability of his company and relies on more lightly taxed dividends or loans to fund his day-to-day expenses many, if not most, people would regard this as unacceptable or even abusive tax planning, hence, tax avoidance.

43. No one has found an objective way of drawing the line between acceptable planning and avoidance but taxpayers need to be able to plan their affairs with some reasonable certainty as to the tax they will have to pay. A landfill site operator planning to increase recycling and reduce disposal by way of landfill needs to know that Landfill Tax on the tonnage recycled will not be charged under the GAAR. Two different approaches can be adopted to give taxpayers more certainty. One is to
provide an advance clearance procedure whereby the taxpayer can submit the planned transaction to the revenue authority and request confirmation that the GAAR will not be applied. This resource intensive procedure is available in the UK for certain TAAR’s but even in such limited circumstances the approach of risk-averse professional advisers is to submit clearance applications for any transaction, however innocent, that could conceivably fall within the circumstances of the TAAR. In the case of a GAAR, clearance might be sought whenever there were less tax efficient ways to do what was being contemplated and fears of excessive burdens on revenue resources are well founded. Wide use of clearance procedures runs counter to the principles of a self-assessment system based on voluntary compliance. The other approach is the one adopted in the UK GAAR introduced in 2013. This is a General Anti Abuse Rule and is intended to be more narrowly targeted.

44. The UK GAAR applies to counteract tax advantages that arise from tax arrangements that are abusive. Arrangements are tax arrangements if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements. Tax arrangements are abusive if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances. The legislation goes on to give examples of relevant circumstances and indicators of abusive arrangements. The intention is to catch contrived and artificial arrangements while casting no doubt over normal commercial arrangements chosen as being less costly in terms of tax. All applications of the GAAR must be referred to the GAAR advisory panel and over time the opinions of the Panel and guidance given by HMRC should reduce uncertainty in the application of the GAAR.

45. The Policy Memorandum at paragraph 61 suggests that the Scottish GAAR is broader in its scope than the UK rule or the EU guidance on introducing a GAAR. The guidance published by the EU on 6 December 2012 refers to artificial arrangements whose essential purpose is to avoid tax and this guidance is certainly narrower than section 58 which applies where obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement. However, the initial difference between the UK GAAR and section 58 seems purely terminological in that the UK legislation refers to tax arrangements and section 58 to tax avoidance arrangements. Both apply where the main purpose, or one of the main purposes, of the arrangement is obtaining a tax advantage. The differences between the UK and the Scottish provisions arise, first, in the contrast between the definition of abusive in the UK rule and artificial in the Scottish rule, and, second, in the absence of an advisory panel in the Scottish legislation.

46. The UK rule defines abusive in terms of the double reasonableness test namely, that the arrangement cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions. It is not a matter of whether the taxpayer honestly believes his actions reasonable or the officers of HMRC personally regard them as unreasonable. The test is whether a dispassionate observer would find it reasonable or not that such actions were judged reasonable. In contrast, section 59 of the RSTP Bill provides two alternative tests to determine whether an arrangement is artificial. The first, Condition A, is that the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard
to all the circumstances. The relevant circumstance include but are not limited to the principles on which the provisions are based, the policy objectives of those provisions and whether the arrangement is intended to exploit any shortcomings in those provisions. The second, Condition B, is whether the arrangement lacks commercial substance.

47. Condition A does not specify from whose perspective reasonableness is to be judged. From experience, intelligent, good citizens one of whom is a revenue officer and the other of whom is a taxpayer can come to the opposite opinion on what is a reasonable course of action in respect to tax provisions. The double reasonableness test in the UK GAAR implies that judgement should be made from a neutral perspective and the required involvement of the Advisory Panel introduces into the process individuals who are better placed to make a dispassionate judgement. Sections 63 and 64 require RS to give the taxpayer details of why they consider that a tax advantage should be counteracted and how they propose to do so and give the taxpayer the opportunity to make representations to RS. Section 65 permits the officer of RS to act on the basis that a tax advantage might have arisen. But subject to that right to make representations, the counteraction can be implemented and tax assessed on the basis of RS’s judgement that the taxpayer’s action was unreasonable in relation to the tax provisions and that a tax advantage might have arisen. The taxpayer’s only remedy will be to appeal to the Tribunal pending which the tax must be paid.

48. Condition B has the appearance of being less subjective, namely, that the arrangement lacks commercial substance. The section provides examples of what might indicate lack of commercial substance. Even with the guidance of the examples, officers of RS will not necessarily be the best placed to make judgements of what is and what is not commercial. The absence of an advisory panel means that the first opportunity for a disinterested judgement will be on appeal to the tribunal. The references to authorised officer throughout this Part of the Bill imply that counteraction under the GAAR will be undertaken by a limited group of specialists. This may mitigate the risk of over enthusiastic application of the GAAR but does not remove the risk of bias or lack of understanding of business conduct.

49. If and when counteraction under the GAAR is appealed to the Tribunal, section 62 sets out matters that RS must demonstrate and others that a tribunal or court must take into account in proceedings relating to the GAAR. RS must demonstrate that there is a tax avoidance arrangement that is artificial and that the counteraction is just and reasonable. The tribunal or court must take into account any guidance issued by RS in connection with the GAAR and may take into account guidance, statements and other material in the public domain and evidence of established practice (all such being extant at the time the tax avoidance arrangement was entered into).

50. The Scottish GAAR in conditions A and B, which determine whether an arrangement is artificial and therefore subject to the GAAR, does make reference to the principles and policy objectives of legislation and to the precedence of commercial substance over form. An alternative to the GAAR might be to legislate a principle of interpretation of devolved tax legislation that required the tax consequences of ambiguities, conflicting rules and novel circumstances to be resolved in accordance with the principles and policy objectives of the legislation and
that economic substance should have priority over legal form. While this is contrary to the principles of interpretation of tax law that were respected thirty years ago, the Courts have moved a long way towards this position already. In financial reporting, the precedence of substance over form is well established and is applied as a matter of course. If this is too radical and such principles are only to apply in the case of artificial tax avoidance arrangements, then the use of the double reasonableness test in Condition A would confirm that the test is intended to be objective, not subjective, and the introduction of an advisory panel of independent persons with relevant financial and commercial experience would help ensure that Conditions A and B are judged in an unbiased way.

Part 6 & Schedule 3 – Tax Returns, Enquiries and Assessments

51. Chapter 1 sets out briefly the content of Part 6 of the Bill, covering the core of a self-assessment regime. Chapter 2 sets out the taxpayer’s duties in section 68 and then elaborates on the final such duty, namely, keeping adequate records relating to tax, in the remaining sections 69 to 72 of the chapter.

52. A taxpayer’s statutory duties will be to:
   a) Notify RS of taxable activity;
   b) Inform RS if tax is due;
   c) Make tax returns on time;
   d) Take reasonable care that the information in returns is accurate and complete;
   e) Assess the tax due;
   f) Pay the tax due at the required time;
   g) Keep adequate records relating to tax.

The detail of such duties will of course differ from tax to tax but the list is a reasonable generic summary of what a taxpayer must do in an effective self-assessment tax regime.

Records

53. The records that must be kept are those that the person requires to make a correct and complete return. The period for preserving these documents comes to an end on the relevant day or the end of the enquiry period whichever is later. The relevant day is the fifth anniversary of the day the return is made or, if amended, the day the notice of amendment is given. The enquiry period lasts until the enquiry is complete or, where there is no enquiry, until the point where the power of an officer to enquire ceases. As provided in Chapter 4 of this Part, notice of enquiry must be given within 3 years of the return’s filing date or if the return is not filed until after that date, within three years of filing and the enquiry must be concluded within the same period. The enquiry period will only extend beyond 5 years from the normal filing date where the return is late and so in most circumstances the preservation period
will be the 5 years from filing of the return or an amendment to it. RS may specify a shorter period than 5 years.

54. Section 69 gives examples of the records to be kept and gives Scottish Ministers powers to specify by regulation what further records require to be kept. Section 70 provides that records, or the information in them, may be preserved by any effective means but subject to regulation by RS. A penalty of £3,000 is provided in section 71 for non-compliance but the penalty can be avoided if the necessary facts can be proved by other documentary evidence. Thus, if the dog has eaten the initial records, a penalty can be avoided if the facts can be proved from other documents. Finally, section 72 provides that Scottish Ministers may make provision in regulations for a buyer to keep records potentially relevant to LBTT even where no return is required, i.e. the transaction is not notifiable. This is because subsequent events, such as the extension of a lease, can result in a liability at a later date.

Returns

55. Chapter 3 sets out provisions for filing, amending or correcting returns. It is brief and largely provides for Scottish Ministers to make regulations and RS to specify the form of notices. Filing dates will need to be separately defined for each tax and the form of notices may likewise differ. The filing date is the date by which a return requires to be made under regulations or any other enactment. A person who has made a return may amend it within 12 months of the filing date or such a date as Scottish Ministers may provide.

56. RS may correct any obvious error or omission in a return by notice to the taxpayer and the correction is to be treated as an amendment to the return. Such a correction must be made within 3 years of the filing of the return. If a taxpayer disputes the correction, they may reject it by further amending the return if it is still within date for amendment. If it is outside the amendment period they may give a notice rejecting the correction within 3 months of the issue of the note of correction. The correction procedure is presumably provided as a simpler mechanism than a full enquiry for correcting what appear to be straightforward arithmetical errors or mistakes of principle. If the taxpayer rejects the correction, RS will need to open an enquiry to pursue the matter further.

57. In the Policy Memorandum, the aim of the RSTP Bill in respect to time limits is stated to be simplicity and certainty in contrast to the multiplicity of time limits in UK tax legislation. I find it a little surprising, therefore, that the 3 year time limit for a correction to an assessment is slightly different from the 3 year time limit for an enquiry into a return. The former is simply 3 years from filing the return while the latter is three years from the filing date or 3 years from filing the return, if later. The Committee may consider recommending that the correction time limit is the same as the enquiry time limit.

Enquiries into returns

58. A designated officer of RS may enquire into a tax return after giving appropriate notice to the person by whom or on behalf of whom the return was made (the relevant person). A designated officer is a member of staff of RS or other person who is, or category of members of staff or other persons who are, designated for the
purposes of the Act [section 216]. The time limit for such a notice is 3 years from the filing date or the date on which the return was made, if later. If an enquiry notice has been issued in respect of a return no further notice can be issued unless in respect of an amendment to the return. The enquiry may extend to anything in the return, or which is required to be in the return, and relating to whether the person is liable to the tax and to the amount of tax chargeable. If the enquiry is into an amendment to a return made after an initial enquiry has been completed, the enquiry is limited to matters to which the amendment relates or matters affected by it. This is intended to provide the taxpayer with the certainty that the return is final after completion of an enquiry.

59. If the designated officer forms the opinion in the course of the enquiry that the self-assessment is insufficient and that an immediate amendment is needed to avoid a loss of tax, the officer, by a notice in writing to the relevant person, may amend the assessment. This protects RS against a taxpayer who prolongs an enquiry with the sole or main purpose of deferring payment of tax.

60. If a matter of dispute or uncertainty arises during the course of an enquiry, the relevant person and the designated officer may make a joint referral to the Lands Tribunal, if the matter at issue is the market value of any land, and otherwise to the Tax Tribunal. While proceedings under a referral are in progress the designated officer cannot issue a closure notice in respect of the enquiry nor can the relevant person apply for a direction to issue a closure notice. This sensibly means that there is access to a Tribunal where the parties agree to differ without having to conclude the enquiry, amend the assessment and appeal.

61. An enquiry is completed when a closure notice is given and such a notice must be given within 3 years of the relevant date. This ensures that an open enquiry cannot be left hanging over the taxpayer indefinitely. The designated officer must come to a conclusion and issue the closure notice within time. However, the fact that a closure notice cannot be issued while proceedings under referral are in progress could create practical difficulties. If the Tribunal were not in a position, for whatever reason, to issue its determination prior to the deadline for the closure notice, the enquiry would be lost despite the best efforts of the relevant person and designated officer to conclude it. I suggest that, where a determination is awaited, there is a case for extending the deadline for a further short period, say, three months after the determination. While section 82, dealing with the implementation of a Tribunal determination, implies that the conclusion of an enquiry will result in any necessary amendments to the return being made, it would put matters beyond doubt if section 84, which deals with the completion of the enquiry, referred to the making of necessary amendments in addition to *stating the conclusions reached*.

62. Finally, the taxpayer needs protection against RS opening but simply not concluding an enquiry. The relevant person may apply to the Tribunal for a direction that a closure notice be given within a specified period. This the Tribunal must do unless RS shows reasonable grounds for not giving a closure notice within that period.

**RS determinations**
63. Where no return is made by the filing date but RS has reason to believe that a person is chargeable to a devolved tax, RS may make a determination to the best of its information and belief of the amount of tax to which the person is chargeable. The time limit for doing this is 5 years after the filing date or such other date as the Ministers may prescribe. The determination has the same effect as a self-assessment for the purposes of collection and enforcement. If the person subsequently makes a tax return with respect to the tax in question, the self-assessment in that return supersedes the determination. The time limit to make such a self-assessment is 5 years after the power to make the determination became exercisable or 3 months after the date of the determination, if later. This procedure gives RS power to prompt a person to make a return without the need to open a full investigation.

**RS assessments**

64. Where a situation gives rise to loss of tax or an excessive repayment, a designated officer may make an assessment of the amount or further amount of tax that ought in his opinion be charged to make good to the Crown the loss of tax. But such an assessment can only be made if the loss or situation was brought about carelessly or deliberately by the taxpayer, a person acting on the taxpayer’s behalf, or a person who was a partner of the taxpayer. Such an assessment cannot be made, however, if the return which gave rise to the loss was made in accordance with the basis or practice generally prevailing at the time. This protects the taxpayer from being assessed as careless where the generally accepted basis or practice applied by them is subsequently overturned by a legal decision or published RS advice.

65. The general time limit for such an assessment is 5 years from the filing date or date of the return, if later. However, this is extended to 20 years if the loss of tax or situation was brought about deliberately by the taxpayer, agent or partner. An assessment to recover an excessive repayment of tax is not out of time if made within 12 months of the repayment being made. There are special time limits where the taxpayer is deceased.

66. A lack of reasonable care resulting in a loss or situation will be regarded as carelessness but carelessness can also be attributed where a person finds out that information provided earlier to RS is inaccurate and fails to take reasonable steps to inform RS. A loss of tax or situation will be regarded as brought about deliberately where there is a deliberate inaccuracy in a document given to RS by or on behalf of a person.

67. A notice of assessment must be served on the taxpayer stating the tax due, the date of issue of the notice and the time within which any review or appeal against the assessment must be requested. After the issue of the notice the assessment can only be altered under certain provisions of the Act. Section 96 (3) specifies these as Part 6 (this part) and Part 5. The reference to Part 5 does not make sense as Part 5 deals with the GAAR. As section 96(2) refers to the time within which reviews and appeals must be requested, I believe the reference should be to Part 11 which provides for such reviews and appeals.

**Relief in case of excessive assessment or overpaid tax**
68. A person who believes that they have been assessed to tax more than once in respect of the same matter may request relief against the double charge [section 97]. Where a person has paid tax but believes the tax was not chargeable or is subjected to an assessment or determination in respect of tax they believe is not chargeable, they may claim for the amount to be repaid or discharged [section 98]. Claim may also be made if the tax was paid or charged in connection with an order setting rates or changing the scope of tax which was subsequently not approved [section 99]. The relevant orders for LBTT and SLfT are set out in section 99(3). Such a claim may also include any penalties and interest related to tax paid under the order. There is a reduced time limit of 2 years from the filing date or date of the return, if later, for claims resulting from an order falling.

69. RS is not obliged to repay or discharge tax under sections 98 and 99 if to do so would unjustly enrich the claimant. Unjust enrichment can arise where the person who paid the tax to RS or who is assessed and is claiming repayment or discharge has passed the tax charge on to other parties. Thus a SLfT payer, being a site operator, may have charged their customers an amount in respect of the tax for which they are now claiming repayment or discharge. However, if the taxpayer has suffered loss or damage as a result of mistaken assumptions about a tax provision, appropriate compensation for that loss or damage may be excluded from the determination of whether and to what extent the taxpayer would be unjustly enriched. There is also provision for Ministers to make regulations governing reimbursement arrangements that will be acceptable as securing that a person is not unjustly enriched.

70. Section 104 lists the circumstances in which RS need not give effect to a claim. These are where:

a) There is a mistake in the claim or in making or failing to make a claim;

b) Relief is available under other provisions in this Part of the Act;

c) The claimant could have sought relief within a period now expired but did not do so;

d) The matter is in course of appeal or review;

e) The claimant knew or ought reasonably have known of the grounds of the claim before the determination or withdrawal of appeal or expiry of the appeal period;

f) The amount was paid in consequence of enforcement proceedings or an agreement settling such proceedings; and

g) The amount, while excessive, was calculated in accordance with practice generally prevailing at the time.

The last of these circumstances protects RS against circumstances where as a result of a court judgement or otherwise a settled interpretation or practise is found to have been wrong. However, as EU law takes precedence, repayment claims are admissible if the previous practice is found to have breached EU law.
71. The procedure for making claims is set out in sections 105 to 108 and in Schedule 3. The time limit for claims is 5 years after the date by which the return relating to the repayable tax, determination or assessment is required to be made. Schedule 3 provides for similar record keeping requirements, amendments, corrections, enquiries and completion of enquiries and appeals as there are for returns. Records must be kept for 3 years after the making of the claim, the completion of an enquiry or the expiry of the enquiry period into an amended return, whichever is latest. An amendment to a claim can be made in the 12 months after the claim. A correction by RS must be made within 9 months of the claim and may not be made while an enquiry continues. A correction is of no effect if rejected by the claimant within 3 months. RS may give notice of enquiry, but must also complete the enquiry, within 3 years of the claim being made. An appeal against a conclusion or amendment made by a closure notice must be made within 30 days of the closure notice. There are special provisions for partnerships. Where RS is otherwise prevented from making assessments, the claim may reopen the opportunity to make an assessment relating to the grounds of the claim. Tax paid as part of a contract settlement and believed to be excessive may also be subject to a claim.

**Part 7 – Investigatory Powers of Revenue Scotland**

72. This Part deals with the powers of RS to request, inspect and copy documents and digital records and enter premises and inspect assets and take samples, all for the purpose of determining tax liabilities. Powers of this nature are clearly necessary to deal with tax evasion and aggressive tax avoidance but must be balanced against the citizen’s right to privacy and confidentiality. As much as possible should be done by request and with the consent of the taxpayer but there will be circumstances where RS either does not know the identity of the taxpayer or where there is a serious risk of evidence being destroyed if the parties are forewarned.

73. RS will designate a staff-member or category of members or other persons as investigation officers. The terms designated officer and designated investigation officer are used at various points throughout this Part. Designated officer is defined in section 216 in respect of the purposes of the Act as a whole. It appears from the context in which the terms are used that a designated investigation officer is senior to a designated officer. The latter may issue a third party notice with the approval of the taxpayer or the Tribunal, for example, but the application to the Tribunal must be made by or with the approval of the former. It might be helpful if section 111, when defining designated investigation officer clarified the relationship between the two categories.

74. A persons’ tax position is broadly defined as is carrying on a business. Statutory records are all the documents required to be kept and preserved under the Act but, except in the case of business records, are confined to records for periods which have ended. Information and documents also cease to be statutory records when the required period of preservation has expired.

**Information and documents**

75. Different rules apply depending on whether information and documents are requested from the taxpayer or someone else, a third party. In both cases, the designated officer must require the information or document in writing and the
information or document must be reasonably required for checking the taxpayer’s tax position. Its provision by the person addressed must also be reasonable. A third party notice cannot be given without either the taxpayer’s agreement or the approval of the Tribunal. An officer may also seek the Tribunal’s approval to issue a notice with a view to limiting the subsequent right of the taxpayer to appeal against the issue of the notice. Where the Tribunal is satisfied that it would prejudice the assessment or collection of tax, it may waive the requirement that the person to whom the notice is addressed be informed of the need for the documents and given the opportunity to make representations. In the case of a third party notice, it may waive on similar grounds the requirement to provide the taxpayer with a summary of the reasons why the information is required together with a copy of the third party notice. Applications to the Tribunal must be made by or with the agreement of a designated investigation officer.

76. In some circumstances, RS may not know the identity of a taxpayer or taxpayers. If information is reasonably required to check the tax position of such persons, a designated investigation officer may by notice require a person to provide information or documents. A designated officer may also give such a notice but only with the approval of the Tribunal. The Tribunal must be satisfied that the information is not only reasonably needed to check a tax position but that there is reason to believe that the unidentified persons may have failed or may fail to comply with the law relating to a devolved tax, that such failure will prejudice the assessment or collection of tax and the information is not readily available from another source. This section seems odd for two reasons. If a designated investigation officer may issue a notice without reference to the Tribunal, there seems no need for a designated officer to have the power to issue such notice with the Tribunal’s approval. Secondly, it seems odd that the Tribunal, who may be expected to be impartial, must satisfy themselves of a stricter set of conditions than a designated investigation officer.

77. The rules for third party notices are adapted in sections 120 and 121 to the circumstances of groups of companies and for partnerships. Section 122 provides the power for a designated investigation officer to give a notice in writing to a person which requires information necessary to identify a potential taxpayer. Amongst the conditions necessary for such a request are that the person obtained the relevant information in the course of carrying on a business. Sections 123 to 126 make further provision about the form and content of information notices and the requirements of complying with them.

78. Information notices are restricted to documents in the possession or power of the person to whom the notice is given. A document that wholly originates more than 5 years before the date of the notice may only be included if the notice is given or authorised by a designated investigation officer. Where the taxpayer is deceased the information notice may not be given more than 4 years after death. An information notice cannot require information relating to the conduct of a pending review or appeal or journalistic material. An information notice may not require certain personal information, for example, health records.

79. An information notice may not be issued for a tax and for an accounting period for which a return has been made, unless there is an open enquiry or claim for the period, or unless a designated officer has reason to suspect that tax has not been
assessed, an assessment is insufficient or relief given is excessive. In other words, where a taxpayer has made a return, the information notice must be part of an enquiry, claim or in consideration of a revenue assessment.

80. Information or documents for which a claim to confidentiality of communications between a client and professional legal advisor could be maintained in legal proceedings are regarded as privileged and cannot be required in an information notice. Likewise an auditor cannot be required to provide information held in connection their audit function or produce documents which are their own property and were prepared in connection with their audit duties. It is notable that there is no protection for information and documents relating to communication between a client and tax adviser in respect of giving or obtaining tax advice. Such protection is provided in respect to reserved taxes by paragraph 25 of Schedule 36, Finance Act 2008.

81. The policy memorandum at paragraph 97 states that the Scottish Government takes the view that such protection would unduly hinder efforts to tackle tax avoidance. The advantages of being able to request information and documents relating to tax advice where artificial tax avoidance is suspected are clear. But it is important to remember that most tax advice is not about artificial avoidance but about liabilities and how they are calculated; alternative interpretations of tax provisions and their relative merits; or about alternative but fully commercial ways of transacting that may have differing tax liabilities attached. A taxpayer is obliged to make a return of information relating to their liabilities to RS. The lack of protection for tax advice means that all discussions about what to include in the return and how to calculate the liability are also potentially the subject of an information return to RS.

82. The availability of quality tax advice for taxpayers is a clear public benefit and promotes tax compliance. The lack of protection for tax advice may undermine this in two ways. Taxpayers are less likely to have full and frank discussions with their tax advisers if they know that such discussions may have to be disclosed to RS. This is likely to damage tax compliance. Those who do wish to keep their tax advice confidential will engage a lawyer for the purpose. This may restrict the supply of tax advice available in the professional services market.

**Premises and other property**

83. A designated officer may enter a person’s business premises to inspect the premises or business assets and documents that are on them, provided there is reason to believe the inspection is reasonably required to check on the person’s tax position. Any part of the premises used solely as a dwelling is excluded from this power. The premises, assets and documents of a third party may similarly be entered and inspected to check the tax position of a person or class of persons but the relevant third parties and documents for this purpose will be specified in an order by Ministers.

84. Unless the inspection is carried out by, or with the agreement of, a designated investigation officer, it must be carried out at a time agreed with the occupier or at least 7 days notice of the inspection must have been given. If carried out without agreement or prior notice, a notice in writing must be provided to the occupier at the commencement of the inspection or, if the occupier is not present, given to the...
person in charge of the premises at the time or, if none, left in a prominent place. The notice must state the possible consequences of obstructing the officer and, if the Tribunal has approved the inspection, the notice must state so.

85. With some variations to the conditions, there is a similar power to inspect premises for the purpose of a valuation relevant to checking a person’s tax position. This power is not limited to business premises as the valuation of residential property can clearly be relevant to LBTT.

86. The Tribunal may be asked to approve an inspection of each of the three types above with the result that penalties can be charged subsequently for failure to comply or obstruction. The application must be made by or approved by a designated investigation officer. The conditions for approval are different for an inspection of business premises and for a valuation, and the decision of the Tribunal is final.

87. The inspection powers include the power to mark assets to indicate that they have been inspected; to obtain and record information regarding the premises, property, assets and documents inspected; and to take samples of material on the premises for the purpose of checking a person’s tax position. Documents may not be inspected under the inspection power if they could not have been the subject of an information notice given to the occupier at the time of the inspection.

**Further investigatory powers, reviews, appeals and offences**

88. Powers to copy, make extracts and remove documents are set down and the interests of the person producing the documents protected. The powers over documents are extended to information recorded in other ways and specifically in computer systems. The designated officer is entitled to require assistance in accessing, inspecting and checking the operation of any computer system, associated apparatus or material used in connection with a relevant document. A specific penalty of £300 is provided for obstructing the exercise of these powers or for failing to render requested assistance in a reasonable time. It seems odd that the penalty is specified here in Part 7 while the general penalty of £300 for failure to comply with an information notice or obstructing an inspection is levied under section 167 in Part 8.

89. Section 144 sets out the rules for review or appeal of information notices. It is not possible for a person to appeal against the giving of a notice or a third party notice if the Tribunal had approved the notice, nor can a person appeal against a requirement to produce information or documents that form part of their statutory records. The permissible grounds of review or appeal in other cases are set out in the remainder of the section. Section 145 sets out the consequences of the conclusion of a review or the disposal of an appeal. The decision of the Tribunal on an appeal against an information notice is final.

90. Concealing, destroying or otherwise disposing of documents specified in an information notice, or doing so after having been informed in writing by a designated officer that they may be so specified or that an application to the Tribunal is intended, is an offence. On summary conviction the penalty is a fine not exceeding the
statutory maximum or on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine or both.

**Part 8 – Penalties**

91. Penalties are an integral part of a tax system. Certain acts of tax evasion will constitute fraud or will otherwise be subject to criminal prosecution under other legislation. But the immediate financial benefits of tax evasion need to be countered in tax legislation by both criminal penalties for more serious offences and civil financial penalties for other failures. Experience with UK taxes provides some valuable lessons. In the past the taxes administered by the former Inland Revenue had penalties which had to be levied in each instance and which were subject to a broad degree of discretion in amount. On the other hand VAT penalties, administered by the former Customs and Excise, were automatic, invariable and severe. Over time it was realised that the Inland Revenue penalties were an insufficient deterrent due to likelihood that they would not be levied or would be substantially mitigated. The VAT penalties brought the system in disrepute, on the other hand, due to the lack of warning, the speed with which they escalated to substantial sums and the lack of discrimination between compliant taxpayers with a temporary problem and persistent offenders.

92. Even before the two departments merged into HMRC their penalty regimes were converging to a system of more automatic penalties which were not overly penal initially but built up with continued non-compliance and which distinguished between generally compliant and persistently non-compliant taxpayers. In the case of penalties for mistakes, errors, failure to return income and similar, the penalties can be varied to recognise voluntary disclosure, seriousness of the offence and cooperation in putting matters right. It is important that the penalty system be comprehensible to the taxpayer otherwise it will fail to encourage good taxpayer behaviour.

93. Part 8 provides in Chapter 2 for penalties for failure to make returns or pay tax. While much of the detail of the penalty system will be specified by Ministers in regulations, the skeleton provided in the Bill shows that the intention is for a system that avoids double penalties for the same offence, gives recognition to taxpayer disclosure and cooperation, allows for agreement for deferred payment, recognises that special circumstances may merit remission, suspension or compromise and accepts that there can be reasonable excuse for failure to make a return or pay tax. *Reasonable excuse* is a term used in UK tax law which has been considered in a good number of court decisions. So there will be precedent available to help apply it in respect of devolved taxes.

94. Penalties for errors are dealt with in Chapter 3 and can be levied not just on the person submitting the document but also on someone who provides false information to or withholds information from the person submitting the document. A penalty is also due for unreasonable failure by a person to notify RS that they have been under-assessed. A penalty due for a careless error may be suspended to encourage future good behaviour. The penalties in this Chapter may be remitted, suspended or compromised in special circumstances and may be reduced where there is disclosure.
95. Unlike the previous two Chapters, Chapter 4, covering penalties relating to investigations, provides for the amounts of penalties, their assessment and enforcement. The penalty for failure to comply with an information notice or obstruction of an inspection is £300 but with a continuing daily penalty of £60 for each day on which the failure or obstruction continues after the imposition of the initial penalty. Penalties for careless or deliberate inaccuracies in documents may be up to £3,000 for each inaccuracy. There is provision for Ministers to increase these penalties from time to time in line with inflation. If a designated officer allows further time to someone required to do something and it is done within that extended time limit penalties under failure to comply or obstruction will not be levied and reasonable excuse is also recognised as a defence against these penalties.

96. Rather oddly, sections 171 and 172 in this Chapter forbid the concealing, destroying or disposing of documents which are the subject of an information notice or where the person has been informed that a notice will, or is likely to, be issued. Sections 146 and 147 in Part 7 provide that such concealing, destroying or disposing of documents is an offence subject to criminal penalty. It would seem more in line with the plan of the Bill if sections 171 and 172 forbidding the activity appeared in Part 7 and the two penalising sections appeared in Part 8.

97. Sections 175 and 176 give rules and time limits for assessment and payment of penalties. Payment of the penalties may be enforced as if they were assessments to tax. Where a daily penalty is assessed for continuing failure to comply with a notice under section 119 (information required to identify an unknown taxpayer or taxpayers) and the failure continues for more than 30 days after that assessment, a designated officer may apply to the Tribunal for an increased daily penalty provide the person has been notified of the intended application. The limit for such an increased penalty is £1,000 per day. Where a person is subject to a penalty under section 167 (failure to comply or obstruction) and continues with that failure or obstruction and the designated officer has reason to believe the tax lost as a result will be significant, he may apply to the Upper Tribunal for an additional, tax-related penalty to be imposed. This penalty is in addition to any others levied.

98. Finally, Chapter 5 provides for a penalty to be imposed where a person fails to register for SLfT or to amend their registration when required to do so. The Minsters are empowered to make regulations specifying the penalties and the procedures for issuing, appealing and enforcing them.

99. While much of the detail of the penalty regime and its operation remains to be filled in with Ministerial regulation, the skeleton in the Bill is capable of supporting a regime which is firm but fair and provides an effective encouragement to good taxpayer behaviour.

Part 9 – Interest on Payments Due to or by Revenue Scotland

100. This Part provides a framework with the detail of rates and dates to be filled in by Ministerial regulation. It provides for payment of interest by those who pay tax or penalties late. It also provides for RS to pay interest on repayments of tax, penalties or interest overpaid. Interest on unpaid tax will run from 30 days after the date specified for payment while interest on penalties runs from the date the penalty was
due to be paid. Repayment interest will be calculated from the date the tax, penalty, interest or deposit was first made to the date the repayment was issued.

101. The reciprocal nature of the obligation to pay interest and the dates for its calculation suggest that interest is intended as a financial matter rather than as part of the penalty regime. In the past in the UK tax system, interest was viewed as if it were a daily penalty for continuing failure to pay. This led to pressure to waive interest, along with penalties, where the late payment was an innocent error or as a quid pro quo when the taxpayer conceded matters in dispute. This culture of interest as an imposition was fostered by the lack of reciprocity. Repayment interest, if provided for at all, was only paid where the repayment was made late and the legislation typically allowed the revenue a year to make the repayment. HMRC and its predecessors have had to work hard to reach the current position where interest is understood on both sides as financial recompense.

102. In setting interest rates, Ministers must take account of market rates. If interest on late payment is too low, businesses will use late payment of tax as cheap funding. If the interest on tax repayments is higher than available on deposits in the market, people will overpay tax deliberately. It is inevitable as a result that rates charged on late payment will be higher than those paid on repayments.

Part 10 – Enforcement of Payment of Tax

103. This part deals with the collection of tax, penalties and interest due to RS. RS is empowered to demand the sum due from the person who owes it and, on payment, must provide a receipt if requested. I suggest that issuance of a receipt or similar statement should be automatic. Paragraph 2(4) of Schedule 3 requires documentary evidence that tax has been paid as a condition of a repayment claim and taxpayers may not be aware when they pay the tax that a repayment may be due at a later date.

104. Where a payment method results in a fee or charge to RS, for example, in payment by credit card, Ministers are empowered to make regulations governing fees to be charged to payers. These fees may not exceed RS’s reasonable costs in paying the fee or charge.

105. A certificate of a designated officer that, to the best of their knowledge and belief, a sum due to RS has not been paid is sufficient evidence that it is unpaid. It is, of course, a matter for a Court to decide whether to accept the evidence or not. Tax due and payable may be sued for and recovered from the person liable to pay it as a debt due to the Crown. Proceedings may be taken in the Sheriff Court or the Court of Session, sitting as the Court of Exchequer. Provision is made for obtaining a summary Sheriff’s warrant for payment of unpaid tax. This empowers collection by the sheriff officer by attachment, money attachment, earnings arrestment or arrestment and action of forthcoming or sale. Unpaid penalties and interest may be collected under these provisions as though they were an amount of unpaid tax.

106. Finally, this Part makes provision for a designated officer to obtain contact details of a debtor from a third party. The third party must be a company, local authority or a person who obtained the information in the course of business. Charities or persons acting on behalf of charities in the provision of services that are
free of charge cannot be asked for contact details. This is presumably so that the vulnerable can seek debt counselling or welfare from charities without fear of being pursued. A notice to provide the contact information may be subject to a request for a review or an appeal but only on grounds that compliance with the request would be unduly onerous. The penalty for non-compliance is £300 and Ministers have the power to increase this from time to time in line with inflation.

**Part 11 – Reviews and Appeals**

107. Section 198 lists *appealable decisions* of RS. These are also decisions where the person aggrieved by the decision may request a review. The list is comprehensive but certain matters are specifically not appealable:

   a) A third party information notice which has been approved by the Tribunal [section 144];
   
   b) A request in an information notice to produce statutory records [section 144];
   
   c) The giving of a RS determination (the remedy is to make a self-assessment); and
   
   d) The giving of notice of enquiry into a return or claim.

These non-appealable decisions seem reasonable and are not oppressive to the taxpayer or other parties.

108. Sections 199 to 205 provide for RS to review its appealable decisions at the request of the person aggrieved by the decision. Procedures and time limits are specified and the conclusion of the review has the force of a settlement agreement, which essentially means that it is to be treated as if it is a decision by the Tribunal on appeal [section 211(2)]. If the aggrieved person is dissatisfied with the conclusion, then the matter may proceed to mediation, a settlement agreement or an appeal to the Tribunal. HMRC reviews are a relatively recent feature of the UK tax system and have generally been welcomed. They provide reassurance to the aggrieved person that they are not the victim of an over enthusiastic officer and they give the Revenue the opportunity to step back from an entrenched position. Review should be a worthwhile and cost effective way of settling disputes.

109. Sections 206 to 209 set out the rules for appeals to the Tribunal by a person aggrieved by a decision. A notice of appeal cannot be given:

   a) Against a decision to amend a self-assessment during the course of an enquiry;
   
   b) Once a review has been requested and before it is concluded;
   
   c) Where the appellant has entered into a settlement agreement and has not withdrawn from it.

These exceptions seem reasonable, as an appeal will be competent once the relevant process is concluded. The rules for conduct of appeals and the appropriate Tribunal are found in Part 4 of the Bill.
110. Both the review and appeals procedures permit RS to accept notices requesting review or appeal outside the provided time limit. If RS does not permit the late application, the Tribunal may do so. RS may grant the late application if they are satisfied that there was reasonable excuse for the late notice and that the application was made thereafter without reasonable delay. This mirrors a provision in the UK tax code where there is considerable guidance from court decisions. Reasonable excuse has included illness, absence from the country, and personal or business crises but the courts have emphasised the importance of making an application as soon as the impediment has passed.

111. The requesting of a review or making of an appeal does not automatically postpone payment of tax, penalties or interest. However, Ministers may make regulations to provide for postponement, or partial postponement, of payment pending the outcome of the review or appeal. The Policy Memorandum states that it is the Government’s intention to provide for postponement in the case of LBTT but not in the case of SLfT where the taxpayer has already collected the tax from a third party. It is important that postponement is not automatic as earlier tax provisions in the UK, which provided for automatic postponement on appeal, resulted in many vexatious appeals which had no substance. However, a person faced by an unexpected tax liability surely has a right to postpone payment until such time as the liability has been definitely established. The power to regulate postponements includes the power to a permit requests to the Tribunal for postponement and for appeals against RS and Tribunal decisions on postponement. This will be an important protection for the taxpayer.

112. Section 211 is a single section but deals with an important matter, settlement agreements. Where a matter is under review, mediation or appeal, the taxpayer and RS may agree the matters in question and the agreement has the force that the conclusion of the review, mediation and appeal would have had. The taxpayer has 30 days from the agreement to withdraw. An agent may act for the taxpayer in such a settlement agreement. This should lead to early settlement of many cases without the need to complete formal proceedings.

113. The Bill provides special rules where there are joint buyers or trustees in a LBTT case. These rules ensure that each party or trustee is informed of and has a right to participate in a review, mediation or appeal and is bound by the outcome.

Part 12, Schedules 4 & 5 – Final Provisions

114. This Part is essentially the housekeeping section. Some key terms are defined in section 216 and Schedule 5 lists terms used in the Bill and indicates where their definition may be found. Section 218 governs the making of Order and Regulations under the provisions of the Bill and indicates whether the affirmative or negative procedure applies to them. Section 219 gives Ministers broad powers to make incidental, supplementary, consequential, transitional, transitory or saving provisions. And Schedule 4 makes minor and consequential amendments and repeals of enactments.

115. Sections 221 to 223 modify the provisions of the Bill in respect to the Crown and Crown land. Section 224 provides for commencement, which is substantially determined by order of the Scottish Ministers with the exception of the sections
relating to subordinate legislation, ancillary provisions and the Crown, which come into affect on the day after Royal Assent.

116. From the day after Royal Assent the Bill becomes the Revenue Scotland and Tax Powers Act 2014.
Dear Kenneth

Revenue Scotland and Tax Powers Bill

At its meeting on 19 March, the Public Audit Committee considered correspondence from Revenue Scotland and the Auditor General for Scotland (AGS) on the audit arrangements for Revenue Scotland. The correspondence can be read on the Committee’s website here: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/74384.aspx

The Committee noted the AGS comments that an order under the Scotland Act, to give Revenue Scotland the status of office-holder in the Scottish Administration, requires to be made and applied from the same date as the commencement of the Bill. This will ensure that Revenue Scotland falls within the auditing provisions of the Public Finance and Accountability (Scotland) Act 2000. This will also then require it to prepare annual accounts to be sent to the AGS for auditing, which will subsequently be laid in Parliament.

The Committee therefore agreed to highlight this issue to the Finance Committee to inform its scrutiny of the Revenue Scotland and Tax Powers Bill at Stage 1.

Should you have any further questions, please do not hesitate to contact the Committee Clerks on 0131 348 5236 or pa.committee@scottish.parliament.uk.

Yours sincerely

Hugh Henry MSP, Public Audit Committee Convener
Correspondence from Audit Scotland to the Public Audit Committee, dated 7 February 2014

Thank you for your letter of 20 January requesting my views on aspects of the Revenue Scotland and Tax Powers Bill (the Bill).

Revenue Scotland
The Bill makes clear provision for the establishment of Revenue Scotland as a body corporate, for its members to be appointed by Scottish Ministers and for the appointment of a chief executive who will not be a member of Revenue Scotland.

The Bill requires Revenue Scotland to prepare a corporate plan for each three year period which must be sent to Ministers for approval and, once approved, laid before the Scottish Parliament. The Bill also provides for Revenue Scotland to prepare an annual report on the exercise of its functions which must be sent to Ministers and laid before the Parliament.

Provisions in the Bill prevent Ministers from giving directions to Revenue Scotland about the exercise of its functions although they may issue guidance which Revenue Scotland must have regard to.

Once established as part of the Scottish Administration the Principal Accountable Officer will normally appoint the chief executive of Revenue Scotland as its Accountable Officer. The standard terms of appointment of an Accountable Officer as published in the Scottish Public Finance Manual include that the Officer is personally answerable to the Scottish Parliament for the exercise of their functions.

Accounting and audit arrangements
The Bill does not explicitly require the preparation of annual accounts or an external audit. However the Explanatory Notes say that “Revenue Scotland will have the status of a non-ministerial department, as distinct from the status of an NDPB. As with other NMDs Revenue Scotland will be a Crown body.

Revenue Scotland is expected to have the status of an office-holder in the Scottish Administration, within the meaning of section 126 of the Scotland Act 1998, by virtue of an order under that Act”.

In the absence of explicit provisions in the Bill about accounting and auditing it is important that the order is made and applies from the same date as the commencement date for the Bill as a whole. Once the Scottish Government make such an order then Revenue Scotland will fall within the scope of the accounting and auditing provisions of the Public Finance and Accountability (Scotland) Act 2000 (PFA Act) which will require it to prepare accounts and send them to the Auditor General for auditing. This also provides for the conduct of performance audits.

Whilst we understand that it has not yet been decided exactly which sets of accounts the taxes collected will appear in, the existing audit arrangements together with those provided as a result of the proposed order will ensure that I am able to report to Parliament on the operation of Revenue Scotland and the devolved taxes.
Prior to the Bill coming into effect we will monitor the preparations that are being made for implementation by Revenue Scotland in its current form as part of the Scottish Government through our annual audit work.

Access to information
As would be expected the Bill provides safeguards for taxpayer information held by Revenue Scotland.

However the Bill also provides for circumstances in which taxpayer information can be disclosed and one of those is where other legislation requires or permits its disclosure. The PFA Act requires audited bodies to provide the auditor with such information as they need for the purposes of their audit and therefore auditors will be able to access taxpayer information when necessary.

National Fraud Initiative
Another purpose for which taxpayer information can be disclosed under the provisions in the Bill is for the prevention and detection of crime. We have discussed the application of the various provisions for disclosure of taxpayer information with Scottish Government officials who have confirmed that the provisions have been drafted with the intention that Revenue Scotland will be able to disclose taxpayer information for the purposes of the NFI.

Performance information
Whilst it is for Revenue Scotland to determine what performance information it includes in its reporting arrangements I would expect that, in line with the discussions about information on the Scottish Rate of Income Tax, it will include information on collection, enforcement, customer service and complaints as well as any steps being taken to ensure that all tax due is identified.

On the basis of the comments above I am content that the Bill addresses the points raised in our consultation response.

I would be happy to provide any further information if the Committee would find it helpful.

Yours sincerely

Caroline Gardner

Correspondence from the Public Audit Committee to Audit Scotland, dated 20 January 2014

The Revenue Scotland and Tax Powers Bill (the Bill), which provides for a Scottish tax system and to establish Revenue Scotland to enable the collection and management of the Land and Buildings Transaction Tax and Scottish landfill Tax from 1 April 2015, was introduced on 12 December 2013.
The Committee is aware that Audit Scotland responded to the Scottish Government’s consultation on the Bill, highlighting the following areas for consideration:

- that the leadership and governance of Revenue Scotland is clear including identifying who has responsibility for preparing/approving corporate plans, making budget submissions to Parliament and that the accountability to Parliament for performance is clearly set out;
- the extent to which Audit Scotland would have the same access rights to Revenue Scotland taxation information as the National Audit Office has with HMRC; and
- whether the National Fraud initiative would be extended to include information held by Revenue Scotland.

The Committee notes your response from February 2013 that Revenue Scotland will fall within your remit for the purposes of audit and scrutiny. However, as the Bill has now been introduced, the Committee agreed to seek your views on the extent to which it has addressed the concerns raised in Audit Scotland’s consultation response on the Bill.

Any other comments you may have on the range and nature of performance information you might expect Revenue Scotland to provide to the Scottish Parliament to assist with its scrutiny role would also be welcome.

The Finance Committee’s consultation closes on 19 February, after which point it will begin taking oral evidence on the Bill. I would therefore be grateful for a response by Wednesday 12 February 2014, so the Committee can consider its next steps at its meeting on 19 February 2014.

Yours sincerely

Hugh Henry MSP
Convener
Correspondence from Revenue Scotland to the Public Audit Committee, dated 13 February 2014

Thank you for your letter of 20 January seeking clarification on the range of information that Revenue Scotland proposes to provide about its performance on the collection and management of the devolved taxes.

As you will be aware, the Revenue Scotland and Tax Powers Bill anticipates a robust governance structure for Revenue Scotland which, subject to Parliamentary approval, will be established as a non-ministerial department with an appropriate Board and a statutory requirement to agree its corporate plan with Scottish Ministers. The corporate plan will set the targets and performance measures for Revenue Scotland, on which it will be required to report annually. Revenue Scotland’s corporate plan, annual reports and accounts will, of course, all be laid before the Scottish Parliament. Subject to Parliamentary scrutiny of the Revenue Scotland and Tax Powers Bill through the Scottish Parliament, the Board of Revenue Scotland could be appointed and constituted by early 2015, with a view to having the first corporate plan agreed shortly afterwards.

Until the Board of Revenue Scotland is in place and has reached agreement with Scottish Ministers, I can give you only an indication of areas we would expect to cover in our performance management and monitoring data. I would expect that reporting would cover a range of performance measures for each of the devolved taxes along the following lines:

- revenue collected
- volume of tax returns
- compliance activity
- disputes, including any appeals to the Scottish Tax Tribunal and outcomes of disputes
- penalties levied and the circumstances for the levying
- complaints and resolution rates
- performance against customer service standards.

We will be looking to develop arrangements to report on additional tax collected as a result of compliance work, although there will be circumstances – such as those where a taxpayer may volunteer new information because he or she has heard about action taken on a different case – where it may be difficult to link additional compliance directly to specific amounts of tax collected. As you would expect, in developing all of the performance management arrangements, we will ensure that the reporting does not in any way breach the confidentiality of individual taxpayers. We anticipate that the performance data will cover all aspects of the collection of the two devolved taxes, including, where appropriate, the activities of Registers of Scotland and the Scottish Environment Protection Agency.

Revenue Scotland will also be subject to audit by Audit Scotland, which will report its findings annually to Parliament.

I will, of course, take account of the key performance issues which you mention in your letter of 20 January in developing the performance measures for Revenue Scotland.
Scotland and in eventual advice to the Board. I would be happy to take any further feedback from the Committee about areas you would wish to see covered and to update you further on the development of the corporate plan later this year if that would be helpful.

Yours sincerely,

ELEANOR EMBERSON

Correspondence from the Public Audit Committee to Revenue Scotland, dated 20 January 2014

At its meeting on 15 January 2014, The Committee considered its approach to scrutinising the audit arrangements of the Revenue Scotland and Tax Powers Bill (the Bill), which was introduced on 12 December 2013.

The Committee noted that the Bill provides for compliance, penalties and dispute resolution activities to be undertaken by Revenue Scotland and establishes that Revenue Scotland will be accountable to the Scottish Parliament. In that regard, its accounts and activities could fall to be scrutinised by the Public Audit Committee.

The Committee agreed that it would welcome clarification from Revenue Scotland on the range of information it would propose to provide about its performance as the tax authority responsible for collecting Scottish taxes including the Land and Buildings Transaction Tax and the Scottish Landfill Tax.

Such information would assist the Scottish Parliament in scrutinising the performance of Revenue Scotland in undertaking its duties and could supplement that which Revenue Scotland would be required to provide in its annual accounts. This performance information might include:

- the effectiveness of its compliance activities;
- its customer service performance (such as response times and complaints);
- those sums which are the subject of error, fraud and dispute.

The Finance Committee’s consultation closes on 19 February, after which point it will begin taking oral evidence on the Bill. I would therefore be grateful for a response by Wednesday 12 February 2014, so the Committee can consider its next steps at its meeting on 19 February 2014.

Should this date cause you any difficulties, or should you or your officials have any questions, please contact the Assistant Clerk to the Committee, Jason Nairn, on 0131 348 5236 or pa.committee@scottish.parliament.uk.

Yours sincerely

Hugh Henry MSP
Convener
Correspondence from Audit Scotland to the Public Audit Committee, dated 31 January 2014

Thank you for your letter of 16 January 2014. As requested I enclose further information in response to your question about paragraph 80 in my report Police reform: progress update 2013. I have also taken this opportunity to clarify two other issues which were raised during the Committee’s recent evidence sessions on police reform.

Paragraph 80 of Police reform: progress update 2013

In paragraph 80 of my report, I refer to the presentation of police reform costs and savings information. This centres on how costs and savings are presented by the Scottish Government in comparison to the information outlined in the financial memorandum to the Act.

The financial memorandum separates the anticipated costs and savings associated with introducing a single police service with those which are anticipated as part of wider police reforms. This separation is necessary to inform Parliament of the potential costs and benefits arising from the proposed legislation compared to those which may have been incurred through alternative measures. The Scottish Government does not make a distinction between the restructuring costs and savings and those which would have been incurred as part of wider police reforms, irrespective of the structure chosen.

I can confirm that the Scottish Government did not provide any comments on this paragraph in their response to the draft report.

The terms “Full Business Case” and “Financial Strategy”

At the Public Audit Committee meeting on 18 December 2013, there was much discussion concerning a full business case and a financial strategy. My report commented on both of these separately: that the costs and savings in the OBC had not been updated into a FBC; and a financial strategy had not yet been agreed. Given the stage of reform, it is my view that the financial strategy is the more important document for SPA and Police Scotland to now focus their time, effort and resources into developing. That is why I specifically made a recommendation in the report that the financial strategy should be agreed by 31 March 2014.

According to HM Treasury guidance (which is linked in the Scottish Government’s Public Finance Manual), the purpose of a FBC is to revisit the Outline Business Case in advance of an investment decision and set out the recommendation for the option which optimises value for money. The FBC should include detailed arrangements for the successful implementation of a project or programme including updated economic and financial appraisals, detailed benefits and risks registers, project and change management plans and arrangements for post project evaluations. I have described the role and purpose of FBCs in a number of previous reports, in particular those relating to capital investment.

By way of comparison, the purpose of a financial strategy is to demonstrate how an organisation intends to use its financial resources to meet strategic objectives and ensure long term financial sustainability. Paragraph 77 on page 26 of my report...
identifies what we would expect the SPA and Police Scotland to consider in developing their financial strategy. In particular, the strategy should be based on a sound understanding of the costs of different activities, identify options for achieving savings and be clearly integrated with the other longer-term strategies which will be important in making savings.

**Savings in 2014/15**

At the Public Audit Committee on 18th December 2013, Scottish Government officials quoted a savings target of £88.2 million for 2014/15 (PAC Official Report, col.1972). The Committee noted my report estimates savings for the same year as £68 million. The difference is explained as follows:

- The £88.2 million is a cumulative amount covering 2013/14 and 2014/15 and is based on the OBC. This combines the Scottish Government’s target savings of £42 million from 2013/14 and their savings target of £46.5 million in 2014/15, allowing for minor rounding differences (*Police reform: progress update*, paragraphs 64 and 84).
- These estimates do not include cost pressures such as inflation, pay awards or annual pay increments.
- Taking these cost pressures into consideration, my report estimates the savings required for 2014/15 at £68 million (*Police reform: progress update* paragraph 86). The corresponding figure in 2013/14 is £64 million, giving a cumulative total of £132 million for both years.

I hope this provides the Committee with clarification on these issues.

Yours sincerely,

Auditor General for Scotland

**Correspondence from the Public Audit Committee to Audit Scotland, dated 16 January 2014**

At its meeting on 18 December, the Public Audit Committee took evidence from the Scottish Government on your report entitled *Police reform: progress update 2013*.

At the meeting there was discussion about the interpretation of paragraph 80 of the Audit Scotland report regarding the attribution of costs and savings arising from a single Police Service compared with those costs and savings which would have been delivered by the wider police reform programme. I would be grateful if you could clarify whether in your discussions with the Scottish Government on the pre-publication drafts of the Audit Scotland report, the Scottish Government commented on this paragraph (and if so, what was the nature of those comments). (*Col 1945-1946*).

In addition, any further clarification you may wish to provide on the interpretation of this paragraph or any other issues would also be welcome.

Yours sincerely

Hugh Henry MSP,
Convener
Correspondence from the Scottish Government to the Public Audit Committee, dated 8 January 2014.

AUDITOR GENERAL FOR SCOTLAND (AGS) REPORT “POLICE REFORM: PROGRESS UPDATE 2013

I am writing in response to your letter of 19 December 2013 seeking clarification of my comments regarding the preparation of a Full Business Case at the Public Audit Committee meeting of 18 December 2013.

I highlighted in my evidence that the Audit Scotland report recommended that the SPA and Police Scotland should continue to work together to agree a financial strategy by the end of March 2014. The SPA and Police Scotland are on target to produce that strategy. It will reflect the costs and savings arising from a range of strategic and operational decisions that are being made under the new single structure. The relevant documentation will be a Police Scotland Organisational Corporate Strategy and underpinning Finance Strategic Delivery Plan. Scottish Government resource is being provided to assist in the development of this documentation.

Given this context, the term “full business case” is essentially interchangeable with the term “financial strategy”. Whichever term is used, what is required is a plan setting out how savings will be delivered on a sustainable basis. This is what will be delivered. The Auditor General recognised that the terms are interchangeable when, in her evidence to the Committee on 20 November, she said: “The Government felt that those figures (from the OBC) were good enough to inform the financial memorandum that accompanied the legislation…At that point, the Government gave a commitment that a full business case or financial strategy would be developed by the service”.

The Scottish Government is now focussed on working with the SPA and Police Scotland to ensure that the Police Scotland Organisational Corporate Strategy and underpinning Finance Strategic Delivery Plan are in place by the end of this financial year.

I trust that this clarifies the position.

LESLIE EVANS
Correspondence from the Public Audit Committee to the Scottish Government, dated 19 December 2013.

At the Committee meeting on 18 December, you committed to provide a range of information to the Committee. The clerks will be in touch with you, once the Official report of the meeting is published, to confirm arrangements for providing that information.

In the meantime however I would be grateful if you could clarify the following matter. At the meeting on 18 December you indicated that a full business case will be provided which will sit alongside the corporate strategy, both of which are currently being progressed.

However at the meeting on 20 November, the Auditor General for Scotland confirmed that “there will not be a full business case because the reform is already well underway. Instead, there will be a financial strategy for the way policy will work under the new arrangements.”¹

The Chief Constable, Sir Stephen House, explained that “There as a compressed timescale, which meant that we missed the step of completing the business case, but we are now going straight towards developing a joint financial strategy.”²

Later at the same meeting, Vic Emery explained that “The term “financial Strategy” has been taken out of context a little bit. What we are looking for is a corporate strategy, which will be an agreement between SPA and Police Scotland on how we will move forward.”³

These comments obviously conflict with your commitment on behalf of the Scottish Government that a full business case would be prepared. Can I ask you to confirm that a full business case would be prepared? Can I also ask for your comments on what has been said by the Auditor General for Scotland and the Chief Constable about a financial strategy and Vic Emery about a corporate strategy, as noted above?

In responding to the above question, it would be helpful if you could set out who will be responsible for producing the full business case, and when it will be published. Can you also clarify who will be responsible for producing the financial strategy and the corporate strategy? A brief summary of what each document is intended to contain along with the relationship between any of the above documents would also be welcomed.

Yours sincerely

Hugh Henry MSP,
Convener

³ Public Audit Committee Official Report, Col 1786, 20 November 2013
Correspondence from the Scottish Government to the Public Audit Committee, dated 5 February 2014

I am writing in response to your letter of 20 January 2014 confirming the further evidence requested by the Committee at the Scottish Government oral evidence session on 18 December 2013. For ease of reference, the points you raise are repeated below with my responses in bold.

**Forecast savings**

You offered to provide the Committee with a breakdown of the savings made in 2013, and the two subsequent years and the contribution these will make towards the £1.1billion savings (to 2026). Of the remaining savings to be achieved, please can you confirm where you anticipate these savings will be made? (Col 1939-1941)

The savings generated by police reform are expected by the Scottish Government to be £41.8m, £88.2m and £108.7m for years 2013-14 to 2015-16 respectively. In March 2013 the SPA set a savings target of £63.3m for 2013-14 to achieve a balanced revenue budget. This includes a further £21.5m in order to meet inflationary and other cost pressures. Savings identified and delivered to date are £61m.

The savings are expected to be delivered by a combination of:

- People related savings such as reductions in overtime, Police Officer delayering and voluntary severance/early retirement schemes
- Property related savings including those from the disposal of properties, self insurance and reducing repairs and maintenance costs.
- Procurement related savings including reductions in supplies, transport and administration costs

The relative proportions of savings from these three sources will change over time.

The table below shows the current split of savings identified for 2013-14 and the forecast additional ‘new’ savings needed to meet both the expected savings from police reform and inflationary and other cost pressures for 2014-15 and 2015-16:

<table>
<thead>
<tr>
<th></th>
<th>2013-14 SG target (£m)</th>
<th>2013-14 (identified – all recurring in subsequent years) (£m)</th>
<th>2014-15 SG target (£m)</th>
<th>2014-15 (forecast, in addition to recurring savings) (£m)</th>
<th>2015-16 SG target (£m)</th>
<th>2015-16 (forecast, in addition to recurring savings) (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>People</td>
<td>37.8</td>
<td>32.2</td>
<td>6.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>12.7</td>
<td>6.1</td>
<td>7.8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procurement</td>
<td>10.5</td>
<td>8.1</td>
<td>7.8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>41.8</td>
<td>61.0</td>
<td>88.2</td>
<td>46.4</td>
<td>108.7</td>
<td>21.6</td>
</tr>
</tbody>
</table>
The 2013-14 figure includes both the expected savings from reform and those relating to inflationary and cost pressures. The 2014-15 and 2015-16 figures show the forecast additional savings required to meet the savings expected from police reform. By the end of 2015-16 the total savings towards the Scottish Government targets are expected to be at least £107.8m. As these will be recurrent, over the subsequent ten years the total contribution towards the eventual 2025-26 target of £1.1bn will be £1.078bn.

Quality and accessibility survey
Please can you confirm when the results of the survey on the quality and accessibility of the police service post reform are due? (Col 1943)

The surveys undertaken by Police Scotland referred to at the evidence session will be used to inform local policing plans and there are no plans for a stand-alone publication. The Scottish Police Authority is required by the Police and Fire Reform (Scotland) Act 2012 to publish an annual report for each reporting year. This Annual Report must contain an assessment of the performance by the Authority and the Police Service during the reporting year in achieving, or in working towards achieving, the main objectives set out in the most recently approved strategic police plan. It is expected that the SPA’s first Annual report covering 2013/14 will be published in the summer.

Costs of a single service
At the meeting there was discussion about the interpretation of paragraph 80 of the Audit Scotland report regarding the attribution of costs and savings arising from a single Police Service compared with those costs and savings which would have been delivered by the wider police reform programme. I would be grateful if you could clarify whether in its comments on pre-publication drafts of the Audit Scotland report, the Scottish Government commented on this paragraph (and if so, what was the nature of those comments). (Col 1945-1946)

Paragraph 80 is the third paragraph within a section titled “The Scottish Government spent almost £16 million in 2011/12 and 2012/13 on police reform. However, the full costs of restructuring to date are not known”. The substantive point in this section of the first draft and clearance drafts provided to Scottish Government for comment was that the full costs of restructuring were not known and that Scottish Government was not distinguishing between the costs specifically associated with restructuring and those arising from wider police reform as identified in the Financial Memorandum. The Scottish Government's comments at drafting stage concentrated on addressing these points and providing information on the factual issues around that. The sentence at paragraph 80 “It is not therefore clear which costs are a direct consequence of introducing a single service and what savings could have been achieved by delivering services differently” was queried as it was not clear how that related to the substantive paragraphs above which related to the state of Scottish Government knowledge of costs of restructuring. This point was not discussed any further. For the record, Scottish Government’s role in agreeing the report is limited to agreeing the facts on which Audit Scotland were applying their professional judgement and drawing conclusions.

I note that at columns 1945 and 1956 of the Official Report on the Committee’s session on 18 December, Tavish Scott MSP was suggesting that I do not agree with this paragraph. I should clarify that what I was not agreeing with was his suggestion
that the paragraph states that the costs of the different options of police reform were not clear. As I said in my evidence to the Committee (in column 1946) the outline business case and the financial memorandum – which Parliament scrutinised carefully – considered the three different reform models that were up for discussion at the time.

Additional resource cost
The AGS report states that, “Limited financial capacity and capability within the police has contributed to the lack of financial strategy.” To address this, you confirmed that the Scottish Government has provided additional resource to the SPA and Police Scotland, including seconding staff and providing additional support for recruitment and developing the financial and corporate strategies. Please can you provide a breakdown of the costs of providing this additional support and resource? (Col 1950-1951)

Scottish Government identified the need for senior public sector financial experience to assist with the development of the corporate and financial strategies. The cost of this additional resource is as follows:

<table>
<thead>
<tr>
<th></th>
<th>2013-14</th>
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<tr>
<td>Secondees (salary &amp; on-</td>
<td>94,614</td>
</tr>
<tr>
<td>costs, T &amp; S)</td>
<td></td>
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</table>

In addition, assistance and support was provided by Scottish Government to the SPA and Police Scotland for other activities arising out of the reform process.

VAT-exemption
There was discussion about the VAT status of the police service and what models were considered which may have retained VAT exemption for the police service. You committed to write to the Committee on whether it would have been possible to establish a single police force which would have remained VAT exempt. (Col 1969 - 1970)

As part of the process of winding up the former police boards, discussions took place with HMRC about the VAT status of the single police service. The ruling was made by HM Treasury that no exemption under section 33 of the Value Added Taxes Act 1994 would be applicable because the new police service would have no power of precept on local taxation. Scottish Government does not agree with this ruling but acknowledges that it is a matter reserved to the UK Government. At the time consideration was given as to whether it would be possible to establish a single police service which would retain VAT exemption. It was concluded that, while in theory this would have been possible, it would have meant significant practical problems. There were two possible solutions to ensuring a continuing exemption for the single service. Firstly, directing Scottish Government funding through the 32 local authorities and thereby qualifying for a s33 exemption. This was rejected as it would not have met the reform objective of a simplified landscape comprising a single Police Service of Scotland accountable to a single Scottish Police Authority. Governance arrangements would have been overly burdensome and complex and lines of accountability blurred. Alternatively, we could have sought UK Government approval to amending the VAT Act (1994) to provide for a specific exemption similar to that for the police service of Northern Ireland, under s99 of the VAT Act. This was not viewed as an option by HMT and to pursue this option would have caused significant delay to the implementation of reform.
I trust this clarifies the position.

LESLIE EVANS

Correspondence from the Public Audit Committee to the Scottish Government, dated 16 January 2014

In my letter of 19 December, I confirmed that I would be in touch to request further evidence you offered to provide the Committee during oral evidence on 18 December. The Official Report has been published and is available on the Committee’s webpage: http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8726&mode=pdf

For ease of reference, I have set out the information you have offered to provide below.

Forecast savings
You offered to provide the Committee with a breakdown of the savings made in 2013, and the two subsequent years and the contribution these will make towards the £1.1billion savings (to 2026). Of the remaining savings to be achieved, please can you confirm where you anticipate these savings will be made? (Col 1939-1941)

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Please can you confirm when the results of the survey on the quality and accessibility of the police service post reform are due? (Col 1943)

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There was discussion about the VAT status of the police service and what models were considered which may have retained VAT exemption for the police service. You committed to write to the Committee on whether it would have been possible to establish a single police force which would have remained VAT exempt. (Col 1969 - 1970)

Yours sincerely

Hugh Henry
Convener
Further to your recent letter in relation to the discussion with regard to the costs of filling the Interim Chief Executives and Finance Directors at the Scottish Police Authority, I write to confirm the following details.

**Interim Chief Executive – Andrea Quinn**
Andrea Quinn was the legacy Chief Executive Officer within the Scottish Police Services Authority prior to moving to the role of Interim Chief Executive at the Scottish Police Authority. As such there were no advertising costs with regard to her appointment and no additional salary costs beyond her legacy remuneration package.

**Interim Chief Executive – John Foley**
John was appointed to the role of Interim Chief Executive in September 2013 prior to Andrea ending her Interim role in October 2013.

John was appointed through Escape Recruitment Services at a cost to the organisation of £12,875. No other recruitment costs were incurred in relation to this post.

**Interim Director of Finance – Eamon Hegarty**
Eamon was appointed to the role of Interim Director of Finance in January 2013.

During this recruitment process a number of external recruitment agencies were approached to provide possible candidates and charges would have been incurred if one of those had been successful. However, Eamon was identified independent of this process and, following an interview process in involving a number of candidates, Eamon was selected and therefore no cost was incurred.

**Jim Maguire**
Following the resignation of Eamon, Jim Maguire was appointed to the role of Interim Director of Finance. Prior to this he was employed within the Scottish Police Services Authority and latterly the SPA. As such no advertising costs were incurred.

He did, however, receive an additional temporary responsibility payment in relation to this role. This was paid on a pro rata basis from the 14th June 2013 to 30th September 2013 at a cost of £10,000.

**Interim Group Finance Director – James Hobson**
When Jim Maguire left the Scottish Police Authority, James was already on secondment to the organisation and operating within the finance function. He was asked to take on the above role and as such no advertising costs were incurred.

I hope this clarifies the position, however, if there is any further information which I can forward to you please do not hesitate to contact me.

Yours sincerely
Vic Emery OBE, Chair, Scottish Police Authority
Correspondence to the Scottish Police Authority from the Public Audit Committee, dated 13 February 2014

At the meeting on 20 November 2013, the Committee heard that there had been two interim Chief Executives and three Finance Directors at the Scottish Police Authority and there was a discussion about the costs to the SPA of repeatedly filling these posts. At that time you indicated that whilst the costs of the posts was cost neutral you would be able to provide information on the associated costs of advertising and recruiting, as well as any contract costs, incurred by the SPA in filling these posts.¹

I would therefore be grateful if you could provide this information by Thursday 27 February. Our normal practice is to publish relevant evidence that is sent to us on our website and we may also include it in the hard copy of any committee report. Therefore, if you wish your evidence to be treated as confidential, or for your evidence to be published anonymously, please contact the Clerk to the Committee, before you submit your evidence.

Should you have any questions, please contact the Clerk, Jane Williams, on the contact details provided above.

Kind Regards

Hugh Henry MSP
Convener

¹ Public audit Committee, Official Report, 20 November 2013, Colum 1788
PUBLIC AUDIT COMMITTEE

EXTRACT FROM THE MINUTES

1st Meeting, 2014 (Session 4)

Wednesday 15 January 2014

Present:
Colin Beattie
Hugh Henry (Convener)
Ken Macintosh
Mary Scanlon (Deputy Convener)
Bob Doris
Colin Keir
Christina McKelvie (Committee Substitute)
Tavish Scott

Apologies were received from Willie Coffey, James Dornan.

1. **Decision on taking business in private:** The Committee agreed to take items 7, 8 and 9 in private.

9. **Revenue Scotland and Tax Powers Bill (in private):** The Committee considered its approach to examining audit issues arising from the Bill.

The Committee agreed to seek written evidence from Audit Scotland and Revenue Scotland on the audit arrangements arising from the Bill.
Present:
Colin Beattie           Willie Coffey
Bob Doris              James Dornan
Hugh Henry (Convener)  Colin Keir
Ken Macintosh          Mary Scanlon (Deputy Convener)

Apologies were received from Tavish Scott.

1. Decision on taking business in private: The Committee agreed to take items 3 and 4 in private.

4. Revenue Scotland and Tax Powers Bill (in private): The Committee considered responses from Revenue Scotland and the Auditor General for Scotland on the audit arrangements arising from the Bill. The Committee agreed to write to the Finance Committee on issues raised in its discussion.
Dear Jim

APPOINTMENTS TO REVENUE SCOTLAND

As you know, paragraph 4 of schedule 4 of the Revenue Scotland and Tax Powers Bill ("the Bill") provides for Revenue Scotland to be included as a specified authority in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003. This is to enable the Commissioner for Ethical Standards in Public Life in Scotland to regulate public appointments by Scottish Ministers to Revenue Scotland under schedule 1 to the Bill.

The Bill is not of course expected to complete its Parliamentary passage until August 2014, which means that it will not receive Royal Assent until September 2014. If the public appointments process did not get underway until then, it is unlikely that the Chair and members of Revenue Scotland would be in place until early 2015. Since the intention is that Revenue Scotland should assume its full powers and duties in relation to the devolved taxes from 1 April 2015, this timeline would not afford sufficient time for newly appointed members to familiarise themselves with the functions of Revenue Scotland prior to taking on their duties and responsibilities as members.

To facilitate earlier oversight of the public appointment process by the Commissioner, the Cabinet Secretary for Finance, Employment and Sustainable Growth therefore intends to lay an order under section 3(3) of the 2003 Act as soon as the Parliament has signified its approval of the general principles of the Bill at Stage 1. This would enable Revenue Scotland to be treated for the purposes of any public appointment as if it were already a specified authority; and would allow the public appointments process to get underway immediately afterwards.

I hope that this is helpful by way of background and I would be grateful if you could inform the Committee of the Cabinet Secretary’s intention to proceed in this way.

I am copying this letter to Euan Donald, the Clerk to the Delegated Powers and Law Reform Committee, and to Bill Thomson, the Commissioner for Ethical Standards in Public Life.

29 April 2014
Yours sincerely

COLIN MILLER
Background

1. The Committee reported on the delegated powers in the Revenue Scotland and Tax Powers (Scotland) Bill\(^1\) on 19 March 2014 its 25th report of 2014.

2. The response from the Scottish Government to the report is reproduced at the Annex.

Scottish Government response

Section 11(7)(a) – power to set the period of Revenue Scotland’s first Corporate Plan

3. This power allows the Scottish Ministers to set the period that Revenue Scotland’s first corporate plan will cover. The corporate plan will set out Revenue Scotland’s main objectives, the outcomes that would demonstrate achievement of these objectives, and the activities that Revenue Scotland expects to undertake.

4. In response to a query from the Committee, the Scottish Government explained that a 3 year planning period is standard practice for public body corporate plans and confirmed its view that this was appropriate for Revenue Scotland’s first corporate plan.

5. However the scope of the power at 11(7)(a) allows any first planning period to be specified by order, whether less or more than 3 years.

6. The Committee therefore considered that the Government should provide a good reason to explain why the power allows for a planning period of more than 3

years to be specified. As an alternative, the Committee also suggested that the power could be limited to an appropriate maximum period.

7. In its response to the Committee’s report, the Government explained that it may be appropriate for Revenue Scotland’s first corporate plan to cover a period of less than 3 years, depending on when members are appointed.

8. The timing of the first planning period will also be dependent on the commencement of the two relevant devolved taxes – the Landfill Tax (Scotland) Bill and the Land and Buildings Transaction Tax (Scotland) Act. The relevant commencement orders will require approval from both the Scottish and UK Parliaments before coming into force.

9. However, the Government has agreed to specify by order under section 11(7)(a) of the Bill, that the period covered by Revenue Scotland’s first corporate plan will not exceed 3 years.

Section 54 – Guidance

10. Section 54 of the Bill provides that the President of the Tax Tribunals may issue guidance about the administration of the Tax Tribunals as appears necessary or expedient to secure that the functions of the tribunals are exercised efficiently and effectively.

11. The Committee considered that the guidance could have significance for the effective functioning of the Tax Tribunals system and that it should therefore be published on issue.

12. The Committee also suggested that an exception to publication could be made where considered appropriate, for example where it is considered that publication would prejudice the effective exercise by Revenue Scotland of its functions.

13. In response to the Committee’s report, the Scottish Government has agreed to bring forward an amendment at stage 2 requiring guidance made under section 54 to be published except in circumstances in which the President of Tax Tribunals considers that publication of the guidance would prejudice the effective exercise by the Tribunal of its functions.

Powers to make provision about penalties

Sections 103(2), 150(2), 151(2), 160(7), 162(4) 163(3) and 181(2)

14. The above powers make further provision for penalties to enforce requirements specified in the Bill. The Committee is of the view that the appropriate maximum amounts of such penalties should initially be set by the Parliament, and that any subsequent changes to those amounts should be subject to the higher level of scrutiny which the affirmative procedure affords.

15. Prior to the publication of the Committee’s report, the Scottish Government confirmed that it would bring forward multiple amendments at stage 2 in order to specify all initial penalty amounts on the face of the Bill.
16. In its report, therefore, the Committee asked the Government whether it was able to provide additional information on the proposed initial penalty amounts.

17. The Government explained that it was not yet able to share details of the proposed amendments with the Committee. However, the Government intends to provide the Committee with the text of the amendments ‘as soon as possible’ prior to the start of stage 2.

Conclusion

18. Members are invited to make any comments they wish on the Bill at this stage. Given the Scottish Government’s commitment to bring forward amendments, the Committee will have a further opportunity to consider the Bill after stage 2.

Recommendation

19. Members are invited to note the Scottish Government’s response on the Bill and to make any comments they wish at this stage.
Correspondence from the Scottish Government, dated 2 May 2014:

**Section 11(7)(a) – Power to set the period of Revenue Scotland’s first Corporate Plan**

In relation to the power in section 11(7)(a) which permits any period to be specified in an order as the first planning period of Revenue Scotland's corporate plan, the Committee accepts that a first planning period of 3 years is intended and that the period might need to be less. However it considers that the Scottish Government should provide a good reason why the power requires to be drawn to allow any period of more than 3 years to be specified, or otherwise the power should be limited to an appropriate maximum period.

**Scottish Government response:** As I indicated in my letter of 14 February, a 3 year planning period is standard practice for public body corporate plans and the Government believes that that is appropriate for Revenue Scotland. It is possible that a period of less than 3 years might be appropriate for Revenue Scotland’s first corporate plan, depending on the timing of the appointment of members. The planned commencement date of 1 April 2015 for the two devolved taxes is also dependent on both the Scottish Parliament and the two Houses of Parliament approving the necessary subordinate legislation in due course. However the Scottish Government is happy to provide an undertaking that the “planning period” which will be specified by Scottish Ministers by order under section 11(7)(a) of the Bill will not exceed a period of 3 years.

**Section 54 – Guidance**

Section 54 provides that the President of the Tax Tribunals may issue such guidance about the administration of the Tax Tribunals as appears necessary or expedient to secure that the functions of the tribunals are exercised efficiently and effectively.

The Committee considers that there should be provision that the guidance under section 54 should be published on issue....It would presumably be possible to provide for an exception to publication where this is appropriate. For instance, in circumstances where this would prejudice the effective functioning of the Scottish Tax Tribunals (cf. section 8(4) of the Bill).

**Scottish Government response:** The Government accepts the Committee’s recommendation and will bring forward an amendment requiring the President of the Tax Tribunals to publish guidance under section 54 in such manner as the President considers appropriate unless and to the extent that the President considers that publication of the guidance would prejudice the effective exercise by the Tribunal of its functions.

**Powers to make provision about penalties**
The Committee notes....that the Scottish Government has undertaken to bring forward various amendments at Stage 2...so that all initial penalty amounts would be specified on the face of the Bill. This relates to the powers in sections 103(2), 150(2), 151(2), 160(7), 162(4), 163(3), and 181(2). The Committee asks the Scottish Government, when it responds to this report, to provide further information as to the initial penalty amounts which are proposed, if it is in a position to do so.

Scottish Government response: The Government is in the process of preparing draft amendments to Part 8 of the Bill (Penalties), including penalty amounts, and will send the text of the proposed amendments to the Delegated Powers and Law Reform Committee, and the Finance Committee, as soon as possible. We expect to be able to do so in good time before the Finance Committee embarks on Stage 2 consideration of the Bill.
Present:
Richard Baker  
Mike MacKenzie  
Stuart McMillan (Deputy Convener)  
Stewart Stevenson

Nigel Don (Convener)  
Margaret McCulloch  
John Scott

Revenue Scotland and Tax Powers Bill: The Committee considered the Scottish Government's response to its Stage 1 report.
Revenue Scotland and Tax Powers Bill: Stage 1

11:37

The Convener: Agenda item 4 is consideration of the Scottish Government’s response to the committee’s stage 1 report on the Revenue Scotland and Tax Powers Bill. Members have seen the briefing paper and the response from the Scottish Government.

Do members have any comments?

John Scott: I welcome the fact that the Government will not extend the corporate plan beyond three years and that at stage 2 it intends to amend section 54. The remaining piece of work, on penalties, is obviously still in progress. I have no doubt that we will hear what the Government proposes in due course.

The Convener: Indeed. Are we content to note what we have before us and to look forward to what is to come?

Members indicated agreement.

The Convener: If necessary, of course, we can reconsider the bill after stage 2.

11:38

Meeting continued in private until 11:40.
REVENUE SCOTLAND AND TAX POWERS BILL: STAGE 1 REPORT

I am grateful to you and your colleagues for the Committee’s very thorough and helpful Stage 1 Report on the Revenue Scotland and Tax Powers Bill (RSTPB). I thought it might be helpful to let you have my initial comments on the Committee’s conclusions and recommendations in relation to each of the key issues it identified in advance of the Stage 1 debate on Tuesday 20 May.

Tax avoidance and the General Anti-Avoidance Rule (GAAR)

I have emphasised that the Scottish Government expects all businesses and individuals working in Scotland to meet their tax liabilities in full, and that we intend to take the toughest line on tax avoidance. The wide-ranging GAAR set out in the RSTPB, targeted at artificial anti-avoidance arrangements, is intended to underline that approach and I am delighted at the Finance Committee’s strong all-party support for our robust approach to tax avoidance.

The Committee asked for clarification as to whether the GAAR as drafted, together with principles based drafting of any future Scottish taxes, will mitigate the need for Targeted Anti-Avoidance Rules (TAARs) in respect of those taxes (paragraph 31).

I believe that an effective approach to tackling tax avoidance needs to be multi-layered. The starting point is good tax design, including keeping complex reliefs and exemptions to a minimum, in order to minimise the scope for avoidance activity. A principles-based approach together with clear Parliamentary statements and published guidance setting out the intention behind tax legislation should also encourage the Tax Tribunals and the courts to apply the spirit and not merely the strict letter of the law. An approach along these lines, together with a robust and wide-ranging GAAR, should certainly minimise the need for TAARs, although they too have their place to counteract specific potential abuses in relation to particular taxes.
As the Committee noted, the first test of an artificial tax avoidance arrangement as set out in section 59 is whether the arrangement is a reasonable course of action in relation to the relevant tax legislation, having regard to all the circumstances (Condition A). The Committee commented that in keeping Condition A simple, it is important that the requirement for an objective view of what is reasonable is protected (paragraph 33).

I believe we have done as much as we can to provide both clarity and simplicity in respect of this test in two ways. First, we have deliberately chosen not to adopt the so-called ‘double reasonableness’ test which I think is unnecessarily complex. Second, section 59(2) provides straightforward and common-sense indicators of what might or might not constitute a reasonable course of action. These include whether the substantive results of the tax avoidance arrangement are inconsistent with the principles and policy objectives on which the relevant tax legislation is based, and whether the arrangement is intended to exploit any shortcomings in the legislation. That is an example of the more principles-based approach which we have tried to adopt in our approach to tackling tax avoidance.

I have given further thought to the terms of Condition B in the light of the Committee’s recommendations (paragraph 38). I intend to bring forward amendments at Stage 2 to provide that Condition B is met if the arrangement lacks either economic or commercial substance; and that an additional ‘hallmark’ which might indicate that an arrangement lacks economic or commercial substance is where the arrangement results in a tax advantage which is not reflected in the business risks undertaken by the taxpayer.

The Committee recommended that Revenue Scotland should be required to consult widely on a draft of its guidance on the application of the GAAR prior to its initial publication and on subsequent substantive revisions (paragraph 53). I am sympathetic to the thinking behind this recommendation but have some practical concerns. For example, there may be circumstances in which Revenue Scotland might need to amend its guidance at very short notice to reflect a tribunal or court judgment or to respond quickly to a new tax avoidance scheme. An alternative approach might be for me to issue guidance to Revenue Scotland under section 8(1) of the Bill making it clear that I expect Revenue Scotland to consult in advance on all guidance (not merely GAAR guidance) except where there are good operational reasons not to do so. That would, I hope, meet the spirit of the Committee’s recommendation while retaining a sufficient degree of flexibility.

The Committee asked for clarification about whether the Government intended to bring forward either DOTAS or prior clearance arrangements in relation to Land and Buildings Transaction Tax (LBTT) (paragraph 61). I have given careful consideration to this but on balance I have decided that the disadvantages – particularly in terms of the potential resource implications for Revenue Scotland – outweigh the arguments for putting in place such arrangements, at least for the present.

Finally, the Committee recommended that the Government should consider introducing a rule to give the GAAR priority over any other legislative measures and international double tax arrangements, to reinforce the overriding importance of the anti-avoidance measure (paragraph 63). This is an interesting idea which I am sure we will wish to consider further in the event of the Scottish Parliament becoming responsible for a wider range of taxes or all taxes. But I do not think it has any application in relation either to LBTT or Scottish Landfill Tax, and therefore I do not think it is either necessary or appropriate to make such provision in the RSTPB.
Penalties

The Finance Committee and the Delegated Powers and Law Reform Committee (DPLRC) both welcomed the commitment I gave to include more detail and greater consistency in relation to penalties on the face of the Bill, including specifying all penalty amounts (paragraph 73). I attach a table summarising the draft amendments which I propose to table at Stage 2 to give effect to this undertaking, with the exception of the penalty in section 103 (breaching an obligation imposed by virtue of section 102(4)) which will be provided for in regulations made under section 102. These are subject to further work and may therefore be further developed before they are tabled, but I hope they will give both the Finance Committee and the DPLRC an indication of our thinking. I will provide both Committees with the complete set of draft amendments in good time before Stage 2. I believe these amendments are also consistent with the Committee’s recommendation that the penalty regime should encourage people to pay on a timely basis but should be proportionate and avoid creating an unnecessary administrative burden for Revenue Scotland (paragraph 78).

The Charter

I am happy to confirm that I will be tabling amendments at Stage 2 to ensure reciprocity of obligations as between the taxpayer and Revenue Scotland (paragraph 83) and to require Revenue Scotland to consult on the terms of the original Charter and any subsequent revisions (paragraph 87).

Revenue Scotland – Membership and Powers

Section 8 of the Bill provides that any guidance given by Scottish Ministers to Revenue Scotland about the exercise of its powers must be published except to the extent that Ministers consider that publication of the guidance would prejudice the effective exercise by Revenue Scotland of its functions. The Committee recommended that where guidance is not published Scottish Ministers should write to the Finance Committee explaining the reasons for this. I am happy to give an undertaking to that effect.

Tribunals and Mediation

Section 28 of the Bill provides that decisions of the Upper Tax Tribunal are to be made by a single member chosen by the President of the Tax Tribunals (paragraph 113). The Committee asked me to examine this issue further and I have done so. I accept that there may be cases which are sufficiently complex, or of sufficient public importance, to justify augmenting the Upper Tribunal to hear such cases. I therefore propose to bring forward an amendment at Stage 2 so that a panel of two or more members may be chosen by the President to hear a case in the Upper Tribunal.

The Committee also invited me to reconsider section 33(4)(b) of the Bill, which provides that an appeal from the Upper Tribunal may be made to the Court of Session only if the Upper Tribunal or the Court of Session is satisfied that there are arguable grounds for the appeal and that it would raise an important issue of principle or practice or, alternatively, that there is another compelling reason for allowing the appeal to proceed (paragraph 117). I note that Part 6 of the Tribunals (Scotland) Act 2014 addresses the same issue by providing that if an appeal has already been heard twice (by the First Tier and the Upper Tier) then the appellant would have to satisfy the same tests as are set out in section 33(4)(b) of the RSTPB. However if the case has been dealt with by the Upper Tribunal ‘at first instance’, then the appellant would only have to show that there are arguable grounds for appeal.
I propose to adopt the same approach in relation to appeals from the Tax Tribunals to the Court of Session and will bring forward appropriate amendments at Stage 2 for that purpose.

The Committee asked whether any consideration has been given to allow taxpayers to have access to judicial review at the level of tax tribunals (paragraph 120). As the Committee points out, section 37 of the Bill already allows the Court of Session to remit a petition for judicial review to the Upper Tribunal in certain specified circumstances. Since judicial review falls within the supervisory jurisdiction of the Court of Session, I think it is right that that Court should also determine whether to remit petitions for judicial review to the Upper Tribunal or hear them itself.

As suggested by the Committee, I will bring forward amendments to section 216 of the Bill at Stage 2 to adopt the convention that tax legislation should be referred to as (for example) the LBTT Act 2013 rather than ‘the 2013 Act’, as it is possible that in future there may be more than one tax Act each year (paragraph 125).

I can confirm that the estimated annual running costs of £135,000 for the Scottish Tax Tribunals set out in the Financial Memorandum include members’ associated fees and expenses (paragraph 127).

The Committee asked for further details in relation to the appointments process for mediators and how the independence of mediators from Revenue Scotland would be assured (paragraph 132).

Revenue Scotland is in the process of considering how best to ensure that taxpayers wishing to enter into mediation with Revenue Scotland may best be provided with access at a reasonable cost to appropriately qualified mediators who will be independent from Revenue Scotland. We are working with stakeholders and representatives of the mediation community to identify options and will seek external involvement in any selection process of mediators or mediation providers approved to facilitate tax disputes.

I agree with the Scottish Public Services Ombudsman (SPSO) that there is no reason to anticipate any significant number of complaints to the SPSO in respect of Revenue Scotland and therefore expect that any costs arising from investigating such complaints would be absorbed within the SPSO’s existing budget (paragraph 135).

**Professional Privilege**

As the Committee requested when it took evidence from the Scottish Government, I have given further thought to section 130 of the Bill which provides that information or a document is privileged if a claim to confidentiality as between client and legal professional adviser could be maintained in legal proceedings (paragraph 144).

I understand that section 130 of the Bill does no more than reflect general and long-standing principles of law in relation to legal professional privilege. The leading case on this is Micosta S.A v Shetland Islands Council 1983 SLT 483 in which the Court of Session held that communications between a party and his legal adviser were confidential unless fraud or an illegal act was alleged against a party and his legal adviser had been directly concerned in the carrying out of the transaction which was the subject matter of inquiry.

I do not consider that it would be appropriate to seek to disturb the principle of legal professional privilege in the context of the RSTPB, although I note that the exception in
respect of fraud or an illegal act would include tax evasion, so if that was at issue legal professional privilege would not protect the communications in question.

Financial Memorandum

The Committee asked why the additional compliance costs of £210,000 to SEPA which were identified in the Financial Memorandum (FM) for the RSTPB were not also identified in the FM for the Landfill Tax (Scotland) Bill (paragraph 149).

The FM for the RSTPB includes two additional costs:

- £85,000 in financial year 2015-16 only, which is for additional compliance activity; and
- £210,000 per annum from 2015-16 to 2019-20 for administering and reporting costs for tax on illegal landfill sites.

The additional compliance costs of £85,000 were not included in the FM for the Landfill Tax (Scotland) Bill because they support the more robust approach to tackling tax avoidance which emerged as a result of the way in which our thinking developed during the consultation on, and development of, the RSTPB.

The costs of £210,000 per year relate not to additional compliance activity, but to the costs of administering, reporting on and collecting tax arising from illegal dumping. While this was identified as an early policy objective during the passage of the Landfill Tax (Scotland) Bill, we expected that it would be absorbed into SEPA’s existing regime for the administration of landfill operators and landfill tax and enforcement action under the Environment Act 1995 as it will be amended by the Regulatory Reform (Scotland) Act 2014.

During the development of the RSTPB it became clear however that dedicated investment is necessary in the identification and administration of tax liability arising from illegal dumping is necessary to maximise the revenue collected from the new tax on illegal dumping.

Conclusion

Once again, I would like to express my thanks to the Committee for its very thorough, detailed and helpful Stage 1 Report on the RSTPB. I look forward to further considering the issues which the Committee has raised further as the Bill progresses through Parliament.

I am copying this letter to Nigel Don, the Convener of the DPLRC.

JOHN SWINNEY
Revenue Scotland and Tax Powers Bill

Penalties – Summary of proposed (Government) Stage 2 amendments

The Government proposes to bring forward a number of Stage 2 amendments to the penalty provisions in the Revenue Scotland and Tax Powers Bill as introduced. These amendments will have the effect of putting substantially more detail on penalties in primary legislation, whilst retaining subordinate legislation powers (subject to affirmative procedure) to amend these provisions if it proves necessary to do so.

This Annex sets out a summary table outlining the main details of the proposed amendments for each penalty (these may be subject to further refinement before the draft amendments are tabled). The proposed amendments are in the following main areas:

- **Penalty amounts** - The Bill as introduced contains 16 different types of civil penalties. Of these 16, 8 currently specify the penalty amounts. The proposed Stage 2 amendments will specify all penalty amounts in primary legislation, with the exception of the penalty in section 103 which will be set in regulations made under section 102 because it relates to breaching obligations in those regulations.

- **Detail on circumstances when a penalty is payable, appeals, enforcement and assessment** – The proposed Stage 2 amendments will have the effect of setting full detail in primary legislation for all penalties (with the exception of the section 103 penalty) on the circumstances when a penalty is payable, further penalty-specific appeals provisions, enforcement and assessment arrangements.

- **Subordinate legislation powers** – Some of the penalties (section 150, section 151, section 160, section 161, section 163 and section 181) currently provide for the power to set further detail on penalties in regulations. The Government will propose that Scottish Ministers should have regulation-making powers (subject to affirmative procedure) to amend all penalty provisions if it proves necessary to do so in the light of experience. For example, penalty amounts may need to be amended to take account of inflation/deflation or the assessment or enforcement provisions may need to be tweaked in light of operational experience.

- **Discretionary powers** - The Bill as introduced already contains a number of discretionary powers for Revenue Scotland. Further similar powers are proposed for the following penalties: section 71, section 181 and Schedule 3 paragraph 5.
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| Section 71 | Failure to keep and preserve records (linked to the duty under section 69 to keep and preserve records). | Reasonable excuse (this will be a proposed Government Stage 2 amendment).          | Penalty up to £3000. | 1. Make the assessment provisions such that an assessment of the penalty must be made by Revenue Scotland within 12 months of the person becoming liable to the penalty.  
2. Make similar enforcement provisions as in section 176(1)-(2) such that the section 71 penalty must normally be made within 30 days of the penalty notification being issued. Slightly alternative timelines will be made for resolution of reviews, appeals or mediation.  
3. Make appeal provisions such that:  
   a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;  
   b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
<p>| Section 103 | Breaching obligations contained in regulations under section 102 (preventing reimbursement where this would unjustly enrich the claimant). | Will be set out in subordinate legislation (regulations made under section 102).  | Will be set out in subordinate legislation (regulations made under section 102). | Make regulations made under section 102 subject to the affirmative not negative procedure. This was identified by the Delegated Powers and Law Reform Committee in its consideration of the Bill. |</p>
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| Section 143 | Obstructing or failing to comply with a requirement to allow a designated officer access to, or inspection of, a computer or associated apparatus. | Reasonable excuse | Fixed penalty of £300. | Make appeal provisions such that:
|         |                |                      |                | a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision; |
|         |                |                      |                | b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
| Section 150 | Failure to make a return on or before the filing date. | Reduction for disclosure; Special reduction; Reasonable excuse | **LBTT:**
|         |                |                      |                | 1. Provide a table of legislative references which will make it easier for readers to understand the legislation and pinpoint people to the relevant provisions. |
|         |                |                      |                | 2. Make appeal provisions such that:
|         |                |                      |                | a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision; |
|         |                |                      |                | b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
|         |                |                      |                | Where b) applies, the tribunal can rely on the special circumstances discretionary power (section 156): 1) to the same extent as Revenue Scotland (which may mean applying the same percentage reduction as Revenue Scotland to a different starting point); or 2) to a different extent, but only if the tribunal thinks that Revenue Scotland’s decision in respect of the application of section 156 was flawed (when considered in the light of the principles applicable in proceedings for judicial review). |

**LBTT:**

- 1 day late - £100 fixed. This applies even if there is no tax to pay or tax has been paid.
- 3 months late - £10 for each following day - up to a 90 day maximum of £900. This is as well as the fixed penalty above.
- 6 months late - £300 or 5% of the tax liability which would have been shown in the return, whichever is the higher. This is as well as the penalties above.
- 12 months late - £300 or 5% of the tax liability which would have been shown in the return, whichever is the higher.

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<td>Section 150 (continued)</td>
<td>In serious cases where the person deliberately withholds information from Revenue Scotland which would enable it to assess the person’s liability to tax, the penalty is the greater of £300 or 100% of the tax liability which would have been shown in the return. These are in addition to the other penalty amounts above. <strong>SLfT:</strong></td>
<td>A penalty period then begins from the penalty date and runs for a period of 12 months from the filing date. If the person fails to submit further returns during that penalty period, the penalty period is extended so that it ends 12 months after the filing date for that subsequent return. The amount of the subsequent fixed penalty also increases with each failure to submit the return by the filing date. The subsequent fixed penalty for the:</td>
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<td><strong>Second failure is £200</strong></td>
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<td>Section 150 (continued)</td>
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<td>• third failure is £300, and • fourth, and subsequent failures, is £400. The larger subsequent fixed penalties are still incurred for failing to file later returns on time even if the first return is filed when the subsequent failure occurs. • A person is liable to a 6 month further penalty if the return or other document remains outstanding 6 months after the penalty date. The penalty is the greater of: • 5% of the liability to tax that would have been shown in the return, and • £300. Note: that the 5% penalty is calculated on the liability that would have been shown in the return if it had been filed on time, and is not reduced by any amount that has been paid towards that liability. • A person is liable to a 12 month further penalty if the return or other document remains outstanding after 12 months from the penalty date.</td>
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<td>Section 150 (continued)</td>
<td>The penalty is: £300 or 5% of the tax due, whichever is the higher. or In serious cases where the person deliberately withholds information from Revenue Scotland which would enable it to assess the person’s liability to tax, the penalty is the greater of £300 or 100% of the tax liability which would have been shown in the return.</td>
<td>Suspension; Special reduction; Reasonable excuse</td>
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<td>Section 151</td>
<td>Failure to pay tax on or before the filing date.</td>
<td>Suspension; Special reduction; Reasonable excuse</td>
<td>LBTT: 1 day late – 5% of the unpaid tax 5 months late – 5% of the unpaid tax at that time. This is in addition to the ‘1 day late’ fixed penalty above. 11 months late - 5% of the unpaid tax at that time. This is in addition to the ‘1 day late’ and ‘5 months late’ fixed penalties above. SLfT: 1 day late (the penalty date) - A penalty period then begins from the penalty date and runs for a period of 12 months from the filing date. No penalty amount for this first instance</td>
<td>1. Provide a table of legislative references which will make it easier for readers to understand the legislation and pinpoint people to the relevant provisions. 2. Make appeal provisions such that: a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision; b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. Where b) applies, the tribunal can rely on the special circumstances discretionary power (section 156): 1) to the same extent as Revenue Scotland (which may mean applying the same percentage reduction as Revenue Scotland to a different starting point); or 2) to a different extent, but only if the tribunal thinks that Revenue Scotland’s decision in respect of</td>
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<td>Section 151 (continued)</td>
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<td>of failure to make payment on time.</td>
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<td>the application of section 156 was flawed (when considered in the light of the principles applicable in proceedings for judicial review).</td>
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<td>For each default during the penalty period, a) the penalty period is extended so that it ends 12 months after the filing date for that subsequent return; and b) the person making the default is liable to pay a penalty.</td>
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<td>The amount of this penalty increases with each default. The penalty amounts are:</td>
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<td>(1) first default is 2% of the amount of the default</td>
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<td>(2) second default is 3% of the amount of the default</td>
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<td>(3) for the third and each subsequent default, 4% of the amount of the default</td>
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<td>• A person is liable to a 6 month further penalty if any amount of the tax liability is unpaid 6 months after the original penalty date. The penalty amount is 5% of that amount.</td>
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<td>• A person is liable to a 12 month further penalty if any amount of the tax liability is unpaid 12 months after the original penalty date. The penalty amount is 5% of that amount.</td>
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| Section 160 | Error in document given to Revenue Scotland that is 'careless', 'deliberate but not concealed' or 'deliberate and concealed' and either a) understates the tax liability, b) provides a false/inflated statement of loss/exemption/relief or c) provides a false/inflated claim for relief to or repayment of tax. | Suspension; Special reduction; Reduction for disclosure | The penalty amount depends on the nature of the inaccuracy:  
- for ‘careless’ behaviour, the penalty is 30% of the potential lost revenue;  
- for ‘deliberate’ behaviour, the penalty amount is 100% of the potential lost revenue. | 1. Provide a table of legislative references which will make it easier for readers to understand the legislation and pinpoint people to the relevant provisions. |
| | | | Potential lost revenue in respect of an inaccuracy in a document is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment. | 2. Make appeal provisions such that: |
| | | | A penalty is payable for each inaccuracy in a document. | a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision; |
| | | | | b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
| | | | | Where b) applies, the tribunal can rely on the special circumstances discretionary power (section 164): 1) to the same extent as Revenue Scotland (which may mean applying the same percentage reduction as Revenue Scotland to a different starting point); or 2) to a different extent, but only if the tribunal thinks that Revenue Scotland’s decision in respect of the application of section 164 was flawed. |
| | | | | c) where a person appeals against a decision not to suspend a penalty payable by the person, the tribunal may order Revenue Scotland to suspend the penalty only if it thinks that Revenue Scotland’s decision not to suspend was flawed. If this happens, the person may then appeal against a provision of the suspension and the tribunal may order Revenue Scotland to amend the notice. |
| | | | | d) where a person appeals against a decision of Revenue Scotland setting conditions of suspension of a penalty payable by that person, the tribunal may affirm the conditions of suspension or may vary the conditions but only if it thinks that Revenue Scotland’s decision in the light of the conditions was
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<td>Section 160 (continued)</td>
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<td>Flawed’ means flawed when considered in the light of the principles applicable in proceedings for judicial review.</td>
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<td>Section 162</td>
<td>Error in document given to Revenue Scotland that is attributable to another person either deliberately supplying false information to, or withholding information from, the person who provides the document.</td>
<td>Special reduction; Reduction for disclosure</td>
<td>The penalty amount is 100% of the potential lost revenue. Potential lost revenue in respect of an inaccuracy in a document is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.</td>
<td>1. Provide a table of legislative references which will make it easier for readers to understand the legislation and pinpoint people to the relevant provisions.</td>
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<td>2. Make appeal provisions such that:</td>
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<td>a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;</td>
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<td>b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make.</td>
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<td>Where b) applies, the tribunal can rely on the special circumstances discretionary power (section 164): 1) to the same extent as Revenue Scotland (which may mean applying the same percentage reduction as Revenue Scotland to a different starting point); or 2) to a different extent, but only if the tribunal thinks that Revenue Scotland’s decision in respect of the application of section 164 was flawed.</td>
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<td>Section 163</td>
<td>Failure to take reasonable steps to notify the tax authority about a Revenue Scotland under-assessment of tax within 30 days of the assessment date.</td>
<td>Special reduction; Reduction for disclosure</td>
<td>The penalty amount is 30% of the potential lost revenue. Potential lost revenue in respect of an inaccuracy in a document is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.</td>
<td>Make appeal provisions such that: a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision; b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. Where b) applies, the tribunal can rely on the special circumstances discretionary power (section 164): 1) to the same extent as Revenue Scotland (which may mean applying the same percentage reduction as Revenue Scotland to a different starting point); or 2) to a different extent, but only if the tribunal thinks that Revenue Scotland's decision in respect of the application of section 164 was flawed. ‘Flawed' means flawed when considered in the light of the principles applicable in proceedings for judicial review.</td>
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| Section 167 | Failure to comply with an information notice or deliberately obstructing the carrying out of an inspection which has been approved by the tribunal.  

NB - includes concealing or destroying documents following an information notice (sections 171-172). | Reasonable excuse | Fixed penalty of £300. | Make appeal provisions such that:  
a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;  
b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
|---|---|---|---|
| Section 168 | Daily penalty for failure to comply with an information notice or inspection after the date the fixed penalty in section 167 is imposed. | Reasonable excuse | Penalty amount of up to £60 for each day after the fixed penalty in section 167 is imposed. | Make appeal provisions such that:  
a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;  
b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
| Section 169 | Providing inaccurate information or documents as a result of an information notice. | None. | Penalty up to £3000. | Make appeal provisions such that:  
a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;  
b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
| Section 177 | Increased daily default penalty for continued failure (more than 30 days after the section 168 penalty has been applied) to comply with an information notice issued to a person under section 119 to obtain information or documents about another person (or class of persons) whose identity is unknown to the investigating officer. | None. The tribunal determines the penalty amount. | Penalty up to £1000 per day if the section 168 penalty has been imposed for 30 days and the person continues to fail to comply with the information notice issued under section 119. The tribunal determines the additional daily default penalty amount. | Make clear that a decision in relation to the imposition of a penalty under section 177, or relating to the penalty amount, is not an appealable decision under section 198(4) of the Bill. By the provision of section 199(1) this also means neither of these decisions are reviewable either. The rationale is that such a penalty should not be appealable or reviewable because the liability and the amount is determined by the tribunal. |
| Section 179 | Tax-related penalty for continued failure to comply with an information notice or obstruction of an inspection approved by the tribunal and where it is felt that as a consequence of such behaviour the tax paid (or is likely to be paid) is significantly less than it would have been. | None. The Upper Tribunal determines the penalty amount. | Penalty amount determined by the Upper Tribunal, but it cannot exceed the tax due (NB this will be a Government Stage 2 amendment. | 1. Make clear that a decision in relation to the imposition of a penalty under section 179, or relating to the penalty amount, is not an appealable decision under section 198(4) of the Bill. By the provision of section 199(1) this also means neither of these decisions are reviewable either. The rationale is that such a penalty should not be appealable or reviewable because the liability and the amount is determined by the Upper Tribunal. 2. Make it so that the penalty amount determined by the Upper Tribunal cannot exceed the amount of the tax liability in question. |
| Section 181 | Failure to register for tax – specific to Scottish Landfill Tax. | Reduction for disclosure; Special reduction; Reasonable excuse (these will be proposed Government Stage 2 amendments). | The penalty amount depends on the nature of the inaccuracy:  
- for ‘careless’ action, the penalty is 30% of the potential lost revenue;  
- for ‘deliberate’ behaviour, the penalty amount is 100% of the potential lost revenue.  
Potential lost revenue in respect of a failure to register for tax is the amount of the tax (if any) for which the person is liable for the period –  
  a) beginning on the date with effect from which the person is required in accordance with that provision to be registered, and  
  b) ending on the date on which Revenue Scotland received notification of, or otherwise became fully aware of, the person’s liability to be registered | 1. Provide a table of legislative references which will make it easier for readers to understand the legislation and pinpoint people to the relevant provisions.  
2. Make appeal provisions such that:  
a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;  
b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make.  
Where b) applies, the tribunal can rely on the special circumstances discretionary power (to be added via a Stage 2 amendment): 1) to the same extent as Revenue Scotland (which may mean applying the same percentage reduction as Revenue Scotland to a different starting point); or 2) to a different extent, but only if the tribunal thinks that Revenue Scotland’s decision in respect of the application of section 156 was flawed (when considered in the light of the principles applicable in proceedings for judicial review). |
| Section 195 | Failure to comply with a notice to supply debtor contact details. | Reasonable excuse | Fixed penalty of £300. | Make appeal provisions such that:  
a) where a person appeals a decision that a penalty is payable by that person, the tribunal may confirm or cancel the decision;  
b) where a person appeals a decision in relation to the amount of the penalty, the tribunal may either confirm the decision or substitute for the decision another decision that Revenue Scotland had the power to make. |
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<tr>
<th>Schedule 3 Para 5</th>
<th>Penalty for failure to keep and preserve records. Similar to the section 71 penalty, but this applies in the case of claims for relief in the case of excessive assessment or overpaid tax, as provided for in sections 97-99.</th>
<th>Reasonable excuse (NB this will be a Government Stage 2 amendment.)</th>
<th>Penalty up to £3000.</th>
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<td><strong>1.</strong> Make the assessment provisions such that an assessment of the penalty must be made by Revenue Scotland within 12 months of the person becoming liable to the penalty.</td>
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<td><strong>2.</strong> Make similar enforcement provisions as in section 176(1)-(2) such that the section 71 penalty must normally be made within 30 days of the penalty notification being issued. Slightly alternative timelines will be made for resolution of reviews, appeals or mediation.</td>
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<td><strong>3.</strong> Make appeal provisions such that:</td>
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Revenue Scotland and Tax Powers Bill: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-10079—That the Parliament agrees to the general principles of the Revenue Scotland and Tax Powers Bill.

After debate, the motion was agreed to (DT).


(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
Revenue Scotland and Tax Powers Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-10079, in the name of John Swinney, on the Revenue Scotland and Tax Powers Bill. I say to members that we are extremely tight for time all afternoon.

14:20

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The Revenue Scotland and Tax Powers Bill is the third of three Scottish tax bills that have been introduced in this parliamentary session. The first two are now on the statute book: the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014.

The bill that we are considering has two main purposes. First, it establishes revenue Scotland as the tax authority that will be responsible for collecting and managing the two devolved taxes when they come into operation on 1 April 2015. Second, it sets out in one place the statutory framework in which revenue Scotland will operate. That includes revenue Scotland’s constitution, the relationship between the taxpayer and the tax authority, revenue Scotland’s investigation and enforcement powers, and the new two-tier Scottish tax tribunals, which will hear appeals against decisions that revenue Scotland has taken. It also includes a robust and distinctive approach to tackling tax avoidance, about which I will say more in a few moments.

All the provisions in the bill are designed to facilitate the collection and management of the two devolved taxes for which the Scottish Parliament will become responsible on 1 April 2015. In the process, we are also putting in place an overarching statutory framework that could readily be adapted if the Parliament took on responsibility for further tax powers in due course. It is therefore very important that we get the bill correct.

I am grateful for the detailed and thoughtful scrutiny that the Finance Committee has given the bill at stage 1. The committee took evidence from a wide range of expert witnesses from the legal and tax professions, among others, and from a number of eminent academics, such as Professor James Mirrlees. The committee’s report is extremely helpful. Its conclusions and recommendations will allow us to improve the bill at stage 2.

I am struck by the wide consensus across the political spectrum about the approach that we propose to adopt to the collection and
management of the devolved taxes and to combating tax avoidance as vigorously and effectively as possible. With that in mind, I will address some of the issues that the committee highlighted in its report.

Part 2 of the bill provides for the establishment of revenue Scotland as an office-holder in the Scottish Administration, which means that it will be directly accountable to the Parliament, not ministers. The bill sets out revenue Scotland’s statutory functions and, in doing so, it emphasises the provision of a service to taxpayers as well as the collection of the devolved taxes.

The bill places a duty on revenue Scotland to prepare and publish a charter that sets out the standards of behaviour and values that will be expected of taxpayers and which taxpayers can expect of revenue Scotland. As recommended by the committee, I propose to lodge amendments at stage 2 that will require revenue Scotland to consult on the charter and any revisions that require to be made and will underline our intention for the obligations between the taxpayer and the tax authority to be matching and reciprocal.

A particular issue that the committee considered is whether revenue Scotland’s chief executive should be a member of its board. As the bill stands, the chief executive is not to be a board member, because it is the board’s responsibility to hold the chief executive to account. However, I know that views differ on that and that there are different models for operating such boards. If there was a consensus that the board would operate more effectively if the chief executive was a member of it, I would be happy to lodge amendments to that effect. I look forward to listening to members’ perspectives and points in today’s debate and at stage 2.

Part 4 establishes the tax tribunals, which will comprise a first tier and an upper tier under the leadership of a president. As colleagues will be aware, the Parliament recently passed the Tribunals (Scotland) Act 2014, which paves the way for the establishment of the new unified Scottish tribunals. The intention is that, in due course, the tax tribunals will become part of the new unified Scottish tribunals. However, it is necessary to have arrangements in place to hear appeals about the devolved taxes from 1 April 2015, so we need to establish self-standing tax tribunals for an interim period, until the new unified arrangements are fully operational.

Part 5 sets out a new general anti-avoidance rule—the GAAR. I have made it clear that we intend to take the toughest possible approach to tax avoidance in relation to any devolved taxes. I emphasise that I mean all tax avoidance, not just the more extreme cases of abuse, which are covered by the United Kingdom general anti-abuse rule. I am pleased that the robust approach that we have adopted was unanimously endorsed by the Finance Committee. It is important that the Parliament sends out the strongest signal possible that artificial tax avoidance is not acceptable behaviour and that effective action will be taken to counteract any such schemes.

With that in mind, the GAAR that is set out in part 5 provides revenue Scotland with power to take robust counteraction against artificial tax avoidance schemes. The bill provides two separate definitions of artificiality—condition A and condition B—to make sure that our approach is as wide ranging and as comprehensive as it can be.

Patrick Harvie (Glasgow) (Green): In order that I can fully understand what is intended by the general anti-avoidance rule, will the cabinet secretary indicate whether a corporation that pretended not to be doing business in this country but simply to be providing services for its counterpart—one based in Luxembourg, for example—would fall foul of the general anti-avoidance rule?

John Swinney: Patrick Harvie will appreciate that it is impossible for me to give detailed tax advice in the chamber. However, I will set out for the Parliament’s benefit the definitions of artificiality that will be applied. I think that that will give him significant comfort that the Government has gone into the legislation with the intention, objective and aspiration of ensuring that we set the highest possible standards. As I have said to the Parliament before, if, in the detailed scrutiny of the bill, the Parliament believes that the Government could take further action to establish a more robust position in tackling tax avoidance, I will consider any measures of that type, make the appropriate judgments and advise the Parliament accordingly of the terms of my responses.

Willie Rennie (Mid Scotland and Fife) (LD): I want to press the cabinet secretary a bit further on that. Closer to home, we have Amazon in Dunfermline. Does he think that Amazon would pay more tax under his regime?

John Swinney: As Mr Rennie will be aware, the taxes for which I will have responsibility will be the land and buildings transaction tax and the landfill tax. If Amazon were to be responsible for any transactions involving the land and buildings transaction tax or any activities relating to the landfill tax, I would expect it to fully and comprehensively meet its obligations under the legislation that the Parliament has already passed and under the Revenue Scotland and Tax Powers Bill, which I hope that the Parliament will pass.

In my response to Patrick Harvie, I said that I would address the contents of conditions A and B. Under condition A, revenue Scotland will be able
to take counteraction where a tax avoidance arrangement is not a reasonable course of action, having regard to the principles and policy objectives on which the relevant tax legislation is based, and having regard to whether the arrangement is intended to exploit any shortcomings in that legislation. That will allow revenue Scotland, the tax tribunals and the courts to look at the spirit and intention of tax legislation, not just the strict letter of the law, to defeat ingenious but artificial and contrived avoidance schemes. Those remarks are particularly relevant to the point that Patrick Harvie raised.

Condition B allows revenue Scotland to take counteraction where a tax avoidance arrangement lacks commercial substance. It also sets out a number of hallmarks of arrangements that lack commercial substance—for example, if they are carried out in a manner that would not normally be employed in reasonable business conduct or which consists of transactions that are circular in nature.

I have made it clear that I welcome any suggestions for toughening the GAAR still further. I am therefore happy to accept the Finance Committee’s recommendation that the test of commercial substance should be extended to tax avoidance arrangements that lack either economic or commercial substance. We will also provide that a further hallmark of arrangements that lack economic or commercial substance is where the arrangements result in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.

I believe that the approach that we have adopted to tackling tax avoidance is based on a straightforward commonsense test that ordinary taxpayers would understand and endorse. I note that when Michael Clancy gave evidence to the Economy, Energy and Tourism Committee on behalf of the Law Society of Scotland, he commented that the GAAR provisions in the Revenue Scotland and Tax Powers Bill were “much better ... less complex and should prove to be more effective”—[Official Report, Economy, Energy and Tourism Committee, 19 March 2014; c 4205.]

than the corresponding general anti-abuse rule in the UK Finance Act 2013.

Throughout the bill, we have tried to strike a balance between the taxpayer and the tax authority. The investigation and enforcement powers that the bill provides for revenue Scotland are therefore fair and proportionate, and they are accompanied by careful safeguards.

A particular feature of the arrangements that we are putting in place is that taxpayers will have various opportunities to challenge decisions taken by revenue Scotland without having to resort to expensive legal action.

First, taxpayers will be able to ask revenue Scotland to carry out an internal review that will be undertaken by a person not associated with the original decision. Secondly, if that does not resolve the dispute, revenue Scotland and the taxpayer will be able to enter independent, third-party mediation, if both parties agree to do so. Finally, there will be a right of access to the new, two-tier Scottish tax tribunals and ultimately, on a point of law, to the Court of Session. I believe that those arrangements are robust and credible and will provide taxpayers with confidence in the administration of devolved taxes.

Part 8 of the bill as introduced set out a penalties regime but left much of the detail to be put in place by secondary legislation. That approach was criticised by both the Finance Committee and the Delegated Powers and Law Reform Committee, as well as by a number of stakeholders. I will therefore bring forward amendments at stage 2 to set out on the face of the bill the detail of the penalties regime in full, including all penalty amounts. At the same time, I propose to provide flexibility to make by order subject to the affirmative procedure changes either to penalty amounts or to the detail of the penalties regime if that should prove necessary in the light of experience. I have already written to the Finance Committee to explain in detail what the purpose and effect of those amendments will be, and I have indicated that I aim to lodge them in good time before stage 2 gets under way.

The process of implementing the Revenue Scotland and Tax Powers Bill will involve putting in place a significant amount of subordinate legislation by 1 April 2015, when revenue Scotland comes into being. It is important that there should be ample opportunity for stakeholders, the Finance Committee and the Delegated Powers and Law Reform Committee to consider the proposed subordinate legislation. I therefore propose to publish a consultation paper later this year, accompanied by drafts of all the subordinate legislation that needs to be put in place by 1 April 2015, to provide that opportunity for consideration well before the relevant orders and regulations are laid before the Parliament in January 2015. We have already published consultation papers in which we set out the proposed subordinate legislation for the land and buildings transaction tax and the landfill tax.

The assumption of responsibility for the collection and management of devolved taxes is a significant opportunity for the Scottish Parliament. I believe that the approach that the Government and the Parliament alike have taken to developing the three tax bills demonstrates the seriousness
and maturity of the process. I would like to record my thanks to the various bodies that have contributed to our thinking in assembling the approach that we have taken to the legislation.

I know that members of all parties share the same objective in relation to the bill: to make sure that it provides the best possible framework for the collection and management of the first two devolved taxes when they come in on 1 April 2015 and a solid foundation that can be built on in the event of this Parliament becoming responsible for a wider range of taxes. I am confident that the bill as introduced has got the fundamentals right, but in such a complex area there will certainly be scope to make improvements at stage 2. The Finance Committee has made a number of recommendations that will help us do that, and I look forward to today’s debate in that spirit. I invite the Parliament to approve the general principles of the Revenue Scotland and Tax Powers Bill.

I move,

That the Parliament agrees to the general principles of the Revenue Scotland and Tax Powers Bill.

The Deputy Presiding Officer (John Scott): I call Kenneth Gibson to speak on behalf of the Finance Committee. I inform members that we are tight for time today. You have up to 10 minutes, Mr Gibson.

14:35 Kenneth Gibson (Cunninghame North) (SNP): I am pleased to speak in this debate and highlight some key areas that the Finance Committee considered during its scrutiny of the evidence at stage 1. As the Cabinet Secretary for Finance, Employment and Sustainable Growth mentioned, the Revenue Scotland and Tax Powers Bill is the third of three bills arising from the financial provisions of the Scotland Act 2012. The Finance Committee was designated lead committee for all three bills. [Interruption.]

The Deputy Presiding Officer: Will you lift your microphone, please, Mr Gibson?

Kenneth Gibson: Both the Land and Buildings Transaction Tax (Scotland) Bill and the Landfill Tax (Scotland) Bill have now received royal assent and their provisions will come into force next April.

As its policy memorandum states, the purpose of the Revenue Scotland and Tax Powers Bill is to make provision for a tax system to enable the collection and management of devolved taxes. To that end, it establishes revenue Scotland on a statutory basis and puts in place a statutory framework for the devolved taxes, setting out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

The committee received a range of useful written and oral evidence from a variety of stakeholders and interested parties, and we received expert advice and analysis of the bill from our adviser, Professor Gavin McEwen. I put on the record the committee’s gratitude to all those who helped us to focus on certain key aspects of the bill, particularly in light of its often complex and technical nature.

I will now address some of the key themes that we focused on in our consideration and highlight in our report. It seems that tax avoidance is never far from the headlines these days, and in an attempt to combat avoidance the bill introduces a general anti-avoidance rule, or GAAR, as we heard from the cabinet secretary. It is intended to grant revenue Scotland broader powers to combat artificial tax arrangements than those that are provided for in existing UK legislation. Given the continuing pressure on public finances, not to mention the notion of fairness to the majority who pay their taxes, the committee welcomes the bill’s approach to tax avoidance.

We reject the position of those who wish to have artificial arrangements. However, as with all such matters, it soon became apparent that there was no straightforward consensus on how best to define artificial arrangements. Several professional bodies, including the Institute of Chartered Accountants of Scotland, suggested that a broadly drawn GAAR might result in uncertainty for businesses and other taxpayers, with the potential to deter investment in Scotland. Others, including the First-tier Tribunal (Tax) member and tax law lecturer Dr Heidi Poon, suggested that a more narrowly drawn, rules-based GAAR would encourage some people to search for loopholes, and they advocated instead a principles-based approach.

Having considered the evidence in detail, the committee was not persuaded that a narrowly drawn GAAR would result in more certainty for taxpayers, and as such we support the approach that is taken in the bill. Nevertheless, we remain mindful of the need for as much additional certainty as possible for taxpayers, and we considered a number of proposals that witnesses put forward to achieve that. ICAS, the Law Society of Scotland and the low incomes tax reform group all highlighted the need for detailed and extensive guidance that sets out the circumstances in which tax arrangements would be considered artificial.

The committee was persuaded of the benefits of that suggestion for taxpayer certainty, and we therefore recommended that revenue Scotland be required to consult widely on the draft guidance on the GAAR before it is published, and on substantive future revisions. The Government expressed sympathy with the thinking behind that
recommendation, but it has some practical concerns, such as the circumstance in which changes need to be made at short notice following a court judgment. The cabinet secretary has suggested a possible alternative, by way of including guidance to revenue Scotland in anticipation of such a consultation.

The committee also noted that the bill does not contain provisions that give the GAAR priority over other legislative measures. In order to reinforce the overriding importance of the GAAR, the committee recommended that the cabinet secretary consider introducing such a rule. In his response, he stated that he considered such a rule to be unnecessary in relation to LBTT and the Scottish landfill tax but that it could be considered in the event of the Parliament gaining further tax powers.

No legislation that is intended to deter those who might attempt to avoid paying their taxes in full would be complete without the imposition of a penalty regime for non-compliance. The bill is intended to provide a broad statutory framework to enable the imposition of different penalties depending on the seriousness of the non-compliance and the tax to which it may relate.

Several witnesses raised concerns about the appropriate balance between primary and secondary legislation in relation to the bill’s penalty provisions. Although certain administrative arrangements can be adequately provided for in secondary legislation, we agreed with our witnesses that the primary legislation should contain more detail on penalties.

That view was reflected in the Delegated Powers and Law Reform Committee’s consideration of the bill. The committee’s report recommended that there should be greater clarity on the circumstances that could result in a penalty and the amounts that would apply, along with further detail on enforcement and the right to appeal.

We therefore welcome the cabinet secretary’s commitment to lodge amendments at stage 2 to include “more detail and greater consistency in relation to penalties on the face of the Bill.”

I look forward to considering those amendments in the coming weeks.

On the subject of penalties, the Finance Committee was mindful that the bill’s primary purpose should be to encourage timely payment of taxes rather than to implement inefficient, and at times costly, bureaucratic arrangements. We heard that, on occasion, penalties for minor or accidental transgressions can cost more to collect than they are worth. As such, we recommended that penalties should be proportionate and should not create unnecessary administrative burdens for revenue Scotland. The cabinet secretary stated in his response that he believes that the amendments that he plans to lodge are consistent with that recommendation. No doubt, the committee will wish to discuss the amendments with him in due course.

The requirement for the tax authority to produce a charter that sets out the standards of behaviour and the values that are expected of revenue Scotland and the taxpayer was welcomed by our witnesses, although concerns were raised. It was pointed out that there was a lack of reciprocity in the bill as drafted, with taxpayers being “expected” to aspire to those standards and values whereas revenue Scotland would simply aspire to them. Some witnesses felt that that form of words implied that more was expected of the taxpayer than of revenue Scotland. We therefore welcome the cabinet secretary’s commitment to amend the bill at stage 2 to ensure that there is “reciprocity of obligations” in the charter.

The issue of the discretion that is granted to revenue Scotland with regard to how and when the charter should be reviewed and republished was also raised, and the committee welcomes the Government’s commitment to amend the bill to oblige revenue Scotland to consult when it updates and republishes the charter.

I turn to the committee’s consideration of the bill’s provisions in respect of establishing revenue Scotland as the tax authority responsible collecting devolved taxes. We heard no criticism of revenue Scotland’s establishment as a non-ministerial department, and the fact that ministers would be prohibited from directing it was welcomed. However, some witnesses questioned whether it would be appropriate for ministerial guidance to remain unpublished in circumstances in which ministers decided that its publication might prejudice revenue Scotland in exercising its functions.

The cabinet secretary assured us that publication of ministerial guidance would be the default position but that he wants to retain the ability to provide confidential guidance in certain circumstances. In order to achieve an appropriate balance, we recommended that, where the Government does not consider publication of its guidance to be appropriate, ministers should be required to write to the committee explaining the reasons for that decision. I am pleased that the cabinet secretary has given an undertaking to that effect.

The rationale underpinning the delegation of powers from revenue Scotland to Registers of Scotland and the Scottish Environment Protection Agency for LBTT and the landfill tax respectively
was recognised by our witnesses, although some expressed the view that such delegation should not extend to all powers. The head of revenue Scotland’s view was that a non-statutory formal scheme of delegation, to be laid before Parliament for consideration before the bill takes full effect, would address those concerns. We look forward to considering the scheme in due course.

The bill provides for two tribunals—a first-tier tribunal and an upper tribunal—to hear appeals against decisions that are made by revenue Scotland. The first-tier tribunal will consist of up to three members, and the upper tribunal would have only a single member. Several witnesses expressed doubts about the appropriateness of that arrangement, and the committee welcomes the cabinet secretary’s undertaking to amend the bill to allow more than one member to sit on the upper tribunal when required.

The subject of legal restrictions on the right to appeal a decision of the upper-tier tax tribunal to the Court of Session was also raised. In evidence to the committee, the cabinet secretary stated that “the appeal mechanism must be fair and must be seen to be fair”.—[Official Report, Finance Committee, 2 April 2014; c 3948.]

We are therefore pleased that he has reconsidered eligibility to appeal to the Court of Session in light of the recently passed Tribunals (Scotland) Act 2014.

Before a dispute reaches the tribunal stage, it is important that attempts are first made to resolve it at a less formal level. The Government suggested informal mediation as a way of achieving that, and our witnesses broadly welcomed that suggestion. However, the independence of a revenue Scotland mediator is of paramount importance, and we have invited the Government to provide further details on how it intends to achieve that. We note that the Government is working with stakeholders to identify options to address the matter, and we await with interest the outcome of those discussions.

I am conscious of time and the need to let other members join the debate, so I will draw my remarks to a close. In summary, the committee has assessed and carefully reflected on the evidence, and—as we state in our report—we support the general principles of the bill. Work remains to be done at stage 2, when we will further consider issues around tribunals and penalties, among other matters.

Given the likelihood that many of the amendments will be of a complex and technical nature, we welcome the cabinet secretary’s undertaking to furnish us with the complete set in good time before stage 2. We also appreciate the efforts of the bill team in that regard.

Looking further ahead, the committee looks forward to considering secondary legislation relating to devolved taxes in the coming months. As members would expect, the Finance Committee will continue to closely monitor implementation and delivery in relation to those taxes as they become embedded in the Parliament’s annual budget scrutiny process.

I look forward to hearing from other members.

14:45

Iain Gray (East Lothian) (Lab): As far as legislation goes, this is more of a series than a one-off. It might not quite be a full box set, but today’s bill is the third in the series, following on from the legislation that we have already passed to introduce the land and buildings transaction tax and the landfill tax. Those taxes were devolved to the Parliament by the Scotland Act 2012, following the recommendations of the Calman commission.

Recently we noted, if we did not quite celebrate, the 15 years since we met as a Parliament for the first time. Those of us who had the privilege of being there on that day know that it felt very much like being part of history, because it was. The fact is that the Parliament still sometimes gets the chance to make a little history, and today is one of those days. Making legislative history can sometimes feel a little duller than it sounds and a little more complicated than is comfortable. I well remember, back in the early days of the Parliament, when we abolished 1,000 years of feudalism. Whatever exciting images of swashbuckling land rebellions that might conjure, it was also a series of very complicated bills, which, by the time that we got to the Tenements (Scotland) Act 2004, had rather lost its revolutionary glamour.

Nonetheless, the bill that is before us today is genuinely historic, creating as it does revenue Scotland, which is to be charged with collecting the first national taxes to be set and collected by the Parliament and the Government that we scrutinise. Einstein once commented that the hardest thing in the world to understand is the income tax. Although we are not dealing with income tax today, but rather landfill tax and the land and buildings transaction tax, they have given the Government and the Finance Committee tricky enough issues to deal with, and they are to be congratulated on their sterling work in that regard.

The cabinet secretary has told us before that his approach to taxation is to return to the first principles, or Adam Smith’s four maxims for a tax system, which are certainty, convenience, efficiency and proportionality to the ability to pay. That seems uncontroversial, but it is not always straightforward to apply those principles in reality.
Their application always requires subjective social and political judgments and the conclusion is always open to interpretation and dispute.

What is more, the purpose of taxation has rather widened since Smith was elaborating those maxims. I quote from a particularly fine document—Labour’s devolution commission report:

“The tax system is at the centre of the state and its relationship with citizens, households and commercial organisations. It has evolved over many centuries and is now used for purposes that extend beyond its traditional function of raising revenue.”

A perfect example of that is the landfill tax—one of the two taxes that revenue Scotland is being created to collect—which has been explicitly created to reduce landfill rather than to raise income. That raises some interesting issues around proportionality to the ability to pay, which we debated when legislating for the landfill tax.

The four maxims are certainly the right and principled starting point for the creation of revenue Scotland, but they do not get us out of some of the complexities, difficulties and complications. That was largely illustrated by the considerable debate in pre-legislative scrutiny around the general anti-avoidance rule. The first thing to say is that we agree with the cabinet secretary that the bill requires a general anti-avoidance rule, and we agree that it should be more widely drawn than the equivalent general anti-abuse rule in UK tax legislation. However, that gets us into some of those complexities around the interpretation of a word or phrase. As the cabinet secretary said, we are clearly talking here about avoidance, because tax evasion, which is illegal, will continue to be dealt with under the criminal law.

Having gone for the term “anti-avoidance” rather than “anti-abuse”, as used in the UK legislation, the cabinet secretary had to define what he meant and that took up much of the Finance Committee’s consideration of the bill. The definition given is “tax avoidance arrangements that are artificial” and in which

“It would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.”

That differs from existing definitions in three ways. It avoids the double reasonableness test—which is reasonable that something is reasonable—which seems pretty reasonable and much clearer to me; it uses artificiality rather than abusiveness; and it encompasses arrangements in which tax avoidance is one of the main reasons, not just the sole or main reason, for an arrangement. However, it is worth noting that the committee’s adviser did not think that the last of those was any different from the UK legislation.

In all this, the cabinet secretary has argued that he is trying to widen the net of the GAAR and that he is seeking greater clarity. Although we broadly support all that, we cannot simply ignore the many concerns that were raised in evidence to the committee that those definitions are not clear, and that the result is a lack of certainty for businesses, which is a breach of the first of the four maxims.

John Mason (Glasgow Shettleston) (SNP): I agree with a huge amount of what Iain Gray says. Does he agree that there is a basic tension here? In one sense, if we provide a lot of certainty, we give people the opportunity to find loopholes.

Iain Gray: I agree, but I would not want my remarks to imply that we accept that there is not certainty in the GAAR. Rather, as we take the bill through its stages, we are obliged to respond to those concerns as far as we can.

To be fair, the cabinet secretary has started to do that in his response to the committee. He has rejected some of the measures that were suggested to address those concerns, such as disclosure of tax avoidance schemes and pre-clearance of transactions. He quite rightly did that in the chamber today in his response to interventions from Willie Rennie and Patrick Harvie. That makes it all the more important that the amendments that the cabinet secretary intends to lodge at stage 2 are strong enough to provide some assurances on certainty. Those amendments will be welcome, especially those that put penalties on the face of the bill, and they will be subject to scrutiny at stage 2.

I note that the cabinet secretary has accepted the committee’s desire to see wide consultation on the draft guidance, to help with the concerns regarding certainty. I understand that he believes that revenue Scotland must keep the capacity to issue guidance urgently if required, which is reasonable on his part, but he must make clear that that should be the exception rather than the rule.

I return to the bill’s interaction with previous legislation on the landfill tax. In the debates on the Landfill Tax (Scotland) Bill, the Parliament welcomed the extension of SEPA’s powers to enforce tax liability on illegal dumping. That was seen as a major step forward, but concerns were expressed about SEPA’s capacity to enforce such collection. At the time, the cabinet secretary was perhaps a little dismissive of those concerns, but I am glad that he has had second thoughts and has provided for exactly that in the financial memorandum. That is welcome.

We look forward to continuing close examination of the bill as it evolves at stage 2, to see whether it can be made to reflect even more closely the four maxims of certainty, convenience, efficiency and
proportionality. We will be pleased to support the general principles of the bill at decision time.

14:54

Gavin Brown (Lothian) (Con): According to the policy memorandum, the bill “puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.”

There is broad consensus on the bill, and it commanded support across the committee during the stage 1 process. In particular, the bill team ought to be given credit, as it was by witnesses, for the way in which it pulled together the bill and for its attitude since then. Obviously, we will support the bill at decision time.

I will focus most of my remarks on two areas that deserve a bit more scrutiny. The first is the issue of penalties, which many witnesses brought up in evidence. Broadly, their view was that the circumstances, the amounts, the mitigation and other factors to be taken into account should all be set out in the bill. The witnesses were more relaxed about procedure and administration issues, which they felt could be left to secondary legislation. I acknowledge that, in a letter to the Finance Committee, the cabinet secretary said that stage 2 amendments will be lodged and gave a pretty good indication of what those amendments would be.

It is critical that that happens, because the initial approach was not consistent or clear. For some penalties, exact amounts were set out in the bill. For example, section 167 contains the exact amount of £300 and section 169 contains the exact amount of £3,000. However, for many other penalties—at least four of them, including for a failure to make a return or to pay tax—no amount at all is stated in the bill and there is very little information on how those penalties will be dealt with, other than that they could and should be dealt with by secondary legislation.

It is right that the circumstances, amounts, mitigation and other factors should be set out in the bill. It is important that the amendments, when they are lodged, reflect that. It is also important that a consistent approach is taken across the bill. If it is correct to have some amounts in the bill, that ought to be the case for all the penalties. There should not be amounts for some penalties and not even an indication of the magnitude of other penalties. All that said, the cabinet secretary, when he gave evidence prior to writing his letter, suggested that amendments might be forthcoming. The Government and the bill team have listened to the committee and to experts on that issue. We look forward to seeing those amendments when they are lodged in fairly short order.

The second area that I will focus on is one on which there has not yet been movement from the Government, and the cabinet secretary’s letter suggested that the door might be closed on the issue. Nevertheless, the issue was raised by a number of witnesses, so I certainly want to put it on the record. It is the issue of the safeguards that might be brought in along with the general anti-avoidance rule. The convener was right that the committee in its entirety supported the broad approach to the GAAR. However, in my view, if we are to bring in a wider rule, there are strong arguments that safeguards need to be introduced at the same time. The door might be closed, but I hope that the cabinet secretary has an open mind and will not lock it completely.

Broadly, such safeguards could involve an advisory panel, revenue Scotland guidance, the disclosure of tax avoidance schemes or pre-clearance transactions. On revenue Scotland guidance, the Government has listened and I think that an amendment will be forthcoming on the level of consultation that ought to take place. It is important that that guidance is available to and useful for everybody, including those who do not have professional advisers. That point was made particularly strongly by the low incomes tax reform group, which pointed out that not everybody who goes through a transaction will have professional advisers, so the guidance has to be useful to all.

On the other three safeguards, I do not think that the Government is minded to make any changes, but there are good arguments for doing so. On the disclosure of tax avoidance schemes, the Government was at one stage at least considering that, but it is not going to do that because of the resource implications. The DOTA schemes achieved broad support from a number of organisations, including Unison and the Scottish Trades Union Congress. There was a particularly good comment on the disclosure of tax avoidance schemes from Dr Heidi Poon, who gave compelling evidence to the committee. She said:

“If they know that something is there, they can take a look at it. If they do that sooner, less time is spent on it, and it is better for the authority because, if the scheme is discovered years later, time bars may apply.

For multiple reasons, the GAAR and DOTA schemes should go hand-in-hand.”—[Official Report, Finance Committee, 26 March 2014; c 3881.]

I ask the cabinet secretary to reflect on that compelling quotation from that witness. I wonder whether, even at this late stage, the Scottish Government can do something to ensure that there are sufficient safeguards for taxpayers at the same time as it introduces the GAAR.
15:00

John Mason (Glasgow Shettleston) (SNP): I am pleased to be able to take part in the debate. I accept that taxation is not the most exciting topic for everyone, but I find it extremely interesting and the bill is particularly significant for a number of reasons, including the fact that, as some speakers have mentioned, it sets up our own revenue Scotland as an alternative to Her Majesty’s Revenue and Customs. It also sets out the broad framework for future tax legislation and starts to deal with the highly topical issue of tax avoidance.

One of the problems of UK legislation in general and UK tax legislation in particular has been that it overemphasises the letter of the law while almost completely ignoring the spirit of the law. I argue that that is jointly the fault of Westminster legislators and the wider courts and legal system in the UK. As a result of that overemphasis, there have been situations in which the wider public were clear that tax should have been paid, but the taxpayers escaped by using so-called legal loopholes. That is particularly galling for ordinary members of the public, who are subject to the pay-as-you-earn system and have no room for manoeuvre but see the rich and famous paying proportionately much less tax than they do.

Therefore, the aim to have a more principles-based approach is welcome. I accept that we are dealing with a scale of approaches, ranging from more to less principles based. It is not entirely the one or the other, but I welcome the attempt to move in the principles-based direction and, to be fair, the UK is starting to do that as well.

That leads on to some of the evidence that the committee received from witnesses. We heard a lot of evidence from professionals, such as accountants—of which I am one—lawyers and tax advisers. I have to say that, in some cases, it sounded like they were arguing the case for richer taxpayers who were trying to avoid tax. Perhaps that is not surprising as they are the people who pay the bills. All the professions claim to have public interest at the heart of their thinking, but it seems that there is at the very least a tension for them when the clients want one thing and the public interest might be different.

We did not hear many witnesses representing the general public, who might want taxes to be paid properly so that public services are funded properly so, to some extent, it was left to committee members to give that particular angle on the bill. Some witnesses argued that most taxpayers want to pay the correct amount of tax. However, I am slightly more sceptical and would say that most taxpayers want to pay less tax if they possibly can.

Certainty has already been raised and was a major part of the committee’s work. It came up a number of times and is one of Adam Smith’s maxims, which I think that we all support. However, the demand for certainty can also be a smokescreen to tilt matters in favour of those who want to avoid paying tax. We had examples of that.

There was a general request for more certainty but it sometimes seemed that we were being asked to give taxpayers a totally fixed and rigid system so that, if they could find loopholes in it, they would know that those could not be challenged. I do not agree with that argument.

The desire for an advisory panel was similar. It seemed that the intention might be that some richer taxpayers could try pushing the boundaries of what they could get away with and get it approved beforehand so that they would not face any repercussions later. Similarly, the request for definite tax rates a long way ahead seems to me often to be a request to give people more time to juggle their tax affairs so that they can avoid paying the tax that they should pay.

Therefore, broadly speaking, the committee is supportive—I certainly am—of the cabinet secretary’s insistence that we stick to the principles-based approach, including having a wider GAAR than the somewhat more timid one that the UK has.

Legal privilege was an issue that came up at committee, and I would like to touch on that. I am a member of ICAS, and it and the Chartered Institute of Taxation tended to argue for an extension of privilege to other professions, so that there would be more confidentiality for taxpayers, because those professions were, in effect, giving the same advice as people from the legal profession were. I think that there should be a level playing field for all the professions, while accepting that, on explicitly legal matters, there can continue to be professional confidentiality. My preference would be for legal privilege to be curtailed and for all tax advice that is given to be much more open.

Two relatively small taxes are currently being devolved. We have had the opportunity and time to start from scratch but, at the same time, we cannot stray too far away from what our friends and neighbours down south are doing. For example, with regard to landfill tax, we do not want to see waste travelling across the border to find cheaper tax rates.

When we take control of income tax and corporation tax, the challenges will inevitably be greater. We will be inheriting hugely complex rules-based systems that cost the UK more to administrate than is the case in many other
countries. Presumably, we will start off having to modify the UK system but will keep the basics in place. However, at some stage, we will have the challenge and the opportunity to write our own legislation for those major taxes from scratch. I look forward to that exercise.

However, the great thing about what we are doing today is that we are setting out a direction of travel. It is not completely different from that of the UK, but neither is it exactly like that of the UK. We want to do things our way and in a way that fits Scotland’s needs. The bill is a good start, and I whole-heartedly support its approval.

15:06

Michael McMahon (Uddingston and Bellshill) (Lab): I begin by thanking all those who gave evidence to the Finance Committee on what was a complex issue and by thanking the clerks and the bill team for assisting us as we moved through the complexities of the bill.

Over the past year or so, the Finance Committee has grappled with the outcomes of the Scotland Act 2012 as they relate to new tax powers. The debate around which powers should be devolved can be interesting at times, but for now we must address the legislation that is before us, which is required to bring about the new land and buildings transaction tax and the Scottish landfill tax. The bill will create the framework for establishing the new taxes.

In the debates that we had on the two separate tax bills, I have to say that I was dreading the possibility of becoming bogged down in tedious technicality and prosaic legalistic verbiage. To be fair, there was plenty of both, but there was also the fun of watching lawyers and accountants arguing against one another to see who should have the greater right to make money out of advising people on how not to pay as much tax as they might otherwise. Had we taken evidence on the bill from a librarian and added it to what we heard from the lawyers and accountants, we would certainly have had all the information that we needed, but we would not have understood a word of it.

In truth, though, all the witnesses we heard from recognised that the bill is well drafted and in general delivers what is expected of it, so great credit is due to the team that prepared it. The fact that the lawyers as well as the accountants were left slightly disappointed is the best indicator that I could see that the right balance has been struck.

It was probably inevitable that in our evidence sessions most of the attention focused on the general anti-avoidance rule. It appears to be sufficiently robust for us to have confidence in it but, as is ever the case, much will depend on the guidance and regulations that follow. Of course, there can be no guarantees that a good tax accountant could not still have a loophole named after them.

Mr Swinney has underlined again today the Scottish Government’s intention to take a tough stance on tax avoidance and there is a widespread welcome for that, and an acceptance that the approach must be robust. However, I remain uncertain that the cabinet secretary has clarified entirely that principles-based drafting of any future Scottish taxes will alleviate the need for a targeted anti-avoidance rule in respect of the taxes. We took plenty of evidence on that.

I understand that it is desirable to keep complexity out of reliefs and exemptions, and there is a strong view that that will minimise the scope for avoidance activity, but I remain sceptical that parliamentary statements and guidance on the intention behind tax legislation are sufficient to ensure that tax tribunals and the courts can impose the spirit as well as the letter of the law. That will depend on how the board and related bodies work with one another. The committee asked whether it could get further clarification and we still require to explore that issue further.

That is not to say that I believe that the bill is flawed; it was merely a comment on a difference of opinion on the desirability of relying solely on the GAAR rather than having a plan B, and a targeted anti-avoidance rule. If we had a TAAR from the outset, we could look forward to the devolution of more tax powers over time and be confident that a principles-based rather than a rules-based approach could be developed as we move forward.

There has been much discussion this afternoon about Adam Smith’s maxims and the principles-based approach. That leads me to a small point that I raise in order to bring something different to the debate. It is not a serious disagreement with the cabinet secretary, but he is aware that I think that he is wrong in his decision not to include the Scottish rate of income tax in their pay slips.

I appreciate that that information will be provided in someone’s P60, but all tax paid can be found on that form. Scots should not have to wait until the end of the tax year to know in respect of the SRIT what they know from week to week or month to month in respect of their income tax. I have no evidence to back up what is nothing more than a gut feeling that there is something inherently wrong in people not being able to see in their pay slip what they are paying in tax. A lot of people have worked on that principle. We all receive our P60s but we also see our pay slips.
John Mason: Would the member agree that he is deviating somewhat from the subject? The SRIT could not be touched by the bill.

Michael McMahon: I did say that it was a small point, which was to emphasise the principles, which are accountability and how we know when and how much we are being taxed. I am trying to find something slightly different to say in the debate. I did make that clear.

If we had some consultation, those types of issues would come out. That is the point. We can hold Governments to account in many ways, one of which is by knowing how much we are being taxed. When we talk about a principles-based approach, it is only fair that we consider all of the principles, which includes knowing how much we are due to pay and what penalties we might face if we do not pay it. We have discussed that this afternoon. It is of little significance and it was probably not worth investing time and effort to consult on it, but it is a point of principle that we touched on in our discussions in the committee.

Overall, the bill is fine and will serve its purpose more than adequately. For that reason, we should have no hesitation in supporting its general principles this afternoon.

15:13

Willie Rennie (Mid Scotland and Fife) (LD): This is one of those debates that is, on occasion, rather technical in nature. However, we all know that it is about the precursor to what the Scottish National Party hopes will be an independent Scotland’s revenue-raising tax body. I hope the opposite. However, I am glad that the finance secretary has been converted to the benefits of the Scotland Act 2012. In his press statement today, he emphasises the 300-year historic event of the creation of a new tax body. That is similar to the language that he and others scoffed at when the UK Government signalled the most significant transfer of financial power, from Westminster to Holyrood, in 300 years. I am glad that he is converted to the new language and optimism about the benefits of the act.

I welcome the bill and the creation of revenue Scotland. There is relative consensus across the piece about the benefits of having this new tax body. I note, however, that even before it has been created, it is much more successful than the United Kingdom body. Before any employees are in place or any actions have been conducted, it is much more effective than the UK body.

I was quite interested when John Mason said that what we are doing is not completely different from the UK but we want to do things our way. That contrasts quite starkly with the rhetoric that has been used about aggressive tax avoidance in the UK, as if somehow HMRC is stuck in the past, unable to tackle aggressive tax avoidance by the likes of Amazon and Starbucks and many other companies that we have heard of. However, when John Mason gets down to the detail of exactly how we will implement this new tax body and the principles that will be established he says that it is not completely different, but our way.

In fact, he praised HMRC for making significant progress. He was right, because, with its general anti-abuse rule, the UK Government has managed to make significant progress. There have been 40 changes in tax law since 2010 and many loopholes have been closed. The general anti-abuse rule has meant significant progress and we have got in billions of pounds as a result of it. Often when we hear members in the chamber talk about HMRC, they talk as if it is some defunct body that is incapable of collecting tax. I like John Mason’s phrase, not completely different, but our way.

Jean Urquhart (Highlands and Islands) (Ind): Will the member take an intervention?

John Mason: Will the member give way?

Willie Rennie: I will take an intervention from John Mason, given that I referred to him.

John Mason: I appreciate the member referring to me, but he slightly overstates my enthusiasm for HMRC. Does he accept that there is still a key difference between anti-abuse legislation at Westminster and our wider anti-avoidance legislation?

Willie Rennie: I accept that there is a difference and that our legislation goes further. The concerns of ICAS and the Law Society of Scotland need to be taken into account, because if we are to take a much more assertive approach to dealing with tax avoidance, we have to consider the potential consequences. There is no point going into this new measure blind, thinking that there will be no shift of investment from Scotland to elsewhere as a result of a less lucrative environment for some people who would like to invest. I would like the finance secretary to address that in his closing remarks. What does he think about the validity of the points that ICAS and others have made? I do not mean whether what they suggest will come to pass and whether they are right about uncertainty having an effect on investment but, rather, if they are right, what measures he has in place to deal with those consequences. There is a concern that if they are right in believing that the broader, inclusive approach to dealing with tax avoidance will create uncertainty, that will have an impact on the budget.

Again, this is about a precursor to the independent revenue body that the SNP is expecting to come about. A figure of £250 million
has been arrived at. I would like to know from the finance secretary exactly how that figure was calculated. Who are the people who are not paying tax currently but who will pay as a result of the measure? I like to deal in practicalities. I like to see the examples of who these new measures will catch.

The reality is that, as we have seen in New Zealand, creating a new tax body would be expensive. Sometimes making something simple is more costly and, therefore, it would have an impact on our budgets, too. That is why it is important that we deal not just with the upsides of creating a new tax body and a new tax system that is much more simple and less complex but with the consequences for investors and people who are trying to avoid tax. What would be the impact on our budgetary system and, therefore, on the budget for an independent Scotland?

Those are the questions to which I would like to hear answers from the First Minister—sorry, the finance secretary; he is not the First Minister yet. I would like to get some answers to the concerns that ICAS has drawn to the attention of the committee and the Parliament.

15:19

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I suppose that this bill is probably not viewed as the most exciting piece of legislation ever to come before the Parliament—certainly my mail bag has not been bursting at the seams with letters from constituents on the subject—but it is an important bill nonetheless, and I am very glad to have been part of the Finance Committee’s scrutiny of it at stage 1.

This is the third bill that relates to taxes that have been devolved to the Parliament, as has been said, and it complements the two previous parliamentary acts and is necessary in establishing the structure for revenue Scotland, which will be responsible for the collection of those devolved taxes.

I turn to a few specific points in the bill. The general anti-avoidance rule has already been mentioned. I am very supportive of the Scottish Government’s principles-based approach, which is the effective way forward. Although it probably cannot be said that most people relish paying their taxes, I think that most people accept and understand the need to do so, even more so when they feel that others are not avoiding paying their taxes. The approach is effective and the best way forward.

At stage 1, we received evidence that some perhaps did not agree with that. For example, ICAS argued that there is “no certainty at the moment on the real impact of the GAAR”.

It felt that it failed Adam Smith’s maxim about certainty. Surely if the expectation of the Scottish Government and its agency, revenue Scotland, is that no individual organisation should engage in avoidance, I cannot see what is uncertain. The convener of the Finance Committee referred to Heidi Poon’s evidence to the committee, which was very illuminating. She suggested that “A more principles-based approach would give more certainty”.—[Official Report, Finance Committee, 26 March 2014: c 3870.]

Therefore, I support the approach that is being taken.

I was quite relaxed about how many of the penalties were to be determined by secondary legislation. After all, such penalties would have the same effect in law and would be subject to parliamentary scrutiny in the same way as primary legislation is. However, I accept that many bodies that gave evidence to the committee felt that that was an issue. Again, they believed that it was an issue of certainty. I cannot see why, if penalties are in place in the tax system, their being in primary legislation, rather than secondary legislation, makes things more certain, but I recognise that organisations raised concerns. In that context, we should welcome the Scottish Government’s lodging of amendments to put more detail in the bill, which can be amended in future by affirmative instrument. That is a sensible compromise, and I look forward to reviewing the amendments at stage 2.

The charter that revenue Scotland will prepare will, of course, set out the standards that it will operate to and the standards that will be expected of taxpayers. Two issues were identified early on with the bill as drafted. It said that the charter would set out what revenue Scotland would aim to do, but what was expected of the taxpayer. I think that the committee as a whole and certainly a number of witnesses felt that that did not seem equal or reciprocal. To be fair, I think that the bill team accepted that the wording could have been better. I was glad that the cabinet secretary confirmed that an amendment will be lodged to ensure that that is changed. Witnesses also had a strong desire for consultation on the charter. Again, it is welcome that the cabinet secretary has confirmed that an amendment will be lodged to that effect.

The issue of revenue Scotland’s membership has been raised, particularly whether the chief executive should be on the board. The cabinet secretary mentioned that, and a few witnesses raised the issue during stage 1 scrutiny—I emphasise that a few witnesses raised it; most did not have anything to say about it. Those who
raised it seemed to view it as important that the chief executive should be on the board to maintain contact with board members. It is clear and self-evident that it would be important for the chief executive to do that.

The cabinet secretary asked for views on the matter. My view is that the issue is a little overblown. It is clear that, in any organisation, it would be perfectly acceptable for the chief executive to attend any board meeting without their being a member of it. There are circumstances in which that could be an advantage. If the board had to discuss the chief executive’s position, that might be easier to do if they were not a member of the board. I think that the needs of those who said in evidence that the chief executive should be a member of the board can be achieved without the chief executive being a member of the board. Therefore, I support the bill’s present approach.

The last issue that I will raise very briefly is a minor one: the names of the tribunals. The Faculty of Advocates is concerned that the tribunals’ names are very similar to those of the UK tax tribunals and, understandably, it felt that that could cause some confusion. I hope that we can look at altering the names at stage 2.

Overall, I very much welcome the sensible approach taken in the bill. I look forward to further scrutinising the bill at stage 2 with Finance Committee colleagues.

15:25

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): As other members have reminded us, this is the third prong of a set of legislation that will see devolution of new revenue-raising powers to Scotland. The bill will give us our first body for management of taxation, and a statutory framework on which effective devolution of taxation will be based, whether or not that is under independence—as I know some members would want it to be. However, I note that ICAS has said today that an entirely independent taxation system would be a rather costly option.

The general anti-avoidance rule is at the heart of the bill and it should be informed by the principle of fairness. However, I want to make a few other points in relation to fairness before turning to the GAAR.

Section 10 of the bill requires revenue Scotland to prepare a charter that must include separate “standards of behaviour and values” for revenue Scotland and the same for taxpayers. It is not particularly fair that the bill includes separate obligations for revenue Scotland and for taxpayers, so I welcome the cabinet secretary’s announcement about reciprocal obligations, as well as his commitment to consult on the charter’s terms.

The issue of penalties is also important in respect of fairness. The committee recommended “more detail and greater consistency in relation to penalties on the face of the Bill”.

I welcome the cabinet secretary’s announcement that he will set out the details of the penalties on the bill.

I will mention two other aspects that are related to fairness. First, a vigorous approach to tax avoidance must be balanced by a fair appeals system. I raised that issue with the cabinet secretary at committee; the committee recommended that he “reconsider the restrictive rule governing appeals” to the Court of Session, and the number of members of the upper tax tribunal for appeals. He has not mentioned those issues; perhaps he will do so when he winds up.

Finally, before I turn to the GAAR, I believe that if we are to found a taxation system on the principle of fairness—a lot of discussion took place on this, and I do not have a particular view about the extent to which advice should be privileged—the provision on what is and what is not privileged advice should apply equally to all advisers, whether or not they are lawyers.

The general anti-avoidance rule is widely accepted as being a more thorough approach to reducing the blight of tax avoidance than has been a feature of previous UK arrangements. The bill will allow revenue Scotland to counteract tax avoidance arrangements based on whether the arrangements pass a test of artificiality. The proposed Scottish GAAR will thus be wider than the UK general anti-abuse rule, which targets only abusive arrangements.

On the whole, the GAAR is a positive measure that the committee welcomed. However, its wide scope has also caused concerns for bodies including the Law Society of Scotland, which emphasised the need to protect taxpayers’ rights. It is among a number of voices that are calling for an independent advisory panel to take an informed view of individual disputed cases. It is interesting that the Scottish Trades Union Congress did not object in principle to such a panel, but it made the point that were such a panel established, the personnel on it would have to be very widely representative—more widely representative than those on the equivalent UK panel. The committee did not support the introduction of an advisory panel; I was happy to go along with that recommendation. However, it recognises the need for additional protection for taxpayers.
A further issue on the general anti-avoidance rule concerns clarity on the definition of what is reasonable and the test that is applied to measure that. For purposes of certainty, which is a guiding principle of an effective taxation system, the widely drawn GAAR requires the definition of reasonableness to be as clear and unambiguous as possible. However, what is reasonable to one person may not be reasonable to another. That is why HMRC applies a double or second reasonableness test. I found myself in committee saying that—perhaps to my own surprise—the double reasonableness test is quite reasonable. However, the committee did not go along with the idea of a double reasonableness test.

One way to provide certainty in that regard is to enshrine in the bill clear principles on what is considered reasonable. As Dr Poon told the committee:

"certainty is not conferred by whether the GAAR is widely or narrowly drawn"—[Official Report, Finance Committee, 26 March 2014; c 3870.]

The cabinet secretary’s indication that the bill will enshrine clear principles of tax compliance was broadly welcomed by the committee.

The inclusion of more targeted measures would simply create a build-up of rules that would allow opportunities for loopholes to develop, as Justine Riccomini and Heidi Poon agreed. That has been the case with the current United Kingdom system.

The committee said that, in the interests of fairness, revenue Scotland should "consult widely on a draft of its guidance on the application of the GAAR."

I think that the cabinet secretary has indicated that he will go along with that recommendation. In general, we should appreciate that he has responded positively to several of the committee’s recommendations.

We want to preserve revenue Scotland’s independence. The committee recommended that guidance from the Government to revenue Scotland should be published. I think that the cabinet secretary has accepted that, with some qualification.

This is an opportunity to create a mechanism that functions effectively, in relation to the taxes that we will receive in this Parliament and changes that take place in the future. It is the start of a long-term project, which will require watertight legislation that is built on clear and unambiguous values and principles. The bill is a reasonable start.

15:31

Colin Beattie (Midlothian North and Musselburgh) (SNP): I welcome the opportunity to speak in this debate on the important—if slightly dull—subject of taxation.

The United Kingdom as a whole raises about 35 per cent of gross domestic product in taxation. In Scotland, council tax and non-domestic rates, which are the only fully devolved taxes, account for 6.9 per cent of tax revenues. Given the limited powers that we have, the Revenue Scotland and Tax Powers Bill represents an attempt to redress that state of affairs. The bill’s provisions on collection and management of the land and buildings transaction tax and the Scottish landfill tax will, I hope, raise the tax take to 7.5 per cent of revenues, which would be a small step in the right direction.

Taxation is fundamental to modern states and to provision of public goods and services. The Organisation for Economic Co-operation and Development average for tax revenues as a percentage of gross domestic product is about 34 per cent, which means that the UK’s 35 per cent is slightly above the average. We know that almost 70 per cent of Scotland’s revenue comes from income tax, VAT, national insurance contributions and North Sea revenue but, of course, that income is filtered through Westminster, and the Scottish Government has minimal flexibility in that regard. Only independence would enable us to take charge of our own tax affairs.

The land and buildings transaction tax is expected to improve significantly on the stamp duty system that it replaces. Each rate of LBTT will apply only to the part of the sale that is above the corresponding threshold. I hope that all members agree that this is much fairer than the stamp duty system, which applies to the entire sale price. The stamp duty system inevitably results in major discrepancies in relation to transactions on either side of the price threshold: an increase of just £1 on a house price can result in a tax bill that is thousands of pounds higher.

Furthermore, stamp duty has been criticised because it can lead to the bunching of house prices, given that buyers are understandably keen to avoid paying it. The end result is a skewed pricing structure. In 2007, more than 3,500 houses in the £125,000 band were sold, compared with just over 1,500 houses in the £135,000 band. It is clear that changes need to be made. I look forward to next year’s introduction of the land and buildings transaction tax, which is a progressive tax that will be far better for all.

The creation of a general anti-avoidance rule is an important step in our efforts to combat tax avoidance. Recent stories in the media
demonstrate that the issue is not going away. It is the Scottish Government’s responsibility to ensure that all devolved tax is paid on time, fairly and in full, especially given that we cannot rely on the Westminster machinery to close loopholes on our behalf. The importance of tackling tax avoidance cannot be overstated. To put it simply, tax avoidance reduces our public revenues and can fundamentally undermine public confidence in our tax system.

The bill will see the introduction of a 10 percentage point Scottish rate of income tax, which will reduce the budget by 10 per cent, but will allow the Scottish Government to decide whether to replace the lost revenue via that income tax. Although that measure will allow some flexibility, it has been criticised by the Institute for Fiscal Studies, which said:

"while the Scottish parliament will be able to decide that income tax ought to be higher or lower overall, it will not be able to change the balance of liabilities between taxpayers at different income levels or with different types of income ... The SRIT will also prevent Scotland from reducing just the higher or additional rate of income tax as a form of tax competition to attract high-income people (and the revenue that accompanies them) from the rest of the UK. The SRIT is far from giving Scotland full autonomy over income tax policy."

That raises a critical issue with the bill, which is that the Scottish Government is working within the confines of the Scotland Act 2012.

Gavin Brown: Has income tax got anything to do with the bill?

Colin Beattie: As the bill is about devolution of tax powers, it is reasonable to make the point that I made.

I said that the amount of fully devolved tax that we can raise will increase by only 0.6 of a percentage point, which is a drop in the ocean in comparison with what we could do in an independent Scotland. As the Institute for Fiscal Studies notes, the bill is rigid and inflexible and will not allow the Scottish Government to create a balanced tax regime. We cannot fully benefit if we lack control over revenue and expenditure.

We can take positives from the bill. The land and buildings transaction tax will implement a much fairer system for home buyers. The establishment of revenue Scotland as its own department with legal status will provide the basis of a tax collection agency in an independent Scotland. We should therefore regard the bill as a beginning and we should look forward to what can be achieved under independence.

At the moment, we rely on the UK tax system, which features more than 10,000 pages of legislation. That makes it one of the world’s longest tax codes. Numerous commentators have noted that an independent Scotland would have the opportunity to create a simpler and more lucid tax system. Another benefit of such a system would be reduced administration costs, which would bring Scotland into line with comparable countries including Finland, Sweden and Denmark.

The Deputy Presiding Officer: You should draw to a close.

Colin Beattie: Alongside the introduction of the Scottish general anti-avoidance rule, a simplification of the tax system would—through streamlined reliefs and reduction of compliance costs—reduce the potential for avoidance. The Scottish Government aims to increase revenue by £250 million a year by the end of the first session in which it operates through simplifying and streamlining the tax process. That is a substantial sum of money that will add considerably to the Scottish Exchequer.

The Deputy Presiding Officer: You should close, please.

Colin Beattie: I broadly welcome the introduction of the bill, which has some measures that will be of undoubted benefit. However, the only way in which we can truly progress our tax system is under independence.

15:37

Ken Macintosh (Eastwood) (Lab): Like most members, I welcome the debate and will support the bill at stage 1. I am not sure that all my SNP colleagues will agree with me, but I believe that the bill is yet another example of devolution’s success, both in principle and in practice.

I will make a couple of observations about the context in which the bill will operate and will ask questions about whether it fully fulfils our intentions or objectives. Several witnesses who gave evidence to the Finance Committee talked about the importance of getting our tax regime right. Any tax system has huge potential not just to reflect but to shape our economy, our Government and our country.

The SNP Administration often talks grandly about its radicalism and the transformational change that independence would supposedly bring, and ministers constantly hold up the examples of our Scandinavian cousins—Colin Beattie gave such an example a few minutes ago—and cite their approach to welfare reform. The picture is attractive to many of us, but as many of us know, it is based on an equally radical and different approach to taxation.

However, in practice, the SNP’s approach has mostly been conservative with a small “c”. Its guiding principle appears to be not so much to grasp the opportunity to make a difference as not
to rock the boat. I am not saying that it is wrong in taking that approach in this or the two preceding tax bills, but there is a stark contrast between ministers’ words and their actions in the Government. Even with the Revenue Scotland and Tax Powers Bill, ministers’ predominant concern seems to have been about how to devolve the taxes from the UK to Scotland without really changing anything.

John Mason: Does Ken Macintosh accept that we are considering two very small bills and that, especially with landfill tax, our scope for manoeuvre is quite limited?

Ken Macintosh: John Mason took the words right out of my mouth. I admit that revenue Scotland will be responsible only for the landfill tax and the land and buildings transaction tax, but what happened to the SNP’s plans for a local income tax? That was an election promise, was it not? I would welcome clarification from the cabinet secretary on exactly where we are with the local income tax. Is it officially ditched, or is the SNP maintaining the pretence that it is official policy and will be introduced at some as yet undefined stage?

The cabinet secretary has made much of the Government’s principles-based approach to the establishment of revenue Scotland. The legacy of Adam Smith has been invoked, as have his four maxims: certainty, convenience, efficiency and proportionality. However, as my colleague Iain Gray described in his opening speech—several other members also commented on this—there remain a number of questions about whether the bill could do more on the first of those principles. Certainty matters in taxation.

I will digress for a moment. In the 1960s, Zero Mostel starred in a funny film called “The Producers”, which was remade in 2005. The plot centres on the premise that, with some dodgy accounting, more money can be made from producing a flop show on Broadway than can be made from producing a hit. The film is very funny.

However, as Gary Barlow and other members of Take That have discovered, in reality the public opprobrium that is attracted by taking a similar approach to taxation is not funny at all. The difficulty in such cases comes in distinguishing between tax evasion, tax avoidance and tax management. Just as it is the duty of individuals and companies to pay taxes, so it is the duty of Government to make it absolutely clear exactly how much tax is expected. I do not need to remind members of this, but most Scots were totally shocked when it was revealed last week that Amazon paid only £4.2 million in tax in the United Kingdom last year despite selling goods worth £4.3 billion. The company’s defence—of course—is that that was entirely legal.

I do not want to be morally outraged by the behaviour of those who are not willing to pay their share for the provision of public services; I want to be legally certain of whether they are in the right or in the wrong. The danger with the bill is that it does not necessarily provide that certainty. The issue proved to be the focus of evidence to the committee and, like Iain Gray, Michael McMahon and Willie Rennie, I want to hear from the cabinet secretary how he can address the concerns that were raised by the Chartered Institute of Taxation, the Institute of Chartered Accountants in Scotland and others. It is worth emphasising that Labour members—in fact, the whole Parliament—entirely support the Scottish Government in taking a robust approach to tax avoidance.

To continue the theme of lack of certainty, I note that other aspects of the bill involve subsequent expected actions rather than detailed actions that are set out in the bill. In its submission at stage 1, Audit Scotland highlighted that there are no explicit provisions to cover auditing or accounting of revenue Scotland, although it is crucial that the work of revenue Scotland be open and transparent. I welcome the fact that it will be independent of ministers, but I would like to know what requirements ministers expect to place on revenue Scotland in terms of performance information and reporting arrangements, particularly regarding its record on collection and enforcement.

I support the bill.

15:43

Jim Eadie (Edinburgh Southern) (SNP): I am grateful for the opportunity to speak in the debate. The Revenue Scotland and Tax Powers Bill is an important bill. Its title may be dull—I do not think that anyone would deny that—but the bill serves a serious purpose, which is to fulfil the requirements of transferring the financial powers that are outlined in the Scotland Act 2012, to set out a positive framework that will allow the Scottish Parliament to assume responsibility for further tax powers in the future, and to address tax avoidance in the widest sense. We should all welcome those developments.

The cabinet secretary has made it clear this afternoon and in his evidence to the committee that the Government intends to take the toughest possible line on all tax avoidance—not on just the most extreme forms of abuse. That theme has been picked up by several members.

Iain Gray sought to explain the double reasonableness test. Until Malcolm Chisholm spoke, I thought that I understood it; I then realised that the issue is even more complex than I had thought. However, I think that in its general
The general anti-avoidance rule is broader than the UK general abuse rule, as has been said this afternoon. The greater breadth of the bill’s GAAR lies in the introduction of the test for artificiality, as opposed to the narrower UK test for abuse. The cabinet secretary quoted Mr Michael Clancy, who is the director of reform at the Law Society of Scotland, and who cannot be quoted enough in the chamber. I am therefore going to return to the wise words that he said in evidence to the Economy, Energy and Tourism Committee:

“We have compared those provisions with the current general anti-abuse provisions in the Finance Act 2013 and we think that the Scottish GAAR provisions are much better. They are less complex and should prove to be more effective.”—[Official Report, Economy, Energy and Tourism Committee, 19 March 2014; c 4205.]

I was intrigued by Michael McMahon’s account of the deliberations in the committee, with accountants and lawyers competing with each other. I therefore feel compelled to quote from the Law Society of Scotland, which stated that

“It would be misleading to suggest that most of the work of lawyers is involved in advising taxpayers on tax avoidance schemes”—[Official Report, Finance Committee, 12 March 2014; c 3810.]

rather than on helping clients to comply with their tax obligations. I think that all of us in the chamber will be grateful for that reassurance and clarification.

An important issue during committee consideration of the bill was professional privilege. Both the Faculty of Advocates and the Law Society of Scotland stated that they saw no reason to extend legal professional privilege beyond its current boundaries and took issue with the suggestion that the legal profession was benefiting from an unfair advantage. The Law Society stated in evidence to the committee:

“We are not aware of people flooding to lawyers’ offices rather than accountants’ offices to take tax advice because legal privilege exists. Accountants get more than their fair share of tax advisory work.”—[Official Report, Finance Committee, 12 March 2014; c 3811.]

The legislation is, of course, a direct consequence of the fact that this Parliament and the UK Parliament passed the Scotland Act 2012. However, even after that act comes into force, the Scottish Parliament will be responsible for only 15 per cent of Scotland’s tax revenues. That reminded me of the piece of work that was undertaken by Sir James Mirrlees, who has been mentioned already this afternoon, in his report on the UK tax system entitled “Tax By Design; the Mirrlees Review”, in which he stated:

“The UK system is ... unnecessarily complex and distorting. Tax policy has for a long time been driven more by short-term expedience than by any long-term strategy. Policymakers seem continually to underestimate the extent to which individuals and companies will respond to the financial opportunities presented to them by the tax system. They seem unable to comprehend the importance of dealing with the system as a whole.”

Those wise words are reinforced by the work of the fiscal commission working group, which has looked at a number of the issues in the round and has concluded that, in relation to personal taxes, under the current system employed and self-employed individuals who undertake similar work are treated differently in terms of their national insurance contributions and that, more generally, income tax and national insurance contributions, which are effectively two separate taxes on the same income stream, are measured on different bases. The variations in rates, time periods, thresholds and applicability seem to underline the fact that the system is not fit for purpose.

The fiscal commission has stated:

“With regard to links to the wider welfare system, the current system comprises a range of tax credits and benefits, with a mixture of means tested and universal provision. All of these can impact on the effective rate of taxation, especially at the margin, leading to often conflicting incentives with regard to certain activities such as participation in the labour market.”

In his book “Money for Everyone. Why We Need a Citizen’s Income”, Malcolm Torry has argued that the criteria for a benefits system should be coherence and administrative simplicity. It is clear to me—as, I am sure, it must be to many members—that neither the current UK tax system nor the UK benefits system meet the criteria of coherence and simplicity. I believe that we can do better with further powers of financial responsibility, which are coming to this Parliament, and with independence, which will surely follow a yes vote in the referendum.

17:49

Patrick Harvie (Glasgow) (Green): Like others, I welcome the Revenue Scotland and Tax Powers Bill and the approach that the Government is setting out in seeking to build in anti-avoidance as a principle from the word go.

Iain Gray described the bill as part of a series of pieces of legislation on tax, saying that we have a series but not the full box set. It may be that some of us on my side of the independence debate interpret that phrase a little differently. I would like Scotland to have the full box set of tax powers. However, even if others only see us getting one or perhaps two more series, the bill is clearly part of a transition towards Scotland needing an
organisation that exercises more than just the tax powers in the bill. It is therefore really important that we get that organisation and its culture right from the outset.

I argue that the bill is also part of a series of debates that we are having that relate to inequality. That is a far cry from the speech that Margaret Curran has given today suggesting that debate on inequality in Scotland has been shut down by the referendum. We are having a series of debates about the tax system, we will debate the welfare system when the Government’s commission reports back on that, and we have been debating the structure of the economy as well. All those things are necessary if we are to address the inequality problem that our society suffers from.

It is crucial that we get the organisational culture right from the start. People have been talking about the long-standing principles of certainty, efficiency, convenience and proportionality, but I wonder whether there is one missing, because we do not really talk about the principle of progressive outcomes. Whether in relation to the initial, small tax powers or the wider tax powers that we may get, whether they are to raise all our own revenue or 40 or 50 per cent of it, we should be looking for a progressive outcome and ensuring that we close the gap between rich and poor.

There are also some assumptions that inform this debate, which are sometimes unspoken. For example, there are assumptions about greed. It may well be in some people’s nature always to seek advantage and to seek to minimise what they pay and maximise what they can extract from any engagement with the economy or wider society, but I do not think that that is human nature. It is much more a cultural norm or a cultural expectation, and it can and should be challenged. When Governments and Parliaments pass legislation, they do not set cultural norms unilaterally. We do not establish them when we pass bills or establish new systems such as revenue Scotland. However, we contribute to them.

As Jim Eadie suggested in some of his comments, a comparison between our approach to taxation and our approach to welfare is instructive. It is almost as though, when we debate taxation, the expectation that wealthy people and businesses will always seek to minimise what they pay cannot even be challenged, but we would not accept the same principle in relation to the welfare state. We do not accept that people seeking to maximise false or unfair claims on the welfare system is just something that we have to expect and live with. In fact, the UK’s welfare system is far harsher on people who misclaim benefits than our tax system is on those who underpay on their taxation—those who seek to wriggle through every loophole, whether legally or by skirting around the edges of what is legal.

Given that both systems—taxation and welfare—are necessary if we are to achieve progress towards a more equal society, we should be looking to be as ruthless on cutting down on tax avoidance—or perhaps more so—as we are in relation to those who might seek to gain what is a much smaller advantage, in reality, from the welfare system. The penalties and sanctions that we have are quite disproportionate.

In debating the welfare system we also discuss a benefits cap, yet in debating the taxation system we do not discuss a principle that wealthy people must always pay a higher proportion of their income and wealth than poorer people. In fact, as I think we all know, our taxation system does not achieve that and has not for a long time. The expectation of pure self-interest in relation to tax systems and the way in which we operate them should be challenged.

I support the Government’s suggested broad approach to the anti-avoidance rule. To those who are worried about the lack of clarity, I would just ask why. If someone’s aim in constructing a tax arrangement is not to avoid tax or to seek a tax advantage, the worst that will happen, from my reading of the bill, is that the tax advantage that they have accidentally achieved will be corrected. If their aim is not to achieve tax avoidance, why should they worry? It is no big deal for them to lose a tax advantage that they had not intended to achieve.

The Deputy Presiding Officer: I ask the member to draw to a close, please.

Patrick Harvie: In conclusion, legal tax avoidance is not the only driver of inequality in our system. We also need a fair welfare system that does not bully people into low-paid work, and we need to address the structure of our economy. However, tax avoidance has been one of the drivers of inequality in our society for decades, and it must be tackled.

15:56

Gavin Brown: The debate has been pretty good, following a pretty interesting committee report and investigation. I will pick up on a couple of points from the debate before coming to a couple of themes that I want to cover.

The cabinet secretary said in his opening speech that he was interested in Parliament’s view on whether or not the chief executive of revenue Scotland should sit on the board. The committee considered that issue in detail, and many witnesses were asked the question. I am afraid
that the result of our consideration on that point is not terribly helpful to the cabinet secretary in enabling him to reach a decision.

There were good arguments put forward for why the chief executive should be on the board of revenue Scotland, and good arguments for why he should not. I, and the rest of the committee, found it difficult to decide which argument was more powerful and, as a consequence, we felt that leaving the provision in the bill as it was drafted was fair enough. It was difficult to say that one argument was better than the other.

Jamie Hepburn spoke about penalties and suggested that he was a bit more relaxed about whether penalties should be in secondary or primary legislation. He is correct to say that, whichever it is, they would still have the force of law and would still have to be applied. Ultimately, the taxpayer may not be bothered about whether penalties are in primary or secondary legislation, but I believe that the Government’s change of approach to include penalties in primary legislation is right. Primary legislation, by its very nature, receives considerably more scrutiny than secondary legislation. The committee can look at the amendments carefully at stage 2 and, if we have not got it right by stage 2, there are still opportunities to amend the provisions formally at stage 3. That is why it is important in getting the regime right that we deal with penalties through primary legislation.

In my earlier speech I touched on the safeguards that I thought ought to be considered in relation to the general anti-avoidance rule. I accept the thrust of what the Government is doing, but it needs to introduce greater safeguards. I talked about the guidance that it is giving to a taxpayer in its interpretation, the longer-term resource implications. I ask the cabinet secretary to confirm whether that is the case. If Dr Heidi Poon’s reading is correct, which is a matter of interpretation, the longer-term resource implications would be greater in the absence of a DOTAS mechanism. Perhaps the Government can reflect on that.

One other concern in relation to safeguards for the GAAR concerns pre-clearance transactions. Those happen elsewhere, in certain instances, and again the Government may want to give some thought to that approach, particularly with regard to LBTT, for which it is probably more of an issue than it is for the landfill tax.

Three obvious approaches can be taken by any Government. There could be no system whatsoever, which is the current case; there could be an informal system in which there are discussions with the tax authority and a steer is given, but that steer is ultimately not binding; and the third option is to take a formal approach in which pre-clearance is signed off by the tax authority, which means that no challenge can be made later.

I put that specific question to Sir James Mirrlees, who is highly regarded by the Government and who has been quoted by a number of members for his expertise and by the cabinet secretary in his opening remarks. When I put those three approaches to Sir James Mirrlees, his response was:

“The second of your three approaches makes sense to me. It violates certainty a bit, so I can see why there is a case for the third approach but, on balance, that is what I would call for.”—[Official Report, Finance Committee, 5 February 2014; c 3626.]

I therefore suggest that a number of organisations argued for a pre-clearance scheme, and I think that there is some merit in it. I quoted Sir James Mirrlees because some experts out there can see the merit in having pre-clearance. It gives a degree of certainty, and it ought to be considered.

The other area I wanted to discuss was some form of advisory panel. The idea here is ensuring that the GAAR is applied with a degree of commercial experience, particularly given condition B in the legislation. The idea got support from a number of organisations that we might have expected to support it, but it also had support from Unison and the STUC, although that support would depend on who the members of the advisory panel are to be.

That is a point worth making in response to John Mason, who was pretty strongly against the advisory panel. However, the strength of such a panel would be that it would give independent expert advice; it would not just be revenue Scotland giving its take on things. One could argue about who ought to be on such an advisory panel—and different groups had different views—but its strength would be in its independence.

There ought to be some more safeguards in the bill but, as I said at the start, we agree with the Government’s approach and will support the bill come decision time.

16:02

Iain Gray: This has been a debate of broad agreement. It started off after the cabinet secretary with what was a very convenerly contribution from Kenneth Gibson, who summarised the committee’s deliberations very effectively. He said that he was looking forward to stage 2 and further
scrutiny. Gavin Brown rather jumped ahead to stage 2 by scrutinising the proposals on penalties, for example, that the cabinet secretary suggested he would make. That is good; it shows that there is an appetite for developing the legislation.

Interestingly, Mr Mason brought his inside knowledge of the accountancy profession to bear in the form of scepticism about his former colleagues’ motives in seeking certainty. He spoke up very effectively for the honest tax-paying citizen. Michael McMahon picked up that baton when he made the point that, if we are leaving lawyers and accountants disappointed, we are probably doing the right thing.

We were some way into the debate before somebody spoke up for the lawyers. Mr Eadie quoted them by pointing out that some of their representatives—Mr Clancy, for example—had strongly supported the GAAR and the Scottish Government’s approach as being better than that of the UK. There was, however, overall general agreement that tax avoidance is a bad thing, and it is a good starting point to ensure that we minimise it.

We should remind ourselves that tax avoidance is not new. I have a quote here from John Maynard Keynes, an economist who Mr Swinney often follows when it comes to capital investment. Many years ago, Keynes said:

“The avoidance of taxes is the only intellectual pursuit that carries any reward.”

I presume that he was still thinking of those lawyers and accountants. We should not therefore be naive about our capacity to end tax avoidance, but it is good to start from the right principles.

This has been a debate of widespread agreement. However, before we get too misty eyed about that and join hands across the chamber, I will make some remarks about two dogs in the debate that by and large did not bark, although there was some reference to them from Willie Rennie and Malcolm Chisholm, for example. One of them is looking back at where revenue Scotland has come from and the other is looking at where the cabinet secretary perhaps fondly imagines that revenue Scotland is going.

One or two members have made the point that revenue Scotland is a manifestation—an outcome—of the process of the Calman commission and the Scotland Act 2012: the latest enhancement of the devolution settlement. It is worth saying that, although it is the latest and perhaps one of the biggest enhancements of the devolution settlement, it is far from being the only one. It rather gives the lie to the idea that devolution is somehow fixed and unchangeable and cannot match itself to new and developing circumstances.

Indeed, since the very beginning of devolution we have seen changes in the powers and responsibilities of this Parliament, such as responsibilities for new technologies and renewable energies—things that were not really known or understood at the time that the Parliament was set up. For example, some of the responsibilities around consenting to offshore developments have passed to this Parliament.

Some of the changes have been driven by the logic of responsibilities that we already have. During the three years that I spent as an adviser in the Scotland Office, one of the biggest things that we did was devolve responsibility for rail infrastructure to this Parliament, which was a logical development of the fact that we had responsibility for rail services and the franchise. That was a significant piece of devolution, because it brought with it investment of around £300 million every year. Of course, the amount each year has become rather more than that as time has gone on.

The changes have encompassed all Administrations. The current UK Government—not that I am in any way an apologist for it—has enhanced the devolution settlement when it felt it appropriate. For example, it has devolved some parts of the welfare system to the Parliament. The responsibility for community care grants and crisis loans is one example, and the most recent example is the agreement that control over discretionary housing payment caps will be devolved to the Parliament.

Devolution has changed over time, but there is no doubt that the Scotland Act 2012 and the Calman process that preceded it have provided one of the biggest enhancements. The driver for that was to rebalance the Parliament and give it more fiscal powers to match its very high level of legislative responsibility. All that demonstrates that devolution is dynamic and flexible: a powerful democratic system that we can use to our best advantage. It will continue to be so.

It is no secret that I and my party want more devolution of welfare—such as housing benefit—and taxation. That is the actual meaning of the old phrase,

devolution is a process, not an event,

which was said not by Donald Dewar but by Rhodri Morgan.

Independence, of course, would be an event, and it would not enhance but destroy devolution, because we would give up the powerful combination of the ability to pool risk, reward, resources and opportunities with the ability to make strong democratic choices over a wide range of sectors in public and private life.
Nonetheless, that is where the cabinet secretary wants to take us. I think that he has said in the past—and certainly Colin Beattie said today—that revenue Scotland would become our equivalent of HMRC were Scotland to become independent. I am a little puzzled by that because, when I was in a debate last week, one of Mr Beattie’s colleagues thought that we would contract out responsibility to, for example, HMRC—although that option was not favoured in the relatively small case of the two taxes that we are discussing today.

ICAS is puzzled as well. The paper that it produced today demonstrates that the cost of independence on taxation is not clear but could be anything up to £3.25 billion. There would be a staffing cost as well: 2,500 HMRC staff in Scotland would not be required. There would be problems of a lack of specialist staff. For example, staff who deal with oil and gas are based not here in Scotland but in London, and those who deal with national insurance are based in Newcastle.

There are therefore still big questions about revenue Scotland and its future but, with regard to the bill, there is a widespread welcome for the body and general support for the cabinet secretary’s approach. The bill will go on to stage 2 with a fair wind from those of us in the Labour Party and, I rather suspect, members from right across the chamber.

16:10

John Swinney: I thank members of the Finance Committee and other members of the Parliament for the way in which they have engaged with the bill, which sets foundations in which all of us must have confidence. My guiding principle in working through the bill process is to give clear leadership but to ensure that the bill commands wide political agreement, because there has to be contentment across the political spectrum with the approach that we take.

It was particularly kind of members to record their thanks to my bill team. That is important, because the individuals who work in that team have to convey to the Parliament in their evidence and in the steps that they take the clear guidance that I give on the formulation of the bill, and they have to deal with the fact that the bill has to meet that high test of being able to command broad parliamentary agreement. It is in that spirit that I respond to the debate.

I will deal with a couple of issues before I come to the heart of the debate, which has been on issues to do with the GAAR and issues of certainty. Ken Macintosh talked about issues that Audit Scotland raised. As an office-holder in the Scottish Administration, revenue Scotland will automatically be subject to audit by Audit Scotland. Under sections 11 and 12, revenue Scotland will be required to prepare and publish a corporate plan and an annual report, both of which will be laid before the Parliament. Thereafter, it will be up to the Parliament to exercise the scrutiny that it determines to be appropriate for those issues.

Ken Macintosh: Audit Scotland is of the view that the Government will have to introduce an order, possibly to coincide with the day of implementation of the bill. Is that correct?

John Swinney: I cannot confirm that that is the precise approach, although I suspect that it will be. We are working on the assumption that, as an office-holder in the Scottish Administration, those arrangements will apply to revenue Scotland.

Malcolm Chisholm asked about the number of members of the upper tax tribunal. I will lodge an amendment at stage 2 to allow the president of the tax tribunals to appoint additional members of the upper tribunals in cases that are particularly important or complex and to provide the flexibility to apply that.

John Mason raised the issue of professional privilege, as he did in the committee, if I recall correctly. There is a difference in treatment between the accountancy profession and the legal profession. The arrangements that we have in place are part of long-standing legislative arrangements on legal privilege and I do not propose to revisit them as part of the bill. However, I will say that it is important that the standards and methods of operation in handling all business in relation to privilege must be within the spirit of the legislation. We expect that of the legal profession and the accountancy profession.

I turn to the issues that have been raised about the general anti-avoidance rule. I am happy to give Mr Gibson, the convener of the Finance Committee, an undertaking that I will exercise my power to issue guidance to revenue Scotland to make it clear that I expect it to consult in advance on all guidance that it proposes to publish, and not merely the GAAR guidance, except where there are good operational reasons for not doing so.

I will try to tackle some of the issues that Mr Brown and others raised about the alternatives to a GAAR that we could put in place—I suppose that I should say the complements of additional tests that could be applied. I am generally pretty unsympathetic to those alternatives for a number of reasons.

Mr Brown suggested a DOTAS approach. In my formal response to the committee, I said that I gave careful consideration to that but, on balance, decided that the disadvantages—particularly the potential resource implications for revenue Scotland—outweigh the arguments for putting in
place such arrangements, at least for the present. It is not only about resources; it is about the fact that, with the bill, I am trying to create the clearest possible culture of responsible tax paying, in which the burden of tax is shared fairly by individuals and companies paying their taxes in full as the Parliament intended.

I think that that is the spirit in which Patrick Harvie makes his contribution to the debate. It is also the tone set by John Mason in his speech, in which he made the point that not only the letter but the spirit of the law is important in paying taxes. That is the tone that I tried to set in the bill’s design and, if we apply the bill with that approach, we will minimise the need to have a DOTAS approach, some further review mechanisms or other provisions because the general anti-avoidance rule will signify that we expect individuals to comply with the legislation in full.

That is the heart of my response to Mr Gray’s and Mr Rennie’s points on certainty. If individuals or businesses are prepared to pay taxes within a culture of responsible tax paying as we expect, I do not see what need there is to put in place any mechanisms other than the general anti-avoidance rule, because it signals to people the standards by which we intend to operate.

Mr McMahon also explored some of that territory in his speech, in which he suggested that there can be a place for targeted anti-avoidance rules. Of course there can be a place for such rules if they are required, but the style that I am trying to bring to the bill is to establish all our direction based on the creation of a clear and simple set of arrangements for paying tax. Those arrangements are designed to work within the spirit of the general anti-avoidance rule and to give us the robust framework within which individuals and organisations should operate to comply with the legislation. That has been done because we have tried to translate into legislation Adam Smith’s four principles on certainty, proportionality to the ability to pay, convenience for the taxpayer and efficiency. I will continue to apply those tests as we continue to scrutinise the bill as it passes through the Parliament.

In the last part of his speech, Mr Gray talked about where revenue Scotland had come from and where it was going. Yes, revenue Scotland has emerged out of the Scotland Act 2012. I do not think that I could ever be identified as someone who signs up to what Mr Rennie described as the new optimism of the Scotland Act 2012. If that act is all that captures our country’s new optimism, heaven help us. I am determined to be infinitely more optimistic and ambitious than anything that it could produce for us. I simply and gently point out that the Scotland Act 2012 did not even give us all the powers that the Calman commission envisaged coming to the Scottish Parliament, so for it to be used as an example of the unionist parties’ pioneering, ambitious approach to devolving further powers to the Parliament is well misplaced.

My final point concerns the comments that were made today about the ICAS paper. I simply point out that Scotland participates in an existing tax system. I want that system to be a great deal simpler and more efficient. I have demonstrated how that can be undertaken by the approach that we have adopted to this legislation as we take it through the Parliament. That will be the approach that we continue to take as the Parliament acquires more responsibilities. This legislation demonstrates that it is perfectly possible for us to undertake effective and strong tax legislation in the Scottish Parliament, and the independence referendum in September gives us the opportunity to do a great deal more of that, in the interests of the people of our country.
Revenue Scotland and Tax Powers Bill: Financial Resolution

16:20

The Deputy Presiding Officer (Elaine Smith): The next item of business is consideration of motion S4M-09142, in the name of John Swinney, on the Revenue Scotland and Tax Powers Bill financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Revenue Scotland and Tax Powers Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[John Swinney.]

The Deputy Presiding Officer: The question on the motion will be put at decision time.
Revenue Scotland and Tax Powers Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

<table>
<thead>
<tr>
<th>Sections</th>
<th>Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 and 2</td>
<td>1</td>
</tr>
<tr>
<td>3 to 24</td>
<td>2</td>
</tr>
<tr>
<td>25 to 105</td>
<td>3</td>
</tr>
<tr>
<td>106 to 217</td>
<td>4</td>
</tr>
<tr>
<td>218 to 220</td>
<td>5</td>
</tr>
<tr>
<td>221 to 225</td>
<td>6</td>
</tr>
</tbody>
</table>

Sections 1 to 2
Schedule 1

Sections 3 to 24
Schedule 2

Sections 25 to 105
Schedule 3

Sections 106 to 217
Schedule 4

Sections 218 to 220
Schedule 5

Sections 221 to 225
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 1

**John Swinney**

1. In schedule 1, page 92, line 19, at end insert—
   <( ) a member of the National Assembly for Wales,
   ( ) a member of the Northern Ireland Assembly,>

   **Section 3**

   **John Swinney**

   2. In section 3, page 2, line 16, after first <to> insert < taxpayers, their agents and>

   **John Swinney**

   3. In section 3, page 2, line 18, after <taxes> insert <(including by mediation)>  

   **Section 8**

   **John Swinney**

   4. In section 8, page 3, line 35, leave out <(1)> and insert <(3)>  

   **Section 10**

   **John Swinney**

   5. In section 10, page 4, line 11, leave out <will aspire> and insert <is expected to adhere>

   **John Swinney**

   6. In section 10, page 4, line 12, leave out <people> and insert <taxpayers, their agents and other persons>
In section 10, page 4, line 13, leave out <people> and insert <taxpayers, their agents and other persons>.

In section 10, page 4, line 14, leave out <aspire> and insert <adhere>.

In section 10, page 4, line 18, at end insert—

<( ) Before publishing or revising the Charter, Revenue Scotland must consult such persons as it considers appropriate.>

Section 13

In section 13, page 5, line 23, leave out <Revenue Scotland> and insert <A relevant person>.

In section 13, page 5, line 23, leave out <it> and insert <the person>.

In section 13, page 5, line 25, leave out subsection (2).

In section 13, page 5, line 31, leave out <“Revenue Scotland” includes> and insert <“relevant person” means>.

In section 13, page 6, line 1, after <functions> insert <,

( ) a member of staff of a person mentioned in paragraph (e)>

In section 13, page 6, line 6, after <enactment> insert <,

( ) in the case of a member of staff of a person mentioned in subsection (3)(e)—

(i) a function which Revenue Scotland has delegated to the person and which the member of staff is exercising, and

(ii) a function of the person under any other enactment which the member of staff is exercising>

Section 14

In section 14, page 6, line 10, leave out first <Revenue Scotland> and insert <a relevant person>.
17 In section 14, page 6, line 14, after <Scotland> insert <or of a person to whom Revenue Scotland has delegated any of its functions>

18 In section 14, page 6, line 15, after <Scotland> insert <or of such a person>

19 In section 14, page 6, line 15, leave out <others> and insert <other persons>

Section 15

20 In section 15, page 6, line 22, leave out <Revenue Scotland> and insert <relevant>

21 In section 15, page 6, line 24, leave out <Revenue Scotland> and insert <relevant>

22 In section 15, page 6, line 33, at end insert—

   =( ) it is made for the purposes of obtaining services in connection with a function of Revenue Scotland,>

23 In section 15, page 7, leave out lines 1 and 2

24 In section 15, page 7, line 4, leave out <mentioned in paragraph (f)> and insert <to whom Revenue Scotland has delegated any of its functions>

Section 16

25 In section 16, page 7, line 6, leave out <Revenue Scotland> and insert <relevant>

After section 16

26 After section 16, insert—

   <Other limits on use and disclosure of information>

   Disclosure of information prohibited or restricted by statute or agreement

   Sections 13(1) and 15(3) are subject to any provision which prohibits or restricts the use of information and which is contained in—

   (a) this Act,

   (b) any other enactment,
(c) an international or other agreement to which the United Kingdom, Her Majesty’s Government or the Scottish Ministers is or are party.

John Swinney

27 After section 16, insert—

<Protected taxpayer information: use by the Keeper

(1) This section applies to information that—

(a) is held by the Keeper in connection with a function which Revenue Scotland has delegated to the Keeper, and

(b) is protected taxpayer information.

(2) The Keeper may not use that information in connection with the Keeper’s functions under section 108 of the Land Registration etc. (Scotland) Act 2012 (asp 5).

Section 23

John Swinney

28 In section 23, page 9, line 5, at end insert—

<( ) Before appointing such a person, the Scottish Ministers must consult the Lord President.>

Section 24

John Swinney

29 In section 24, page 9, line 31, leave out <office> and insert <their positions>

Schedule 2

John Swinney

30 In schedule 2, page 95, line 7, at end insert—

<( ) Before appointing a person as an ordinary member, the Scottish Ministers must consult the Lord President.>

John Swinney

31 In schedule 2, page 95, line 12, at end insert—

<( ) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.>

John Swinney

32 In schedule 2, page 95, line 19, leave out from <, or> to end of line 20

John Swinney

33 In schedule 2, page 95, line 24, at end insert—

<( ) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.>
34 In schedule 2, page 95, line 31, leave out from <, or> to end of line 32.

35 In schedule 2, page 96, line 5, at end insert—
   <( ) a member of the National Assembly for Wales,
   ( ) a member of the Northern Ireland Assembly.>

36 In schedule 2, page 96, line 12, after <sub-paragraph> insert <(2A).>

37 In schedule 2, page 96, line 14, after <sub-paragraph> insert <(3A).>

38 In schedule 2, page 96, line 14, at end insert—
   <(2A) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (1)) is—
     (a) current practice as a solicitor or barrister in England and Wales or Northern
        Ireland, and
     (b) engagement in practice as such for a period of not less than 5 years.>

39 In schedule 2, page 96, line 15, leave out <referred to in sub-paragraph (1)> and insert
   <mentioned in this sub-paragraph (also referred to in sub-paragraph (1))>

40 In schedule 2, page 96, line 19, at end insert—
   <(3A) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (2)) is—
     (a) current practice as a solicitor or barrister in England and Wales or Northern
        Ireland, and
     (b) engagement in practice as such for a period of not less than 10 years.>

41 In schedule 2, page 96, line 20, leave out <referred to in sub-paragraph (2)> and insert
   <mentioned in this sub-paragraph (also referred to in sub-paragraph (2))>

42 In schedule 2, page 97, line 1, leave out <other matters referred to in sub-paragraphs (1) and (2)> and insert <matters mentioned in this sub-paragraph (also referred to in sub-paragraphs (1) and (2))>

43 In schedule 2, page 97, line 2, after <through> insert <current or previous>
In schedule 2, page 97, line 8, leave out <8(3)(a)> and insert <8(2A) or (3)(a)>

In schedule 2, page 97, line 10, leave out <8(4)(a)> and insert <8(3A) or (4)(a)>

In schedule 2, page 98, line 25, at end insert—

<Appointment to position of President>

(1) Sub-paragraph (2) applies where a legal member of the First-tier Tribunal or of the Upper Tribunal becomes by appointment President of the Tax Tribunals. (2) The appointment mentioned in sub-paragraph (1) supersedes the earlier appointment as a legal member.>

In schedule 2, page 99, leave out lines 1 and 2 and insert—

<( ) Under sub-paragraph (1), such arrangements may (in particular)—

(a) include provision relating to payment of compensation for loss of office,

(b) make different provision for different types of member or other different purposes.>

In schedule 2, page 99, line 9, leave out from <in> to <the> in line 11 and insert <elsewhere in this Act or under it, the Scottish Ministers may determine the terms and conditions on which the members of the Tax Tribunals hold their positions.>

(2) Under sub-paragraph (1), a>

In schedule 2, page 99, line 14, leave out <categories> and insert <types>

In schedule 2, page 102, line 19, leave out <person> and insert <member>

In schedule 2, page 102, line 21, leave out <person> and insert <member>

Section 27

In section 27, page 10, line 30, leave out <presided over by> and insert <one of whom must be>

Section 28

In section 28, page 11, line 3, leave out <a single member> and insert <one or more members>
Section 28

In section 28, page 11, line 5, after <member> and insert <or members>

Section 29

John Swinney

Leave out section 29

After section 30

John Swinney

After section 30, insert—

Voting for decisions

The Scottish Ministers may by regulations make provision for the purposes of sections 27(1) and 28(1) in so far as a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the tribunal, including—

(a) for a decision to be made unanimously or by majority,

(b) where a decision is to be made by majority, for the chairing member to have a casting vote in the event of a tie.>

Chairing members

(1) Tribunal rules may make provision for determining the question as to who is to be the chairing member where a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the tribunal.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) allow the President of the Tax Tribunals to determine the question,

(b) specify criteria as against which the question is to be determined (including by reference to type of member or particular expertise).>

Section 31

John Swinney

In section 31, page 12, line 6, leave out <and 145(5)> and insert <, 145(5) and 208(4A)>

Section 33

John Swinney

In section 33, page 12, line 36, leave out from <, and> to end of line 3 on page 13

John Swinney

In section 33, page 13, line 4, leave out <and 145(5)> and insert <, 145(5) and 208(4A)>
Section 35

John Swinney

61 In section 35, page 13, line 21, at end insert—

(A1) Section 33(4) is subject to subsections (1A) and (1B) as regards a second appeal.

John Swinney

62 In section 35, page 13, line 22, at end insert—

(1A) For the purposes of subsection (A1), the Upper Tribunal or (as the case may be) the Court of Session may not give its permission to the making of a second appeal unless also satisfied that subsection (1B) applies.

(1B) This subsection applies where, in relation to the matter in question—

(a) a second appeal would raise an important point of principle or practice, or

(b) there is some other compelling reason for allowing a second appeal to proceed.

Section 41

John Swinney

63 Leave out section 41 and insert—

Venue for hearings

(1) Each of the First-tier Tribunal and the Upper Tribunal may be convened at any time and place to hear or decide a case or for any other purpose relating to its functions.

(2) Subsection (1) is subject to any provision made by tribunal rules as to the question of when and where the Tax Tribunals are to be convened (and such rules may allow the President of the Tax Tribunals to determine the question).

Section 44

John Swinney

64 In section 44, page 16, line 11, leave out <may> and insert <is to>

John Swinney

65 In section 44, page 16, line 14, leave out <such> and insert <awardable>

John Swinney

66 In section 44, page 16, leave out lines 19 to 21

John Swinney

67 In section 44, page 16, line 24, at end insert—

(3A) Tribunal rules may make provision—

(a) for disallowing any wasted expenses,

(b) for requiring a person who has given rise to any wasted expenses to meet them.
In section 44, page 16, line 25, after <(3)> insert <or (3A)>

In section 44, page 16, line 26, leave out <that subsection> and insert <this section>

After section 45

After section 45, insert—

<Offences in relation to proceedings>

(1) The Scottish Ministers may by regulations make provision, in relation to proceedings before the First-tier Tribunal or the Upper Tribunal—

(a) for offences and penalties—

(i) for making a false statement in an application in a case,

(ii) for failure by a person to attend, or give evidence in, such proceedings when required to do so in accordance with tribunal rules,

(iii) for alteration, concealment or destruction by a person of, or failure by a person to produce, something that is required to be produced in such proceedings in accordance with tribunal rules,

(b) about the circumstances in which a person need not give evidence or produce something (for example, where a person could not be compelled to give evidence or produce something in proceedings in a case before the sheriff or in the Court of Session).

(2) The maximum penalties that may be provided for in regulations under subsection (1) are—

(a) for an offence triable summarily only, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both),

(b) for an offence triable either summarily or on indictment—

(i) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(ii) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).

(3) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President’s approval.

Section 46

In section 46, page 17, line 5, after <rules> insert <—

(a)>
John Swinney
71 In section 46, page 17, line 8, after <Tribunal> insert <, and
   ( ) containing provision of other sorts appropriate with respect to the Tax Tribunals
   (including in relation to the exercise by them of their functions)>

John Swinney
72 In section 46, page 17, line 11, leave out <Court of Session by Act of Sederunt> and insert
   <Scottish Ministers by regulations>

John Swinney
73 In section 46, page 17, line 12, leave out subsection (4)

Section 49

John Swinney
74 In section 49, page 18, line 11, at end insert—
   <( ) enable two or more applications to be conjoined in certain circumstances,>

Section 50

John Swinney
75 In section 50, page 18, line 31, at end insert—
   <( ) enable two or more sets of proceedings to be taken concurrently at a hearing in
   certain circumstances,>

John Swinney
76 In section 50, page 18, line 33, leave out <, mediation, arbitration or adjudication> and insert <or
   mediation>

Section 51

John Swinney
77 In section 51, page 19, line 14, leave out from <(in> to end of line 15 and insert <, including as
   to—
   ( ) the manner in which such decisions are to be made,
   ( ) the incorporation in such decisions of findings in fact,
   ( ) the recording, issuing, and publication of such decisions.>

Section 52

John Swinney
78 In section 52, page 19, line 19, leave out <in> and insert <at>
Section 54

**John Swinney**

79 In section 54, page 20, line 16, at end insert—

<(2) The following persons are to have regard to any guidance issued under subsection (1)—

(a) members of the Tax Tribunals,
(b) members of staff of the tribunals,
(c) personnel supplied under section 53 for use by the tribunals.

(3) The President of the Tax Tribunals must publish any guidance issued under subsection (1) as the President considers appropriate.

(4) Subsection (3) does not apply to the extent that the President considers that publication of the guidance would prejudice the effective exercise by the Tax Tribunals of their functions.>

Section 57

**John Swinney**

80 In section 57, page 21, line 16, leave out subsection (3)

Section 59

**John Swinney**

81 In section 59, page 22, line 3, after <lacks> insert <economic or>

**John Swinney**

82 In section 59, page 22, line 5, after <lacks> insert <economic or>

**John Swinney**

83 In section 59, page 22, line 12, after <nature> insert <,

( ) whether the arrangement results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer>

Section 61

**John Swinney**

84 In section 61, page 23, line 1, after <include> insert <(but are not restricted to)>

**John Swinney**

85 In section 61, page 23, line 5, leave out <way> to end of line 7 and insert <—

( ) the amendment of a return (see sections 74, 78 and 84),
( ) the correction of a return (see section 75),
( ) the making of a Revenue Scotland determination (see section 86),
( ) the making of a tax return (see section 88),
( ) the making of a Revenue Scotland assessment (see section 91),
the entering into of a contract settlement (see section 109), or
such other method as Revenue Scotland considers appropriate.>

John Swinney
86 In section 61, page 23, line 9, at end insert—
<( ) The power to make adjustments by virtue of this section is subject to any time limit imposed by or under Part 6, any other provision of this Act or any other enactment.>

Section 63

John Swinney
87 In section 63, page 23, line 27, leave out <an authorised> and insert <a designated>

John Swinney
88 In section 63, page 24, line 2, leave out <in response to the notice to the authorised officer> and insert <to the designated officer in response to the notice>

John Swinney
89 In section 63, page 24, line 4, leave out <authorised> and insert <designated>

John Swinney
90 In section 63, page 24, line 6, leave out <authorised> and insert <designated>

Section 64

John Swinney
91 In section 64, page 24, line 8, leave out <authorised> and insert <designated>

John Swinney
92 In section 64, page 24, line 15, after <it> insert <and the period within which those steps must be taken>

After section 64

John Swinney
93 After section 64, insert—
<Counteraction of tax advantages: payment of tax charged etc.
(1) This section applies where—
(a) a designated officer gives a taxpayer a notice under section 64, and
(b) the notice sets out the adjustments required to give effect to the counteraction of a tax advantage.
(2) The taxpayer must pay any amount, or additional amount, of tax chargeable or penalty or interest imposed as a result of the adjustments before the end of the period of 30 days beginning with the date on which the notice is issued.
(3) Subsection (2) applies in place of any other provision of this Act or any other enactment which specifies a time limit for the payment of tax, penalty or interest.

Section 65

John Swinney

94 In section 65, page 24, line 17, leave out <An authorised> and insert <A designated>

John Swinney

95 In section 65, page 24, line 19, leave out <an authorised> and insert <a designated>

Section 67

John Swinney

96 In section 67, page 25, line 1, leave out <devolved taxes> and insert <tax records>

Section 68

John Swinney

97 Leave out section 68

Section 69

John Swinney

98 In section 69, page 25, line 30, after <records> insert <mentioned in subsection (1)>

John Swinney

99 In section 69, page 25, line 34, at end insert—
   <(2A) A person who is liable to be registered for tax (a “registrable person”) must—
      (a) keep any records that may be needed to enable the registrable person to comply with a requirement to notify Revenue Scotland of the person’s intention—
         (i) to carry out taxable activities, or
         (ii) to cease to carry out taxable activities,
      (b) make records relating to material at a landfill site or part of a landfill site, and
      (c) preserve those records in accordance with this section.
   (2B) The records mentioned in subsection (2A) must be preserved until the end of the relevant day.>

John Swinney

100 In section 69, page 25, line 35, after <day”> insert <in relation to records mentioned in subsection (1)>

John Swinney

101 In section 69, page 26, line 3, at end insert—
   <(3A) The “relevant day” in relation to records mentioned in subsection (2A) means—
(a) in the case of records mentioned in subsection (2A)(a), the fifth anniversary of the day on which the notice was given,
(b) in the case of records mentioned in subsection (2A)(b), the fifth anniversary of the day on which the record was made, or
(c) in either case, any earlier day that may be specified in writing by Revenue Scotland.

John Swinney
102 In section 69, page 26, line 4, after (3)(b) insert (3)(c)

John Swinney
103 In section 69, page 26, line 5, leave out this section and insert subsection (1)

Section 70

John Swinney
104 In section 70, page 26, line 24, leave out specified in writing by Revenue Scotland and insert prescribed by the Scottish Ministers by regulations

Section 71

John Swinney
105 In section 71, page 26, line 26, after person insert (“P”)

After section 71

John Swinney
106 After section 71, insert—

<Reasonable excuse for failure to keep and preserve records>

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with section 69, liability to a penalty under section 71 does not arise in relation to that failure.

(2) For the purposes of subsection (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

John Swinney
107 After section 71, insert—

<Assessment of penalties under section 71>

(1) Where a person becomes liable to a penalty under section 71, Revenue Scotland must—
(a) assess the penalty, and
(b) notify the person.

(2) An assessment of a penalty under section 71 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

John Swinney

108 After section 71, insert—

<Enforcement of penalties under section 71

(1) A penalty under section 71 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under section (Assessment of penalties under section 71) was issued,

(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,

(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or

(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 71 is to be treated for enforcement purposes as an assessment to tax.

John Swinney

109 After section 71, insert—

<Power to change penalty provisions in sections 71 to (Enforcement of penalties under section 71)

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,

(d) about appealing penalties,

(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.


Section 72

John Swinney

110 In section 72, page 27, line 2, leave out &lt;71&gt; and insert &lt;(Enforcement of penalties under section 71)&gt;

John Swinney

111 In section 72, page 27, line 5, leave out &lt;2013 Act&gt; and insert &lt;LBTT(S) Act 2013&gt;

Section 73

John Swinney

112 In section 73, page 27, line 11, leave out subsections (1) and (2)

John Swinney

113 In section 73, page 27, line 15, leave out from &lt;(whether&gt; to end of line 16 and insert &lt;by or under any enactment.&gt;

Section 74

John Swinney

114 In section 74, page 27, line 28, at end insert—

 &lt;( ) This section is subject to sections 78(2A) and 84(3A).&gt;

Section 75

John Swinney

115 In section 75, page 28, line 1, leave out &lt;3 years&gt; and insert &lt;12 months&gt;

Section 78

John Swinney

116 In section 78, page 29, line 13, at end insert—

 &lt;(2A) Where a designated officer gives notice under subsection (1), section 74 does not apply.&gt;

John Swinney

117 In section 78, page 29, line 13, at end insert—

 &lt;( ) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section at the same time as the notice of the amendment is given.&gt;

Section 84

John Swinney

118 In section 84, page 30, line 28, after &lt;enquiry&gt; insert &lt;or, or

 &lt; ( ) no closure notice having been given, 3 years after the relevant date&gt;
John Swinney

119 In section 84, page 30, line 33, at end insert—

    <(3A) Where a closure notice is given which makes amendments of a return as mentioned in subsection (3)(b), section 74 does not apply.>

John Swinney

120 In section 84, page 30, line 34, at end insert—

    <( ) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment made by a closure notice before the end of the period of 30 days beginning with the day on which the notice is given.>

John Swinney

121 In section 84, page 30, line 35, leave out <subsection> and insert <subsections (1) and>

Section 86

John Swinney

122 In section 86, page 31, line 22, at end insert—

    <( ) P must pay the tax chargeable as a result of the determination immediately on receipt of notice of the determination.>

Section 96

John Swinney

123 In section 96, page 34, line 28, after <issued,> insert

    <( ) the date by which—

    (i) the amount or further amount of tax chargeable as a result of the assessment (as mentioned in section 89(2)), or

    (ii) the amount of tax or interest repaid that ought not to have been (as mentioned in section 90(1)),

    must be paid,>

John Swinney

124 In section 96, page 34, line 30, at end insert—

    <( ) The—

    ( ) amount or further amount of tax chargeable as a result of the assessment (as mentioned in section 89(2)), or

    ( ) amount of tax or interest repaid that ought not to have been (as mentioned in section 90(1)),

    must be paid before the end of the period of 30 days beginning with the date on which the assessment is issued.>
Section 99

John Swinney
125 In section 99, page 36, line 2, leave out <2013 Act> and insert <LBTT(S) Act 2013>

John Swinney
126 In section 99, page 36, line 7, leave out <2014 Act> and insert <LT(S) Act 2014>

John Swinney
127 In section 99, page 36, line 33, leave out <2014 Act> and insert <LT(S) Act 2014>

Schedule 3

John Swinney
128 In schedule 3, page 106, line 4, after first <person> insert <(―P‖)>

John Swinney
129 In schedule 3, page 106, line 8, at end insert—
<Reasonable excuse for failure to keep and preserve records

5A(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with paragraph 3, liability to a penalty under paragraph 5 does not arise in relation to that failure.

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties under paragraph 5

5B(1) Where a person becomes liable for a penalty under paragraph 5, Revenue Scotland must—

(a) assess the penalty, and

(b) notify the person.

(2) An assessment of a penalty under paragraph 5 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

Enforcement of penalties under paragraph 5

5C(1) A penalty under paragraph 5 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 5B was issued,
(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,

(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or

(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under paragraph 5 is to be treated for enforcement purposes as an assessment to tax.

**Power to change penalty provisions in paragraphs 5 to 5C**

5D(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under paragraphs 5 to 5C.

(2) Regulations under sub-paragraph (1) may include provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,

(d) about appealing penalties,

(e) about enforcing penalties.

(3) Regulations under sub-paragraph (1) may not create criminal offences.

(4) Regulations under sub-paragraph (1) may modify any enactment (including this Act).

(5) Regulations under sub-paragraph (1) do not apply to a failure which began before the date on which the regulations come into force.

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**John Swinney**

130 In schedule 3, page 107, line 15, after <conclusions> insert <, or

( ) no closure notice having been given, 3 years after the date on which the claim was made>

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**Section 111**

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**John Swinney**

131 Leave out section 111

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**Section 117**

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**John Swinney**

132 In section 117, page 44, leave out lines 32 and 33

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**Section 118**

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**John Swinney**

133 In section 118, page 45, leave out lines 16 and 17

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Section 119

John Swinney
134 In section 119, page 45, line 23, leave out <condition in subsection (2) is> and insert <conditions in subsection (2) are>

John Swinney
135 In section 119, page 45, line 23, leave out <investigation>

John Swinney
136 In section 119, page 45, line 27, leave out <That condition is> and insert <Those conditions are—>

(a) >

John Swinney
137 In section 119, page 45, line 30, after <officer> insert <, and>

(b) the tribunal has approved the giving of the notice>

John Swinney
138 In section 119, page 45, line 31, leave out subsection (3)

John Swinney
139 In section 119, page 45, line 34, leave out <subsection (3)> and insert <this section>

John Swinney
140 In section 119, page 45, line 36, leave out <(2)> and insert <(2)(a)>

Section 120

John Swinney
141 In section 120, page 46, line 36, leave out subsection (6)

Section 121

John Swinney
142 In section 121, page 47, line 7, leave out <transaction entered into as buyer> and insert <taxable event entered into or undertaken>

John Swinney
143 In section 121, page 47, line 12, leave out <in which the partnership> and insert <by which the partnership is known or under which it>

John Swinney
144 In section 121, page 47, line 30, leave out subsection (6)
Section 122

John Swinney
145 In section 122, page 47, line 36, leave out <investigation>

John Swinney
146 In section 122, page 47, line 37, after <if> insert <the tribunal approves the giving of the notice.>

( ) The tribunal may not approve the giving of a notice under this section unless satisfied that>

Section 123

John Swinney
147 In section 123, page 48, line 24, leave out <or 119> and insert <, 119 or 122>

Section 127

John Swinney
148 In section 127, page 49, line 26, leave out <by, or with the agreement of, a designated investigation officer> and insert <with the approval of the tribunal>

Section 135

John Swinney
149 In section 135, page 53, line 22, after <notice> insert <in writing>

John Swinney
150 In section 135, page 53, line 23, leave out <(whether in writing or otherwise)>

John Swinney
151 In section 135, page 53, line 24, leave out from <inspection> to end of line 25 and insert <officer has reasonable grounds for believing that giving notice of the inspection would seriously prejudice the assessment or collection of tax.>

John Swinney
152 In section 135, page 53, line 34, after <subsection> insert <(2)(a) or>

John Swinney
153 In section 135, page 53, line 36, after <subsection> insert <(2)(a) or>

After section 135

John Swinney
154 After section 135, insert—

<Carrying out inspections under section 133 or 134: further provision>

(1) A designated officer carrying out an inspection under section 133 or 134 has the following powers.
(2) On entering the premises, the officer may take any person authorised by the officer and, if the officer has reasonable cause to apprehend any serious obstruction in the execution of the inspection, a constable.

(3) Subject to subsection (6), on entering the premises, the officer or a person authorised by the officer may take any equipment or materials required for any purpose for which the inspection is being carried out.

(4) The officer may make such examination or investigation the officer considers to be necessary in the circumstances.

(5) The officer may direct that the premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any such examination or investigation.

(6) An officer or authorised person may exercise the power mentioned in subsection (3) only—

   (a) at a time agreed to by the occupier of the premises, or
   (b) if subsection (7) is satisfied, at any reasonable time.

(7) This subsection is satisfied if—

   (a) in a case where notice was given under section 135(2)(a), that the notice informed the occupier of the premises that the officer or authorised person intended to exercise the power mentioned in subsection (3), or
   (b) the officer has reasonable grounds for believing that giving notice of the exercise of that power would seriously prejudice the assessment or collection of tax.

(8) Section 135(3) to (5) apply to the exercise of the power mentioned in subsection (3) by virtue of subsection (7)(b) as they apply to an inspection carried out by virtue of section 135(2)(b).

Section 138

John Swinney

155 In section 138, page 55, line 4, after <136> insert <, or

   ( ) to approve the exercise, in relation to an inspection under section 133 or 134, of any of the powers mentioned in section (Carrying out inspections under section 133 or 134: further provision),>

John Swinney

156 In section 138, page 55, leave out lines 9 and 10

John Swinney

157 In section 138, page 55, leave out lines 13 and 14

Section 140

John Swinney

158 In section 140, page 55, line 36, at end insert—

   <( ) The power to take samples mentioned in subsection (1) includes power—
   (a) to carry out experimental borings or other works on the premises,
(b) to install, keep or maintain monitoring and other apparatus there.

( ) A designated officer entering premises under this section may take any person authorised by the officer and such a person may exercise the power mentioned in subsection (1).>

Section 142

John Swinney

159 In section 142, page 56, line 24, leave out <if the document is reasonably required for any purpose,>.

Section 144

John Swinney

160 In section 144, page 58, line 22, leave out <section 120(6) or 121(6)> and insert <subsection (6A)>

John Swinney

161 In section 144, page 58, line 30, at end insert—

<(6A) This subsection applies where notice is given under section 119—

(a) to a parent undertaking for the purposes of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice, or

(b) to one or more partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice.>

After section 144

John Swinney

162 After section 144, insert—

<Power to modify section 144

The Scottish Ministers may by order modify section 144(2) to (7) to provide for certain decisions in relation to the giving of information notices or in relation to any requirement in such notices—

(a) to be appealable for the purposes of section 198(1)(f),

(b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,

(c) to not be appealable.>

Section 146

John Swinney

163 In section 146, page 59, line 15, after <notice> insert <the giving of which was approved by the tribunal>.
In section 146, page 59, line 16, leave out from beginning to <119,> in line 17

Section 147

In section 147, page 59, line 38, leave out from <intends> to <119> in line 39 and insert <either intends, under section 117, or is required, under section 119 or 122, to seek the approval of the tribunal to the giving of the notice>

Section 148

In section 148, page 60, line 17, leave out <errors> and insert <inaccuracies>

Section 149

In section 149, page 60, line 22, leave out <Part> and insert <Act>

Section 150

In section 150, page 60, line 27, after <return> insert <specified in the table below>

<table>
<thead>
<tr>
<th>Tax to which return relates</th>
<th>Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Land and buildings transaction tax</td>
<td>(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.</td>
</tr>
</tbody>
</table>

If P’s failure falls within more than one provision of this section or sections (Land and buildings transaction tax: first penalty for failure to make return) to (Scottish landfill tax: 12 month penalty for failure to make return), P is liable to a penalty under each of those provisions.

But where P is liable for a penalty under more than one provision of this section or sections (Land and buildings transaction tax: first penalty for failure to make return) to (Scottish landfill tax: 12 month penalty for failure to make return) which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.
In sections (Land and buildings transaction tax: first penalty for failure to make return) to (Scottish landfill tax: 12 month penalty for failure to make return) “penalty date”, in relation to a return, means the day after the filing date.

Sections (Land and buildings transaction tax: first penalty for failure to make return) to (Land and buildings transaction tax: 12 month penalty for failure to make return) apply in the case of a return falling within item 1 of the table.

Sections (Scottish landfill tax: first penalty for failure to make return) to (Scottish landfill tax: 12 month penalty for failure to make return) apply in the case of a return falling within item 2 of the table.

John Swinney

170 In section 150, page 60, line 29, leave out subsections (2) to (4)

After section 150

John Swinney

171 After section 150, insert—

<Amounts of penalties: land and buildings transaction tax

Land and buildings transaction tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 150.

(2) P is liable to a penalty under this section of £100.>

John Swinney

172 After section 150, insert—

<Land and buildings transaction tax: 3 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if)—

(a) P’s failure continues after the end of the period of 3 months beginning with the penalty date,

(b) Revenue Scotland decide that such a penalty should be payable, and

(c) Revenue Scotland give notice to P specifying the date from which the penalty is payable.

(2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).

(3) The date specified in the notice under subsection (1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in subsection (1)(a).>
After section 150, insert—

**Land and buildings transaction tax: 6 month penalty for failure to make return**

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—

   (a) 5% of any liability to tax which would have been shown in the return in question, and

   (b) £300.

After section 150, insert—

**Land and buildings transaction tax: 12 month penalty for failure to make return**

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—

   (a) 100% of any liability to tax which would have been shown in the return in question, and

   (b) £300.

(3) In any case not falling within subsection (2), the penalty under this section is the greater of—

   (a) 5% of any liability to tax which would have been shown in the return in question, and

   (b) £300.

After section 150, insert—

**Amounts of penalties: Scottish landfill tax**

**Scottish landfill tax: first penalty for failure to make return**

(1) This section applies in the case of a failure to make a return falling within item 2 of the table in section 150.

(2) P is liable to a penalty under this section of £100.

(3) In addition, a penalty period begins to run on the penalty date for the return.

(4) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under section (Scottish landfill tax: multiple failures to make return)(2)(c).
John Swinney

176 After section 150, insert—

<Scottish landfill tax: multiple failures to make return

(1) This section applies if—
   (a) a penalty period has begun under section (Scottish landfill tax: first penalty for failure to make return) because P has failed to make a return (“return A”), and
   (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the table as return A.

(2) In such a case—
   (a) section (Scottish landfill tax: first penalty for failure to make return)(2) and (3) do not apply to the failure to make return B,
   (b) P is liable to a penalty under this section for that failure, and
   (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.

(3) The amount of the penalty under this section is determined by reference to the number of returns that P has failed to make during the penalty period.

(4) If the failure to make return B is P’s first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.

(5) If the failure to make return B is P’s second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.

(6) If the failure to make return B is P’s third or subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.

(7) For the purposes of this section, in accordance with subsection (1)(b), the references in subsections (3) to (6) to a return are references to a return falling within the same item in the table as returns A and B.

(8) A penalty period may be extended more than once under subsection (2)(c).>

John Swinney

177 After section 150, insert—

<Scottish landfill tax: 6 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—
   (a) 5% of any liability to tax which would have been shown in the return in question, and
   (b) £300.>
After section 150, insert—

<Scottish landfill tax: 12 month penalty for failure to make return>

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—

(a) 100% of any liability to tax which would have been shown in the return in question, and

(b) £300.

(3) In any case not falling within subsection (2), the penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.>

Section 151

In section 151, page 61, line 7, leave out from <tax> to end of line 8 and insert <an amount of tax mentioned in column 3 of the following table on or before the date mentioned in column 4 of the table.>

<table>
<thead>
<tr>
<th>Tax to which payment relates</th>
<th>Amount of tax payable</th>
<th>Date after which penalty incurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Land and buildings transaction tax</td>
<td>(a) Amount payable under section 40 of the LBTT(S) Act 2013.</td>
<td>(a) – (g) The date by which the amount must be paid.</td>
</tr>
<tr>
<td></td>
<td>(b) Additional amount payable as a result of an adjustment under section 61 of this Act.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Additional amount payable as a result of an amendment under section 74 of this Act.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(d) Additional amount payable as a result of an amendment under section 78 of this Act.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(e) Additional amount payable as a result of an amendment under section 84 of this Act.</td>
<td></td>
</tr>
</tbody>
</table>
(f) Amount assessed under section 86 of this Act in the absence of a return.
(g) Amount payable as a result of an assessment under section 89 of this Act.

| 2. | Scottish landfill tax | (a) Amount payable under regulations made under section 25 of the LT(S) Act 2014.
(b) Additional amount payable as a result of an adjustment under section 61 of this Act.
(c) Additional amount payable as a result of an amendment under section 74 of this Act.
(d) Additional amount payable as a result of an amendment under section 78 of this Act.
(e) Additional amount payable as a result of an amendment under section 84 of this Act.
(f) Amount assessed under section 86 of this Act in the absence of a return.
(g) Amount payable as a result of an assessment under section 89 of this Act. | (a) – (g) The date by which the amount of tax payable must be paid. |

John Swinney

180 In section 151, page 61, line 8, at end insert—

<\( )\) If P’s failure falls within more than one provision of this section or sections (Land and buildings transaction tax: amounts of penalties for failure to pay tax) to (Scottish landfill tax: 12 month penalty for failure to pay tax), P is liable to a penalty under each of those provisions.
In sections (Land and buildings transaction tax: amounts of penalties for failure to pay tax) to (Scottish landfill tax: 12 month penalty for failure to pay tax) “penalty date”, in relation to an amount of tax, means the day after the date mentioned in or for the purposes of column 4 of the table in relation to that amount.

Section (Land and buildings transaction tax: amounts of penalties for failure to pay tax) applies in the case of a payment falling within item 1 of the table.

Sections (Scottish landfill tax: first penalty for failure to pay tax) to (Scottish landfill tax: 12 month penalty for failure to pay tax) apply in the case of a payment falling within item 2 of the table.

John Swinney
181 In section 151, page 61, line 9, leave out subsections (2) to (4)

After section 151

John Swinney
182 After section 151, insert—

<Land and buildings transaction tax: amounts of penalties for failure to pay tax

(1) This section applies in the case of a payment of tax falling within item 1 of the table in section 151.

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.>

John Swinney
183 After section 151, insert—

<Scottish landfill tax: first penalty for failure to pay tax

(1) This section applies in the case of a payment of tax falling within item 2 of the table in section 151.

(2) P is liable to a penalty of 1% of the unpaid tax.

(3) In addition, a penalty period begins to run on the penalty date for the payment of tax.

(4) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 of the table in section 151 for the payment, unless it is extended under section (Scottish landfill tax: penalties for multiple failures to pay tax)(2)(c).>

John Swinney
184 After section 151, insert—

<Scottish landfill tax: penalties for multiple failures to pay tax

(1) This section applies if—

(a) a penalty period has begun under section (Scottish landfill tax: first penalty for failure to pay tax) because P has failed to make a payment (“payment A”), and
(b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the table in section 151 as payment A.

(2) In such a case—

(a) section (Scottish landfill tax: first penalty for failure to pay tax)(2) and (3) do not apply to the failure to make payment B,

(b) P is liable to a penalty under this section for that failure, and

(c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.

(3) The amount of the penalty under this section is determined by reference to the number of defaults that P has made during the penalty period.

(4) If the default is P’s first default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.

(5) If the default is P’s second default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.

(6) If the default is P’s third or subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.

(7) For the purposes of this section—

(a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable,

(b) in accordance with subsection (1)(b), the references in subsections (3) to (6) to a default are references to a default in relation to the tax to which payments A and B relate,

(c) a default counts for the purposes of those subsections if (but only if) the period to which the payment relates is less than 6 months,

(d) the amount of a default is the amount which P fails to pay.

(8) A penalty period may be extended more than once under subsection (2)(c).

John Swinney

185 After section 151, insert—

<Scottish landfill tax: 6 month penalty for failure to pay tax>

If any amount of tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

John Swinney

186 After section 151, insert—

<Scottish landfill tax: 12 month penalty for failure to pay tax>

If any amount of tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Section 152

John Swinney

187 In section 152, page 61, line 21, leave out <any provision made under>
John Swinney
188 In section 152, page 61, line 26, leave out <made under> and insert <of>

John Swinney
189 In section 152, page 61, line 27, leave out <any provision made under>

Section 153

John Swinney
190 In section 153, page 61, line 29, leave out <any provision made under>

John Swinney
191 In section 153, page 61, line 34, leave out <made under> and insert <of>

John Swinney
192 In section 153, page 61, line 35, leave out <any provision made under>

Section 154

John Swinney
193 In section 154, page 62, line 2, leave out <provision made under>

Section 155

John Swinney
194 In section 155, page 62, line 28, leave out <provision made under>

Section 156

John Swinney
195 In section 156, page 63, line 5, leave out <any provision made under>

Section 157

John Swinney
196 In section 157, page 63, line 21, leave out <provision made under>

John Swinney
197 In section 157, page 63, line 24, leave out <provision made under>

Section 158

John Swinney
198 In section 158, page 63, line 35, leave out <provision made under>

John Swinney
199 In section 158, page 64, line 3, leave out <provision made under>
In section 158, page 64, line 6, leave out <provision made under>

In section 158, page 64, line 9, leave out <provision made under>

In section 158, page 64, line 16, leave out <provision made under>

In section 159, page 64, line 28, leave out <provision made under>

In section 159, page 64, line 35, leave out <provision made under>

In section 159, page 64, line 40, leave out <provision made under>

After section 159, insert—

<Power to change penalty provisions in Chapter 2

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—

(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.>

In section 160, page 65, line 12, leave out <relevant document (see subsection (7))> and insert <document of a kind mentioned in the table below>
<table>
<thead>
<tr>
<th>Tax</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Land and buildings transaction tax</td>
<td>(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(c) Application under section 41 of the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(d) Amended return under section 74 of this Act.</td>
</tr>
<tr>
<td></td>
<td>(e) Claim under section 97, 98 or 99 of this Act.</td>
</tr>
<tr>
<td>2. Scottish landfill tax</td>
<td>(a) Return under regulations made under section 25 of the LT(S) Act 2014.</td>
</tr>
<tr>
<td></td>
<td>(b) Amended return under section 74 of this Act.</td>
</tr>
<tr>
<td></td>
<td>(c) Claim under section 97, 98 or 99 of this Act.</td>
</tr>
</tbody>
</table>

( ) Section (*Amount of penalty for error in taxpayer document*) applies in the case of a document falling within item 1 or 2 of the table.>
Section 162

John Swinney

211 In section 162, page 66, line 26, leave out <relevant document (see subsection (4))> and insert <document of a kind mentioned in the table in section 160>

John Swinney

212 In section 162, page 67, line 3, at end insert—

<(  ) The penalty payable under this section is 100% of the potential lost revenue.>

John Swinney

213 In section 162, page 67, line 4, leave out subsections (4) to (6)

Section 163

John Swinney

214 In section 163, page 67, line 15, leave out <relevant> and insert <devolved>

John Swinney

215 In section 163, page 67, line 21, at end insert—

<(  ) The penalty payable under this section is 30% of the potential lost revenue.>

John Swinney

216 In section 163, page 67, line 22, leave out subsections (3) to (5)

After section 163

John Swinney

217 After section 163, insert—

<Potential lost revenue: normal rule>

(1) The “potential lost revenue” in respect of—

(a) an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information), or

(b) a failure to notify an under-assessment,

is the additional amount due and payable in respect of tax as a result of correcting the inaccuracy or under-assessment.

(2) The reference in subsection (1) to the additional amount due and payable includes a reference to—

(a) an amount payable to Revenue Scotland having been erroneously paid by way of repayment of tax, and

(b) an amount which would have been repayable by Revenue Scotland had the inaccuracy or assessment not been corrected.>
After section 163, insert—

<Potential lost revenue: multiple errors>

(1) Where P is liable to a penalty under section 160 in respect of more than one inaccuracy, and the calculation of potential lost revenue under section (Potential lost revenue: normal rule) in respect of each inaccuracy depends on the order in which they are corrected, careless inaccuracies are to be taken to be corrected before deliberate inaccuracies.

(2) In calculating potential lost revenue where P is liable to a penalty under section 160 in respect of one or more understatements in one or more documents relating to a tax period, account is to be taken of any overstatement in any document given by P which relates to the same tax period.

(3) In subsection (2)—
   (a) “understatement” means an inaccuracy that meets condition A in section 160, and
   (b) “overstatement” means an inaccuracy that does not meet that condition.

(4) For the purpose of subsection (2) overstatements are to be set against understatements in the following order—
   (a) understatements in respect of which P is not liable to a penalty,
   (b) careless understatements,
   (c) deliberate understatements.

(5) In calculating for the purposes of a penalty under section 160 potential lost revenue in respect of a document given by or on behalf of P, no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential overpayment by another person (except to the extent than an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).

John Swinney

After section 163, insert—

<Potential lost revenue: losses>

(1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is calculated in accordance with section (Potential lost revenue: normal rule).

(2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has not been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is—
   (a) the potential lost revenue calculated in accordance with section (Potential lost revenue: normal rule) in respect of any part of the loss that has been used to reduce the amount due and payable in respect of tax, plus
   (b) 10% of any part that has not.

(3) Subsections (1) and (2) apply both—
   (a) to a case where no loss would have been recorded but for the inaccuracy, and
(b) to a case where a loss of a different amount would have been recorded (but in that case subsections (1) and (2) apply only to the difference between the amount recorded and the true amount).

(4) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P’s circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).> 

John Swinney

220 After section 163, insert—

<Potential lost revenue: delayed tax>

(1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—

(a) 5% of the delayed tax for each year of the delay, or

(b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.

(2) This section does not apply to a case to which section (Potential lost revenue: losses) applies.>

Section 164

John Swinney

221 In section 164, page 67, line 35, leave out <any provision made under>

Section 165

John Swinney

222 In section 165, page 68, line 14, leave out <provision made under>

Section 166

John Swinney

223 In section 166, page 69, line 2, leave out <provision made under>

John Swinney

224 In section 166, page 69, line 7, leave out <provision made under>

John Swinney

225 In section 166, page 69, line 10, leave out <provision made under>

After section 166

John Swinney

226 After section 166, insert—

<Power to change penalty provisions in Chapter 3>

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

37
(2) Provision under subsection (1) includes provision—
(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.
(3) Regulations under subsection (1) may not create criminal offences.
(4) Regulations under subsection (1) may modify any enactment (including this Act).
(5) Regulations under subsection (1) do not apply to—
(a) a failure which began before the date on which the regulations come into force, and
(b) an inaccuracy in any information or document provided to Revenue Scotland before that date.

Section 167

John Swinney

227 In section 167, page 69, line 35, leave out <in the course of an inspection> insert <or a person authorised by the officer in the course of an inspection or in the exercise of a power>

Section 170

John Swinney

228 Leave out section 170

Section 174

John Swinney

229 In section 174, page 71, line 30, after <officer> insert <or of a person authorised by the officer>

Section 177

John Swinney

230 In section 177, page 73, line 17, leave out subsection (6)

After section 180

John Swinney

231 After section 180, insert—

Power to change penalty provisions in Chapter 4
(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter (other than penalties under section 179).
(2) Regulations under subsection (1) may include provision—
(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under subsection (1) may also include provision for the purposes of sections 143(6) and (7) and 195(2) and (3).

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(6) Regulations under subsection (1) do not apply to a failure or obstruction which began before the date on which the regulations come into force.

Section 181

John Swinney

232 In section 181, page 74, line 29, after first <person> insert <(―P‖)>

John Swinney

233 In section 181, page 74, line 29, leave out from <the> to end of line 30 and insert—

<(a) P fails to comply with a requirement imposed by or under section 22 or 23 of the
LT(S) Act 2014 (“a relevant requirement”), and
(b) the failure was—
(i) deliberate on P’s part (“a deliberate failure”), or
(ii) careless on P’s part (“a careless failure”).

( ) A failure is careless if it is due to a failure by P to take reasonable care.

( ) A failure by P to comply with a relevant requirement, which was neither deliberate nor
careless on P’s part at an earlier time, is to be treated as careless if P—

(a) discovered the failure at some later time, and
(b) did not take reasonable steps to inform Revenue Scotland.

( ) Section (Amount of penalty for failure to register for tax etc.) sets out the penalty under
this section.>

John Swinney

234 In section 181, page 74, line 31, leave out subsections (2) to (4)

After section 181

John Swinney

235 After section 181, insert—

<Amount of penalty for failure to register for tax etc.

(1) This section sets out the penalty payable under section 181.
(2) For a deliberate failure, the penalty is 100% of the potential lost revenue.
(3) For a careless failure, the penalty is 30% of the potential lost revenue.>
(4) In the case of a relevant requirement relating to Scottish landfill tax, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period—
   (a) beginning on the date with effect from which P is required in accordance with that requirement to be registered, and
   (b) ending on the date on which Revenue Scotland received notification of, or otherwise became fully aware of, P’s liability to be registered.

(5) In calculating potential lost revenue in respect of a failure to comply with a relevant requirement on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person.

---

John Swinney

236 After section 181, insert—

<Interaction of penalties under section 181 with other penalties>

(1) The amount of a penalty for which P is liable under section 181 is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to any other penalty does not include—
   (a) a penalty under section 150, or
   (b) a penalty under section 151.

---

John Swinney

237 After section 181, insert—

<Reduction in penalty under section 181 for disclosure>

(1) Revenue Scotland may reduce a penalty under section 181 where P discloses a failure to comply with a relevant requirement (“a relevant failure”).

(2) P discloses a relevant failure by—
   (a) telling Revenue Scotland about it,
   (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of it, and
   (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

(3) Reductions under this section may reflect—
   (a) whether the disclosure was prompted or unprompted, and
   (b) the quality of the disclosure.

(4) Disclosure of a relevant failure—
   (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the failure, and
   (b) otherwise, is “prompted”.

(5) In relation to disclosure, “quality” includes timing, nature and extent.
After section 181, insert—

**Special reduction in penalty under section 181**

(1) Revenue Scotland may reduce a penalty under section 181 if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

   (a) ability to pay, or
   
   (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

   (a) remitting a penalty entirely,
   
   (b) suspending a penalty, and
   
   (c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

After section 181, insert—

**Reasonable excuse for failure to register for tax etc.**

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with a relevant requirement, liability to a penalty under section 181 does not arise in relation to that failure.

(2) For the purposes of subsection (1)—

   (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
   
   (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
   
   (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

After section 181, insert—

**Assessment of penalties under section 181**

(1) Where P becomes liable to a penalty under section 181, Revenue Scotland must—

   (a) assess the penalty,
   
   (b) notify P, and
   
   (c) state in the notice the period in respect of which the penalty is assessed.
(2) A penalty under section 181 must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.

(3) An assessment of a penalty under section 181—
   (a) is to be treated for enforcement purposes as an assessment to tax, and
   (b) may be combined with an assessment to tax.

(4) An assessment of a penalty under section 181 must be made within the period of 12 months beginning with—
   (a) the end of the appeal period for the assessment of tax unpaid by reason of the failure to comply with the relevant requirement in respect of which the penalty is assessed, or
   (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.

(5) In subsection (4) “appeal period” means the period during which—
   (a) an appeal could be brought, or
   (b) an appeal that has been brought has not been determined or withdrawn.

(6) Subject to subsection (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

John Swinney

241 After section 181, insert—

<Power to change penalty provisions in Chapter 5

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—
   (a) about the circumstances in which a penalty is payable,
   (b) about the amounts of penalties,
   (c) about the procedure for issuing penalties,
   (d) about appealing penalties,
   (e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

Section 182

John Swinney

242 In section 182, page 75, line 4, leave out <end of the period of 30 days after the>
Section 186

In section 186, page 76, line 14, leave out <, if requested to do so>

Section 188

In section 188, page 76, line 33, leave out from <a> to end of line 35 and insert <Revenue Scotland—

(a) that a return required to be made to Revenue Scotland under this Act or any other enactment has not been made,
(b) that a relevant sum has not been paid,
(c) that a notification required to be made to Revenue Scotland under this Act or any other enactment has not been made,

is sufficient evidence of that fact until the contrary is proved.>

In section 188, page 76, line 37, at end insert—

<( ) A copy of any document provided to Revenue Scotland for the purposes of this Act or any other enactment and certified by it to be such a copy is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.>

After section 194

After section 194, insert—

<Power to modify section 194

The Scottish Ministers may by order modify section 194(2) to provide for certain decisions in relation to the giving of notices under section 193 or in relation to any requirement in such notices—

(a) to be appealable for the purposes of section 198(1)(g),
(b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,
(c) to not be appealable.>

Section 196

Leave out section 196
Section 198

John Swinney

248 In section 198, page 80, line 19, at end insert—
    <(  ) a decision under section 61 to make adjustments to counteract a tax advantage,>

John Swinney

249 In section 198, page 80, line 25, leave out <the imposition of>

John Swinney

250 In section 198, page 80, line 25, after <penalty> insert <under the following provisions—
    ( ) section 71,
    ( ) section 103,
    ( ) section 143,
    ( ) Part 8,
    ( ) section 195,
    ( ) paragraph 5 of schedule 3>

John Swinney

251 In section 198, page 80, line 34, at end insert—
    <(  ) the giving of a notice under section 63,>

Section 199

John Swinney

252 In section 199, page 81, line 13, after <review> insert <if subsection (2A), (2B) or (2C) applies.
    (2A) This subsection applies>

John Swinney

253 In section 199, page 81, line 16, at end insert—
    <(2B) This subsection applies where—
        (a) the appellant has given notice of appeal in relation to the same matter in question, or
        (b) the tribunal has determined the matter in question under section 209.
    (2C) This subsection applies where the appellant has entered into a settlement agreement with
        Revenue Scotland in relation to the same matter in question and has not withdrawn from
        the agreement under section 211(3).>

Section 200

John Swinney

254 In section 200, page 81, line 26, leave out <199(2)> and insert <199(2A)>
In section 200, page 81, line 27, after <completed> insert <, or
( ) no such notice having been given, the date the enquiry is completed by virtue of section 84(1)(b)>

In section 200, page 81, line 27, after <completed> insert <, or
( ) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal>

Section 206

In section 206, page 84, line 1, after <review> insert <in relation to the same matter in question>

In section 206, page 84, line 4, after <Scotland> insert <in relation to the same matter in question>

Section 207

In section 207, page 84, line 11, leave out <Revenue Scotland> and insert <the tribunal>

In section 207, page 84, line 14, after <completed> insert <, or
( ) no such notice having been given, the date the enquiry is completed by virtue of section 84(1)(b)>

Section 208

In section 208, page 84, line 27, leave out <Revenue Scotland> and insert <the tribunal>

In section 208, page 85, line 2, at end insert—
<(4A) A decision of the tribunal under subsection (2)(b) is final.>

Section 210

In section 210, page 85, line 17, leave out subsections (2) and (3)
Section 211

John Swinney

264 In section 211, page 86, line 5, at end insert—

<( ) But a settlement agreement is not to be treated as a decision of the tribunal for the purposes of section 31 or 33.>

John Swinney

265 In section 211, page 86, line 19, after <review> insert <, mediation or appeal>

Section 212

John Swinney

266 In section 212, page 87, line 13, leave out <2013 Act> and insert <LBTT(S) Act 2013>

Section 213

John Swinney

267 In section 213, page 88, line 9, leave out <2013 Act> and insert <LBTT(S) Act 2013>

John Swinney

268 In section 213, page 88, line 10, leave out <2013 Act> and insert <LBTT(S) Act 2013>

Section 216

John Swinney

269 In section 216, page 88, line 33, leave out <2013 Act”> and insert <LBTT(S) Act 2013”>

John Swinney

270 In section 216, page 88, line 35, leave out <2014 Act> and insert <LT(S) Act 2014>

John Swinney

271 In section 216, page 88, line 35, leave out <00> and insert <2>

John Swinney

272 In section 216, page 89, line 3, at end insert—

<“information notice” has the meaning given by section 123(1).>

Schedule 5

John Swinney

273 In schedule 5, page 111, line 5, leave out <2013 Act> and insert <LBTT(S) Act 2013>

John Swinney

274 In schedule 5, page 111, line 6, leave out <2014 Act> and insert <LT(S) Act 2014>
In schedule 5, page 111, leave out line 9

In schedule 5, page 111, leave out line 19

**Section 218**

In section 218, page 89, line 18, at end insert—

<(( ) section (Voting for decisions),> 

In section 218, page 89, line 19, at end insert—

<(( ) section (Offences in relation to proceedings)(1),> 

In section 218, page 89, line 19, at end insert—

<(( ) section (Power to change penalty provisions in sections 71 to (Enforcement of penalties under section 71))(1),> 

In section 218, page 89, leave out line 21

In section 218, page 89, line 21, at end insert—

<(( ) section 102(1),> 

In section 218, page 89, line 21, at end insert—

<(( ) section (Power to modify section 144),> 

In section 218, page 89, leave out lines 22 and 23

In section 218, page 89, line 23, at end insert—

<(( ) section (Power to change penalty provisions in Chapter 2)(1),> 

In section 218, page 89, leave out lines 24 to 26

In section 218, page 89, line 26, at end insert—
<\(\) section (Power to change penalty provisions in Chapter 3)(1),>  

John Swinney  
285 In section 218, page 89, leave out line 27  

John Swinney  
313* In section 218, page 89, line 27, at end insert—  
<\(\) section (Power to change penalty provisions in Chapter 4)(1),>  

John Swinney  
286 In section 218, page 89, leave out line 28  

John Swinney  
314* In section 218, page 89, line 28, at end insert—  
<\(\) section (Power to change penalty provisions in Chapter 5)(1),>  

John Swinney  
287 In section 218, page 89, line 29, at end insert—  
<\(\) section (Power to modify section 194),>  

John Swinney  
288 In section 218, page 89, leave out line 30  

John Swinney  
289 In section 218, page 89, leave out line 32  

John Swinney  
290 In section 218, page 89, line 32, at end insert—  
<\(\) paragraph 5D(1) of schedule 3,>  

John Swinney  
291 In section 218, page 89, leave out line 36  

Schedule 4  

John Swinney  
292 In schedule 4, page 108, line 22, at end insert—  
<Environment Act 1995  
(1) The Environment Act 1995 (c.25) is amended as follows.  
(2) In section 51 (provision of information)—  
(a) after subsection (1) insert—
“(1A) Nothing in this section authorises the disclosure by SEPA of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of that Act.”,

(b) after subsection (5) insert—

“(6) In subsection (1A), “protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(3) In section 113 (disclosure of information)—

(a) after subsection (1) insert—

“(1A) Nothing in this section authorises the disclosure by SEPA to any person of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of that Act.”,

(b) in subsection (5), after the definition of “local enforcing authority” insert—

““protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 00),”.”.

John Swinney

293 In schedule 4, page 108, line 26, after <of> insert <or in connection with>

John Swinney

294 In schedule 4, page 109, line 15, leave out <2013 Act> and insert <LBTT(S) Act 2013>

John Swinney

295 In schedule 4, page 109, line 15, at end insert—

<( ) In section 10 (substantial performance without completion), after subsection (5) insert—

“(5A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.”.

( ) In section 11 (contract providing for conveyance to third party), after subsection (6) insert—

“(6A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.”.

( ) In section 27 (reliefs), after subsection (2) insert—

“(2A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.”.

( ) In section 32 (contingency ceases or consideration ascertained: less tax payable), after subsection (2) insert—

“(2A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.”.

John Swinney

296 In schedule 4, page 109, line 19, at end insert—

<( ) Section 37 (amendment of returns) is repealed.”.>
John Swinney

297 In schedule 4, page 110, line 4, at end insert—

<( ) In schedule 2 (chargeable consideration), in paragraph 16(1)(a)(ii), for “1982” substitute “1992”.

( ) In schedule 5 (multiple dwellings relief), in paragraph 18(b), for “effect” substitute “effective”.

John Swinney

298 In schedule 4, page 110, line 4, at end insert—

<( ) In schedule 17 (partnerships), in paragraph 35 (election by property-investment partnership), after sub-paragraph (3) insert—

“(3A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

( ) In schedule 19 (leases), in paragraph 25 (agreement for lease substantially performed etc.), after sub-paragraph (7) insert—

“(7A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”>

John Swinney

299 In schedule 4, page 110, line 6, leave out <2014 Act> and insert <LT(S) Act 2014>

John Swinney

300 In schedule 4, page 110, line 18, at end insert—

<( ) Section 28 (evidence about tax status) is repealed.

John Swinney

301 In schedule 4, page 110, line 19, at end insert—

<( ) Sections 32 and 33 (record keeping) are repealed.

John Swinney

302 In schedule 4, page 110, line 26, leave out <(b)> and insert <(d)>

John Swinney

303 In schedule 4, page 110, line 27, leave out <(e)> and insert <(c)>

John Swinney

304 In schedule 4, page 110, line 29, leave out <42> and insert <43>

John Swinney

305 In schedule 4, page 110, line 31, leave out <00> and insert <10>

John Swinney

306 In schedule 4, page 110, line 35, at end insert—

<( ) In Part 2 of that schedule, after paragraph 13(10) insert—
“(10A) The entries in paragraphs 10A and 10B relate to the functions exercisable by the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland by virtue of the Revenue Scotland and Tax Powers Act 2014 or any other enactment.”.

**Section 224**

**John Swinney**

307 In section 224, page 91, line 19, leave out <and sections> and insert <, sections>

**John Swinney**

308 In section 224, page 91, line 19, after <225> insert < and paragraphs 7(5) and 8(5) of schedule 4>
Revenue Scotland and Tax Powers Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Disqualification from membership of Revenue Scotland**
1

**Minor and drafting amendments and corrections**
2, 4, 6, 7, 29, 49, 50, 51, 111, 125, 126, 127, 166, 167, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 293, 294, 297, 299, 302, 303, 304, 305

**Revenue Scotland’s functions: mediation**
3

**Revenue Scotland: Charter of standards and values**
5, 8, 9

**Use of information by Revenue Scotland**
10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 292

**Tax tribunals: appointments**
28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

**Tax tribunals: procedure and administration**
52, 53, 54, 55, 56, 57, 63, 64, 65, 66, 67, 68, 69, 70, 309, 71, 72, 73, 74, 75, 76, 77, 78, 79, 277, 278

**Tax tribunals: finality of decisions and grounds of appeal**
58, 59, 60, 61, 62, 262, 264

“**Designated officer**”
80, 87, 88, 89, 90, 91, 94, 95, 131, 275, 276

**The general anti-avoidance rule: meaning of artificial**
81, 82, 83
The general anti-avoidance rule: counteracting tax advantages
84, 85, 86, 92, 93

Taxpayer duties: general
96, 97

Keeping records: taxpayer duties and penalties for failure
98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 128, 129, 310, 290, 301

Tax returns

Payment of tax due
117, 120, 122, 123, 124, 242, 243

Closure of tax enquiries
118, 121, 130, 255, 260

Investigatory powers: information and documents

Reviews and appeal: appealable decisions
162, 246, 248, 249, 250, 251, 282, 287

Penalties for failure to make returns or pay tax
168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 283, 311

Penalties for inaccuracies etc.
207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 284, 312

Power to change penalty provisions relating to obstruction etc.
228, 230, 231, 247, 285, 313, 288

Penalties for failure to register for tax etc.

Certificates of debt
244, 245, 300

Right to review and appeal
252, 253, 254, 256, 257, 258, 259, 261

Postponement of tax etc. pending appeal
263, 289

Reimbursement arrangement regulations: procedure
280, 291
Transfer-in of tax tribunals
306

Commencement
307, 308
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

19th Meeting, 2014 (Session 4)

Wednesday 11 June 2014

Present:
Gavin Brown     Malcolm Chisholm
Kenneth Gibson (Convener)   Jamie Hepburn
John Mason (Deputy Convener)   Michael McMahon
Jean Urquhart

Also present: John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth.

Revenue Scotland and Tax Powers Bill: The Committee considered the Bill at Stage 2.


Amendment 263 was moved and, no member having objected, withdrawn.

Amendment 289 was not moved.

The following provisions were agreed to without amendment: sections 1, 2, 4, 5, 6, 7, 9, 11, 12, 14, 17, 18, 19, 20, 21, 22, 25, 26, 30, 32, 34, 36, 37, 38, 39, 40, 42, 43, 45, 47, 48, 53, 55, 56, 58, 60, 62, 66, 67, 76, 77, 79, 80, 81, 82, 83, 85, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 136, 137, 139, 141, 143, 145, 161, 168, 169, 171, 172, 173, 175, 176, 178, 179, 180, 183, 184, 185, 187,

The following provisions were agreed to as amended: schedule 1, sections 3, 8, 10, 13, 14, 15, 16, 23, 24, schedule 2, sections 27, 28, 31, 33, 35, 41, 44, 46, 49, 50, 51, 52, 54, 57, 59, 61, 63, 64, 65, 67, 69, 70, 71, 72, 73, 74, 75, 78, 84, 86, 96, 99, schedule 3, sections 117, 118, 119, 120, 121, 122, 123, 127, 135, 138, 140, 142, 144, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 174, 177, 181, 182, 186, 188, 198, 199, 200, 206, 207, 208, 210, 211, 212, 213, 216, schedule 5, section 218, schedule 4 and section 224.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Finance Committee

Wednesday 11 June 2014

The Convener opened the meeting at 09:15

Revenue Scotland and Tax Powers Bill: Stage 2

09:15

The Convener: Our second item of business is stage 2 consideration of the Revenue Scotland and Tax Powers Bill. We are joined by the Cabinet Secretary for Finance, Employment and Sustainable Growth and by Mr Colin Miller and Mr Greig Walker, who are officials from the Scottish Government team. Members should note that, as officials cannot speak on the record at stage 2, all questions should be directed to the cabinet secretary.

The bill is lengthy and we have more than 300 amendments to dispose of. The cabinet secretary will give evidence to the Economy, Energy and Tourism Committee later this morning, so proceedings on the bill will have to be concluded by around 11.15. I do not intend to set a target, but we shall attempt to make as much progress on the bill as possible today.

Members have copies of the marshalled list of amendments and the groupings of amendments. We will take each amendment on the marshalled list in turn.

I formally welcome the cabinet secretary and his officials to the meeting.

Sections 1 and 2 agreed to.

Schedule 1—Revenue Scotland

The Convener: Amendment 1, in the name of the cabinet secretary, is in a group on its own.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 1 deals with the issue that it would be inappropriate for serving members of the National Assembly for Wales or the Northern Ireland Assembly to be eligible for appointment as members of revenue Scotland. The amendment will have the effect of disqualifying them from appointment. Members of the Scottish Parliament, the House of Commons and the House of Lords are among others who are already disqualified.

I move amendment 1.

Amendment 1 agreed to.

Schedule 1, as amended, agreed to.

Section 3—Functions of Revenue Scotland

The Convener: Amendment 2, in the name of the cabinet secretary, is grouped with amendments 4, 6, 7, 29, 49 to 51, 111, 125 to 127, 166, 167, 265 to 274, 293, 294, 297, 299 and 302 to 305.
John Swinney: The amendments in the group are all minor technical and drafting amendments. Perhaps the most significant of them are those that relate to section 3, which sets out revenue Scotland’s statutory functions, and to section 10, which relates to the charter of standards and values.

In response to recommendations from stakeholders, we lodged an amendment to section 3 to make it clear that references to persons to whom revenue Scotland must provide information and assistance include taxpayers and their agents. The same amendments will be made to section 10 to ensure that the charter that revenue Scotland must prepare specifically addresses taxpayers and their agents.

I move amendment 2.

Amendment 2 agreed to.

The Convener: The committee has now been joined by Jean Urquhart and by Ian Young and John St Clair, who are the cabinet secretary’s officials.

Amendment 3, in the name of the cabinet secretary, is in a group on its own.

John Swinney: The arrangements that we are putting in place for revenue Scotland include an emphasis on providing opportunities for disputes to be settled quickly without the need for expensive and time-consuming legal proceedings. One of those opportunities is the provision for revenue Scotland and the taxpayer to enter into independent, third-party mediation. The purpose of amendment 3, which makes specific reference to mediation among revenue Scotland’s statutory functions, is to underline the importance that Parliament attaches to that provision.

I move amendment 3.

Amendment 3 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 7 agreed to.

Section 8—Ministerial guidance

Amendment 4 moved—[John Swinney]—and agreed to.

Section 8, as amended, agreed to.

Sections 9 to 7 agreed to.

Section 10—Charter of standards and values

The Convener: Amendment 5, in the name of the cabinet secretary, is grouped with amendments 8 and 9.

John Swinney: I undertook to lodge the amendments in the group in response to recommendations that the committee made in its stage 1 report. The amendments will ensure that the charter imposes reciprocal obligations on revenue Scotland and the taxpayer and will require revenue Scotland to consult on the terms of the first charter and any subsequent revisions to the charter.

I move amendment 5.

Amendment 5 agreed to.

Amendments 6 to 9 moved—[John Swinney]—and agreed to.

Section 10, as amended, agreed to.

Sections 11 and 12 agreed to.

Section 13—Use of information by Revenue Scotland

The Convener: Amendment 10, in the name of the cabinet secretary, is grouped with amendments 11 to 27 and 292.

John Swinney: The group concerns part 3, which is on information. Section 13 allows revenue Scotland and persons to whom it delegates any of its functions—that is, Registers of Scotland and the Scottish Environment Protection Agency—to share information with each other in connection with their statutory functions, including land registration and environmental functions. Section 15 imposes a duty on officials who exercise tax functions to maintain the confidentiality of taxpayer information, and the bill provides that the wrongful disclosure of protected taxpayer information will be a criminal offence.

The amendments in the group will clarify the detail of those arrangements and provide additional safeguards by modifying the legislation that governs Registers of Scotland and SEPA to ensure that protected taxpayer information can be disclosed only in appropriate given circumstances. With the addition of the amendments, part 3 will strike the right balance between allowing information to be shared between the relevant agencies for the proper exercise of their functions and properly protecting the confidentiality of taxpayer information.

I move amendment 10.

Amendment 10 agreed to.

Amendments 11 to 15 moved—[John Swinney]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Protected taxpayer information

Amendments 16 to 19 moved—[John Swinney]—and agreed to.

Section 14, as amended, agreed to.
Section 15—Confidentiality of protected taxpayer information

Amendments 20 to 24 moved—[John Swinney]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Protected taxpayer information: declaration of confidentiality

Amendment 25 moved—[John Swinney]—and agreed to.

Section 16, as amended, agreed to.

After section 16

Amendments 26 and 27 moved—[John Swinney]—and agreed to.

Sections 17 to 22 agreed to.

Section 23—Temporary President

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 30 to 48.

John Swinney: The amendments in the group will broadly align the provisions that relate to appointments to the Scottish tax tribunals with the corresponding provisions in the Tribunals (Scotland) Act 2014, which Parliament recently endorsed. It would be inappropriate for serving members of the National Assembly for Wales or the Northern Ireland Assembly to be eligible for appointment as members of tax tribunals. Amendment 35 will disqualify them from appointment as such members.

I move amendment 28.

Amendment 28 agreed to.

Section 23, as amended, agreed to.

Section 24—Members

Amendment 29 moved—[John Swinney]—and agreed to.

Section 24, as amended, agreed to.

Schedule 2—The Scottish Tax Tribunals

Amendments 30 to 51 moved—[John Swinney]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 25 and 26 agreed to.

Section 27—Decisions in the First-tier Tribunal

The Convener: Amendment 52, in the name of the cabinet secretary, is grouped with amendments 53 to 57, 63 to 70, 309, 71 to 79, 277 and 278.

John Swinney: Like the amendments in the previous group, the amendments in this group broadly align the procedures and administration of the tax tribunals that are implicit in the bill with the corresponding provisions in the Tribunals (Scotland) Act 2014.

I draw the committee’s attention in particular to amendments 53 and 54, which address concerns that the committee raised in its stage 1 report. The amendments provide that the size of the panel that hears an appeal in the upper tribunal can be augmented at the discretion of the president of the tax tribunals.

Amendments 70 and 278 provide that the Scottish ministers may, by regulation, provide for offences and penalties in relation to the proceedings of the tax tribunals. The power is aligned to the corresponding power available to the Scottish ministers under the 2014 act.

I move amendment 52.

Amendment 52 agreed to.

Section 27, as amended, agreed to.

Section 28—Decisions in the Upper Tribunal

Amendments 53 and 54 moved—[John Swinney]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Declining jurisdiction

Amendment 55 moved—[John Swinney]—and agreed to.

Section 30 agreed to.

After section 30

Amendments 56 and 57 moved—[John Swinney]—and agreed to.

Section 31—Appeal from the First-tier Tribunal

The Convener: Amendment 58, in the name of the cabinet secretary, is grouped with amendments 59 to 62, 262 and 264.

John Swinney: The amendments in this group provide for a different test to apply to the procedure for permitting an onward appeal from the upper tribunal, depending on whether the original appeal was heard in the upper tribunal at first instance. What is known as the second appeals test will apply in the fashion that the Parliament endorsed in the Tribunals (Scotland) Act 2014. If an appeal is heard in the upper tribunal at first instance, an appeal to the Court of
Session on a point of law is permitted if the upper tribunal or the Court of Session agrees. If an appeal that is heard in the upper tribunal has already been heard in the first-tier tribunal, the upper tribunal or the Court of Session may agree that an onward appeal is permissible if it would raise an important point of principle or practice, or if there is another compelling reason to allow the appeal.

Amendments 58, 60 and 262 provide that if the tribunal refuses to allow a late appeal there is no right of onward appeal. Amendment 264 provides that a settlement agreement will be treated as a decision of the tribunal, but not in respect of a right of onward appeal.

I move amendment 58.
Amendment 58 agreed to.
Section 31, as amended, agreed to.
Section 32 agreed to.

Section 33—Appeal from the Upper Tribunal
Amendments 59 and 60 moved—[John Swinney]—and agreed to.
Section 33, as amended, agreed to.
Section 34 agreed to.

09:30

Section 35—Procedure on second appeal
Amendments 61 and 62 moved—[John Swinney]—and agreed to.
Section 35, as amended, agreed to.
Sections 36 to 40 agreed to.

Section 41—Venue for hearings
Amendment 63 moved—[John Swinney]—and agreed to.
Section 41, as amended, agreed to.
Sections 42 and 43 agreed to.

Section 44—Award of expenses
Amendments 64 to 69 moved—[John Swinney]—and agreed to.
Section 44, as amended, agreed to.
Section 45 agreed to.

After section 45
Amendment 70 moved—[John Swinney]—and agreed to.

Section 46—Tribunal rules
Amendments 309 and 71 to 73 moved—[John Swinney]—and agreed to.
Section 46, as amended, agreed to.
Sections 47 and 48 agreed to.

Section 49—Proceedings and steps
Amendment 74 moved—[John Swinney]—and agreed to.
Section 49, as amended, agreed to.

Section 50—Hearings in cases
Amendments 75 and 76 moved—[John Swinney]—and agreed to.
Section 50, as amended, agreed to.

Section 51—Evidence and decisions
Amendment 77 moved—[John Swinney]—and agreed to.
Section 51, as amended, agreed to.

Section 52—Practice directions
Amendment 78 moved—[John Swinney]—and agreed to.
Section 52, as amended, agreed to.
Section 53 agreed to.

Section 54—Guidance
Amendment 79 moved—[John Swinney]—and agreed to.
Section 54, as amended, agreed to.
Sections 55 and 56 agreed to.

Section 57—The general anti-avoidance rule: introductory

The Convener: Amendment 80, in the name of the cabinet secretary, is grouped with amendments 87 to 91, 94, 95, 131, 275 and 276.

John Swinney: The bill as introduced established three separate categories of officer—an authorised officer, a designated officer and a designated investigation officer, who were each able to exercise some of the powers of revenue Scotland. During stage 1, that was criticised by a number of stakeholders as being unnecessarily complicated. I accept that criticism. Therefore, the purpose of the group of amendments is to replace the three different types of revenue Scotland officer with a single category of designated officer for the purpose of exercising relevant powers. That will enable revenue Scotland to ensure that officers who exercise particular powers are
sufficiently senior or specialist without unnecessarily complicating arrangements.

I move amendment 80.

Amendment 80 agreed to.

Section 57, as amended, agreed to.

Section 58 agreed to.

Section 59—Meaning of “artificial”

The Convener: Amendment 81, in the name of the cabinet secretary, is grouped with amendments 82 and 83.

John Swinney: The amendments in the group relate to the general anti-avoidance rule in part 5. I have made it clear that we intend to take the toughest possible approach to tax avoidance. I am delighted that the committee supported that approach in its stage 1 report. The committee recommended that we should further strengthen condition B of the general anti-avoidance rule. That position was also supported by the Scottish Trades Union Congress and Unison. These amendments are designed to do exactly that.

Amendments 81 and 82 provide that condition B will be satisfied if a tax avoidance arrangement lacks either economic or commercial substance—not just commercial substance. Amendment 83 adds a further factor, which might indicate that an arrangement lacks economic or commercial substance, which is where it results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer. The amendments further reinforce the very robust approach that we intend to take to any form of artificial tax avoidance.

I move amendment 81.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I thank the cabinet secretary for responding to the committee’s recommendation on this, as on other matters. The committee also recommended in paragraph 38 of its report that reasonable business conduct be extended to cover reasonable personal conduct. The example cited by the committee in its report was the matter of a personal gift that has no commercial substance and would not normally be employed in reasonable business conduct. Why did the cabinet secretary not take on board that particular aspect of the committee’s recommendation?

John Swinney: Our view is that the definition of the amendments—by adding in economic substance as well as commercial substance—would address the issue that the committee raised in its report. We consider that the amendments are sufficiently broad in scope to capture the scenario and issues that Mr Chisholm raises.

I am certainly happy to reflect further on that in the light of the point that Mr Chisholm has made to satisfy myself that the aspiration that we have set out in the bill of establishing a high level of intolerance of tax avoidance is met by the provisions that we have put in the bill. If there is a necessity to bring forward further provisions at stage 3, I will consider doing so.

Amendment 81 agreed to.

Amendments 82 and 83 moved—[John Swinney]—and agreed to.

Section 59, as amended, agreed to.

Section 60 agreed to.

Section 61—Counteracting tax advantages

The Convener: Amendment 84, in the name of the cabinet secretary, is grouped with amendments 85, 86, 92 and 93.

John Swinney: This group of amendments makes further provision in respect of counteraction taken under the general anti-avoidance rule. In particular, it provides that adjustments that revenue Scotland makes in order to counteract tax advantages under the GAAR are subject to the same administrative processes as are set out elsewhere in the bill, for example in relation to amending and correcting returns, the making of assessments and determinations by revenue Scotland and time limits.

Amendment 93 provides that the taxpayer must pay any outstanding tax, penalty or interest within a period of 30 days after a final notice of counteraction is issued under the general anti-avoidance rule.

I move amendment 84.

Amendment 84 agreed to.

Amendments 85 and 86 moved—[John Swinney]—and agreed to.

Section 61, as amended, agreed to.

Section 62 agreed to.

Section 63—Notice to taxpayer of proposed counteraction of tax advantage

Amendments 87 to 90 moved—[John Swinney]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Final notice to taxpayer of counteraction of tax advantage

Amendments 91 and 92 moved—[John Swinney]—and agreed to.

Section 64, as amended, agreed to.
After section 64

Amendment 93 moved—[John Swinney]—and agreed to.

Section 65—Assumption of tax advantage

Amendments 94 and 95 moved—[John Swinney]—and agreed to.

Section 65, as amended, agreed to.

Section 66 agreed to.

Section 67—Overview

The Convener: Amendment 96, in the name of the cabinet secretary, is grouped with amendment 97.

John Swinney: During the committee’s evidence sessions at stage 1, the Law Society of Scotland and others questioned the need for section 68 as currently drafted. In particular, they did not feel that it was appropriate to have a section on taxpayer duties when there was no corresponding section on revenue Scotland duties. Although section 68 was intended only as an index, rather than to impose duties, I accept that that caused some concern. I therefore propose to remove section 68.

I move amendment 96.

Amendment 96 agreed to.

Section 67, as amended, agreed to.

Section 68—Taxpayer duties

Amendment 97 moved—[John Swinney]—and agreed to.

Section 69—Duty to keep and preserve records

The Convener: Amendment 98, in the name of the cabinet secretary, is grouped with amendments 99 to 104 and amendment 301.

John Swinney: I shall first speak to amendment 98, together with amendments 99 to 104 and amendment 301.

Amendment 99 makes further provision about a person’s duty to keep and preserve records when they are liable to be registered for tax. It specifies what type of records must be kept, including records relating to material on a landfill site or part of a landfill site. Amendment 101 sets out the period for which such records must be kept and preserved.

Amendment 104 addresses a recommendation of the Delegated Powers and Law Reform Committee. It amends section 70 to introduce a power for the Scottish ministers to make regulations, subject to negative procedure, prescribing any conditions or exceptions to the form and means by which records may be preserved.

Amendment 301 repeals two sections of the Landfill Tax (Scotland) Act 2014 that are no longer required as a result of the amendments in this group. The other amendments are minor and consequential.

I shall now speak to amendment 105, together with amendments 106 to 110, 128, 129 and 310. At stage 1, I undertook to lodge a number of penalties amendments, in response to recommendations that both the Finance Committee and the Delegated Powers and Law Reform Committee made in their stage 1 reports, and also in response to views expressed by stakeholders.

These amendments relate to the penalties in section 71 and paragraph 5 of schedule 3 for failing to keep and preserve records. They specify the assessment and enforcement arrangements for those two penalties, as well as providing a power for revenue Scotland to waive the penalty if it is satisfied that there is a reasonable excuse on behalf of the person liable to the penalty. The amendments also introduce two regulation-making powers for the Scottish ministers to make further provisions about those two penalties. Those regulations will be subject to the affirmative procedure.

I move amendment 98.

Amendment 98 agreed to.

Amendments 99 to 103 moved—[John Swinney]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Preservation of information etc

Amendment 104 moved—[John Swinney]—and agreed to.

Section 70, as amended, agreed to.

Section 71—Penalty for failure to keep and preserve records

Amendment 105 moved—[John Swinney]—and agreed to.

Section 71, as amended, agreed to.

After section 71

Amendments 106 to 109 moved—[John Swinney]—and agreed to.

Section 72—Further provision: land and buildings transaction tax
Amendments 110 and 111 moved—[John Swinney]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Dates by which tax returns must be made

09:45

The Convener: Amendment 112, in the name of the cabinet secretary, is grouped with amendments 113 to 116, 119, 279, 295, 296 and 298.

John Swinney: Amendment 112 will remove the power for the Scottish ministers by regulations to define when a tax return must be made. Provision defining when tax returns have to be made is contained in the two tax-specific acts. It is therefore unnecessary to have the same power in the bill.

Amendments 114, 116 and 119 provide that, when a designated officer of revenue Scotland has amended a tax return under section 78 or section 84, the taxpayer cannot subsequently amend the return under section 74. In those circumstances, the taxpayer’s recourse would be to seek a review or to appeal the decision.

Amendment 115 will amend section 75 to reduce the time within which revenue Scotland may correct an obvious error or omission in a tax return from three years to 12 months. Given that the section deals only with obvious errors and omissions, I took the view that 12 months is probably sufficient to allow revenue Scotland to do that.

I move amendment 112.

Amendment 112 agreed to.

Amendment 113 moved—[John Swinney]—and agreed to.

Section 73, as amended, agreed to.

Section 74—Amendment of return by taxpayer

Amendment 114 moved—[John Swinney]—and agreed to.

Section 74, as amended, agreed to.

Section 75—Correction of return by Revenue Scotland

Amendment 115 moved—[John Swinney]—and agreed to.

Section 75, as amended, agreed to.

Sections 76 and 77 agreed to.

Section 78—Amendment of self-assessment during enquiry to prevent loss of tax

Amendment 116 moved—[John Swinney]—and agreed to.

The Convener: Amendment 117, in the name of the cabinet secretary, is grouped with amendments 120, 122 to 124, 242 and 243.

John Swinney: These amendments provide further detail about when additional tax that is due as a result of a revenue Scotland amendment, determination or assessment must be paid. Amendment 242 provides that interest is payable on any outstanding amount of tax from the relevant date until it is paid. The relevant date will be a date that is set by the Scottish ministers in regulations.

Amendment 243 provides that revenue Scotland will provide a receipt for any amount of tax that is paid in all circumstances and not only if the taxpayer requests one.

I move amendment 117.

Amendment 117 agreed to.

Section 78, as amended, agreed to.

Sections 79 to 83 agreed to.

Section 84—Completion of enquiry

The Convener: Amendment 118, in the name of the cabinet secretary, is grouped with amendments 121, 130, 255 and 260.

John Swinney: These amendments will provide increased certainty for the taxpayer. When revenue Scotland has opened an inquiry and for whatever reason has not issued a closure notice, the taxpayer will be able to treat the inquiry as closed three years after the filing date or the date on which the return in question was made.

Amendments 255 and 260 make consequential changes.

I move amendment 118.

Amendment 118 agreed to.

Amendments 119 to 121 moved—[John Swinney]—and agreed to.

Section 84, as amended, agreed to.

The Convener: I will suspend the meeting for a wee minute, because there is an anomaly between what I have in front of me and what the clerk has.

09:50

Meeting suspended.
On resuming—

The Convener: Okay, folks. I reconvene the meeting—we are back on track.

Section 85 agreed to.

Section 86—Determination of tax chargeable if no return made

Amendment 122 moved—[John Swinney]—and agreed to.

Section 86, as amended, agreed to.

Sections 87 to 95 agreed to.

Section 96—Assessment procedure

Amendments 123 and 124 moved—[John Swinney]—and agreed to.

Section 96, as amended, agreed to.

Sections 97 and 98 agreed to.

Section 99—Claim for repayment if order changing tax basis not approved

Amendments 125 to 127 moved—[John Swinney]—and agreed to.

Section 99, as amended, agreed to.

Sections 100 to 105 agreed to.

Schedule 3—Claims for relief from double assessment and for repayment

Amendments 128 to 130 moved—[John Swinney]—and agreed to.

Schedule 3, as amended, agreed to.

Sections 106 to 110 agreed to.

Section 111—Designated investigation officers

Amendment 131 moved—[John Swinney]—and agreed to.

Sections 112 to 116 agreed to.

Section 117—Approval of taxpayer notices and third party notices

The Convener: Amendment 132, in the name of the cabinet secretary, is grouped with amendments 133 to 161, 163 to 165 and 227 to 229.

John Swinney: The amendments in this group make further important provisions about the rules and procedures regarding information notices. Among other things, they will require that a designated officer must always seek and obtain the approval of the tribunal before an information notice under section 119 or 122 can be given.

In keeping with the move to a single designated officer classification, the amendments remove all references to a designated investigation officer. The references to “a transaction” and “buyer” in section 121(2) of the bill may inadvertently create an assumption that the provision only applies to land and buildings transaction tax. Amendment 142 therefore makes it clearer that the section applies to a wider range of circumstances and, therefore, to both devolved taxes.

The current wording in section 121(3)(a) does not cater for partnerships that are not registered, such as common-law partnerships. Amendment 143 corrects that by allowing a third-party notice to state a name by which the partnership is known.

Other amendments in the group make further important provisions about inspections of business premises and the investigatory powers available to a designated officer. The amendments make it clear that a designated officer can carry out an inspection of business premises without advance notice only if there are reasonable grounds for believing that giving notice would seriously prejudice the assessment or collection of tax. When advance notice is given, it must be given in writing.

The amendments also give additional powers to an officer carrying out such an inspection, so that revenue Scotland can effectively discharge its investigatory functions in relation to Scottish landfill tax. Among other things, an officer will be able to bring other persons to the inspection. Such persons will be able to take and use any equipment or materials required for the purposes of the inspection, such as heavy machinery.

Finally, section 142(3)(b) of the bill currently places a reasonableness condition on the ability of a person to request a copy of a document that they produce to a revenue Scotland designated officer and which is subsequently removed by that officer. I do not think that such a condition is either necessary or fair. A person should always be entitled to request a copy of a document removed in such circumstances, and amendment 159 makes that clear.

I move amendment 132.

Amendment 132 agreed to.

Section 117, as amended, agreed to.

Section 118—Copying third party notice to taxpayer

Amendment 133 moved—[John Swinney]—and agreed to.

Section 118, as amended, agreed to.
Section 119—Power to obtain information and documents about persons whose identity is not known
Amendments 134 to 140 moved—[John Swinney]—and agreed to.
Section 119, as amended, agreed to.

Section 120—Third party notices and notices under section 119: groups of undertakings
Amendment 141 moved—[John Swinney]—and agreed to.
Section 120, as amended, agreed to.

Section 121—Third party notices and notices under section 119: partnerships
Amendments 142 to 144 moved—[John Swinney]—and agreed to.
Section 121, as amended, agreed to.

Section 122—Power to obtain information about persons whose identity can be ascertained
Amendments 145 and 146 moved—[John Swinney]—and agreed to.
Section 122, as amended, agreed to.

Section 123—Notices
Amendment 147 moved—[John Swinney]—and agreed to.
Section 123, as amended, agreed to.
Sections 124 to 126 agreed to.

Section 127—Information notices: general restrictions
Amendment 148 moved—[John Swinney]—and agreed to.
Section 127, as amended, agreed to.
Sections 128 to 134 agreed to.

Section 135—Carrying out inspections under section 133 or 134
Amendments 149 to 153 moved—[John Swinney]—and agreed to.
Section 135, as amended, agreed to.

After section 135
Amendment 154 moved—[John Swinney]—and agreed to.
Sections 136 and 137 agreed to.

Section 138—Approval of tribunal for premises inspections
Amendments 155 to 157 moved—[John Swinney]—and agreed to.
Section 138, as amended, agreed to.
Section 139 agreed to.

Section 140—Power to take samples
Amendment 158 moved—[John Swinney]—and agreed to.
Section 140, as amended, agreed to.
Section 141 agreed to.

Section 142—Power to copy and remove documents
Amendment 159 moved—[John Swinney]—and agreed to.
Section 142, as amended, agreed to.
Section 143 agreed to.

Section 144—Review or appeal against information notices
Amendments 160 and 161 moved—[John Swinney]—and agreed to.
Section 144, as amended, agreed to.

After section 144

The Convener: Amendment 162, in the name of the cabinet secretary, is grouped with amendments 246, 248 to 251, 282 and 287.

10:00
John Swinney: This group makes procedural changes to the circumstances in which decisions taken by revenue Scotland are to be appealable. For example, amendment 248 provides that a decision of revenue Scotland under section 61 to make adjustments to counteract a tax advantage is an appealable decision. Amendments 249 and 250 will ensure that any decision in relation to a penalty is appealable, including decisions on the amount of the penalty and whether to suspend a penalty.

Amendments 162, 246, 248 and 250 provide affirmative order-making powers for the Scottish ministers to modify the list of non-appealable decisions in section 144 and to specify additional circumstances in which decisions in relation to notices given under section 193 may be appealable.

I move amendment 162.
Amendment 162 agreed to.
Section 145 agreed to.
Section 146—Offence of concealing etc documents following information notice
Amendments 163 and 164 moved—[John Swinney]—and agreed to.
Section 146, as amended, agreed to.

Section 147—Offence of concealing etc documents following information notification
Amendment 165 moved—[John Swinney]—and agreed to.
Section 147, as amended, agreed to.

Section 148—Penalties: overview
Amendment 166 moved—[John Swinney]—and agreed to.
Section 148, as amended, agreed to.

Section 149—Double jeopardy
Amendment 167 moved—[John Swinney]—and agreed to.
Section 149, as amended, agreed to.

Section 150—Penalty for failure to make returns
The Convener: Amendment 168, in the name of the cabinet secretary, is grouped with amendments 169 to 206, 283 and 311.

John Swinney: As I said in the context of the amendments in group 13, during stage 1 I undertook to bring the detail of the penalties regime into the bill. This group of amendments relates to the penalties in sections 150 and 151 for failing to make a tax return or pay tax on time. They specify the circumstances under which either penalty is payable and the penalty amounts. They also tidy up the wording in sections 152 to 159.

The amendments also remove the two regulation-making powers in section 150(2) and section 151(2), replacing them with a single regulation-making power for the Scottish ministers to make further provision about penalties in chapter 2 of part 8 of the bill. Any such regulations will be subject to the affirmative procedure.

I move amendment 168.

Gavin Brown (Lothian) (Con): I welcome the Government’s approach to penalties and its decision to put penalties in the bill.

The committee has had representation on amendments 179 to 186 that questions the reason for making the penalty payable, if tax is outstanding, the day after the due date. The representation that we have received suggests that that will be a little harsh on the taxpayer on some occasions, particularly if there has been a genuine oversight or error or if there has been a bureaucratic error by revenue Scotland or those who collect the tax. What is the Government’s thinking on going for the day after? Could the Government be flexible on that issue and reflect on it before stage 3?

John Mason (Glasgow Shettleston) (SNP): The committee welcomes the increased consistency from having the penalties in the bill. How will inflation be dealt with? The penalty is fairly low but, over time, £100 will become worth less and less. We have seen penalties in some older Westminster legislation become almost meaningless. When the penalties are in the bill, how will they be reviewed over time?

John Swinney: I will deal with Mr Mason’s question first. The bill contains a power to apply an inflation adjustment by regulation, so discretion is available. Action would have to be taken—it would not happen automatically—but a power could be used to apply an inflation adjustment as appropriate.

As for Mr Brown’s point, the Government’s view is that we should establish a regime that errs heavily on the side of the proper reporting and disclosure of liability for tax purposes and prompt payment as a consequence. That is a good and sound general principle, which is reflected in the regime that we have set out in the bill in response to the committee’s representations. The bill also gives revenue Scotland discretion to allocate more time in exceptional circumstances, if it considers that necessary.

The bill strikes the correct balance—it emphasises prompt payment but allows discretion to be used in exceptional circumstances. In general, I think that Parliament’s view is that we should err on the side of encouraging prompt payment but leave room for discretion if it is absolutely required.

My sense is that we have struck the right balance. If the committee supports the amendments, I will certainly reflect further on the point that Mr Brown made. If he wishes to make further representations to me, I will be happy to consider them. If I do not believe that we have constructed the correct balance, I will be happy to lodge stage 3 amendments to alter the balance.

Amendment 168 agreed to.

Amendments 169 and 170 moved—[John Swinney]—and agreed to.
Section 150, as amended, agreed to.

After section 150
Amendments 171 to 178 moved—[John Swinney]—and agreed to.
Section 151—Penalty for failure to pay tax
Amendments 179 to 181 moved—[John Swinney]—and agreed to.
Section 151, as amended, agreed to.

After section 151
Amendments 182 to 186 moved—[John Swinney]—and agreed to.

Section 152—Interaction of penalties under section 150 with other penalties
Amendments 187 to 189 moved—[John Swinney]—and agreed to.
Section 152, as amended, agreed to.

Section 153—Interaction of penalties under section 151 with other penalties
Amendments 190 to 192 moved—[John Swinney]—and agreed to.
Section 153, as amended, agreed to.

Section 154—Reduction in penalty under section 150 for disclosure
Amendment 193 moved—[John Swinney]—and agreed to.
Section 154, as amended, agreed to.

Section 155—Suspension of penalty under section 151 during currency of agreement for deferred payment
Amendment 194 moved—[John Swinney]—and agreed to.
Section 155, as amended, agreed to.

Section 156—Special reduction in penalty under sections 150 and 151
Amendment 195 moved—[John Swinney]—and agreed to.
Section 156, as amended, agreed to.

Section 157—Reasonable excuse for failure to make return or pay tax
Amendments 196 and 197 moved—[John Swinney]—and agreed to.
Section 157, as amended, agreed to.

Section 158—Assessment of penalties under sections 150 and 151
Amendments 198 to 202 moved—[John Swinney]—and agreed to.
Section 158, as amended, agreed to.

Section 159—Time limit for assessment of penalties under sections 150 and 151
Amendments 203 to 205 moved—[John Swinney]—and agreed to.
Section 159, as amended, agreed to.

After section 159
Amendment 206 moved—[John Swinney]—and agreed to.

Section 160—Penalty for error in taxpayer document

The Convener: Amendment 207, in the name of the cabinet secretary, is grouped with amendments 208 to 226, 284 and 312.

John Swinney: The amendments in the group are part of the penalties amendments that I undertook to lodge at stage 1. The amendments relate to the penalties in sections 160, 162 and 163 for submitting inaccurate documents to revenue Scotland or for failing to take reasonable steps to notify it about a revenue Scotland underestimate of tax. They specify the circumstances under which those penalties are payable, the penalty amounts and how they are calculated. They also remove the three regulation-making powers in sections 160(7), 162(4) and 163(3) and replace them with a single regulation-making power for the Scottish ministers to make further provision on penalties in chapter 3 of part 8 of the bill. That power will be subject to the affirmative procedure, of course.

I move amendment 207.
Amendment 207 agreed to.
Amendments 208 and 209 moved—[John Swinney]—and agreed to.
Section 160, as amended, agreed to.

After section 160
Amendment 210 moved—[John Swinney]—and agreed to.
Section 161 agreed to.

Section 162—Penalty for error in taxpayer document attributable to another person
Amendments 211 to 213 moved—[John Swinney]—and agreed to.
Section 162, as amended, agreed to.

Section 163—Under-assessment by Revenue Scotland
Amendments 214 to 216 moved—[John Swinney]—and agreed to.
Section 163, as amended, agreed to.

After section 163
Amendments 217 to 220 moved—[John Swinney]—and agreed to.

Section 164—Special reduction in penalty under sections 160, 162 and 163
Amendment 221 moved—[John Swinney]—and agreed to.
Section 164, as amended, agreed to.

Section 165—Reduction in penalty under sections 160, 162 and 163 for disclosure
Amendment 222 moved—[John Swinney]—and agreed to.
Section 165, as amended, agreed to.

10:15

Section 166—Assessment of penalties under sections 160, 162 and 163
Amendments 223 to 225 moved—[John Swinney]—and agreed to.
Section 166, as amended, agreed to.

After section 166
Amendment 226 moved—[John Swinney]—and agreed to.

Section 167—Penalties for failure to comply or obstruction
Amendment 227 moved—[John Swinney]—and agreed to.
Section 167, as amended, agreed to.
Sections 168 and 169 agreed to.

Section 169—Power to change amount of penalties under sections 167, 168 and 169
The Convener: Amendment 228, in the name of the cabinet secretary, is grouped with amendments 230 to 241, 286 and 314.

John Swinney: The amendments in the group relate to the penalty in section 181 for failing “to comply with a requirement imposed by or under section 22 or 23” of the Landfill Tax (Scotland) Act 2014. The provisions require the taxpayer, or prospective taxpayer, to notify Revenue Scotland when they form the intention of engaging in or desisting from engaging in taxable activities. The amendments specify the circumstances under which the penalty is payable, the penalty amounts and how they are calculated, the enforcement and assessment arrangements and the discretionary powers that Revenue Scotland will have in relation to that penalty.

The amendments also remove the regulation-making power specific to section 181(2) and replace it with a broader power for Scottish ministers to make further provision about penalties in chapter 5 of part 8 of the bill. That power will be subject to the affirmative procedure.

I move amendment 232.
Amendment 232 agreed to.

Amendments 233 and 234 moved—[John Swinney]—and agreed to.
Section 181, as amended, agreed to.

After section 181
Amendment 235 to 241 moved—[John Swinney]—and agreed to.

Section 174—Reasonable excuse for failure to comply or obstruction
Amendment 229 moved—[John Swinney]—and agreed to.
Section 174, as amended, agreed to.
Sections 175 and 176 agreed to.

Section 177—Increased daily default penalty
Amendment 230 moved—[John Swinney]—and agreed to.
Section 177, as amended, agreed to.
Sections 178 to 180 agreed to.

After section 180
Amendment 231 moved—[John Swinney]—and agreed to.

Section 181—Penalty for failure to register for tax
The Convener: Amendment 232, in the name of the cabinet secretary, is grouped with amendments 233 to 241, 286 and 314.

John Swinney: The amendments in the group relate to the penalty in section 181 for failing “to comply with a requirement imposed by or under section 22 or 23” of the Landfill Tax (Scotland) Act 2014. The provisions require the taxpayer, or prospective taxpayer, to notify Revenue Scotland when they form the intention of engaging in or desisting from engaging in taxable activities. The amendments specify the circumstances under which the penalty is payable, the penalty amounts and how they are calculated, the enforcement and assessment arrangements and the discretionary powers that Revenue Scotland will have in relation to that penalty.

The amendments also remove the regulation-making power specific to section 181(2) and replace it with a broader power for Scottish ministers to make further provision about penalties in chapter 5 of part 8 of the bill. That power will be subject to the affirmative procedure.

I move amendment 232.
Amendment 232 agreed to.

Amendments 233 and 234 moved—[John Swinney]—and agreed to.
Section 181, as amended, agreed to.

After section 181
Amendment 235 to 241 moved—[John Swinney]—and agreed to.
Section 182—Interest on unpaid tax
Amendments 242 moved—[John Swinney]—
and agreed to.
Section 182, as amended, agreed to.
Sections 183 to 185 agreed to.

Section 186—Issue of tax demands and receipts
Amendment 243 moved—[John Swinney]—
and agreed to.
Section 186, as amended, agreed to.
Section 187 agreed to.

Section 188—Certificates of debt
The Convener: Amendment 244, in the name of the cabinet secretary, is grouped with amendments 245 and 300.
John Swinney: Section 188 makes provision for a designated officer to issue a certificate of debt that a sum payable to revenue Scotland has not been paid. Amendments 244 and 245 make further provision for designated officers to issue certificates that no return or notice has been made.

The importance of the certificates is that, on the strength of them, revenue Scotland can obtain summary warrants under section 190, which are immediately enforceable against taxpayers who owe it money.

Similar provision for those two types of certificates is already made in section 28 of the Landfill Tax (Scotland) Act 2014. Amendment 300 will repeal that section, in consequence of amendments 244 and 245.
I move amendment 244.
Amendment 244 agreed to.
Amendment 245 moved—[John Swinney]—
and agreed to.
Section 188, as amended, agreed to.
Sections 189 to 194 agreed to.

After section 194
Amendment 246 moved—[John Swinney]—
and agreed to.
Section 195 agreed to.

Section 196—Power to change amount of penalty under section 195
Amendment 247 moved—[John Swinney]—
and agreed to.
Section 197 agreed to.

Section 198—Appealable decisions
Amendments 248 to 251 moved—[John Swinney]—
and agreed to.
Section 198, as amended, agreed to.

Section 199—Right to request review
The Convener: Amendment 252, in the name of the cabinet secretary, is grouped with amendments 253, 254, 256 to 259 and 261.
John Swinney: This group of amendments relates to review and appeals, and is entirely procedural. The intention is that any review should take place before an appeal to the tribunal. The amendments provide that a taxpayer cannot ask revenue Scotland to review a decision if he or she has already lodged a notice of appeal to the tribunal against it. Likewise, the taxpayer may not lodge an appeal if he or she has already asked revenue Scotland to carry out a review. If the taxpayer has entered into a settlement arrangement with revenue Scotland, he or she cannot either ask for a review or lodge an appeal against the decision.

Amendments 259 and 261 simply provide that an appellant must give notice of appeal directly to the tribunal and not to revenue Scotland.
I move amendment 252.
Amendment 252 agreed to.
Amendment 253 moved—[John Swinney]—
and agreed to.
Section 199, as amended, agreed to.

Section 200—Notice of review
Amendments 254 to 256 moved—[John Swinney]—
and agreed to.
Section 200, as amended, agreed to.
Sections 201 to 205 agreed to.

Section 206—Right of appeal
Amendments 257 and 258 moved—[John Swinney]—
and agreed to.
Section 206, as amended, agreed to.

Section 207—Notice of appeal
Amendments 259 and 260 moved—[John Swinney]—
and agreed to.
Section 207, as amended, agreed to.

Section 208—Late notice of appeal
Amendments 261 and 262 moved—[John Swinney]—
and agreed to.
Section 208, as amended, agreed to.
Section 209 agreed to.

Section 210—Reviews and appeals not to postpone recovery of tax

The Convener: Amendment 263, in the name of the cabinet secretary, is grouped with amendment 289.

John Swinney: Section 210 provides that any tax, penalty or interest is payable in advance of a review or an appeal but allows ministers to bring forward regulations providing for the postponement of tax, penalties or interest pending a review or appeal. However, in relation to both land and buildings transaction tax and landfill tax, I believe that it is right that any tax that is due and any associated penalties and interest should be paid immediately. It will not therefore be necessary to bring forward regulations providing for postponement, although revenue Scotland will of course be able to exercise its discretion to allow postponement on a case-by-case basis.

I move amendment 263.

Malcolm Chisholm: I was just a bit surprised by that. It seemed rather harsh not to have any provision for appeals. Obviously, there could be cases where an appeal is being used as an excuse to postpone payment but, equally, an appeal might well have merit and the taxpayer might even be suffering hardship.

I was interested in the cabinet secretary’s comments about landfill tax and land and buildings transaction tax, but surely the bill is supposed to refer to any future taxes as well—those two taxes are not mentioned specifically in section 210. It seems rather harsh that there should be no provision for postponement with a review or appeal, because it may well be that revenue Scotland will sometimes make mistakes.

Gavin Brown: Amendment 263 removes sections 210(2) and 210(3). As it stands, subsection (2) gives the Scottish ministers the power to make regulations providing for the postponement of any tax, penalty or interest pending review or appeal. It does not force ministers to do so; it gives them the option, should they choose, to make such regulations. The Government’s position, as of today, is that it does not think that it would want to do so. However, this Government and future Governments might change their mind. I am therefore not sure that there is anything to be gained by removing subsections (2) and (3). If the Government genuinely reaches the view that it does want to bring in regulations, it simply does not have to do so. I do not see the harm in retaining subsections (2) and (3). To follow on from what Mr Chisholm said, it might be unduly harsh in some cases for taxpayers not to have a degree of flexibility. I urge the cabinet secretary not to press amendment 263.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I agree with the cabinet secretary that it is obviously important to get tax and penalties paid when they are owed. That came out in the considerable evidence that we took over stage 1 and I think that it is broadly where the committee is as well. The discretion that revenue Scotland can exercise in these circumstances might be important, and that will obviously be subject to ministerial direction. Will the cabinet secretary set out the circumstances in which revenue Scotland might exercise such discretion in these areas?

John Swinney: This is reasonably similar territory to the other issues that we discussed earlier. There is a question of balance here. Section 210(1) makes it very clear that “Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal.”

There is therefore clarity in subsection (1) that, even if a taxpayer has requested a review or an appeal, the liability to pay tax still crystallises. There is a need to address the circumstances in which that might not apply, given that subsection (1) is very clear that it applies in all circumstances. It comes down to a judgment between whether ministers should have the power to specify that in regulations or whether revenue Scotland should exercise its view on a case-by-case basis. The issue is whether any general schematic view should be taken or whether it should be left to the individual judgment on a case-by-case basis, which revenue Scotland is able to exercise by virtue of its general function of collecting and managing the devolved taxes.

10:30

Mr Hepburn asked in what circumstances revenue Scotland would exercise that judgment. I can certainly think of at least two areas, one of which is hardship; revenue Scotland could receive material information that would inform its view on that question. The other is where there is the emergence of a point of law that is a reasonable point of debate and dispute.

There is certainly sufficient scope for revenue Scotland to take the view that some discretion should be applied on a case-by-case basis. The judgment on amendments 263 and 289 is whether there should be a more general provision giving us the option of providing for postponement through regulations. Clearly, it is a matter of judgment as to whether that is a relevant power for ministers to have. I am certainly very happy to look at this again in the light of the issues that the committee has raised. If there are any more points of detail
that the committee wishes to draw to my attention, I will certainly consider them. In the light of those remarks, I will not press amendment 263.

Amendment 263, by agreement, withdrawn.

Section 210 agreed to.

Section 211—Settling matters in question by agreement

Amendments 264 and 265 moved—[John Swinney]—and agreed to.

Section 211, as amended, agreed to.

Section 212—Application of this Part to joint buyers

Amendment 266 moved—[John Swinney]—and agreed to.

Section 212, as amended, agreed to.

Section 213—Application of this Part to trustees

Amendments 267 and 268 moved—[John Swinney]—and agreed to.

Section 213, as amended, agreed to.

Sections 214 and 215 agreed to.

Section 216—General interpretation

Amendments 269 to 272 moved—[John Swinney]—and agreed to.

Section 216, as amended, agreed to.

Section 217 agreed to.

Schedule 5—Index of defined expressions

Amendments 273 to 276 moved—[John Swinney]—and agreed to.

Schedule 5, as amended, agreed to.

Section 218—Subordinate legislation

Amendments 277, 278, 310 and 279 moved—[John Swinney]—and agreed to.

The Convener: Amendment 280, in the name of the cabinet secretary, is grouped with amendment 291.

John Swinney: The regulation-making power in section 102 is currently subject to the affirmative procedure, but only where the regulations amend primary legislation. At stage 1, the Delegated Powers and Law Reform Committee recommended that the regulation-making power in section 102 should always be subject to the affirmative procedure, to bring it into line with the other regulation-making powers in the bill involving penalties, all of which are already subject to the affirmative procedure. I accepted the committee’s recommendation and gave an undertaking to lodge the necessary amendments at stage 2. Amendments 280 and 291 give effect to that commitment.

I move amendment 280.

Amendment 280 agreed to.

The Convener: I invite the cabinet secretary to move amendments 282, 283, 311, 284, 312, 285, 313, 286, 314 and 287 to 291 en bloc.

John Swinney: I do not want to move amendment 289. It is in the same bracket as amendment 263, which I opted to withdraw.

Amendments 282, 283, 311, 284, 312, 285, 313, 286, 314, 287 and 288 moved—[John Swinney]—and agreed to.

Amendment 289 not moved.

Amendments 290 and 291 moved—[John Swinney]—and agreed to.

Section 218, as amended, agreed to.

Sections 219 and 220 agreed to.

Schedule 4—Minor and consequential modifications

Amendments 292 to 305 moved—[John Swinney]—and agreed to.

The Convener: Amendment 306, in the name of the cabinet secretary, is in a group on its own.

John Swinney: Amendment 306 makes a minor additional amendment to the Tribunals (Scotland) Act 2014 to ensure that, at the appropriate time, the tax tribunals will be able to transfer into the new unified tribunals established by that act.

I move amendment 306.

Amendment 306 agreed to.

Schedule 4, as amended, agreed to.

Sections 221 to 223 agreed to.

Section 224—Commencement

The Convener: Amendment 307, in the name of the cabinet secretary, is grouped with amendment 308.

John Swinney: Among the detailed technical provisions of schedule 4 are amendments to provide that references to “the Tax Authority” in the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 mean “Revenue Scotland” as constituted by the Revenue Scotland and Tax Powers Bill. The amendments in this group ensure that the
necessary change is made the day after royal assent.

I move amendment 307.

Amendment 307 agreed to.

Amendment 308 moved—[John Swinney]—and agreed to.

Section 224, as amended, agreed to.

Section 225 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank everyone for their perseverance during today’s proceedings. Members should note that the bill will now be reprinted as amended. The Parliament has not yet determined when stage 3 will take place, but members may now lodge stage 3 amendments with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

I thank the cabinet secretary for his attendance and contributions today, and I thank his officials for coming to the committee.
# Revenue Scotland and Tax Powers Bill

[AS AMENDED AT STAGE 2]

## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Overview of Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Overview of Act</td>
</tr>
</tbody>
</table>

### PART 1

**OVERVIEW OF ACT**

| 2 | Revenue Scotland |

### PART 2

**REVENUE SCOTLAND**

**Establishment of Revenue Scotland**

| 3 | Functions of Revenue Scotland |

**Functions of Revenue Scotland**

| 4 | Delegation of functions by Revenue Scotland |

**Delegation of Revenue Scotland functions**

| 5 | Payments into the Scottish Consolidated Fund |

**Money**

| 6 | Rewards |

| 7 | Independence of Revenue Scotland |

**Independence of Revenue Scotland**

| 8 | Ministerial guidance |

**Ministerial guidance**

| 9 | Provision of information, advice or assistance to Ministers |

**Provision of information, advice or assistance to Ministers**

| 10 | Charter of standards and values |

**Charter of standards and values**

| 11 | Corporate plan |

**Corporate plan**

| 12 | Annual report |

**Annual report**
PART 3
INFORMATION

Use of information by Revenue Scotland etc.

13 Use of information by Revenue Scotland and other persons

Protected taxpayer information

14 Protected taxpayer information
15 Confidentiality of protected taxpayer information
16 Protected taxpayer information: declaration of confidentiality

Other limits on use and disclosure of information

16A Disclosure of information prohibited or restricted by statute or agreement
16B Protected taxpayer information: use by the Keeper

Offence of wrongful disclosure

17 Wrongful disclosure of protected taxpayer information

PART 4
THE SCOTTISH TAX TRIBUNALS

CHAPTER 1
INTRODUCTORY

18 Overview

CHAPTER 2
ESTABLISHMENT AND LEADERSHIP

Establishment

19 The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

Leadership

20 President of the Tax Tribunals
21 Functions of the President of the Tax Tribunals
22 Business arrangements
23 Temporary President

CHAPTER 3
MEMBERSHIP

Membership of Tax Tribunals

24 Members

Judicial members

25 Judicial members

Status and capacity

26 Status and capacity of members
CHAPTER 4

DECISION-MAKING AND COMPOSITION

Decision-making and composition: general

27 Decisions in the First-tier Tribunal
28 Decisions in the Upper Tribunal
30 Composition of the Tribunals

Decisions by two or more members

30A Voting for decisions
30B Chairing members

CHAPTER 5

APPEAL OF DECISIONS

Appeal from First-tier Tribunal

31 Appeal from the First-tier Tribunal
32 Disposal of an appeal under section 31

Appeal from Upper Tribunal

33 Appeal from the Upper Tribunal
34 Disposal of an appeal under section 33
35 Procedure on second appeal

Further provision on permission to appeal

36 Process for permission

CHAPTER 6

SPECIAL JURISDICTION

37 Judicial review cases
38 Decision on remittal
39 Additional matters
40 Meaning of judicial review

CHAPTER 7

POWERS AND ENFORCEMENT

41 Venue for hearings
42 Conduct of cases
43 Enforcement of decisions
44 Award of expenses
45 Additional powers
45A Offences in relation to proceedings

CHAPTER 8

PRACTICE AND PROCEDURE

Tribunal rules: general

46 Tribunal rules
Preamble

PART 5
THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

Artificial tax avoidance arrangements

58 Tax avoidance arrangements
59 Meaning of “artificial”
60 Meaning of “tax advantage”

Counteracting tax advantages

61 Counteracting tax advantages
62 Proceedings in connection with the general anti-avoidance rule
63 Notice to taxpayer of proposed counteraction of tax advantage
64 Final notice to taxpayer of counteraction of tax advantage
64A Counteraction of tax advantages: payment of tax charged etc.
65 Assumption of tax advantage

General anti-avoidance rule: commencement and transitional provision

66 General anti-avoidance rule: commencement and transitional provision

PART 9
ADMINISTRATION

53 Administrative support
54 Guidance
55 Annual reporting

CHAPTER 10
INTERPRETATION

56 Interpretation

CHAPTER 9
PART 5
THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

Artificial tax avoidance arrangements

58 Tax avoidance arrangements
59 Meaning of “artificial”
60 Meaning of “tax advantage”

Counteracting tax advantages

61 Counteracting tax advantages
62 Proceedings in connection with the general anti-avoidance rule
63 Notice to taxpayer of proposed counteraction of tax advantage
64 Final notice to taxpayer of counteraction of tax advantage
64A Counteraction of tax advantages: payment of tax charged etc.
65 Assumption of tax advantage

General anti-avoidance rule: commencement and transitional provision

66 General anti-avoidance rule: commencement and transitional provision
PART 6

TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1

OVERVIEW

CHAPTER 2

TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

Duties to keep records

Penalties for failing to keep and preserve records

Penalty for failure to keep and preserve records

Reasonable excuse for failure to keep and preserve records

Assessment of penalties under section 71

Enforcement of penalties under section 71

Power to change penalty provisions in sections 71 to 71C

Duty to keep and preserve records: further provision

CHAPTER 3

TAX RETURNS

Filing dates

Meaning of “filing date”

Amendment and correction of returns

Amendment of return by taxpayer

Correction of return by Revenue Scotland

CHAPTER 4

REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

Amendment of return during enquiry

Amendment of self-assessment during enquiry to prevent loss of tax

Referral during enquiry

Referral of questions to appropriate tribunal during enquiry

Withdrawal of notice of referral

Effect of referral on enquiry

Effect of determination
“Appropriate tribunal”

Completion of enquiry

Completion of enquiry
Direction to complete enquiry

CHAPTER 5

REVENUE SCOTLAND DETERMINATIONS

Determination of tax chargeable if no return made
Determination to have effect as a self-assessment
Determination superseded by actual self-assessment

CHAPTER 6

REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayment

Assessment where loss of tax
Assessment to recover excessive repayment of tax
References to “Revenue Scotland assessment”
References to the “taxpayer”

Conditions for making Revenue Scotland assessments

Conditions for making Revenue Scotland assessments
Time limits for Revenue Scotland assessments
Losses brought about carelessly or deliberately

Notice of assessment and other procedure

Assessment procedure

CHAPTER 7

RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

Relief in case of double assessment

Overpaid tax etc.

Claim for relief for overpaid tax etc.

Order changing tax basis not approved

Claim for repayment if order changing tax basis not approved

Defence of unjustified enrichment

Defence to certain claims for relief under section 98 or 99
Unjustified enrichment: further provision
Unjustified enrichment: reimbursement arrangements
Reimbursement arrangements: penalties

Other defences to claims

Cases in which Revenue Scotland need not give effect to a claim
Procedure for making claims

105 Procedure for making claims etc.
106 Time-limit for making claims
107 The claimant: partnerships
108 Assessment of claimant in connection with claim

Contract settlements

109 Contract settlements

PART 7

INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1

INVESTIGATORY POWERS: INTRODUCTORY

Overview

110 Investigatory powers of Revenue Scotland: overview

Interpretation

112 Meaning of “tax position”
113 Meaning of “carrying on a business”
114 Meaning of “statutory records”

CHAPTER 2

INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

115 Power to obtain information and documents from taxpayer
116 Power to obtain information and documents from third party
117 Approval of taxpayer notices and third party notices
118 Copying third party notice to taxpayer
119 Power to obtain information and documents about persons whose identity is not known
120 Third party notices and notices under section 119: groups of undertakings
121 Third party notices and notices under section 119: partnerships
122 Power to obtain information about persons whose identity can be ascertained
123 Notices
124 Complying with information notices
125 Producing copies of documents
126 Further provision about powers relating to information notices

CHAPTER 3

RESTRICTIONS ON POWERS IN CHAPTER 2

127 Information notices: general restrictions
128 Types of information
129 Taxpayer notices following a tax return
130 Protection for privileged communications between legal advisers and clients
131 Protection for auditors
132 Auditors: supplementary
CHAPTER 4
INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises
133 Power to inspect business premises
134 Power to inspect business premises of involved third parties
135 Carrying out inspections under section 133 or 134
135A Carrying out inspections under section 133 or 134: further provision

Inspection for valuation etc.
136 Power to inspect property for valuation etc.
137 Carrying out inspections under section 136

Approval of tribunal for premises inspections
138 Approval of tribunal for premises inspections

Other powers in relation to premises
139 Power to mark assets and to record information
140 Power to take samples

Restriction on inspection of documents
141 Restriction on inspection of documents

CHAPTER 5
FURTHER INVESTIGATORY POWERS

142 Power to copy and remove documents
143 Computer records

CHAPTER 6
REVIEWS AND APPEALS AGAINST INFORMATION NOTICES

144 Review or appeal against information notices
144A Power to modify section 144
145 Disposal of reviews and appeals in relation to information notices

CHAPTER 7
OFFENCES RELATING TO INFORMATION NOTICES

146 Offence of concealing etc. documents following information notice
147 Offence of concealing etc. documents following information notification

PART 8
PENALTIES

CHAPTER 1
PENALTIES: INTRODUCTORY

Overview

148 Penalties: overview
Double jeopardy

CHAPTER 2

PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

Penalties for failure to make returns

150 Penalty for failure to make returns

Amounts of penalties: land and buildings transaction tax

150A Land and buildings transaction tax: first penalty for failure to make return
150B Land and buildings transaction tax: 3 month penalty for failure to make return
150C Land and buildings transaction tax: 6 month penalty for failure to make return
150D Land and buildings transaction tax: 12 month penalty for failure to make return

Amounts of penalties: Scottish landfill tax

150E Scottish landfill tax: first penalty for failure to make return
150F Scottish landfill tax: multiple failures to make return
150G Scottish landfill tax: 6 month penalty for failure to make return
150H Scottish landfill tax: 12 month penalty for failure to make return

Penalties for failure to pay tax

151 Penalty for failure to pay tax

151A Land and buildings transaction tax: amounts of penalties for failure to pay tax
151B Scottish landfill tax: first penalty for failure to pay tax
151C Scottish landfill tax: penalties for multiple failures to pay tax
151D Scottish landfill tax: 6 month penalty for failure to pay tax
151E Scottish landfill tax: 12 month penalty for failure to pay tax

Penalties under Chapter 2: general

152 Interaction of penalties under section 150 with other penalties
153 Interaction of penalties under section 151 with other penalties
154 Reduction in penalty under section 150 for disclosure
155 Suspension of penalty under section 151 during currency of agreement for deferred payment
156 Special reduction in penalty under sections 150 and 151
157 Reasonable excuse for failure to make return or pay tax
158 Assessment of penalties under sections 150 and 151
159 Time limit for assessment of penalties under sections 150 and 151
159A Power to change penalty provisions in Chapter 2

CHAPTER 3

PENALTIES RELATING TO INACCURACIES

160 Penalty for inaccuracy in taxpayer document
160A Amount of penalty for error in taxpayer document
161 Suspension of penalty for careless inaccuracy under section 160
162 Penalty for inaccuracy in taxpayer document attributable to another person
163 Under-assessment by Revenue Scotland
163A Potential lost revenue: normal rule
163B Potential lost revenue: multiple errors
163C Potential lost revenue: losses
163D Potential lost revenue: delayed tax
164 Special reduction in penalty under sections 160, 162 and 163
165 Reduction in penalty under sections 160, 162 and 163 for disclosure
166 Assessment of penalties under sections 160, 162 and 163
166A Power to change penalty provisions in Chapter 3

CHAPTER 4
PENALTIES RELATING TO INVESTIGATIONS

167 Penalties for failure to comply or obstruction
168 Daily default penalties for failure to comply or obstruction
169 Penalties for inaccurate information or documents
171 Concealing, destroying etc. documents following information notice
172 Concealing, destroying etc. documents following information notification
173 Failure to comply with time limit
174 Reasonable excuse for failure to comply or obstruction
175 Assessment of penalties under sections 167, 168 and 169
176 Enforcement of penalties under sections 167, 168 and 169
177 Increased daily default penalty
178 Enforcement of increased daily default penalty
179 Tax-related penalty
180 Enforcement of tax-related penalty
180A Power to change penalty provisions in Chapter 4

CHAPTER 5
OTHER ADMINISTRATIVE PENALTIES

181 Penalty for failure to register for tax etc.
181A Amount of penalty for failure to register for tax etc.
181B Interaction of penalties under section 181 with other penalties
181C Reduction in penalty under section 181 for disclosure
181D Special reduction in penalty under section 181
181E Reasonable excuse for failure to register for tax etc.
181F Assessment of penalties under section 181
181G Power to change penalty provisions in Chapter 5

PART 9
INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax
183 Interest on penalties
184 Interest on repayment of tax overpaid etc.
185 Rates of interest
PART 10
ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1
ENFORCEMENT: GENERAL

Issue of tax demands and receipts
186 Issue of tax demands and receipts

Fees for payment
187 Fees for payment

Certification of matters by Revenue Scotland
188 Certification of matters by Revenue Scotland

Court proceedings
189 Court proceedings

Summary warrant
190 Summary warrant

Recovery of penalties and interest
191 Recovery of penalties and interest

CHAPTER 2
ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

192 Requirement for contact details for debtor
193 Power to obtain details
194 Reviews and appeals against notices or requirements
194A Power to modify section 194
195 Penalty

PART 11
REVIEWS AND APPEALS

CHAPTER 1
INTRODUCTORY

Overview
197 Overview

Appealable decisions
198 Appealable decisions
CHAPTER 2

REVIEWS

Review of appealable decisions

199 Right to request review
200 Notice of review
201 Late notice of review
202 Duty of Revenue Scotland to carry out review
203 Nature of review etc.
204 Notification of conclusions of review
205 Effect of conclusions of review

CHAPTER 3

APPEALS

206 Right of appeal
207 Notice of appeal
208 Late notice of appeal
209 Disposal of appeal

CHAPTER 4

SUPPLEMENTARY

210 Reviews and appeals not to postpone recovery of tax
211 Settling matters in question by agreement
212 Application of this Part to joint buyers
213 Application of this Part to trustees
214 References to the “tribunal”
215 Interpretation

PART 12

FINAL PROVISIONS

Interpretation

216 General interpretation
217 Index of defined expressions

Subordinate legislation

218 Subordinate legislation

Ancillary provision

219 Ancillary provision

Modification of enactments

220 Minor and consequential modifications of enactments

Crown application

221 Crown application: criminal offences
222 Crown application: powers of entry
Commencement and short title

Schedule 1—Revenue Scotland
Schedule 2—The Scottish Tax Tribunals
   Part 1—Appointment of members
   Part 2—Conditions of membership etc.
   Part 3—Conduct and discipline
   Part 4—Fitness and removal
Schedule 3—Claims for relief from double assessment and for repayment
Schedule 4—Minor and consequential modifications
Schedule 5—Index of defined expressions
Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Revenue Scotland and Tax Powers Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

PART 1

OVERVIEW OF ACT

1 Overview of Act
This Act is arranged as follows—

Part 2 establishes Revenue Scotland and provides for its general functions and responsibilities,

Part 3 makes provision about the use and protection of taxpayer and other information,

Part 4 establishes the Scottish Tax Tribunals,

Part 5 puts in place a general anti-avoidance rule,

Part 6 contains provisions on the self-assessment system, the checking of tax returns by Revenue Scotland and claims for repayment of tax,

Part 7 makes provision for Revenue Scotland’s investigatory powers,

Part 8 sets out the matters in relation to which penalties may be imposed,

Part 9 makes provision about the interest payable on unpaid tax, on penalties and on tax repayments,

Part 10 contains provisions on debt enforcement by Revenue Scotland,

Part 11 sets out the system for the review, mediation and appeal of Revenue Scotland decisions, and

Part 12 contains general and final provisions.
PART 2

REVENUE SCOTLAND

Establishment of Revenue Scotland

2 Revenue Scotland

(1) There is established a body corporate to be known as Revenue Scotland.

(2) In Gaelic, Revenue Scotland is to be known as Teachd-a-steach Alba.

(3) Schedule 1 makes further provision about the membership, procedures and staffing of Revenue Scotland.

Functions of Revenue Scotland

3 Functions of Revenue Scotland

(1) Revenue Scotland’s general function is the collection and management of the devolved taxes.

(2) Revenue Scotland has the following particular functions—

   (a) providing information, advice and assistance to the Scottish Ministers relating to tax,

   (b) providing information and assistance to taxpayers, their agents and other persons relating to the devolved taxes,

   (c) efficiently resolving disputes relating to the devolved taxes (including by mediation),

   (d) protecting the revenue against tax fraud and tax avoidance.

(3) “Devolved taxes” has the meaning given by section 80A(4) of the Scotland Act 1998 (c.46).

4 Delegation of functions by Revenue Scotland

(1) Revenue Scotland may delegate—

   (a) any of its functions relating to land and buildings transaction tax to the Keeper of the Registers of Scotland (“the Keeper”),

   (b) any of its functions relating to Scottish landfill tax to the Scottish Environment Protection Agency (“SEPA”).

(2) Revenue Scotland may give directions to the Keeper or to SEPA as to how a delegated function is to be exercised and the Keeper and SEPA must comply with any such direction.

(3) Delegations or directions under this section may be varied or revoked at any time.

(4) Revenue Scotland must publish information about—

   (a) delegations under this section, and

   (b) directions given under this section.
Revenue Scotland and Tax Powers Bill
Part 2—Revenue Scotland

(5) Revenue Scotland must lay before the Scottish Parliament a copy of information published under subsection (4).

(6) Subsections (4) and (5) do not apply to the extent that Revenue Scotland considers that publication of the information would prejudice the effective exercise of its functions.

(7) Delegation of a function under this section does not affect—
   (a) Revenue Scotland’s ability to exercise that function,
   (b) Revenue Scotland’s responsibility for that function.

(8) Revenue Scotland may reimburse the Keeper or SEPA for any expenditure incurred which is attributable to the exercise by the Keeper or SEPA of functions delegated under this section.

Money

5 Payments into the Scottish Consolidated Fund

(1) Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund.

(2) But Revenue Scotland may do so after deduction of payments in connection with repayments, including payments of interest on—
   (a) repayments, or
   (b) payments treated as repayments.

6 Rewards

Revenue Scotland may pay a reward to a person in return for a service which relates to a function of Revenue Scotland.

Independence of Revenue Scotland

7 Independence of Revenue Scotland

(1) The Scottish Ministers must not—
   (a) give directions relating to, or
   (b) otherwise seek to control,
the exercise by Revenue Scotland of its functions.

(2) This section is subject to any contrary provision made by or under this Act or any other enactment.

Ministerial guidance

8 Ministerial guidance

(1) The Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions.

(2) Revenue Scotland must have regard to any guidance given by Ministers.

(3) Ministers must publish any guidance given to Revenue Scotland under this section as they consider appropriate.
(4) Subsection (3) does not apply to the extent that Ministers consider that publication of the guidance would prejudice the effective exercise by Revenue Scotland of its functions.

Provision of information, advice or assistance to Ministers

9 Provision of information, advice or assistance to the Scottish Ministers

5 (1) Revenue Scotland must provide the Scottish Ministers with such information, advice or assistance relating to its functions as Ministers may from time to time require.

(2) The information, advice or assistance must be provided in such form as Ministers determine.

Charter of standards and values

10 Charter of standards and values

(1) Revenue Scotland must prepare a Charter.

(2) The Charter must include—

(a) standards of behaviour and values which Revenue Scotland is expected to adhere to when dealing with taxpayers, their agents and other persons in the exercise of its functions, and

(b) standards of behaviour and values which Revenue Scotland expects taxpayers, their agents and other persons to adhere to when dealing with Revenue Scotland.

(3) Revenue Scotland must—

(a) publish the Charter as it considers appropriate,

(b) review the Charter from time to time, and

(c) revise the Charter when it considers it appropriate to do so.

(3A) Before publishing or revising the Charter, Revenue Scotland must consult such persons as it considers appropriate.

(4) Revenue Scotland must lay the first Charter and any revised Charter before the Scottish Parliament.

Corporate plan

11 Corporate plan

(1) Revenue Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval by the Scottish Ministers.

(2) The corporate plan must set out—

(a) Revenue Scotland’s main objectives for the planning period,

(b) the outcomes by reference to which the achievement of the main objectives may be measured, and

(c) the activities which Revenue Scotland expects to undertake during the planning period.

(3) Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Revenue Scotland.
(4) If Ministers approve a corporate plan, Revenue Scotland must—
   (a) publish the plan as Revenue Scotland considers appropriate, and
   (b) lay a copy of the plan before the Scottish Parliament.

(5) During the planning period to which a corporate plan relates, Revenue Scotland may
   review the plan and submit a revised corporate plan to Ministers for approval.

(6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

(7) “Planning period” means—
   (a) a first period specified by the Scottish Ministers by order, and
   (b) each subsequent period of 3 years.

(8) The Scottish Ministers may by order substitute for the period for the time being
   specified in subsection (7)(b) such other period as they consider appropriate.

**Annual report**

12 **Annual report**

(1) As soon as possible after the end of each financial year, Revenue Scotland must—
   (a) prepare and publish a report on the exercise of its functions during that year,
   (b) send a copy of the report to the Scottish Ministers, and
   (c) lay a copy of the report before the Scottish Parliament.

(2) “Financial year” means—
   (a) the period beginning with the establishment of Revenue Scotland and ending on
       31 March in the following year, and
   (b) each subsequent period of a year ending on 31 March.

(3) Revenue Scotland may publish such other reports and information on matters relevant to
   its functions as it considers appropriate.

**PART 3**

**INFORMATION**

13 **Use of information by Revenue Scotland and other persons**

(1) A relevant person may use information held by the person in connection with a function
    in connection with any other function.

(3) In this section and section 14 “relevant person” means any or all of the following persons—
   (a) Revenue Scotland,
   (b) a member of Revenue Scotland,
   (c) a committee of Revenue Scotland (and a member of any committee),
   (d) the chief executive or any other member of staff of Revenue Scotland,
   (e) a person to whom Revenue Scotland has delegated any of its functions,
Revenue Scotland and Tax Powers Bill
Part 3—Information

(f) a member of staff of a person mentioned in paragraph (e).

(4) In this section and section 14 references to a “function” are references to—

(a) a function of any of the persons mentioned in subsection (3)(a) to (d),

(b) in the case of a person mentioned in subsection (3)(e)—

(i) a function which Revenue Scotland has delegated to the person, and

(ii) a function under any other enactment,

(c) in the case of a member of staff of a person mentioned in subsection (3)(e)—

(i) a function which Revenue Scotland has delegated to the person and which

the member of staff is exercising, and

(ii) a function of the person under any other enactment which the member of

staff is exercising.

Protected taxpayer information

14 Protected taxpayer information

(1) “Protected taxpayer information” means information relating to a person—

(a) which is held by a relevant person in connection with a function of Revenue

Scotland, and

(b) by which a person may be identified.

(2) Subsection (1)(a) does not apply to information about internal administrative

arrangements of Revenue Scotland or of a person to whom Revenue Scotland has

delegated any of its functions (whether the information relates to members or staff of

Revenue Scotland or of such a person or to other persons).

(3) For the purposes of subsection (1)(b), a person may be identified by information if—

(a) the person’s identity is specified in the information, or

(b) the person’s identity can be deduced from the information (whether from that

information on its own or from that information taken together with other

information disclosed by or on behalf of Revenue Scotland).

Confidentiality of protected taxpayer information

15 Confidentiality of protected taxpayer information

(1) A relevant official must not disclose protected taxpayer information unless the

disclosure is permitted by subsection (3).

(2) In this section and section 16 “relevant official” means any individual who is or was—

(a) a member of Revenue Scotland,

(b) a member of a committee of Revenue Scotland,

(c) the chief executive or any other member of staff of Revenue Scotland,

(d) exercising functions on behalf of Revenue Scotland.

(3) A disclosure is permitted by this subsection if—

(a) it is made with the consent of each person to whom the information relates,

(b) it is made in accordance with any provision made by or under this Act or any

other enactment requiring or permitting the disclosure,
(ba) it is made for the purposes of obtaining services in connection with a function of Revenue Scotland,

(c) it is made for the purposes of civil proceedings,

(d) it is made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime,

(e) it is made in pursuance of an order of a court or tribunal,

(g) it is made to a person exercising functions on behalf of Revenue Scotland (other than a person to whom Revenue Scotland has delegated any of its functions) for the purposes of those functions.

16  Protected taxpayer information: declaration of confidentiality

(1) Each relevant official must make a declaration acknowledging the obligation of confidentiality under section 15.

(2) A declaration must be made—

(a) as soon as reasonably practicable following the person’s appointment, and

(b) in such form and manner as Revenue Scotland may determine.

(3) For the purposes of subsection (2)(a)—

(a) the renewal of a fixed term appointment is not to be treated as an appointment,

(b) a person mentioned in section 15(2)(d) is to be treated as appointed when the person begins to exercise functions on behalf of Revenue Scotland.

Other limits on use and disclosure of information

16A Disclosure of information prohibited or restricted by statute or agreement

Sections 13(1) and 15(3) are subject to any provision which prohibits or restricts the use of information and which is contained in—

(a) this Act,

(b) any other enactment,

(c) an international or other agreement to which the United Kingdom, Her Majesty’s Government or the Scottish Ministers is or are party.

16B Protected taxpayer information: use by the Keeper

(1) This section applies to information that—

(a) is held by the Keeper in connection with a function which Revenue Scotland has delegated to the Keeper, and

(b) is protected taxpayer information.

(2) The Keeper may not use that information in connection with the Keeper’s functions under section 108 of the Land Registration etc. (Scotland) Act 2012 (asp 5).
Offence of wrongful disclosure

17 Wrongful disclosure of protected taxpayer information

(1) A person commits an offence if the person discloses protected taxpayer information contrary to section 15(1).

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed—

(a) that the disclosure was lawful under section 15, or

(b) that the information had already lawfully been made available to the public.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(4) This section does not affect the pursuit of any remedy or the taking of any action in relation to a contravention of section 15(1).

PART 4
THE SCOTTISH TAX TRIBUNALS

CHAPTER 1
INTRODUCTORY

18 Overview

This Part makes provision establishing tribunals to exercise functions in relation to devolved taxes and about—

(a) the leadership of those tribunals,

(b) the appointment, conduct, fitness and removal of members of those tribunals,

(c) the taking of decisions by and composition of those tribunals,

(d) appeals to and from, and other proceedings before, those tribunals, and

(e) the procedure before and administration of those tribunals (including the making of tribunal rules).

CHAPTER 2
ESTABLISHMENT AND LEADERSHIP

Establishment

19 The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

(1) There is established a tribunal to be known as the First-tier Tax Tribunal for Scotland.
(2) The First-tier Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.

(3) There is also established a tribunal to be known as the Upper Tax Tribunal for Scotland.

(4) The Upper Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.

(5) In this Act—
   (a) the First-tier Tax Tribunal for Scotland is referred to as the First-tier Tribunal,
   (b) the Upper Tax Tribunal for Scotland is referred to as the Upper Tribunal, and
   (c) collectively, they are referred to as the Tax Tribunals.

Leadership

20 President of the Tax Tribunals

(1) The Scottish Ministers must appoint a person as President of the Tax Tribunals.

(2) Before appointing such a person, the Scottish Ministers must consult the Lord President.

(3) The President of the Tax Tribunals is appointed on such terms and conditions as the Scottish Ministers may determine.

21 Functions of the President of the Tax Tribunals

(1) The President of the Tax Tribunals is the senior member of the Tax Tribunals.

(2) The President has the functions exercisable by him or her by or under this Act.

22 Business arrangements

(1) The President of the Tax Tribunals is responsible for making and maintaining appropriate arrangements for securing the efficient disposal of business in the Tax Tribunals.

(2) The President is responsible for ensuring that appropriate arrangements are made and maintained as to the welfare of the members of the tribunals.

23 Temporary President

(1) If there is a vacancy in the presidency of the Tax Tribunals, the Scottish Ministers may appoint a person as Temporary President during the vacancy.

(1A) Before appointing such a person, the Scottish Ministers must consult the Lord President.

(2) A person is eligible to be appointed as Temporary President only if the person is—
   (a) a legal member of the Tax Tribunals, or
   (b) eligible to be appointed as such a member.

(3) The functions of the President of the Tax Tribunals are exercisable by the Temporary President.

(4) Except where the context otherwise requires, a reference in or under this Part to the President includes the Temporary President.
(5) For the purposes of subsection (1) “vacancy” includes where the President of the Tax Tribunals has been suspended under paragraph 36(2) or 37(2) of schedule 2 (by virtue of paragraphs 29(2) and 41 of that schedule).

CHAPTER 3

MEMBERSHIP

Membership of Tax Tribunals

24 Members

(1) The First-tier Tribunal is to consist of its ordinary and legal members.

(2) The Upper Tribunal is to consist of its legal and judicial members.

(3) The President of the Tax Tribunals is, by virtue of holding that position, a member of both the First-tier Tribunal and the Upper Tribunal.

(4) Schedule 2 contains the following further provision about members of the Tax Tribunals—

(a) Part 1 contains provisions about the eligibility for and appointment to—

(i) the position of President of the Tax Tribunals,

(ii) ordinary and legal membership of the First-tier Tribunal,

(iii) legal membership of the Upper Tribunal,

(b) Part 2 contains provision about the terms and conditions on which members of the tribunals hold their positions,

(c) Part 3 contains provision about investigation of members’ conduct and imposition of disciplinary measures, and

(d) Part 4 contains provision about the assessment of members’ fitness and removal from position.

Judicial members

25 Judicial members

(1) A judge of the Court of Session (including a temporary judge but not the Lord President) is, by reason of holding judicial office, eligible to act as a member of the Upper Tribunal.

(2) Such a judge may act as a member of the Upper Tribunal only if authorised by the President of the Tax Tribunals to do so.

(3) An authorisation for the purpose of subsection (2) requires—

(a) the Lord President’s approval (including as to the judge to be authorised), and

(b) the agreement of the judge concerned.

(4) An authorisation for the purpose of subsection (2) remains in effect until such time as the President of the Tax Tribunals may determine (with the same approval and agreement requirements as are mentioned in subsection (3) applying accordingly).
Status and capacity

26 Status and capacity of members

(1) A member of either of the Tax Tribunals, whether that membership is as an ordinary or as a legal member, has judicial status and capacity for the purpose mentioned in subsection (3).

(2) For the avoidance of doubt, a judicial member of the Upper Tribunal has judicial status and capacity for the purpose mentioned in subsection (3) by reason of holding judicial office.

(3) The purpose referred to in subsections (1) and (2) is the purpose of holding the position and acting as member of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

CHAPTER 4

Decision-making and composition

Decision-making and composition: general

27 Decisions in the First-tier Tribunal

(1) The First-tier Tribunal's function of deciding any matter in a case before the tribunal is to be exercised by—

(a) two or more members of the tribunal, one of whom must be a legal member, or

(b) a legal member sitting alone.

(2) The member or members are to be chosen by the President of the Tax Tribunals (who may choose himself or herself).

(3) The President’s discretion in choosing the member or members is subject to—

(a) any relevant provisions in regulations made under section 30(1),

(b) any relevant directions given by virtue of section 32(5)(b).

28 Decisions in the Upper Tribunal

(1) The Upper Tribunal's function of deciding any matter in a case before the tribunal is to be exercised by one or more members chosen by the President of the Tax Tribunals (who may choose himself or herself).

(2) The President’s discretion in choosing the member or members is subject to—

(a) any relevant provisions in regulations made under section 30(1),

(b) any relevant directions given by virtue of section 34(5)(b).

30 Composition of the Tribunals

(1) The Scottish Ministers may by regulations make provision for determining the composition of—

(a) the First-tier Tribunal,

(b) the Upper Tribunal,
when convened to decide any matter in a case before the tribunal.

(2) Regulations under subsection (1) may treat separately the tribunal’s decision-making functions—
   (a) at first instance,
   (b) on appeal.

Decisions by two or more members

30A Voting for decisions

The Scottish Ministers may by regulations make provision for the purposes of sections 27(1) and 28(1) in so far as a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the tribunal, including—
   (a) for a decision to be made unanimously or by majority,
   (b) where a decision is to be made by majority, for the chairing member to have a casting vote in the event of a tie.

30B Chairing members

(1) Tribunal rules may make provision for determining the question as to who is to be the chairing member where a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the tribunal.

(2) Rules making provision as described in subsection (1) may (in particular)—
   (a) allow the President of the Tax Tribunals to determine the question,
   (b) specify criteria as against which the question is to be determined (including by reference to type of member or particular expertise).

CHAPTER 5

APPEAL OF DECISIONS

Appeal from First-tier Tribunal

31 Appeal from the First-tier Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made—
   (a) by a party in the case,
   (b) on a point of law only.

(3) An appeal under this section requires the permission of—
   (a) the First-tier Tribunal, or
   (b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.
(5) This section is subject to section 36(2) and to sections 123(4), 138(6), 145(5) and 208(4A).

32 **Disposal of an appeal under section 31**

(1) In an appeal under section 31, the Upper Tribunal may uphold or quash the decision on the point of law in question.

(2) If the Upper Tribunal quashes the decision, it may—
   (a) re-make the decision,
   (b) remit the case to the First-tier Tribunal, or
   (c) make such other order as the Upper Tribunal considers appropriate.

(3) In re-making the decision, the Upper Tribunal may—
   (a) do anything that the First-tier Tribunal could do if re-making the decision,
   (b) reach such findings in fact as the Upper Tribunal considers appropriate.

(4) In remitting the case, the Upper Tribunal may give directions for the First-tier Tribunal’s reconsideration of the case.

(5) Such directions may relate to—
   (a) issues of law or fact (including the Upper Tribunal’s opinion on any relevant point),
   (b) procedural issues (including as to the members to be chosen to reconsider the case).

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33 **Appeal from the Upper Tribunal**

(1) A decision of the Upper Tribunal in any matter in a case before the tribunal may be appealed to the Court of Session (sitting as the Court of Exchequer).

(2) An appeal under this section is to be made—
   (a) by a party in the case,
   (b) on a point of law only.

(3) An appeal under this section requires the permission of—
   (a) the Upper Tribunal, or
   (b) if the Upper Tribunal refuses its permission, the Court of Session.

(4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that there are arguable grounds for the appeal.

(5) This section is subject to section 36(2) and to sections 123(4), 138(6), 145(5) and 208(4A).
34 Disposal of an appeal under section 33

(1) In an appeal under section 33, the Court of Session may uphold or quash the decision on the point of law in question.

(2) If the Court quashes the decision, it may—

(a) re-make the decision,

(b) remit the case to the Upper Tribunal, or

(c) make such other order as the Court considers appropriate.

(3) In re-making the decision, the Court may—

(a) do anything that the Upper Tribunal could do if re-making the decision,

(b) reach such findings in fact as the Court considers appropriate.

(4) In remitting the case, the Court may give directions for the Upper Tribunal’s reconsideration of the case.

(5) Such directions may relate to—

(a) issues of law or fact (including the Court’s opinion on any relevant point),

(b) procedural issues (including as to the member to be chosen to reconsider the case).

35 Procedure on second appeal

(A1) Section 33(4) is subject to subsections (1A) and (1B) as regards a second appeal.

(1) Section 34 is subject to subsections (2) and (3) as regards a second appeal.

(1A) For the purposes of subsection (A1), the Upper Tribunal or (as the case may be) the Court of Session may not give its permission to the making of a second appeal unless also satisfied that subsection (1B) applies.

(1B) This subsection applies where, in relation to the matter in question—

(a) a second appeal would raise an important point of principle or practice, or

(b) there is some other compelling reason for allowing a second appeal to proceed.

(2) For the purpose of subsection (1), subsections (2)(b) and (3)(a) of section 34 have effect in relation to a second appeal as if the references in them to the Upper Tribunal include, as alternative references, references to the First-tier Tribunal.

(3) Where, in exercising the choice arising by virtue of subsection (2) (and instead of re-making the decision in question), the Court of Session remits the case to the Upper Tribunal rather than the First-tier Tribunal—

(a) the Upper Tribunal, instead of reconsidering the case itself, may remit the case to the First-tier Tribunal,

(b) if the Upper Tribunal does so, it must send to the First-tier Tribunal any directions accompanying the Court’s remittal of the case to the Upper Tribunal.

(4) In this section “second appeal” means appeal under section 33 against a decision in an appeal under section 31.
Further provision on permission to appeal

36 Process for permission
(1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 31(3) or 33(3) must be sought.

(2) A refusal to give the permission required by section 31(3) or 33(3) is not appealable under section 31 or 33.

CHAPTER 6
SPECIAL JURISDICTION

37 Judicial review cases
(1) Subsection (2) applies where a petition is made to the Court of Session for judicial review.

(2) The Court may by order remit the petition to the Upper Tribunal if—
   (a) both of conditions A and B are met, and
   (b) having regard to the functions and expertise of the Tribunal in relation to the subject-matter of the petition, the Court considers that it is appropriate to do so.

(3) Condition A is that the petition does not seek anything other than the exercise of the Court’s judicial review function.

(4) Condition B is that the petition falls within a category specified by an Act of Sederunt made by the Court for the purpose of this subsection.

38 Decision on remittal
(1) The Upper Tribunal is to determine the issues raised in each petition remitted to it under section 37.

(2) In relation to a petition so remitted, the Upper Tribunal—
   (a) has the same powers as the Court of Session has on a petition to it for judicial review,
   (b) is to apply the same principles as the Court applies in the exercise of its judicial review function.

(3) An order made by the Upper Tribunal on a petition so remitted has the same effect as an order made by the Court of Session on a petition for judicial review (and the order is therefore enforceable accordingly).

(4) Subsection (3) does not limit the operation of section 33 in connection with a determination under subsection (1).

39 Additional matters
(1) Where a petition is remitted to the Upper Tribunal under section 37, any order made or step taken by the Court of Session in relation to the petition is to be treated as if made or taken by the tribunal (except the order by which the petition is so remitted (or an associated step)).
(2) Tribunal rules may make further provision with respect to the exercise by the Upper Tribunal of its functions under this Chapter.

40 **Meaning of judicial review**

In this Chapter—

(a) a reference to a petition to the Court of Session for judicial review is to an application to the supervisory jurisdiction of the Court,

(b) a reference to the exercise of the Court of Session’s judicial review function is to the exercise of the Court’s supervisory jurisdiction (and includes the making of any order in connection with or in consequence of the exercise of that function).

**CHAPTER 7**

**POWERS AND ENFORCEMENT**

41 **Venue for hearings**

(1) Each of the First-tier Tribunal and the Upper Tribunal may be convened at any time and place to hear or decide a case or for any other purpose relating to its functions.

(2) Subsection (1) is subject to any provision made by tribunal rules as to the question of when and where the Tax Tribunals are to be convened (and such rules may allow the President of the Tax Tribunals to determine the question).

42 **Conduct of cases**

(1) In relation to the things mentioned in subsection (3), each of the First-tier Tribunal and the Upper Tribunal has such powers, rights, privileges and other authority with respect to any case before it as are provided for in tribunal rules.

(2) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to any kind of authority by reference to any authority of a relevant description exercisable by the sheriff or the Court of Session.

(3) The things are—

(a) the attendance or examination of witnesses,

(b) the recovery, production or inspection of relevant materials,

(c) the commissioning of reports of any relevant type,

(d) other procedural, evidential or similar measures.

(4) In subsection (3)(b) “materials” means documents and other items.

43 **Enforcement of decisions**

(1) A decision made by the First-tier Tribunal or the Upper Tribunal in any matter in a case before it is enforceable by the means provided for in tribunal rules.

(2) Subsection (1) applies to a decision—

(a) on the merits of such a case,

(b) as to—
Revenue Scotland and Tax Powers Bill
Part 4—The Scottish Tax Tribunals
Chapter 7—Powers and enforcement

(i) payment of a sum of money, or
(ii) expenses by virtue of section 44, or
(c) otherwise affecting the rights, obligations or interests of a party in such a case.

(3) Rules making provision for the purpose of subsection (1) may (in particular) do so in
relation to a relevant order by reference to the means of enforcing an order of the sheriff
or the Court of Session.

(4) In subsection (3), “relevant order” means an order of either of the Tax Tribunals giving
effect to a decision to which subsection (1) applies.

44 Award of expenses

(1) In connection with proceedings in a case before the First-tier Tribunal or the Upper
Tribunal, the tribunal may award expenses so far as allowed in accordance with tribunal
rules.

(2) Where such expenses are awarded, the awarding tribunal is to specify by and to whom
they are to be paid (and to what extent).

(3) Tribunal rules may make provision—
   (a) for scales or rates of awardable expenses,
   (b) for—
      (i) such expenses to be set-off against any relevant sums,
      (ii) interest at the specified rate to be chargeable on such expenses where
           unpaid,
   (d) stating the general or particular factors to be taken into account when exercising
discretion as to such expenses,
   (e) about such expenses in other respects.

(3A) Tribunal rules may make provision—
   (a) for disallowing any wasted expenses,
   (b) for requiring a person who has given rise to any wasted expenses to meet them.

(4) Rules making provision as described in subsection (3) or (3A) may also prescribe
meanings for “relevant sums”, “specified rate” and “wasted expenses” as used in this
section.

45 Additional powers

(1) The Scottish Ministers may by regulations confer on the First-tier Tribunal and the
Upper Tribunal such additional powers as are necessary or expedient for the proper
exercise of their functions.

(2) Regulations under subsection (1) may include provision—
   (a) relying on the effect of an Act of Sederunt made by the Court of Session,
   (b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance
Act 2013 (asp 3) to apply to the making of a relevant Act of Sederunt as it does to
the making of tribunal rules.
45A Offences in relation to proceedings

(1) The Scottish Ministers may by regulations make provision, in relation to proceedings before the First-tier Tribunal or the Upper Tribunal—

(a) for offences and penalties—

(i) for making a false statement in an application in a case,

(ii) for failure by a person to attend, or give evidence in, such proceedings when required to do so in accordance with tribunal rules,

(iii) for alteration, concealment or destruction by a person of, or failure by a person to produce, something that is required to be produced in such proceedings in accordance with tribunal rules,

(b) about the circumstances in which a person need not give evidence or produce something (for example, where a person could not be compelled to give evidence or produce something in proceedings in a case before the sheriff or in the Court of Session).

(2) The maximum penalties that may be provided for in regulations under subsection (1) are—

(a) for an offence triable summarily only, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both),

(b) for an offence triable either summarily or on indictment—

(i) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(ii) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).

(3) Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President’s approval.

Chapter 8

Practice and procedure

Tribunal rules: general

46 Tribunal rules

(1) There are to be rules—

(a) regulating the practice and procedure to be followed in proceedings at—

(i) the First-tier Tribunal,

(ii) the Upper Tribunal, and

(b) containing provision of other sorts appropriate with respect to the Tax Tribunals (including in relation to the exercise by them of their functions).

(2) Rules of the kind mentioned in subsection (1) are to be known as Scottish Tax Tribunal Rules (and in this Act they are referred to as tribunal rules).

(3) Tribunal rules are to be made by the Scottish Ministers by regulations.
Exercise of functions

(1) Tribunal rules may, in relation to any functions exercisable by the members of the Tax Tribunals—
   (a) state—
      (i) how a function is to be exercised,
      (ii) who is to exercise a function,
   (b) cause something to require further authorisation,
   (c) permit something to be done on a person’s behalf,
   (d) allow a specified person to make a decision about any of those matters.

(2) Tribunal rules may make provision relying on the effect of directions issued, or to be issued, under section 52.

Extent of rule-making

(1) Tribunal rules may make—
   (a) provision applying—
      (i) equally to both of the First-tier Tribunal and the Upper Tribunal, or
      (ii) specifically to one of them,
   (b) particular provision for each of them about the same matter.

(2) Tribunal rules may make particular provision for different types of proceedings.

(3) Tribunal rules may make different provision for different purposes in any other respects.

(4) The generality of section 46 is not limited by—
   (a) sections 49 to 51, or
   (b) any other provisions of this Act about the content of tribunal rules.

Particular matters

Proceedings and steps

(1) Tribunal rules may make provision about proceedings in a case before the Tax Tribunals.

(2) Rules making provision as described in subsection (1) may (in particular)—
   (a) provide for the form and manner in which a case is to be brought,
   (b) allow for the withdrawal of a case (with or without restrictions on subsequent proceedings as respects the same matter),
   (c) set time limits for—
      (i) making applications,
      (ii) taking particular steps,
   (ca) enable two or more applications to be conjoined in certain circumstances,
(d) specify circumstances in which the tribunals may take particular steps on their own initiative.

50 Hearings in cases

(1) Tribunal rules may make provision about hearings in a case before the Tax Tribunals.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) provide for certain matters to be dealt with—
   (i) without a hearing,
   (ii) at a private hearing,
   (iii) at a public hearing,

(b) require notice to be given of a hearing (and for the timing of such notice),

(c) specify persons who may—
   (i) appear on behalf of a party in a case,
   (ii) attend a hearing in order to provide support to a party or witness in a case,

(d) specify circumstances in which particular persons may appear or be represented at a hearing,

(e) specify circumstances in which a hearing may go ahead—
   (i) at the request of a party in a case despite no notice of it having been given to another party in the case,
   (ii) in the absence of a particular member chosen to exercise the function of deciding any matter in a case,

(ea) enable two or more sets of proceedings to be taken concurrently at a hearing in certain circumstances,

(f) allow for an adjournment of a hearing for the purpose of giving the parties in a case an opportunity to use a process of negotiation or mediation for resolving a dispute to which the case relates,

(g) allow for the imposition of reporting restrictions for particular reasons arising in a case.

51 Evidence and decisions

(1) Tribunal rules may, in connection with proceedings before the Tax Tribunals—

(a) make provision about the giving of evidence and the administering of oaths,

(b) modify the application of any other rules relating to either of those matters so far as they would otherwise apply to such proceedings.

(2) Tribunal rules may, in connection with proceedings before the Tax Tribunals, provide for the payment of expenses and allowances to a person who—

(a) gives evidence,

(b) produces a document, or

(c) attends such proceedings (or is required to do so).
(3) Tribunal rules may, in connection with proceedings before the Tax Tribunals, make provision by way of presumption (for example, as to the serving of something on somebody).

(4) Tribunal rules may make provision about decisions of the Tax Tribunals, including as to—
   (a) the manner in which such decisions are to be made,
   (b) the incorporation in such decisions of findings in fact,
   (c) the recording, issuing, and publication of such decisions.

Issuing directions

52 Practice directions

(1) The President of the Tax Tribunals may issue directions as to the practice and procedure to be followed in proceedings at—
   (a) the First-tier Tribunal,
   (b) the Upper Tribunal.

(2) Directions under subsection (1) may include instruction or guidance on the manner of making of any decision in a case.

(3) Directions under subsection (1) may—
   (a) vary or revoke earlier such directions,
   (b) make different provision for different purposes (in the same respects as tribunal rules).

(4) Directions under subsection (1) must be published in such manner as the President of the Tax Tribunals considers appropriate.

CHAPTER 9
ADMINISTRATION

53 Administrative support

(1) The Scottish Ministers must ensure that the Tax Tribunals are provided with such property, services and personnel as the Scottish Ministers consider to be reasonably required for the proper operation of the tribunals.

(2) The Scottish Ministers must have regard to any representations made to them by the President of the Tax Tribunals in relation to the fulfilment of the duty under subsection (1).

(3) In fulfilling the duty under subsection (1), the Scottish Ministers may—
   (a) fund or supply property, services and personnel for use by the tribunals,
   (b) appoint persons as members of staff of the tribunals.

(4) The Scottish Ministers may make arrangements as to—
   (a) the payment of remuneration or expenses to or in respect of persons so appointed,
(b) the payment of pensions, allowances and gratuities to or in respect of persons so appointed,

(c) contributions or other payments towards provision of such pensions, allowances and gratuities.

(5) The references in subsection (4) to pensions, allowances and gratuities include pensions, allowances and gratuities to be paid by way of compensation for loss of office.

54 Guidance

(1) The President of the Tax Tribunals may issue such guidance about the administration of the Tax Tribunals as appears to the President to be necessary or expedient for the purpose of securing that the functions of the tribunals are exercised efficiently and effectively.

(2) The following persons are to have regard to any guidance issued under subsection (1)—

(a) members of the Tax Tribunals,

(b) members of staff of the tribunals,

(c) personnel supplied under section 53 for use by the tribunals.

(3) The President of the Tax Tribunals must publish any guidance issued under subsection (1) as the President considers appropriate.

(4) Subsection (3) does not apply to the extent that the President considers that publication of the guidance would prejudice the effective exercise by the Tax Tribunals of their functions.

55 Annual reporting

(1) The President of the Tax Tribunals is to prepare an annual report about the operation and business of the Tax Tribunals.

(2) An annual report is to be given to the Scottish Ministers at the end of each financial year.

(3) An annual report—

(a) must explain how the Tax Tribunals have exercised their functions during the financial year,

(b) may contain such other information as—

(i) the President of the Tax Tribunals considers appropriate, or

(ii) the Scottish Ministers require to be covered.

(4) The Scottish Ministers must—

(a) publish each annual report in a manner suitable for bringing it to the attention of persons having an interest in the operation and business of the Tax Tribunals,

(b) before so publishing it, lay a copy of the report before the Scottish Parliament.
CHAPTER 10

INTERPRETATION

56 Interpretation

In this Part—

5 a reference to—

(a) a legal member of the Tax Tribunals is to a person who is appointed under paragraph 3(1) or 5(1) of schedule 2,

(b) a judicial member of the Upper Tribunal is to a person who is authorised for the purpose of section 25(2),

(c) an ordinary member of the First-tier Tribunal is to a person who is appointed under paragraph 2(1) of schedule 2,

the “Lord President” means the Lord President of the Court of Session.

PART 5

THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

(1) This Part has effect for the purpose of counteracting tax advantages arising from tax avoidance arrangements that are artificial.

(2) The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

Artificial tax avoidance arrangements

58 Tax avoidance arrangements

(1) An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.

(2) An “arrangement”—

(a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and

(b) may comprise one or more stages or parts.

59 Meaning of “artificial”

(1) A tax avoidance arrangement is artificial if condition A or B is met.

(2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances, including—

(a) whether the substantive results of the arrangement are consistent with—
(i) any principles on which those provisions are based (whether express or implied), and
(ii) the policy objectives of those provisions,
(b) whether the arrangement is intended to exploit any shortcomings in those provisions.

(3) Condition B is met if the arrangement lacks economic or commercial substance.

(4) Each of the following is an example of something which might indicate that a tax avoidance arrangement lacks economic or commercial substance—
(a) whether the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,
(b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,
(c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,
(d) whether transactions are circular in nature,
(e) whether the arrangement results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.

(5) The fact that—
(a) a tax avoidance arrangement accords with established practice, and
(b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,

is an example of something that might indicate that the arrangement is not artificial.

(6) The examples given in subsections (4) and (5) are not exhaustive.

(7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

60 Meaning of “tax advantage”

(1) A “tax advantage” includes in particular—
(a) relief or increased relief from tax,
(b) repayment or increased repayment of tax,
(c) avoidance or reduction of a charge to tax or an assessment to tax,
(d) avoidance of a possible assessment to tax, and
(e) deferral of a payment of tax or advancement of a repayment of tax.

(2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.
**Revenue Scotland and Tax Powers Bill**  
**Part 5—The general anti-avoidance rule**

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**Counteracting tax advantages**

**61** Counteracting tax advantages

1. Revenue Scotland may make such adjustments as it considers just and reasonable to counteract the tax advantages that would (ignoring this Part) arise from a tax avoidance arrangement that is artificial.

2. The adjustments may be made in respect of the tax in question or any other devolved tax.

3. The adjustments that may be made include (but are not restricted to) those that impose or increase a liability to tax in any case where (ignoring this Part) there would be no liability or a smaller liability, and tax is to be charged in accordance with any such adjustment.

4. Any adjustments required to be made under this section (whether by Revenue Scotland or the person to whom the tax advantage would arise) may be made by—
   - the amendment of a return (see sections 74, 78 and 84),
   - the correction of a return (see section 75),
   - the making of a Revenue Scotland determination (see section 86),
   - the making of a tax return (see section 88),
   - the making of a Revenue Scotland assessment (see section 91),
   - the entering into of a contract settlement (see section 109), or
   - such other method as Revenue Scotland considers appropriate.

5. No steps may be taken by Revenue Scotland unless the procedural requirements of sections 63 and 64 have been complied with.

6. The power to make adjustments by virtue of this section is subject to any time limit imposed by or under Part 6, any other provision of this Act or any other enactment.

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**Proceedings in connection with the general anti-avoidance rule**

**62** Proceedings in connection with the general anti-avoidance rule

1. In proceedings before a court or tribunal in connection with the general anti-avoidance rule, Revenue Scotland must show—
   - that there is a tax avoidance arrangement that is artificial, and
   - that the adjustments made to counteract the tax advantages arising from the tax avoidance arrangement are just and reasonable.

2. In determining any issue in connection with the general anti-avoidance rule, a court or tribunal must take into account any guidance published by Revenue Scotland about the general anti-avoidance rule (at the time the tax avoidance arrangement was entered into).

3. In determining any issue in connection with the general anti-avoidance rule, a court or tribunal may take into account—
   - guidance, statements or other material (whether by Revenue Scotland or anyone else) that was in the public domain at the time the tax avoidance arrangement was entered into, and
   - evidence of established practice at that time.
Notice to taxpayer of proposed counteraction of tax advantage

(1) If a designated officer considers—
      (a) that a tax advantage has arisen to a person ("the taxpayer") from a tax avoidance
          arrangement that is artificial, and
      (b) that the advantage should be counteracted under section 61,
          the officer must give the taxpayer a written notice to that effect.

(2) The notice must—
      (a) specify the tax avoidance arrangement and the tax advantage,
      (b) explain why the officer considers that a tax advantage has arisen to the taxpayer
           from a tax avoidance arrangement that is artificial,
      (c) set out the counteraction that the officer considers should be taken, and
      (d) inform the taxpayer of the period under subsection (4) for making representations.

(3) The notice may set out the steps that the taxpayer may take to avoid the proposed
    counteraction.

(4) If a notice is given to a taxpayer under subsection (1), the taxpayer has 45 days
    beginning with the day on which the notice is given to send written representations
    to the designated officer in response to the notice.

(5) The designated officer may, on a written request made by the taxpayer, extend the
    period during which representations may be made.

(6) The designated officer must take into account any representations made by the taxpayer.

Final notice to taxpayer of counteraction of tax advantage

(1) The designated officer must, after the expiry of the period in which representations may
    be made under section 63, give the taxpayer a written notice setting out whether the tax
    advantage arising from the tax avoidance arrangement is to be counteracted under the
    general anti-avoidance rule.

(2) If the notice states that a tax advantage is to be counteracted, the notice must also set
    out—
      (a) the adjustments required to give effect to the counteraction, and
      (b) if relevant, any steps that the taxpayer is required to take to give effect to it and
          the period within which those steps must be taken.

Counteraction of tax advantages: payment of tax charged etc.

(1) This section applies where—
      (a) a designated officer gives a taxpayer a notice under section 64, and
      (b) the notice sets out the adjustments required to give effect to the counteraction of a
          tax advantage.

(2) The taxpayer must pay any amount, or additional amount, of tax chargeable or penalty
    or interest imposed as a result of the adjustments before the end of the period of 30 days
    beginning with the date on which the notice is issued.
(3) Subsection (2) applies in place of any other provision of this Act or any other enactment which specifies a time limit for the payment of tax, penalty or interest.

65 Assumption of tax advantage

(1) A designated officer may give a notice under section 63 or 64 where the officer considers that a tax advantage might have arisen to the taxpayer.

(2) Accordingly, any notice given by a designated officer under section 63 or 64 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

General anti-avoidance rule: commencement and transitional provision

66 General anti-avoidance rule: commencement and transitional provision

(1) The general anti-avoidance rule has effect in relation to any tax avoidance arrangement entered into on or after the date on which this Part comes into force.

(2) Where the tax avoidance arrangement forms part of any other arrangements entered into before that day, those other arrangements are to be ignored for the purposes of section 59(7), subject to subsection (3).

(3) Account is to be taken of those other arrangements if, as a result, the tax avoidance arrangement would not be artificial.

PART 6
TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1
OVERVIEW

67 Overview

This Part makes provision about the assessment of devolved taxes including—

(a) taxpayers’ duties in relation to tax records,

(b) the timing of tax returns,

(c) amendment and correction of tax returns by taxpayers and Revenue Scotland,

(d) enquiries by Revenue Scotland into taxpayers’ self-assessments,

(e) determination by Revenue Scotland of tax due where no return is made,

(f) assessment by Revenue Scotland of tax due outwith enquiries where tax losses or other situations are brought about by taxpayers carelessly or deliberately, and

(g) claims for relief from double assessment and for repayment of tax.
CHAPTER 2

TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

Duties to keep records

69 Duty to keep and preserve records

(1) A person who is required to make a tax return in relation to a devolved tax must—

(a) keep any records that may be needed to enable the person to make a correct and complete return, and

(b) preserve those records in accordance with this section.

(2) The records mentioned in subsection (1) must be preserved until the end of the later of

(a) an enquiry into the return is completed, or

(b) if there is no enquiry, a designated officer no longer has power to enquire into the return.

(2A) A person who is liable to be registered for tax (a “registrable person”) must—

(a) keep any records that may be needed to enable the registrable person to comply with a requirement to notify Revenue Scotland of the person’s intention—

(i) to carry out taxable activities, or

(ii) to cease to carry out taxable activities,

(b) make records relating to material at a landfill site or part of a landfill site, and

(c) preserve those records in accordance with this section.

(2B) The records mentioned in subsection (2A) must be preserved until the end of the relevant day.

(3) “The relevant day” in relation to records mentioned in subsection (1) means—

(a) the fifth anniversary of the day on which the return is made or, if the return is amended, the day notice of the amendment is given under section 74, or

(b) any earlier day that may be specified in writing by Revenue Scotland.

(3A) The “relevant day” in relation to records mentioned in subsection (2A) means—

(a) in the case of records mentioned in subsection (2A)(a), the fifth anniversary of the day on which the notice was given,

(b) in the case of records mentioned in subsection (2A)(b), the fifth anniversary of the day on which the record was made, or

(c) in either case, any earlier day that may be specified in writing by Revenue Scotland.

(4) Different days may be specified for different purposes under subsection (3)(b) or (3A)(c).

(5) The records required to be kept and preserved under subsection (1) include—

(a) details of any relevant transaction (including relevant instruments relating to any transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents),
(b) details of any relevant taxable activity,
(c) records of relevant payments, receipts and financial arrangements.

(6) The Scottish Ministers may by regulations—
(a) provide that the records required to be kept and preserved under this section do, or do not, include records specified in the regulations, and
(b) specify supporting documents that are required to be kept under this section.

(7) Regulations under this section may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(8) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

70 **Preservation of information etc.**

The duty under section 69 to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or
(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by the Scottish Ministers by regulations.

**Penalties for failing to keep and preserve records**

71 **Penalty for failure to keep and preserve records**

(1) A person (“P”) who fails to comply with section 69 in relation to a devolved tax is liable to a penalty not exceeding £3,000, subject to the following exception.

(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to Revenue Scotland.

71A **Reasonable excuse for failure to keep and preserve records**

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with section 69, liability to a penalty under section 71 does not arise in relation to that failure.

(2) For the purposes of subsection (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
71B Assessment of penalties under section 71

(1) Where a person becomes liable to a penalty under section 71, Revenue Scotland must—
   (a) assess the penalty, and
   (b) notify the person.

(2) An assessment of a penalty under section 71 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

71C Enforcement of penalties under section 71

(1) A penalty under section 71 must be paid—
   (a) before the end of the period of 30 days beginning with the date on which the notification under section 71B was issued,
   (b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
   (c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
   (d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 71 is to be treated for enforcement purposes as an assessment to tax.

71D Power to change penalty provisions in sections 71 to 71C

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—
   (a) about the circumstances in which a penalty is payable,
   (b) about the amounts of penalties,
   (c) about the procedure for issuing penalties,
   (d) about appealing penalties,
   (e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

Duty to keep and preserve records: further provision

72 Further provision: land and buildings transaction tax

(1) This section applies in relation to land and buildings transaction tax.
(2) The Scottish Ministers may by regulations make provision for the keeping and preservation of records in relation to land transactions that are not notifiable.

(3) Regulations under this section may require the buyer in a land transaction which is not notifiable to—
   
   (a) keep such records as may be needed to enable the buyer to demonstrate that the transaction is not notifiable, and
   
   (b) preserve those records in accordance with the regulations.

(4) The regulations may apply sections 69 to 71C (with or without modifications) to a buyer mentioned in subsection (3) as those sections apply to a person mentioned in section 69(1).

(5) Expressions used in this section and in the LBTT(S) Act 2013 have the meanings given in that Act.

**CHAPTER 3**

**Tax returns**

**Filing dates**

73 Meaning of “filing date”

(3) In this Act “the filing date” in relation to a tax return is the date by which that return requires to be made by or under any enactment.

**Amendment and correction of returns**

74 Amendment of return by taxpayer

(1) A person (the “taxpayer”) who has made a tax return may amend the return by notice to Revenue Scotland.

(2) Revenue Scotland may require that notices under this section—
   
   (a) are in a specified form,
   
   (b) contain specified information.

(3) An amendment under this section must be made by the end of the period of 12 months beginning with the relevant date (the “amendment period”).

(4) The relevant date is—
   
   (a) the filing date, or
   
   (b) such other date as the Scottish Ministers may by order prescribe.

(5) This section is subject to sections 78(2A) and 84(3A).

75 Correction of return by Revenue Scotland

(1) Revenue Scotland may correct any obvious error or omission in a tax return.

(2) A correction under this section—
   
   (a) is made by notice in writing to the taxpayer, and
   
   (b) is regarded as effecting an amendment of the return.
(3) The reference in subsection (1) to an error includes, for instance, an arithmetical mistake or an error of principle.

(4) A correction under this section must be made by the end of the period of 12 months beginning with the day on which the return was made.

(5) A correction under this section has no effect if the taxpayer rejects it by—
   (a) during the amendment period, amending the return so as to reject the correction, or
   (b) after that period, giving a notice rejecting the correction.

(6) A notice under subsection (5)(b) must be given to Revenue Scotland before the end of the period of 3 months beginning with the date of issue of the notice of correction.

CHAPTER 4

REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

76 Notice of enquiry

(1) A designated officer may enquire into a tax return if subsection (2) has been complied with.

(2) Notice of the intention to make an enquiry must be given—
   (a) to the person by whom or on whose behalf the return was made (“the relevant person”),
   (b) before the end of the period of 3 years after the relevant date.

(3) The relevant date is—
   (a) the filing date, if the return was made on or before that date, or
   (b) the date on which the return was made, if the return was made after the filing date.

(4) A return that has been the subject of one notice under this section may not be the subject of another, except a notice given in consequence of an amendment of the return under section 74.

(5) A notice under this section is referred to as a “notice of enquiry”.

77 Scope of enquiry

(1) An enquiry extends to anything contained in the tax return, or required to be contained in the return, that relates—
   (a) to the question whether the relevant person is chargeable to the devolved tax to which the return relates, or
   (b) to the amount of tax chargeable on the relevant person.

(2) Subsection (3) applies if the notice of enquiry is given as a result of the amendment of a return under section 74 after an enquiry into the return has been completed.

(3) The enquiry is limited to—
   (a) matters to which the amendment relates, and
Revenue Scotland and Tax Powers Bill
Part 6—Tax returns, enquiries and assessments
Chapter 4—Revenue Scotland enquiries

Amendment of return during enquiry

Amendment of self-assessment during enquiry to prevent loss of tax

78
(1) If, at a time when an enquiry is in progress into a tax return, a designated officer forms the opinion—

(a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and

(b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice in writing to the relevant person amend the assessment to make good the deficiency.

(2) If the enquiry is one that is limited by section 77(2) and (3) to matters arising from an amendment of the return, subsection (1) applies only so far as the deficiency is attributable to the amendment.

(2A) Where a designated officer gives notice under subsection (1), section 74 does not apply.

(2B) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section at the same time as the notice of the amendment is given.

(3) For the purposes of this section and section 79 the period during which an enquiry is in progress is the whole of the period—

(a) beginning with the day on which the notice of enquiry is given, and

(b) ending with the day on which the enquiry is completed.

Referral during enquiry

79
(1) At any time when an enquiry is in progress into a tax return any question arising in connection with the subject-matter of the return may be referred to the appropriate tribunal for determination.

(2) Notice of the referral must be given to the appropriate tribunal jointly by the relevant person and a designated officer.

(3) More than one notice of referral may be given under this section in relation to an enquiry.

80
Withdrawal of notice of referral

A designated officer or the relevant person may withdraw a notice of referral under section 79.

81
Effect of referral on enquiry

(1) While proceedings on a referral under section 79 are in progress in relation to an enquiry—
(a) no closure notice may be given in relation to the enquiry, and
(b) no application may be made for a direction to give a closure notice.

(2) Proceedings on a referral are “in progress” where—
(a) notice of referral has been given and has not been withdrawn, and
(b) the question referred has not been finally determined.

(3) A question referred has been “finally determined” when—
(a) it has been determined by the appropriate tribunal, and
(b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

82 Effect of determination

(1) A determination under section 79 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary plea in an appeal.

(2) The designated officer conducting the enquiry must take the determination into account—
(a) in reaching conclusions on the enquiry, and
(b) in the formulation of any amendments of the tax return that may be required to give effect to those conclusions.

(3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary plea in that appeal.

83 “Appropriate tribunal”

(1) Where the question to be referred under section 79 is of the market value of any land, the appropriate tribunal is the Lands Tribunal for Scotland.

(2) In any other case a referral under section 79 is to be made to—
(a) the First-tier Tribunal,
(b) where determined by or under tribunal rules, the Upper Tribunal, or
(c) any other court or tribunal specified by the Scottish Ministers by order.

(3) References to the “appropriate tribunal” in sections 79 and 81 are to be read accordingly.

Completion of enquiry

84 Completion of enquiry

(1) An enquiry under section 76 is completed—
(a) when a designated officer informs the relevant person by a notice in writing (a “closure notice”) that the enquiry is complete and states the conclusions reached in the enquiry, or
(b) no closure notice having been given, 3 years after the relevant date.

(2) A closure notice must be given no later than 3 years after the relevant date.
(3) A closure notice must either—
   (a) state that in the officer's opinion no amendment of the tax return is required, or
   (b) make the amendments of the return required to give effect to the officer's conclusions.

(3A) Where a closure notice is given which makes amendments of a return as mentioned in subsection (3)(b), section 74 does not apply.

(4) A closure notice takes effect when it is issued.

(4A) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment made by a closure notice before the end of the period of 30 days beginning with the day on which the notice is given.

(5) In subsections (1) and (2) “relevant date” has the same meaning as in section 76.

85 Direction to complete enquiry

(1) The relevant person may apply to the tribunal for a direction that a closure notice is to be given within a specified period.

(2) The tribunal hearing the application must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.

(3) In this paragraph “the tribunal” means—
   (a) the First-tier Tribunal, or
   (b) where determined by or under tribunal rules, the Upper Tribunal.

CHAPTER 5

REVENUE SCOTLAND DETERMINATIONS

86 Determination of tax chargeable if no return made

(1) This section applies where—
   (a) Revenue Scotland has reason to believe that a person (“P”) is chargeable to a devolved tax,
   (b) P has not made a tax return in relation to that liability, and
   (c) the relevant filing date has passed.

(2) “The relevant filing date” means the date by which Revenue Scotland believes a return was required to be made.

(3) Revenue Scotland may make a determination (a “Revenue Scotland determination”) to the best of its information and belief of the amount of tax to which P is chargeable.

(4) Notice of the determination must be given to P and must state the date on which it is issued.

(4A) P must pay the tax chargeable as a result of the determination immediately on receipt of notice of the determination.

(5) No Revenue Scotland determination may be made more than 5 years after the relevant date.
(6) The relevant date is—
   (a) the relevant filing date, or
   (b) such other date as the Scottish Ministers may by order prescribe.

87 Determination to have effect as a self-assessment

(1) A Revenue Scotland determination has effect for enforcement purposes as if it were a self-assessment made by P.

(2) In subsection (1) “for enforcement purposes” means for the purposes of Part 10.

(3) Nothing in this section affects any liability of a person to a penalty for failure to make a tax return.

88 Determination superseded by actual self-assessment

(1) If, after a Revenue Scotland determination has been made, P makes a tax return with respect to the tax in question, the self-assessment included in that return supersedes the determination.

(2) Subsection (1) does not apply to a return made—
   (a) more than 5 years after the power to make the determination first became exercisable, or
   (b) more than 3 months after the date of the determination, whichever is the later.

(3) Where—
   (a) proceedings have been begun for the recovery of any tax charged by a Revenue Scotland determination, and
   (b) before the proceedings are concluded the determination is superseded by a self-assessment,

   the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not yet been paid.

CHAPTER 6

REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayment

89 Assessment where loss of tax

(1) This section applies if a designated officer comes to the view honestly and reasonably that—
   (a) an amount of devolved tax that ought to have been assessed as tax chargeable on a person has not been assessed,
   (b) an assessment of the tax chargeable on a person is or has become insufficient, or
   (c) relief has been claimed or given that is or has become excessive.
(2) The designated officer may make an assessment of the amount or further amount that ought in the officer’s opinion to be charged in order to make good to the Crown the loss of tax.

90 Assessment to recover excessive repayment of tax

(1) If an amount of tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid tax.

(2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.

91 References to “Revenue Scotland assessment”

In this Act “Revenue Scotland assessment” means an assessment under section 89(2) or 90(1), as the case may be.

92 References to the “taxpayer”

In sections 93 to 96 “taxpayer” means—

(a) in relation to an assessment under section 89, the person chargeable to the tax,

(b) in relation to an assessment under section 90, the person mentioned in section 90(1).

Conditions for making Revenue Scotland assessments

93 Conditions for making Revenue Scotland assessments

(1) A Revenue Scotland assessment may be made only where the situation mentioned in section 89(1) or 90(1) was brought about carelessly or deliberately by—

(a) the taxpayer,

(b) a person acting on the taxpayer’s behalf, or

(c) a person who was a partner of the taxpayer.

(2) But no Revenue Scotland assessment may be made if—

(a) the situation mentioned in section 89(1) or 90(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and

(b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

94 Time limits for Revenue Scotland assessments

(1) The general rule is that no Revenue Scotland assessment may be made more than 5 years after the relevant date.

(2) An assessment of a person in any case involving a loss of tax or a situation brought about deliberately by the taxpayer or a related person may be made up to 20 years after the relevant date.

(3) An assessment under section 90 (assessment to recover excessive repayment of tax) is not out of time if it is made within the period of 12 months beginning with the date on which the repayment in question was made.
(4) If the taxpayer has died—
   (a) any assessment on the personal representatives must be made within 3 years after the death, and
   (b) an assessment is not to be made by virtue of subsection (1) in respect of a relevant date more than 5 years before the death.

(5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on a review or appeal against the assessment.

(6) In this section—

   “related person”, in relation to the taxpayer, means—
   (a) a person acting on the taxpayer’s behalf, or
   (b) a person who was the partner of the taxpayer,
   “relevant date” means—
   (a) the filing date, or
   (b) the date on which the return was made, if the return was made after the filing date.

95 Losses brought about carelessly or deliberately

(1) This section applies for the purposes of sections 93 and 94.

(2) A loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation.

(3) Subsection (4) applies where—
   (a) information is provided to Revenue Scotland,
   (b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
   (c) that person fails to take reasonable steps to inform Revenue Scotland.

(4) Any loss of tax or situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(5) References to a loss of tax or to a situation brought about deliberately by a person include a loss of tax or situation brought about as a result of a deliberate inaccuracy in a document given to Revenue Scotland by or on behalf of that person.

96 Notice of assessment and other procedure

(1) Notice of a Revenue Scotland assessment must be served on the taxpayer.

(2) The notice must state—
   (a) the tax due,
   (b) the date on which the notice is issued,
   (ba) the date by which—
(i) the amount or further amount of tax chargeable as a result of the assessment (as mentioned in section 89(2)), or

(ii) the amount of tax or interest repaid that ought not to have been (as mentioned in section 90(1)),

must be paid, and

(c) the time within which any review or appeal against the assessment must be requested.

(2A) The—

(a) amount or further amount of tax chargeable as a result of the assessment (as mentioned in section 89(2)), or

(b) amount of tax or interest repaid that ought not to have been (as mentioned in section 90(1)),

must be paid before the end of the period of 30 days beginning with the date on which the assessment is issued.

(3) After notice of the assessment has been served on the taxpayer, the assessment may not be altered except in accordance with the express provisions of this Part or of Part 5.

(4) Where a designated officer has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, the officer may entrust to some other designated officer the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

CHAPTER 7
RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

97 Relief in case of double assessment

A person who believes that tax has been assessed on that person more than once in respect of the same matter may make a claim to Revenue Scotland for relief against any double charge.

Overpaid tax etc.

98 Claim for relief for overpaid tax etc.

(1) This section applies where—

(a) a person has paid an amount by way of tax but believes the tax was not chargeable, or

(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, but the person believes the tax is not chargeable.

(2) The person may make a claim to Revenue Scotland for the amount to be repaid or discharged.
(3) Where this section applies, Revenue Scotland is not liable to give relief, except as provided in this Part or by or under any other provision of this Act.

(4) For the purposes of this section and sections 100 to 109, an amount paid by one person on behalf of another is treated as paid by the other person.

5

Order changing tax basis not approved

99 Claim for repayment if order changing tax basis not approved

(1) This section applies where a relevant order has ceased to have effect by virtue of a relevant provision and—

(a) a person has paid an amount by way of tax that would not have been payable but for the order, or

(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, that would not have been chargeable but for the order.

(2) The person may make a claim to Revenue Scotland—

(a) for the amount of tax, and

(b) any related penalty or interest,

to be repaid or discharged to the extent that it was paid, or assessed or determined as chargeable, in consequence of the relevant order.

(3) A “relevant order” is an order mentioned in column 1, and a “relevant provision”, in relation to such an order, is the provision mentioned in the corresponding entry in column 2, of the following table.

<table>
<thead>
<tr>
<th>Relevant orders</th>
<th>Relevant provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under the LBTT(S) Act 2013—</td>
<td>Section 68(4)(b) of that Act</td>
</tr>
<tr>
<td>(a) a second or subsequent order under section 24(1),</td>
<td></td>
</tr>
<tr>
<td>(b) a second or subsequent order under paragraph 3(1) of schedule 19.</td>
<td></td>
</tr>
<tr>
<td>Under the LT(S) Act 2014—</td>
<td>Section 41(3)(b) of that Act</td>
</tr>
<tr>
<td>(a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal,</td>
<td></td>
</tr>
<tr>
<td>(b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed,</td>
<td></td>
</tr>
<tr>
<td>(c) a second or subsequent order under section 13(2) or (5),</td>
<td></td>
</tr>
<tr>
<td>(d) an order under section 13(4),</td>
<td></td>
</tr>
</tbody>
</table>
(4) A penalty or interest is related to an amount of tax to the extent that it—
   (a) is attributable to the amount, and
   (b) would not have been incurred but for the relevant order.

(5) A claim for repayment must be made before the end of the period of 2 years after the relevant date.

(6) The relevant date is—
   (a) the filing date, or
   (b) the date on which the tax return was made, if the return was made after the filing date.

(7) For the purposes of this section and sections 100 to 103, 105, 107 and 109, an amount paid by one person on behalf of another is treated as paid by the other person.

(8) Expressions used in this section and in the LT(S) Act 2014 have the meanings given in that Act.

Defence of unjustified enrichment

100 Defence to certain claims for relief under section 98 or 99

It is a defence to a claim for relief made under section 98 or 99 that repayment or, as the case may be, discharge of the amount would unjustly enrich the claimant.

101 Unjustified enrichment: further provision

(1) This section applies where—
   (a) there is an amount paid by way of tax which (apart from section 100) would fall to be repaid or discharged to any person (“the taxpayer”), and
   (b) the whole or a part of the cost of the payment of that amount to Revenue Scotland has, for practical purposes, been borne by a person other than the taxpayer.

(2) Where, in a case to which this section applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any provisions relating to a tax, that loss or damage is to be disregarded, except to the extent of the quantified amount, in the making of any determination—
   (a) of whether or to what extent the repayment or discharge of an amount to the taxpayer would enrich the taxpayer, or
   (b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3) In subsection (2) “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions.
(4) The reference in subsection (2) to provisions relating to a tax is a reference to any provisions of—

(a) any enactment, subordinate legislation or EU legislation (whether or not still in force) which relates to that tax or to any matter connected with it, or

(b) any notice published by Revenue Scotland under or for the purposes of any such enactment or subordinate legislation.

102 Unjustified enrichment: reimbursement arrangements

(1) The Scottish Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 100 except where the arrangements—

(a) contain such provision as may be required by the regulations, and

(b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to Revenue Scotland.

(2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 98 or 99 which—

(a) are made by any person for the purpose of securing that the person is not unjustly enriched by the repayment or discharge of any amount in pursuance of the claim, and

(b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland.

(3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—

(a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations,

(b) provision for the repayment of amounts to Revenue Scotland where those amounts are not reimbursed in accordance with the arrangements,

(c) provision requiring interest paid by Revenue Scotland on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay Revenue Scotland,

(d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to Revenue Scotland, or to a designated officer.

(4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—

(a) to make the repayments to Revenue Scotland that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c),
(b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d).

(5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to Revenue Scotland in accordance with the regulations and any such provision may allow for those matters to be determined by Revenue Scotland in accordance with the regulations.

103 Reimbursement arrangements: penalties

(1) Regulations under section 102 may make provision for penalties where a person breaches an obligation imposed by virtue of section 102(4).

(2) The regulations may in particular make provision including provision—

(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of repayments which the person would have been liable to make to Revenue Scotland if the obligation had been breached,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(3) But the regulations may not create criminal offences.

(4) Regulations made by virtue of this section may amend any enactment (including this Act).

Other defences to claims

104 Cases in which Revenue Scotland need not give effect to a claim

(1) Revenue Scotland need not give effect to a claim under section 98 if or to the extent that the claim falls within a case described in this section.

(2) Case A is where the amount of tax paid, or liable to be paid, is excessive because of—

(a) a mistake in a claim, or
(b) a mistake consisting of making, or failing to make, a claim.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C is where the claimant—

(a) could have sought relief by taking such steps within a period that has now expired, and
(b) knew or ought reasonably to have known, before the end of that period, that such relief was available.

(5) Case D is where the claim is made on grounds that—

(a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
Revenue Scotland and Tax Powers Bill

Part 6—Tax returns, enquiries and assessments

Chapter 7—Relief in case of excessive assessment or overpaid tax

(b) have been put to Revenue Scotland in the course of a review or appeal by the claimant relating to that amount that is treated as having been determined by the tribunal by virtue of section 211 (settling matters in question by agreement).

(6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—

(a) the date on which a relevant appeal in the course of which the ground could have been put forward was determined by a court or tribunal (or is treated as having been so determined),

(b) the date on which the claimant withdrew a relevant appeal to a court or tribunal,

(c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(7) In subsection (6) “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.

(8) Case F is where the amount in question was paid or is liable to be paid—

(a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Revenue Scotland, or

(b) in accordance with an agreement between the claimant and Revenue Scotland settling such proceedings.

(9) Case G is where—

(a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to tax, and

(b) liability was calculated in accordance with the practice generally prevailing at the time.

(10) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(11) For the purposes of subsection (10), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

Procedure for making claims

Procedure for making claims etc.

Schedule 3 applies in relation to claims under sections 97 to 99.

Time-limit for making claims

(1) A claim under section 97 or 98 must be made within the period of 5 years after the date by which the tax return, to which the payment by way of tax, or the assessment or determination relates, required to be made.
(2) A claim under section 98 may not be made by being included in a return.

107 The claimant: partnerships

(1) This section is about the application of sections 98 and 99 in a case where either—
   (a) (in a case falling within section 98(1)(a) or 99(1)(a)) the person paid the amount in question in the capacity of a responsible partner or representative partner, or
   (b) (in a case falling within section 98(1)(b) or 99(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity.

(2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under section 98 or 99 in respect of the amount in question.

(3) The relevant persons are all the persons who would have been liable as responsible partners to pay the amount in question had the payment been due or (in a case falling within section 98(1)(b) or 99(1)(b)) had the assessment or determination been correctly made.

108 Assessment of claimant in connection with claim

(1) This section applies where—
   (a) a claim is made under section 98,
   (b) the grounds for giving effect to the claim also provide grounds for a Revenue Scotland assessment on the claimant in respect of the tax, and
   (c) such an assessment could be made but for a relevant restriction.

(2) In a case falling within section 107(1)(a) or (b), the reference to the claimant in subsection (1)(b) of this section includes any relevant person (as defined in section 107(3)).

(3) The following are relevant restrictions—
   (a) the restrictions in section 93 (conditions for assessment where return has been delivered),
   (b) the expiry of a time limit for making a Revenue Scotland assessment.

(4) Where this section applies—
   (a) the relevant restrictions are to be disregarded, and
   (b) the Revenue Scotland assessment is not out of time if it is made before the final determination of the claim.

(5) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on review, appeal or otherwise).

Contrasts settlements

109 Contract settlements

(1) In sections 98(1)(a) and 99(1)(a) the reference to an amount paid by a person by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.
Subsections (3) to (7) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.

In relation to a claim under section 98 in respect of that amount—

(a) the references to the claimant in section 104(5), (6) and (8) (Cases D, E and F) have effect as if they included the taxpayer,

(b) the reference to the claimant in section 104(9) (Case G) has effect as if it were a reference to the taxpayer, and

(c) the reference to the claimant in section 108(1)(b) has effect as if it were a reference to the taxpayer.

In relation to a claim under section 98 or 99 in respect of that amount, references to tax in schedule 3 (as it applies to a claim under section 98 or 99) include the amount paid under the contract settlement.

Subsection (6) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a Revenue Scotland assessment on the taxpayer in respect of the tax.

Revenue Scotland may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.

The obligations of Revenue Scotland and the taxpayer are discharge to the extent of any set-off under subsection (6).

“Contract settlement” means an agreement made in connection with any person’s liability to make a payment to Revenue Scotland by or under this Act or any other enactment.

**PART 7**

**INVESTIGATORY POWERS OF REVENUE SCOTLAND**

**CHAPTER 1**

**INVESTIGATORY POWERS: INTRODUCTORY**

This Part is arranged as follows—

(a) Chapter 2 sets out Revenue Scotland’s investigatory powers in relation to information and documents,

(b) Chapter 3 contains restrictions on the powers in Chapter 2,

(c) Chapter 4 sets out Revenue Scotland’s investigatory powers in relation to premises and other property,

(d) Chapter 5 sets out further investigatory powers,

(e) Chapter 6 is about reviews and appeals against information notices, and

(f) Chapter 7 sets out offences relating to information notices.
Interpretation

112 Meaning of “tax position”

(1) In this Part unless otherwise stated “tax position”, in relation to a person, means the person’s position as regards any devolved tax, including the person’s position as regards—

(a) past, present and future liability to pay any devolved tax,

(b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any devolved tax, and

(c) claims, elections, applications and notices that have been or may be made or given in connection with the person's liability to pay any devolved tax,

(and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly).

(2) References in this Part to the tax position of a person include the tax position of—

(a) an individual who has died,

(b) a company that has ceased to exist.

(3) References in this Part to a person’s tax position are to the person’s tax position at any time or in relation to any period, unless otherwise stated.

(4) References to checking a person’s tax position include carrying out an investigation or enquiry of any kind.

113 Meaning of “carrying on a business”

(1) In this Part references to carrying on a business include—

(a) the letting of property,

(b) the activities of a charity, and

(c) the activities of a local authority and any other public authority.

(2) The Scottish Ministers may by regulations provide that for the purposes of this Part—

(a) the carrying on of an activity specified in the regulations, or

(b) the carrying on of such an activity (or any activity) by a person specified in the regulations,

is or is not to be treated as the carrying on of a business.

114 Meaning of “statutory records”

(1) For the purposes of this Part information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve by or under this Act, subject to subsections (2) and (3).

(2) To the extent that any information or document that is required to be kept and preserved by or under this Act—

(a) does not relate to the carrying on of a business, and
(b) is not also required to be kept or preserved by or under any other enactment relating to devolved tax,

it forms part of a person’s statutory records only to the extent that any accounting period or periods to which it relates has or have ended.

5 (3) Information and documents cease to form part of a person’s statutory records when the period for which they are required to be preserved by or under this Act has expired.

CHAPTER 2

INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

115 Power to obtain information and documents from taxpayer

10 (1) If the condition in subsection (2) is met, a designated officer may by notice in writing require a person (“the taxpayer”—

(a) to provide information, or
(b) to produce a document.

(2) That condition is that—

(a) the information or document is reasonably required by the officer for the purpose of checking the taxpayer’s tax position, and
(b) it is reasonable for the taxpayer to be required to provide the information or to produce the document.

(3) In this Part “taxpayer notice” means a notice under this section.

116 Power to obtain information and documents from third party

20 (1) If the condition in subsection (2) is met, a designated officer may by notice in writing require a person—

(a) to provide information, or
(b) to produce a document.

(2) That condition is that—

(a) the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”), and
(b) it is reasonable for the person to be required to provide the information or to produce the document.

(3) A notice under this section must name the taxpayer to whom it relates, unless the tribunal has approved the giving of the notice and disapproved this requirement under section 117.

(4) In this Part “third party notice” means a notice under this section.

117 Approval of taxpayer notices and third party notices

35 (1) A designated officer may not give a third party notice without—

(a) the agreement of the taxpayer, or
(b) the approval of the tribunal.

(2) A designated officer may ask for the approval of the tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see sections 144 and 146).

(3) An application for approval under this section may be made without notice (except as required under subsection (4)).

(4) The tribunal may not approve the giving of a taxpayer notice or third party notice unless—

(b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,

(c) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and has been given a reasonable opportunity to make representations to a designated officer,

(d) the tribunal has been given a summary of any representations made by that person, and

(e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why a designated officer requires the information and documents.

(5) Paragraphs (c) to (e) of subsection (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.

(6) Where the tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the designated officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

118 Copying third party notice to taxpayer

(1) A designated officer who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the tribunal has disapplied this requirement.

(2) The tribunal may not disapply that requirement unless the tribunal is satisfied that the officer applying has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

119 Power to obtain information and documents about persons whose identity is not known

(1) If the conditions in subsection (2) are met, a designated officer may by notice in writing require a person—

(a) to provide information, or

(b) to produce a document.

(2) Those conditions are—

(a) that the information or document is reasonably required by the officer for the purpose of checking the tax position of—

(i) a person whose identity is not known to the officer, or
Part 7—Investigatory powers of Revenue Scotland

Chapter 2—Investigatory powers: information and documents

(ii) a class of persons whose individual identities are not known to the officer, and

(b) the tribunal has approved the giving of the notice.

(4) An application for approval may be made without notice.

(5) The tribunal may not approve the giving of a notice under this section unless it is satisfied that—

(a) the notice would meet the condition in subsection (2)(a),

(b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law relating to a devolved tax,

(c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax, and

(d) the information or document to which the notice relates is not readily available from another source.

120 Third party notices and notices under section 119: groups of undertakings

(1) This section applies where an undertaking is a parent undertaking in relation to another undertaking (a “subsidiary undertaking”).

(2) Where a third party notice is given to any person for the purpose of checking the tax position of the parent undertaking and any of its subsidiary undertakings—

(a) section 116(3) only requires the notice to state this and name the parent undertaking, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the parent undertaking.

(3) In relation to such a notice—

(a) in sections 117 and 118 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to the parent undertaking, but

(b) in section 144(2)(b) (no review or appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking and each of its subsidiary undertakings.

(4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—

(a) section 116(3) only requires the notice to state this, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement.

(5) In relation to such a notice—

(a) in section 117 (approval of notices), subsections (1) and (4)(e) do not apply,

(b) section 118(1) (copying third party notices to taxpayer) does not apply,
(c) section 129 (restriction on giving taxpayer notice following a tax return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings), and

(d) in section 144(2)(b) (no review or appeal in relation to a taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.

(7) In this section “parent undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given in sections 1161 and 1162 of, and schedule 7 to, the Companies Act 2006 (c.46).

121 Third party notices and notices under section 119: partnerships

(1) This section applies where a business is carried on by two or more persons in partnership.

(2) Where, in respect of a taxable event entered into or undertaken by or on behalf of the members of the partnership, any partner has made a tax return, section 129 has effect as if that return had been made by each of the partners.

(3) Where a third party notice is given for the purpose of checking the tax position of more than one of the partners (in their capacity as such)—

(a) section 116(3) only requires the notice to state this and give a name by which the partnership is known or under which it is registered for any purpose, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the partnership.

(4) In relation to such a notice given to a person other than one of the partners—

(a) in sections 117 and 118 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to at least one of the partners, and

(b) in section 144(2)(b) (no review or appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such)—

(a) in section 117 (approval of notices), subsections (1) and (4)(c) do not apply,

(b) section 118(1) (copying third party notices to taxpayer) does not apply, and

(c) in section 144(2)(b) (no review or appeal in relation to a taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

122 Power to obtain information about persons whose identity can be ascertained

(1) A designated officer may by notice in writing require a person (“P”) to provide relevant information about another person (“the taxpayer”) if the tribunal approves the giving of the notice.
(1A) The tribunal may not approve the giving of a notice under this section unless satisfied that conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that—
   (a) the taxpayer’s identity is not known to the officer, but
   (b) the officer holds information from which the taxpayer’s identity can be ascertained.

(4) Condition C is that the officer has reason to believe that—
   (a) P will be able to ascertain the taxpayer’s identity from the information held by the officer, and
   (b) P obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “Relevant information” means all or any of the following—
   (a) name,
   (b) last known address, and
   (c) date of birth (in the case of an individual).

(7) This section applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “taxpayer” are to be read accordingly).

123 Notices

(1) In this Part, “information notice” means a notice under section 115, 116, 119 or 122.

(2) An information notice may specify or describe the information or documents to be provided or produced.

(3) If an information notice is given with the approval of the tribunal, it must state that it is given with that approval.

(4) A decision of the tribunal under section 117, 118, 119 or 122 is final.

124 Complying with information notices

(1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
   (a) within such period, and
   (b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.

(2) Where an information notice requires a person to produce a document, it must be produced—
   (a) at a place agreed to by that person and a designated officer, or
Revenue Scotland and Tax Powers Bill
Part 7—Investigatory powers of Revenue Scotland
Chapter 3—Restrictions on powers in Chapter 2

(b) at such place as a designated officer may reasonably specify.

(3) A designated officer must not specify for the purposes of subsection (2)(b) a place that is used solely as a dwelling.

(4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

125 Producing copies of documents

(1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Scottish Ministers.

(2) Subsection (1) does not apply where—

(a) the notice requires the person to produce the original document, or

(b) a designated officer subsequently makes a request in writing to the person for the original document.

(3) Where a designated officer requests a document under subsection (2)(b), the person to whom the request is made must produce the document—

(a) within such period, and

(b) at such time and by such means (if any), as is reasonably requested by the designated officer.

126 Further provision about powers relating to information notices

The Scottish Ministers may by regulations make further provision about—

(a) the form and content of information notices,

(b) the time periods for complying with information notices, and

(c) the manner of complying with information notices.

CHAPTER 3

Restrictions on powers in Chapter 2

127 Information notices: general restrictions

(1) An information notice requires a person to produce a document only if it is in the person’s possession or power.

(2) An information notice may not require a person to produce a document if the whole of the document originates more than 5 years before the date of the notice, unless the notice is given with the approval of the tribunal.

(3) An information notice given for the purposes of checking the tax position of a person who has died may not be given more than 4 years after the person’s death.

128 Types of information

(1) An information notice does not require a person to provide or produce—
(a) information that relates to the conduct of a pending review or appeal relating to tax (or any part of a document containing such information), or
(b) journalistic material (or information contained in such material).

(2) In subsection (1)(b) “journalistic material” means material acquired or created for the purposes of journalism.

(3) Material is to be treated as journalistic material if it is in the possession of someone who acquired or created it for the purposes of journalism.

(4) A person who receives material from someone who intends that the recipient will use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(5) An information notice does not require a person to provide or produce personal records or information contained in such records, subject to subsection (7).

(6) In subsection (5) “personal records” means documentary and other records concerning an individual (“P”) (whether living or dead) who can be identified from them and relating—
(a) to P’s physical or mental health,
(b) to spiritual counselling or assistance given or to be given to P, or
(c) to counselling or assistance given or to be given to P, for the purposes of P’s personal welfare, by any voluntary organisation or by any individual who—
(i) by reason of an office or occupation has responsibilities for P’s personal welfare, or
(ii) by reason of an order of a court has responsibilities for P’s supervision.

(7) An information notice may require a person—
(a) to produce documents (or copies of documents) that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and
(b) to provide any information contained in such records that is not personal information.

129 Taxpayer notices following a tax return

(1) Where a person has made a tax return in relation to a devolved tax in relation to an accounting period, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that tax in relation to that accounting period.

(2) Where a person has made a tax return in relation to a devolved tax in relation to a transaction, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that transaction.

(3) Subsections (1) and (2) do not apply where (or to the extent that) either of condition A or B is met.

(4) Condition A is that a notice of enquiry has been given in respect of—
(a) the return, or
(b) a claim or election (or an amendment of a claim or election) made by the person in relation to—
Part 7—Investigatory powers of Revenue Scotland

Chapter 3—Restrictions on powers in Chapter 2

(i) the accounting period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”), or

(ii) the transaction to which the return relates,

and the enquiry has not been completed.

(5) Condition B is that, as regards the person, a designated officer has reason to suspect that—

(a) an amount that ought to have been assessed to relevant tax for the accounting period or, as the case may be, the transaction may not have been assessed,

(b) an assessment to relevant tax for the accounting period or, as the case may be, the transaction may be or have become insufficient, or

(c) relief from relevant tax given for the accounting period or, as the case may be, the transaction may be or have become excessive.

(6) References in this section to the person who made the return are only to that person in the capacity in which the return was made.

130 Protection for privileged communications between legal advisers and clients

(1) An information notice does not require a person—

(a) to provide privileged information, or

(b) to produce any part of a document that is privileged.

(2) For the purposes of this Part, information or a document is privileged if it is information or a document in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.

(3) The Scottish Ministers may by regulations make provision for the resolution by the tribunal of disputes as to whether any information or document is privileged.

(4) The regulations may, in particular, make provision as to the custody of a document while its status is being decided.

131 Protection for auditors

(1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—

(a) to provide information held in connection with the performance of the person’s functions under that enactment, or

(b) to produce documents which are that person’s property and which were created by that person or on that person’s behalf for or in connection with the performance of those functions.

(2) Subsection (1) has effect subject to section 132.

132 Auditors: supplementary

(1) Section 131(1) does not have effect in relation to—
Part 7—Investigatory powers of Revenue Scotland

Chapter 4—Investigatory powers: premises and other property

(a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, Revenue Scotland, or

(b) a document which contains such information.

(2) In the case of a notice given under section 119, section 131(1) does not have effect in relation to—

(a) any information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or

(b) a document which contains such information.

(3) Section 131 is not disappplied by subsection (1) or (2) if the information in question has already been provided, or a document containing the information has already been produced, to a designated officer.

(4) Where section 131 is disappplied in relation to a document by subsection (1) or (2), an information notice that requires the document to be produced has effect as if it required any part or parts of the document containing the information mentioned in subsection (1) or (2) to be produced.

CHAPTER 4

INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises

133 Power to inspect business premises

(1) If the condition in subsection (2) is met, a designated officer may enter a person’s business premises and inspect—

(a) the premises,

(b) business assets that are on the premises,

(c) business documents that are on the premises.

(2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the person’s tax position.

(3) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

(4) In this Chapter—

“business assets” means assets that a designated officer has reason to believe are owned, leased or used in connection with the carrying on of a business by any person (but does not include documents),

“business documents” means documents or copies of documents—

(a) that relate to the carrying on of a business by any person, and

(b) that form part of any person’s statutory records,

“business premises”, in relation to a person, means premises (or any part of premises) that a designated officer has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person,
Revenue Scotland and Tax Powers Bill
Part 7—Investigatory powers of Revenue Scotland
Chapter 4—Investigatory powers: premises and other property

“premises” includes any building or structure, any land and any means of transport.

134 Power to inspect business premises of involved third parties

(1) If the condition in subsection (2) is met, a designated officer may enter business premises of an involved third party and inspect—
   (a) the premises,
   (b) business assets that are on the premises, and
   (c) relevant documents that are on the premises.

(2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the position of any person or class of persons as regards a relevant devolved tax.

(3) In this section—
   “involved third party” means a person who is, or a category of persons who are, specified by the Scottish Ministers by order,
   “relevant documents” means such documents as may be so specified,
   “relevant devolved tax” means such devolved tax as may be so specified.

(4) The powers under this section may be exercised whether or not the identity of that person is, or the individual identities of those persons are, known to the designated officer.

(5) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

135 Carrying out inspections under section 133 or 134

(1) An inspection under section 133 or 134 may be carried out only—
   (a) at a time agreed to by the occupier of the premises, or
   (b) if subsection (2) is satisfied, at any reasonable time.

(2) This subsection is satisfied if—
   (a) the occupier of the premises has been given at least 7 days’ notice in writing of the time of the inspection, or
   (b) the officer has reasonable grounds for believing that giving notice of the inspection would seriously prejudice the assessment or collection of tax.

(3) A designated officer seeking to carry out an inspection under subsection (2)(b) must provide a notice in writing as follows—
   (a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,
   (b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person,
   (c) in any other case, the notice must be left in a prominent place on the premises.
(4) The notice referred to in subsection (2)(a) or (3) must state the possible consequences of obstructing the designated officer in the exercise of the power.

(5) If a notice referred to in subsection (2)(a) or (3) is given in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.

135A Carrying out inspections under section 133 or 134: further provision

(1) A designated officer carrying out an inspection under section 133 or 134 has the following powers.

(2) On entering the premises, the officer may take any person authorised by the officer and, if the officer has reasonable cause to apprehend any serious obstruction in the execution of the inspection, a constable.

(3) Subject to subsection (6), on entering the premises, the officer or a person authorised by the officer may take any equipment or materials required for any purpose for which the inspection is being carried out.

(4) The officer may make such examination or investigation the officer considers to be necessary in the circumstances.

(5) The officer may direct that the premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any such examination or investigation.

(6) An officer or authorised person may exercise the power mentioned in subsection (3) only—

(a) at a time agreed to by the occupier of the premises, or

(b) if subsection (7) is satisfied, at any reasonable time.

(7) This subsection is satisfied if—

(a) in a case where notice was given under section 135(2)(a), that the notice informed the occupier of the premises that the officer or authorised person intended to exercise the power mentioned in subsection (3), or

(b) the officer has reasonable grounds for believing that giving notice of the exercise of that power would seriously prejudice the assessment or collection of tax.

(8) Section 135(3) to (5) apply to the exercise of the power mentioned in subsection (3) by virtue of subsection (7)(b) as they apply to an inspection carried out by virtue of section 135(2)(b).

Inspection for valuation etc.

136 Power to inspect property for valuation etc.

(1) A designated officer may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person’s tax position.

(2) A designated officer may enter premises and inspect—

(a) the premises,

(b) any other property on the premises,
for the purpose of valuing, measuring or determining the character of the premises or property.

(3) Subsection (2) only applies if the valuation, measurement or determination is reasonably required for the purposes of checking any person’s tax position.

(4) A person who the designated officer considers is needed to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.

137 Carrying out inspections under section 136

(1) An inspection under section 136 may be carried out only if condition A or B is met.

(2) Condition A is that—

(a) the inspection is carried out at a time agreed to by a relevant person, and

(b) the relevant person has been given notice in writing of the agreed time of the inspection.

(3) “Relevant person” means—

(a) the occupier of the premises, or

(b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.

(4) Condition B is that—

(a) the inspection has been approved by the tribunal, and

(b) any relevant person specified by the tribunal has been given at least 7 days’ notice in writing of the time of the inspection.

(5) A notice under subsection (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power.

(6) If a notice is given under this section in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.

(7) A designated officer seeking to carry out an inspection under section 136 must produce evidence of authority to carry out the inspection if asked to do so by—

(a) the occupier of the premises, or

(b) any other person who appears to the officer to be in charge of the premises or property.

Approval of tribunal for premises inspections

138 Approval of tribunal for premises inspections

(1) A designated officer may ask the tribunal—

(a) to approve an inspection under section 133, 134 or 136, or

(b) to approve the exercise, in relation to an inspection under section 133 or 134, of any of the powers mentioned in section 135A,

(and for the effect of obtaining such approval see section 167 (penalties for failure to comply or obstruction)).
(2) An application for approval under this section may be made without notice (except as required under subsection (4)).

(3) The tribunal may not approve an inspection under section 133 or 134 unless the tribunal is satisfied that, in the circumstances, the inspection is justified.

(4) The tribunal may not approve an inspection under section 136 unless—

(b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the designated officer about that inspection,

(c) the occupier of the premises has been given a reasonable opportunity to make such representations,

(d) the tribunal has been given a summary of any representations made, and

(e) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(5) Subsection (4)(c) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.

(6) A decision of the tribunal under this section is final.

Other powers in relation to premises

139 **Power to mark assets and to record information**

The powers under sections 133 to 137 include—

(a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and

(b) power to obtain and record information (whether electronically or otherwise) relating to the premises, property, assets and documents that have been inspected.

140 **Power to take samples**

(1) If the condition in subsection (2) is met, a designated officer may enter premises and take samples of material on the premises.

(2) That condition is that the designated officer has reason to believe that the taking of the sample is reasonably required for the purpose of checking a person’s tax position.

(2A) The power to take samples mentioned in subsection (1) includes power—

(a) to carry out experimental borings or other works on the premises, and

(b) to install, keep or maintain monitoring and other apparatus there.

(2B) A designated officer entering premises under this section may take any person authorised by the officer and such a person may exercise the power mentioned in subsection (1).

(3) The powers under this section do not include power to enter any part of the premises that is used as a dwelling.

(4) Any sample taken under this section is to be disposed of in such manner as Revenue Scotland may determine.
Restriction on inspection of documents

141 **Restriction on inspection of documents**

A designated officer may not inspect a document under this Chapter if (or to the extent that), by virtue of Chapters 2 and 3, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

**CHAPTER 5**

**FURTHER INVESTIGATORY POWERS**

142 **Power to copy and remove documents**

(1) Where a document is produced to, or inspected by, a designated officer, the officer may take copies of, or make extracts from, the document.

(2) Where a document is produced to, or inspected by, a designated officer, the officer may—

(a) remove the document at a reasonable time, and

(b) retain it for a reasonable period, if it appears to the officer to be necessary to do so.

(3) Where a document is removed in accordance with subsection (2), the person who produced the document may request—

(a) a receipt for the document, and

(b) a copy of the document.

(4) A designated officer must comply with a request under subsection (3) without charge.

(5) The removal of a document under this section is not to be regarded as breaking any lien claimed on the document.

(6) Where a document removed under this section is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

(7) In this section, references to a document include a copy of a document.

143 **Computer records**

(1) This section applies to any provision of this Part or Part 8 (penalties) that—

(a) requires a person to produce a document or cause a document to be produced,

(b) requires a person to permit a designated officer—

(i) to inspect a document, or

(ii) to make or take copies of or extracts from or remove a document,

(c) makes provision about penalties or offences in connection with the production or inspection of documents, including with the failure to produce or permit the inspection of documents, or

(d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).
A provision to which this section applies has effect as if—
(a) any reference in the provision to a document were a reference to anything in which information of any description is recorded, and
(b) any reference in the provision to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

A designated officer may, at any reasonable time, obtain access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.

In subsection (3) “relevant document” means a document that a person has been, or may be, required by or under a provision of this Part—
(a) to produce or cause to be produced, or
(b) to permit a designated officer—
(i) to inspect,
(ii) to make or take copies of or extracts from, or
(iii) to remove.

A designated officer may require—
(a) the person by whom or on whose behalf the computer is or has been so used, or
(b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to provide the designated officer with such reasonable assistance as may be required for the purposes of subsection (3).

A person who—
(a) obstructs the exercise of a power conferred by this section, or
(b) fails to comply within a reasonable time with a requirement under subsection (5),
is liable to a penalty of £300.

Section 149 and sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167.

CHAPTER 6
REVIEWS AND APPEALS AGAINST INFORMATION NOTICES

144 Review or appeal against information notices
(1) This section applies where a person seeks, under Part 11, to have a decision in relation to the giving of an information notice or in relation to any requirement in such a notice reviewed or appealed.

(2) The following are not appealable decisions for the purposes of section 198(1)(f)—
(a) a decision to give a taxpayer notice or third party notice if the tribunal approved the giving of the notice under section 117,
(b) a decision to include a requirement in such a notice if it is a requirement to provide any information, or produce any document, that forms part of a taxpayer’s statutory records.

(3) A person may give notice of review or notice of appeal in relation to a decision to give a third party notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

(4) But in a case to which section 120(4) or 121(5) applies, a notice of review or notice of appeal may be given on any grounds.

(5) A person may give notice of review or notice of appeal in relation to a decision to give a notice under section 119 or 122, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

(6) But in a case to which subsection (6A) applies—

(a) a notice of review or notice of appeal may be given on any grounds,

(b) a notice of review or notice of appeal may not be given in relation to a decision to include a requirement in a notice under section 119—

(i) if it is a requirement to provide any information, or produce any document, that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings, or

(ii) if it is a requirement to provide any information, or produce any document, that forms part of the partner’s statutory records.

(6A) This subsection applies where notice is given under section 119—

(a) to a parent undertaking for the purposes of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice, or

(b) to one or more partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice.

(7) In subsection (6)(b)(i), “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meanings as in section 120.

144A Power to modify section 144

The Scottish Ministers may by order modify section 144(2) to (7) to provide for certain decisions in relation to the giving of information notices or in relation to any requirement in such notices—

(a) to be appealable for the purposes of section 198(1)(f),

(b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,

(c) to not be appealable.
Disposal of reviews and appeals in relation to information notices

(1) This section applies where a person gives notice of review or notice of appeal in relation to a decision relating to an information notice or a requirement in it.

(2) Where the conclusions of the review under section 203 uphold or vary the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement within such period as is reasonably specified in writing by a designated officer.

(3) But subsection (2) does not apply where section 205(2) applies (conclusions of review not to have effect of settlement agreement if mediation entered into or notice of appeal given).

(4) Where the tribunal, under section 209 (disposal of appeals), upholds or varies the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement—

(a) within the period specified by the tribunal, or

(b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by a designated officer following the tribunal’s decision.

(5) A decision of the tribunal on an appeal to which this section applies is final.

Chapter 7

Offences relating to information notices

146 Offence of concealing etc. documents following information notice

(1) A person commits an offence if—

(a) the person is required to produce a document by an information notice the giving of which was approved by the tribunal, and

(c) the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) that document.

(2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).

(3) Subsection (1) does not apply, in a case to which section 125 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was so produced unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
Offence of concealing etc. documents following information notification

(1) A person commits an offence if the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document after the person has been informed by a designated officer in writing that—

(a) the document is to be, or is likely to be, the subject of an information notice addressed to that person, and

(b) a designated officer either intends, under section 117, or is required, under section 119 or 122, to seek the approval of the tribunal to the giving of the notice in respect of the document.

(2) A person does not commit an offence under this section if the person acts after—

(a) at least 6 months has expired since the person was (or was last) so informed, or

(b) an information notice has been given to the person requiring the document to be produced.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Penalties: overview

This Part is arranged as follows—

Chapter 2 sets out penalties relating to failure to make tax returns or to pay tax,

Chapter 3 sets out penalties relating to inaccuracies,

Chapter 4 sets out penalties relating to investigations, and

Chapter 5 sets out other administrative penalties.

Double jeopardy

A person is not liable to a penalty under this Act in respect of anything in respect of which the person has been convicted of an offence.
Chapter 2—Penalties for failure to make returns or pay tax

Penalties for failure to make returns

### 150 Penalty for failure to make returns

(1) A penalty is payable by a person (“P”) where P fails to make a tax return specified in the table below on or before the filing date (see section 73).

<table>
<thead>
<tr>
<th>Tax to which return relates</th>
<th>Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Land and buildings transaction tax</td>
<td>(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.</td>
</tr>
</tbody>
</table>

(1A) If P’s failure falls within more than one provision of this section or sections 150A to 150H, P is liable to a penalty under each of those provisions.

(1B) But where P is liable for a penalty under more than one provision of this section or sections 150A to 150H which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

(1C) In sections 150A to 150H “penalty date”, in relation to a return, means the day after the filing date.

(1D) Sections 150A to 150D apply in the case of a return falling within item 1 of the table.

(1E) Sections 150E to 150H apply in the case of a return falling within item 2 of the table.

**Amounts of penalties: land and buildings transaction tax**

150A Land and buildings transaction tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 150.

(2) P is liable to a penalty under this section of £100.

150B Land and buildings transaction tax: 3 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if)—

(a) P’s failure continues after the end of the period of 3 months beginning with the penalty date,

(b) Revenue Scotland decide that such a penalty should be payable, and

(c) Revenue Scotland give notice to P specifying the date from which the penalty is payable.
(2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).

(3) The date specified in the notice under subsection (1)(c)—

   (a) may be earlier than the date on which the notice is given, but
   (b) may not be earlier than the end of the period mentioned in subsection (1)(a).

150C Land and buildings transaction tax: 6 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—

   (a) 5% of any liability to tax which would have been shown in the return in question, and
   (b) £300.

150D Land and buildings transaction tax: 12 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—

   (a) 100% of any liability to tax which would have been shown in the return in question, and
   (b) £300.

(3) In any case not falling within subsection (2), the penalty under this section is the greater of—

   (a) 5% of any liability to tax which would have been shown in the return in question, and
   (b) £300.

Amounts of penalties: Scottish landfill tax

150E Scottish landfill tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 2 of the table in section 150.

(2) P is liable to a penalty under this section of £100.

(3) In addition, a penalty period begins to run on the penalty date for the return.

(4) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under section 150F(2)(c).
150F Scottish landfill tax: multiple failures to make return

(1) This section applies if—
   (a) a penalty period has begun under section 150E because P has failed to make a return (“return A”), and
   (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the table as return A.

(2) In such a case—
   (a) section 150E(2) and (3) do not apply to the failure to make return B,
   (b) P is liable to a penalty under this section for that failure, and
   (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.

(3) The amount of the penalty under this section is determined by reference to the number of returns that P has failed to make during the penalty period.

(4) If the failure to make return B is P’s first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.

(5) If the failure to make return B is P’s second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.

(6) If the failure to make return B is P’s third or subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.

(7) For the purposes of this section, in accordance with subsection (1)(b), the references in subsections (3) to (6) to a return are references to a return falling within the same item in the table as returns A and B.

(8) A penalty period may be extended more than once under subsection (2)(c).

150G Scottish landfill tax: 6 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—
   (a) 5% of any liability to tax which would have been shown in the return in question, and
   (b) £300.

150H Scottish landfill tax: 12 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—
   (a) 100% of any liability to tax which would have been shown in the return in question, and
   (b) £300.
(3) In any case not falling within subsection (2), the penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and
(b) £300.

Penalties for failure to pay tax

151 Penalty for failure to pay tax

(1) A penalty is payable by a person (“P”) where P fails to pay an amount of tax mentioned in column 3 of the following table on or before the date mentioned in column 4 of the table.

<table>
<thead>
<tr>
<th>Tax to which payment relates</th>
<th>Amount of tax payable</th>
<th>Date after which penalty incurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Land and buildings transaction tax</td>
<td>(a) Amount payable under section 40 of the LBTT(S) Act 2013. (b) Additional amount payable as a result of an adjustment under section 61 of this Act. (c) Additional amount payable as a result of an amendment under section 74 of this Act. (d) Additional amount payable as a result of an amendment under section 78 of this Act. (e) Additional amount payable as a result of an amendment under section 84 of this Act. (f) Amount assessed under section 86 of this Act in the absence of a return. (g) Amount payable as a result of an assessment under section 89 of this Act.</td>
<td>(a) – (g) The date by which the amount must be paid.</td>
</tr>
<tr>
<td>2. Scottish landfill tax</td>
<td>(a) Amount payable under regulations made under section 25 of the</td>
<td>(a) – (g) The date by which the amount of tax payable must be paid.</td>
</tr>
</tbody>
</table>
Revenue Scotland and Tax Powers Bill
Part 8—Penalties

Chapter 2—Penalties for failure to make returns or pay tax

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>151A</td>
<td>Land and buildings transaction tax: amounts of penalties for failure to pay tax</td>
</tr>
<tr>
<td>(1)</td>
<td>This section applies in the case of a payment of tax falling within item 1 of the table in section 151.</td>
</tr>
<tr>
<td>(2)</td>
<td>P is liable to a penalty of 5% of the unpaid tax.</td>
</tr>
<tr>
<td>(3)</td>
<td>If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.</td>
</tr>
<tr>
<td>(4)</td>
<td>If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.</td>
</tr>
</tbody>
</table>

LT(S) Act 2014.

(b) Additional amount payable as a result of an adjustment under section 61 of this Act.

c) Additional amount payable as a result of an amendment under section 74 of this Act.

d) Additional amount payable as a result of an amendment under section 78 of this Act.

e) Additional amount payable as a result of an amendment under section 84 of this Act.

(f) Amount assessed under section 86 of this Act in the absence of a return.

g) Amount payable as a result of an assessment under section 89 of this Act.

(1A) If P’s failure falls within more than one provision of this section or sections 151A to 151E, P is liable to a penalty under each of those provisions.

(1B) In sections 151A to 151E “penalty date”, in relation to an amount of tax, means the day after the date mentioned in or for the purposes of column 4 of the table in relation to that amount.

(1C) Section 151A applies in the case of a payment falling within item 1 of the table.

(1D) Sections 151B to 151E apply in the case of a payment falling within item 2 of the table.
151B Scottish landfill tax: first penalty for failure to pay tax

(1) This section applies in the case of a payment of tax falling within item 2 of the table in section 151.

(2) P is liable to a penalty of 1% of the unpaid tax.

(3) In addition, a penalty period begins to run on the penalty date for the payment of tax.

(4) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 of the table in section 151 for the payment, unless it is extended under section 151C(2)(c).

151C Scottish landfill tax: penalties for multiple failures to pay tax

(1) This section applies if—

(a) a penalty period has begun under section 151B because P has failed to make a payment (“payment A”), and

(b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the table in section 151 as payment A.

(2) In such a case—

(a) section 151B(2) and (3) do not apply to the failure to make payment B,

(b) P is liable to a penalty under this section for that failure, and

(c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.

(3) The amount of the penalty under this section is determined by reference to the number of defaults that P has made during the penalty period.

(4) If the default is P’s first default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.

(5) If the default is P’s second default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.

(6) If the default is P’s third or subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.

(7) For the purposes of this section—

(a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable,

(b) in accordance with subsection (1)(b), the references in subsections (3) to (6) to a default are references to a default in relation to the tax to which payments A and B relate,

(c) a default counts for the purposes of those subsections if (but only if) the period to which the payment relates is less than 6 months,

(d) the amount of a default is the amount which P fails to pay.

(8) A penalty period may be extended more than once under subsection (2)(c).
Scottish landfill tax: 6 month penalty for failure to pay tax

If any amount of tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Scottish landfill tax: 12 month penalty for failure to pay tax

If any amount of tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Penalties under Chapter 2: general

Interaction of penalties under section 150 with other penalties

(1) Where P is liable to a penalty under section 150 which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to “any other penalty” does not include—

(a) a penalty under any other provision of section 150, or

(b) a penalty under section 151.

Interaction of penalties under section 151 with other penalties

(1) Where P is liable to a penalty under section 151 which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to “any other penalty” does not include—

(a) a penalty under any other provision of section 151, or

(b) a penalty under section 150.

Reduction in penalty under section 150 for disclosure

(1) Revenue Scotland may reduce a penalty under section 150 where P discloses information which has been withheld by a failure to make a return (“relevant information”).

(2) P discloses relevant information by—

(a) telling Revenue Scotland about it,

(b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and

(c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

(3) Reductions under this section may reflect—

(a) whether the disclosure was prompted or unprompted, and

(b) the quality of the disclosure.
(4) Disclosure of relevant information—
   (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
   (b) otherwise, is “prompted”.

(5) In relation to disclosure, “quality” includes timing, nature and extent.

**155 Suspension of penalty under section 151 during currency of agreement for deferred payment**

(1) This section applies if—
   (a) P fails to pay an amount of tax when it becomes due and payable,
   (b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and
   (c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under section 151 for failing to pay that amount, P is not liable to that penalty.

(3) But if—
   (a) P breaks the agreement, and
   (b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),

P becomes liable to that penalty at the date of the notice.

(4) P breaks an agreement if—
   (a) P fails to pay the amount of tax in question when the deferral period ends, or
   (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.

(5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

**156 Special reduction in penalty under sections 150 and 151**

(1) Revenue Scotland may reduce a penalty under section 150 or 151 if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—
   (a) ability to pay, or
   (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—
   (a) remitting a penalty entirely,
(b) suspending a penalty, and
(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

157 Reasonable excuse for failure to make return or pay tax

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under section 150 does not arise in relation to that failure.

(2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under section 151 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

158 Assessment of penalties under sections 150 and 151

(1) Where P becomes liable to a penalty under section 150 or 151, Revenue Scotland must—

(a) assess the penalty,
(b) notify the person, and
(c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.

(2) A penalty under section 150 or 151 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under section 150 or 151—

(a) is to be treated for enforcement purposes as an assessment to tax, and
(b) may be combined with an assessment to tax.

(4) In relation to penalties under section 150—

(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
(b) a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.

(5) In relation to penalties under section 151—

(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,

(b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.

(6) An amendment made under subsection (5)(b)—

(a) does not affect when the penalty must be paid,

(b) may be made after the last day on which the assessment in question could have been made under section 159.

159 Time limit for assessment of penalties under sections 150 and 151

(1) An assessment of a penalty under section 150 or 151 in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2) Date A is the last day of the period of 2 years beginning with—

(a) in the case of failure to make a return, the filing date, or

(b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.

(3) Date B is the last day of the period of 12 months beginning with—

(a) in the case of section 150—

(i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or

(ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or

(b) in the case of section 151—

(i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or

(ii) if there is no such assessment, the date on which that amount of tax is ascertained.

(4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

159A Power to change penalty provisions in Chapter 2

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
(2) Provision under subsection (1) includes provision—
(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

CHAPTER 3

PENALTIES RELATING TO INACCURACIES

160 Penalty for inaccuracy in taxpayer document

(1) A penalty is payable by a person (“P”) where—
(a) P gives Revenue Scotland a document of a kind mentioned in the table below, and
(b) conditions A and B below are met.

(2) Condition A is that the document contains an inaccuracy which amounts to, or leads to—
(a) an understatement of a liability to tax,
(b) a false or inflated statement of a loss, exemption or relief, or
(c) a false or inflated claim for relief or to repayment of tax.

(3) Condition B is that the inaccuracy was—
(a) deliberate on P’s part (“a deliberate inaccuracy”), or
(b) careless on P’s part (“a careless inaccuracy”).

(4) An inaccuracy is careless if it is due to a failure by P to take reasonable care.

(5) An inaccuracy in a document given by P to Revenue Scotland, which was neither deliberate nor careless on P’s part when the document was given, is to be treated as careless if P—
(a) discovered the inaccuracy at some later time, and
(b) did not take reasonable steps to inform Revenue Scotland.

(6) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

<table>
<thead>
<tr>
<th>Tax</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Land and buildings transaction tax</td>
</tr>
</tbody>
</table>
### 160A Amount of penalty for error in taxpayer document

1. This section sets out the penalty payable under section 160.
2. For a deliberate inaccuracy, the penalty is 100% of the potential lost revenue.
3. For a careless inaccuracy, the penalty is 30% of the potential lost revenue.
4. In this section and sections 162 and 163, “potential lost revenue” has the meaning given in sections 163A to 163D.

### 161 Suspension of penalty for careless inaccuracy under section 160

1. Revenue Scotland may suspend all or part of a penalty for a careless inaccuracy under section 160 by notice in writing to P.
2. A notice must specify—
   (a) what part of the penalty is to be suspended,
   (b) a period of suspension not exceeding 2 years, and
   (c) conditions of suspension to be complied with by P.
3. Revenue Scotland may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under section 160 for careless inaccuracy.
4. A condition of suspension may specify—
   (a) action to be taken, and
   (b) a period within which it may be taken.
(5) On the expiry of the period of suspension—
   (a) if P satisfies Revenue Scotland that the conditions of suspension have been
       complied with, the suspended penalty or part is cancelled, and
   (b) otherwise, the suspended penalty or part becomes payable.

(6) If, during the period of suspension of all or part of a penalty under section 160, P
    becomes liable for another penalty under that section, the suspended penalty or part
    becomes payable.

162 Penalty for inaccuracy in taxpayer document attributable to another person

(1) A penalty is payable by a person (“T”) where—
   (a) another person (“P”) gives Revenue Scotland a document of a kind mentioned in
       the table in section 160,
   (b) the document contains a relevant inaccuracy, and
   (c) the inaccuracy was attributable—
       (i) to T deliberately supplying false information to P (whether directly or
           indirectly), or
       (ii) to T deliberately withholding information from P,
           with the intention of the document containing the inaccuracy.

(2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—
   (a) an understatement of a liability to tax,
   (b) a false or inflated statement of a loss, exemption or relief, or
   (c) a false or inflated claim for relief or to repayment of tax.

(3) A penalty is payable by T under this section in respect of an inaccuracy whether or not P
    is liable to a penalty under section 160 in respect of the same inaccuracy.

(3A) The penalty payable under this section is 100% of the potential lost revenue.

163 Under-assessment by Revenue Scotland

(1) A penalty is payable by a person (“P”) where—
   (a) a Revenue Scotland assessment understates P’s liability to a devolved tax, and
   (b) P has failed to take reasonable steps to notify Revenue Scotland, within the period
       of 30 days beginning with the date of the assessment, that it is an under-
       assessment.

(2) In deciding what steps (if any) were reasonable, Revenue Scotland must consider—
   (a) whether P knew, or should have known, about the under-assessment, and
   (b) what steps would have been reasonable to take to notify Revenue Scotland.

(2A) The penalty payable under this section is 30% of the potential lost revenue.

(6) In this section—
   (c) “Revenue Scotland assessment” includes “Revenue Scotland determination”, and
(d) accordingly, references to an under-assessment include an under-determination.

### 163A Potential lost revenue: normal rule

(1) The “potential lost revenue” in respect of—

(a) an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information), or

(b) a failure to notify an under-assessment,

is the additional amount due and payable in respect of tax as a result of correcting the inaccuracy or under-assessment.

(2) The reference in subsection (1) to the additional amount due and payable includes a reference to—

(a) an amount payable to Revenue Scotland having been erroneously paid by way of repayment of tax, and

(b) an amount which would have been repayable by Revenue Scotland had the inaccuracy or assessment not been corrected.

### 163B Potential lost revenue: multiple errors

(1) Where P is liable to a penalty under section 160 in respect of more than one inaccuracy, and the calculation of potential lost revenue under section 163A in respect of each inaccuracy depends on the order in which they are corrected, careless inaccuracies are to be taken to be corrected before deliberate inaccuracies.

(2) In calculating potential lost revenue where P is liable to a penalty under section 160 in respect of one or more understatements in one or more documents relating to a tax period, account is to be taken of any overstatement in any document given by P which relates to the same tax period.

(3) In subsection (2)—

(a) “understatement” means an inaccuracy that meets condition A in section 160, and

(b) “overstatement” means an inaccuracy that does not meet that condition.

(4) For the purpose of subsection (2) overstatements are to be set against understatements in the following order—

(a) understatements in respect of which P is not liable to a penalty,

(b) careless understatements,

(c) deliberate understatements.

(5) In calculating for the purposes of a penalty under section 160 potential lost revenue in respect of a document given by or on behalf of P, no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential overpayment by another person (except to the extent than an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).
Revenue Scotland and Tax Powers Bill
Part 8—Penalties
Chapter 3—Penalties relating to inaccuracies

163C Potential lost revenue: losses

(1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is calculated in accordance with section 163A.

(2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has not been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is—

(a) the potential lost revenue calculated in accordance with section 163A in respect of any part of the loss that has been used to reduce the amount due and payable in respect of tax, plus

(b) 10% of any part that has not.

(3) Subsections (1) and (2) apply both—

(a) to a case where no loss would have been recorded but for the inaccuracy, and

(b) to a case where a loss of a different amount would have been recorded (but in that case subsections (1) and (2) apply only to the difference between the amount recorded and the true amount).

(4) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P’s circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

163D Potential lost revenue: delayed tax

(1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—

(a) 5% of the delayed tax for each year of the delay, or

(b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.

(2) This section does not apply to a case to which section 163C applies.

164 Special reduction in penalty under sections 160, 162 and 163

(1) Revenue Scotland may reduce a penalty under section 160, 162 or 163 if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

(b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.
The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

**Reduction in penalty under sections 160, 162 and 163 for disclosure**

1. Revenue Scotland may reduce a penalty under section 160, 162 or 163 where a person makes a qualifying disclosure.

2. A “qualifying disclosure” means disclosure of—
   a. an inaccuracy,
   b. a supply of false information or withholding of information, or
   c. a failure to disclose an under-assessment.

3. A person makes a qualifying disclosure by—
   a. telling Revenue Scotland about it,
   b. giving Revenue Scotland reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
   c. allowing Revenue Scotland access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

4. Reductions under this section may reflect—
   a. whether the disclosure was prompted or unprompted, and
   b. the quality of the disclosure.

5. Disclosure of relevant information—
   a. is “unprompted” if made at a time when the person making it has no reason to believe that Revenue Scotland has discovered or is about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
   b. otherwise, is “prompted”.

6. In relation to disclosure, “quality” includes timing, nature and extent.

**Assessment of penalties under sections 160, 162 and 163**

1. Where a person becomes liable to a penalty under section 160, 162 or 163, Revenue Scotland must—
   a. assess the penalty,
   b. notify the person, and
   c. state in the notice the period in respect of which the penalty is assessed.

2. A penalty under section 160, 162 or 163 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

3. An assessment of a penalty under section 160, 162 or 163—
   a. is to be treated for enforcement purposes as an assessment to tax, and
(b) may be combined with an assessment to tax.

(4) An assessment of a penalty under section 160 or 162 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the decision correcting the inaccuracy, or

(b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(5) An assessment of a penalty under section 163 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(6) In subsections (4) and (5) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(7) Subject to subsections (4) and (5), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

### 166A Power to change penalty provisions in Chapter 3

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,

(d) about appealing penalties,

(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to—

(a) a failure which began before the date on which the regulations come into force, and

(b) an inaccuracy in any information or document provided to Revenue Scotland before that date.
CHAPTER 4

PENALTIES RELATING TO INVESTIGATIONS

167 Penalties for failure to comply or obstruction

(1) This section applies to a person who—

(a) fails to comply with an information notice, or

(b) deliberately obstructs a designated officer or a person authorised by the officer in the course of an inspection or in the exercise of a power that has been approved by the tribunal under section 138.

(2) The person is liable to a penalty of £300.

(3) The reference to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document in breach of section 171 or 172.

168 Daily default penalties for failure to comply or obstruction

(1) This section applies if the failure or obstruction mentioned in section 167(1) continues after the date on which a penalty is imposed under that section in respect of the failure or obstruction.

(2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

169 Penalties for inaccurate information or documents

(1) This section applies if—

(a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and

(b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is careless or deliberate.

(3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.

(4) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform Revenue Scotland at that time.

(5) Condition C is that the person—

(a) discovers the inaccuracy some time later, and

(b) fails to take reasonable steps to inform Revenue Scotland.

(6) The person is liable to a penalty not exceeding £3,000.

(7) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

171 Concealing, destroying etc. documents following information notice

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document that is the subject of an information notice addressed to the person, unless subsection (2) or (3) applies.
(2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).

(3) Subsection (1) does not apply, in a case to which section 125 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that section unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).

172 Concealing, destroying etc. documents following information notification

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document if a designated officer has informed the person that the document is to be, or is likely to be, the subject of an information notice addressed to that person, unless subsection (2) applies.

(2) Subsection (1) does not apply if the person acts after—

(a) at least 6 months has expired since the person was (or was last) so informed, or

(b) an information notice has been given to the person requiring the document to be produced.

173 Failure to comply with time limit

A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 167 or 168 if the person did it within such further time (if any) as a designated officer may have allowed.

174 Reasonable excuse for failure to comply or obstruction

(1) Liability to a penalty under section 167 or 168 does not arise if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for the failure or the obstruction of a designated officer or of a person authorised by the officer.

(2) For the purposes of this section—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control,

(b) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and

(c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

175 Assessment of penalties under sections 167, 168 and 169

(1) Where a person becomes liable for a penalty under section 167, 168 or 169 Revenue Scotland must—
(a) assess the penalty, and
(b) notify the person.

(2) An assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to subsection (3).

(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the latest of the following—
(a) the date on which the person became liable to the penalty,
(b) the end of the period in which notice of an appeal against the information notice could have been given, and
(c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.

(4) An assessment of a penalty under section 169 must be made—
(a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of a designated officer, and
(b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

176 Enforcement of penalties under sections 167, 168 and 169

(1) A penalty under section 167, 168 or 169 must be paid—
(a) before the end of the period of 30 days beginning with the date on which the notification under section 175 was issued,
(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 167, 168 or 169 is to be treated for enforcement purposes as an assessment to tax.

177 Increased daily default penalty

(1) This section applies if—
(a) a penalty under section 168 is assessed under section 175 in respect of a person’s failure to comply with a notice under section 119,
(b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and
(c) the person has been told that an application may be made under this section for an increased daily penalty to be imposed.
(2) If this section applies, a designated officer may make an application to the tribunal for an increased daily penalty to be imposed on the person.

(3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day on which the failure continues—
   (a) the person is not liable to a penalty under section 168 for the failure, and
   (b) the person is liable instead to a penalty under this section of an amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.

(5) In determining the amount the tribunal must have regard to—
   (a) the likely cost to the person of complying with the notice,
   (b) any benefits to the person of not complying with it, and
   (c) any benefits to anyone else resulting from the person’s non-compliance.

(7) If a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(8) The notification must specify the day from which the increased penalty is to apply.

(9) That day and any subsequent day is an “applicable day” for the purposes of subsection (3).

178 Enforcement of increased daily default penalty

(1) A penalty under section 177 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 177 is to be treated for enforcement purposes as an assessment to tax.

179 Tax-related penalty

(1) This section applies where—
   (a) a person becomes liable to a penalty under section 167,
   (b) the failure or obstruction continues after a penalty is imposed under that section,
   (c) a designated officer has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,
   (d) before the end of the period of 12 months beginning with the relevant date, a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
   (e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.

(2) The person is liable to a penalty of an amount decided by the Upper Tribunal.

(3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.
(4) Where a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(5) Any penalty under this section is in addition to the penalty or penalties under section 167 or 168.

(6) In subsection (1)(d), the “relevant date” means—

(a) in a case involving an information notice against which a person may appeal, the latest of—

(i) the date on which the person became liable to the penalty under section 167,

(ii) the end of the period in which notice of an appeal against the information notice could have been given, and

(iii) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn, and

(b) in any other case, the date on which the person became liable to the penalty under section 167.

180 Enforcement of tax-related penalty

(1) A penalty under section 179 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 179 is to be treated for enforcement purposes as an assessment to tax.

180A Power to change penalty provisions in Chapter 4

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter (other than penalties under section 179).

(2) Regulations under subsection (1) may include provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,

(d) about appealing penalties,

(e) about enforcing penalties.

(3) Regulations under subsection (1) may also include provision for the purposes of sections 143(6) and (7) and 195(2) and (3).

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(6) Regulations under subsection (1) do not apply to a failure or obstruction which began before the date on which the regulations come into force.
181 Penalty for failure to register for tax etc.

(1) A penalty is payable by a person ("P") where—

(a) P fails to comply with a requirement imposed by or under section 22 or 23 of the
   LT(S) Act 2014 ("a relevant requirement"), and

(b) the failure was—
   (i) deliberate on P’s part ("a deliberate failure"), or
   (ii) careless on P’s part ("a careless failure").

(1A) A failure is careless if it is due to a failure by P to take reasonable care.

(1B) A failure by P to comply with a relevant requirement, which was neither deliberate nor
careless on P’s part at an earlier time, is to be treated as careless if P—

(a) discovered the failure at some later time, and

(b) did not take reasonable steps to inform Revenue Scotland.

(1C) Section 181A sets out the penalty under this section.

181A Amount of penalty for failure to register for tax etc.

(1) This section sets out the penalty payable under section 181.

(2) For a deliberate failure, the penalty is 100% of the potential lost revenue.

(3) For a careless failure, the penalty is 30% of the potential lost revenue.

(4) In the case of a relevant requirement relating to Scottish landfill tax, the potential lost
   revenue is the amount of the tax (if any) for which P is liable for the period—
   (a) beginning on the date with effect from which P is required in accordance with that
       requirement to be registered, and
   (b) ending on the date on which Revenue Scotland received notification of, or
       otherwise became fully aware of, P’s liability to be registered.

(5) In calculating potential lost revenue in respect of a failure to comply with a relevant
   requirement on the part of P no account is to be taken of the fact that a potential loss of
   revenue from P is or may be balanced by a potential over-payment by another person.

181B Interaction of penalties under section 181 with other penalties

(1) The amount of a penalty for which P is liable under section 181 is to be reduced by the
    amount of any other penalty incurred by P, if the amount of the penalty is determined by
    reference to the same liability to tax.

(2) In subsection (1) the reference to any other penalty does not include—

(a) a penalty under section 150, or

(b) a penalty under section 151.
Revenue Scotland and Tax Powers Bill

Part 8—Penalties

Chapter 5—Other administrative penalties

181C  **Reduction in penalty under section 181 for disclosure**

1. Revenue Scotland may reduce a penalty under section 181 where P discloses a failure to comply with a relevant requirement ("a relevant failure").

2. P discloses a relevant failure by—
   (a) telling Revenue Scotland about it,
   (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of it, and
   (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

3. Reductions under this section may reflect—
   (a) whether the disclosure was prompted or unprompted, and
   (b) the quality of the disclosure.

4. Disclosure of a relevant failure—
   (a) is "unprompted" if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the failure, and
   (b) otherwise, is "prompted".

5. In relation to disclosure, "quality" includes timing, nature and extent.

181D  **Special reduction in penalty under section 181**

1. Revenue Scotland may reduce a penalty under section 181 if it thinks it right to do so because of special circumstances.

2. In subsection (1) "special circumstances" does not include—
   (a) ability to pay, or
   (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

3. In subsection (1) the reference to reducing a penalty includes a reference to—
   (a) remitting a penalty entirely,
   (b) suspending a penalty, and
   (c) agreeing a compromise in relation to proceedings for a penalty.

4. In this section references to a penalty include references to any interest in relation to the penalty.

5. The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

181E  **Reasonable excuse for failure to register for tax etc.**

1. If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with a relevant requirement, liability to a penalty under section 181 does not arise in relation to that failure.

2. For the purposes of subsection (1)—
(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

181F Assessment of penalties under section 181

(1) Where P becomes liable to a penalty under section 181, Revenue Scotland must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under section 181 must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.

(3) An assessment of a penalty under section 181—

(a) is to be treated for enforcement purposes as an assessment to tax, and

(b) may be combined with an assessment to tax.

(4) An assessment of a penalty under section 181 must be made within the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of tax unpaid by reason of the failure to comply with the relevant requirement in respect of which the penalty is assessed, or

(b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.

(5) In subsection (4) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(6) Subject to subsection (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

181G Power to change penalty provisions in Chapter 5

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,

(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

PART 9

INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax

(1) Interest is payable on the amount of any unpaid tax from the relevant date until the tax is paid.

(2) For the purposes of this section, the “relevant date” is the date for payment of the tax which is specified by the Scottish Ministers in regulations.

(3) If an amount is lodged with Revenue Scotland in respect of the tax payable on a transaction, the amount on which interest is payable is reduced by that amount.

(4) Interest under this section is calculated at the rate specified in provision made under section 185.

183 Interest on penalties

(1) Interest is payable on the amount of any unpaid penalty from the date on which the penalty is due to be paid until it is paid.

(2) Interest under this section is calculated at the rate specified in provision made under section 185.

184 Interest on repayment of tax overpaid etc.

(1) A repayment by Revenue Scotland to which this section applies must be made with interest for the period between the relevant date and the date when the repayment is issued.

(2) This section applies to—

(a) any repayment of tax,

(b) any repayment of a penalty, and

(c) any repayment of interest (whether on tax or penalty).

(3) In the cases mentioned in subsection (2), the “relevant date” is the date on which the payment of the tax, penalty or interest was made.

(4) This section also applies to a repayment by Revenue Scotland of an amount lodged with it in respect of the tax payable in respect of a transaction.

(5) In the case mentioned in subsection (4), the “relevant date” is the date on which the amount was lodged with Revenue Scotland.

(6) Interest under this section is calculated at the rate specified in provision made under section 185.
185 Rates of interest

(1) The rate of interest that applies for the purposes of sections 182, 183 and 184 is the rate specified by the Scottish Ministers in regulations.

(2) Regulations under subsection (1) may—

(a) provide for different rates for different devolved taxes or different penalties,

(b) provide for circumstances in which alteration of a rate of interest is or is not to take place,

(c) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.

PART 10
ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1
ENFORCEMENT: GENERAL

186 Issue of tax demands and receipts

(1) Where tax is due and payable, Revenue Scotland may demand the sum charged from the person liable to pay it.

(2) On payment of the tax, Revenue Scotland must give a receipt.

187 Fees for payment

(1) The Scottish Ministers may by regulations provide that, where a person makes a payment to Revenue Scotland or a person authorised by Revenue Scotland using a method of payment specified in the regulations, the person must also pay a fee specified in, or determined in accordance with, the regulations.

(2) A method of payment may only be specified in regulations under this section if Revenue Scotland expects that it, or the person authorised by it, will be required to pay a fee or charge (however described) in connection with amounts paid using that method of payment.

(3) The fee provided for in regulations under this section must not exceed what is reasonable having regard to the costs incurred by Revenue Scotland, or a person authorised by it, in paying the fee or charge mentioned in subsection (2).

(4) Regulations under this section—

(a) may make provision about the time and manner in which the fee must be paid,

(b) may make provision generally or only for specified purposes.
Certification of matters by Revenue Scotland

188 Certification of matters by Revenue Scotland

(1) A certificate of Revenue Scotland—
   (a) that a return required to be made to Revenue Scotland under this Act or any other enactment has not been made,
   (b) that a relevant sum has not been paid,
   (c) that a notification required to be made to Revenue Scotland under this Act or any other enactment has not been made,

is sufficient evidence of that fact until the contrary is proved.

(2) In subsection (1) “relevant sum” means a sum payable to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.

(2A) A copy of any document provided to Revenue Scotland for the purposes of this Act or any other enactment and certified by it to be such a copy is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document purporting to be such a certificate is to be treated as if it were such a certificate until the contrary is proved.

Court proceedings

189 Court proceedings

Tax due and payable may be sued for and recovered from the person liable to pay it as a debt due to the Crown by proceedings—

(a) in the sheriff court, or

(b) in the Court of Session (sitting as the Court of Exchequer).

Summary warrant

190 Summary warrant

(1) This section applies if a person does not pay an amount that is payable by that person to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.

(2) A designated officer may apply to the sheriff for a summary warrant.

(3) An application under subsection (2) must be accompanied by a certificate which—

(a) complies with subsection (4), and

(b) is signed by the officer.

(4) A certificate complies with this subsection if—

(a) it states that—

   (i) none of the persons specified in the application has paid the sum payable by that person,

   (ii) the officer has demanded payment from each such person of the sum payable by that person, and
(iii) the period of 14 days beginning with the day on which the demand is made has expired without payment being made, and

(b) it specifies the sum payable by each person specified in the application.

(5) The sheriff must, on an application by a designated officer under subsection (2), grant a summary warrant in (or as nearly as may be in) the form prescribed by Act of Sederunt.

(6) A summary warrant granted under subsection (5) authorises the recovery of the sum payable by—

(a) attachment,

(b) money attachment,

(c) earnings arrestment,

(d) arrestment and action of forthcoming or sale.

(7) Subject to subsection (8) and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment)—

(a) the sheriff officer’s fees, and

(b) any outlays reasonably incurred by that officer,

in connection with the execution of a summary warrant are to be chargeable against the person in relation to whom the summary warrant was granted.

(8) No fees are to be chargeable by the sheriff officer against the person in relation to whom the summary warrant was granted for collecting, and accounting to Revenue Scotland for, sums paid to that officer by that person in respect of the sum payable.

Recovery of penalties and interest

191 Recovery of penalties and interest

The provisions of this Chapter have effect in relation to the recovery of any unpaid amount by way of—

(a) penalty, or

(b) interest (whether on unpaid tax or penalty),
as though that amount were an amount of unpaid tax.

Chapter 2

Enforcement: powers to obtain contact details for debtors

192 Requirement for contact details for debtor

(1) This Chapter applies where—

(a) a sum is payable by a person (“the debtor”) to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement,

(b) a designated officer reasonably requires contact details for the debtor for the purpose of collecting that sum,
(c) the officer has reasonable grounds to believe that a person ("the third party") has any such details, and
(d) the condition in subsection (2) is met.

(2) The condition is that—
(a) the third party is a company or a local authority, or
(b) the officer has reasonable grounds to believe that the third party obtained the details in the course of carrying on a business.

(3) This Chapter does not apply if—
(a) the third party is a charity and obtained the details in the course of providing services free of charge, or
(b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.

(4) In this Chapter—
“business” includes—
(a) a profession, and
(b) a property business (within the meaning of section 263(6) of the Income Tax (Trading and Other Income) Act 2005 (c.5)),

“contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted.

193 **Power to obtain details**

(1) A designated officer may by notice in writing require the third party to provide the contact details.

(2) The notice must name the debtor.

(3) If a notice is given under subsection (1), the third party must provide the details—
(a) within such period, and
(b) at such time, by such means and in such form (if any),
as is reasonably specified or described in the notice.

194 **Reviews and appeals against notices or requirements**

(1) This section applies where a third party seeks, under Part 11, to have a decision in relation to the giving of a notice under section 193 or in relation to any requirement in such a notice reviewed or appealed.

(2) A third party may give notice of review or notice of appeal in relation to a decision to give a notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.
94A Power to modify section 194

The Scottish Ministers may by order modify section 194(2) to provide for certain decisions in relation to the giving of notices under section 193 or in relation to any requirement in such notices—

(a) to be appealable for the purposes of section 198(1)(g),

(b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,

(c) to not be appealable.

195 Penalty

(1) This section applies if the third party fails to comply with the notice.

(2) The third party is liable to a penalty of £300.

(3) Section 149 and sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167 (and references in those provisions to an information notice include a notice under this Chapter).

PART 11
REVIEWS AND APPEALS
CHAPTER 1
INTRODUCTORY

Overview

This Part makes provision about the review and appeal of certain decisions of Revenue Scotland including—

(a) which decisions are, and which are not, reviewable and appealable,

(b) the taxpayer’s right to have decisions reviewed and the nature and conduct of those reviews,

(c) the option of mediation following a review that doesn’t settle the matter in question,

(d) the taxpayer’s right to appeal decisions to the tribunal, whether following review or otherwise, and

(e) settling tax disputes by agreement and other supplementary matters.

Appealable decisions

198 Appealable decisions

(1) The following decisions of Revenue Scotland are appealable decisions—
Revenue Scotland and Tax Powers Bill
Part 11—Reviews and appeals
Chapter 1—Introductory

(za) a decision under section 61 to make adjustments to counteract a tax advantage,
(a) a decision which affects whether a person is chargeable to tax,
(b) a decision which affects the amount of tax to which a person is chargeable,
(c) a decision which affects the amount of tax a person is required to pay,
(d) a decision which affects the date by which any amount by way of tax, penalty or interest must be paid,
(e) a decision in relation to a penalty under the following provisions—
   (i) section 71,
   (ii) section 103,
   (iii) section 143,
   (iv) Part 8,
   (v) section 195,
   (vi) paragraph 5 of schedule 3,
(f) subject to subsection (2), a decision in relation to the giving of an information notice or in relation to the use of any of the other investigatory powers in Part 7,
(g) subject to subsection (3), a decision in relation to the giving of a notice under section 193.

(2) See section 144 for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances.

(3) See section 194 for the grounds on which decisions in relation to the giving of notices under section 193 are appealable.

(4) The following decisions of Revenue Scotland are not appealable decisions—
   (za) the giving of a notice under section 63,
   (a) the making of a Revenue Scotland determination,
   (b) a decision to give a notice of enquiry under section 76 or paragraph 9 of schedule 3.

(5) The decisions mentioned in subsection (1) are appealable whether they are decisions under this Act or any other enactment.

(6) The Scottish Ministers may by order modify subsection (1) or (4) to—
   (a) add a decision to either subsection,
   (b) vary the description of a decision,
   (c) remove a decision from either subsection.
CHAPTER 2
REVIWES

Review of appealable decisions

199 Right to request review

(1) A person aggrieved by an appealable decision (the “appellant”) may request Revenue Scotland to review the decision.

(2) An appellant may not request review if subsection (2A), (2B) or (2C) applies.

(2A) This subsection applies where—

(a) the decision which the appellant seeks to review is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and

(b) the enquiry has not been completed.

(2B) This subsection applies where—

(a) the appellant has given notice of appeal in relation to the same matter in question,

or

(b) the tribunal has determined the matter in question under section 209.

(2C) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 211(3).

(3) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

200 Notice of review

(1) Notice of review under section 199 must be given—

(a) in writing,

(b) within 30 days after the specified date,

(c) to Revenue Scotland.

(2) In subsection (1) “specified date” means—

(a) the date on which the appellant was notified of the appealable decision,

(b) in a case to which section 199(2A) applies—

(i) the date the appellant was given notice that the enquiry was completed, or

(ii) no such notice having been given, the date the enquiry is completed by virtue of section 84(1)(b), or

(c) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.

(3) The notice of review must specify the grounds of review.

201 Late notice of review

(1) This section applies in a case where—
(a) notice of review may be given to Revenue Scotland under this Part, but
(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—
(a) Revenue Scotland agrees, or
(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested in writing that Revenue Scotland does so and Revenue Scotland is satisfied—
(a) that there was reasonable excuse for not giving the notice before the relevant time limit, and
(b) that the request has been made without unreasonable delay.

(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(5) In this section “relevant time limit”, in relation to notice of review, means the time before which the notice is to be given (but for this section).

202 Duty of Revenue Scotland to carry out review

(1) If the appellant gives Revenue Scotland notice of review, Revenue Scotland must—
(a) notify the appellant of Revenue Scotland’s view of the matter in question within the relevant period, and
(b) review the matter in question in accordance with section 203.

(2) Subsection (1) does not apply if—
(a) the appellant has already given notice of review under section 200 in relation to the same matter in question, or
(b) Revenue Scotland has concluded a review of the matter in question.

(3) In this section “relevant period” means—
(a) the period of 30 days beginning with the day on which Revenue Scotland receives the notice of review, or
(b) such longer period as is reasonable.

203 Nature of review etc.

(1) This section applies if Revenue Scotland is required by section 202 to review the matter in question.

(2) The nature and extent of the review are to be such as appear appropriate to Revenue Scotland in the circumstances.

(3) For the purpose of subsection (2), Revenue Scotland must, in particular, have regard to steps taken before the beginning of the review—
(a) by Revenue Scotland in deciding the matter in question, and
(b) by any person in seeking to resolve disagreement about the matter in question.
(4) The review must take account of any representations made by the appellant at a stage which gives Revenue Scotland a reasonable opportunity to consider them.

(5) The review may conclude that Revenue Scotland's view of the matter in question is to be—

(a) upheld,
(b) varied, or
(c) cancelled.

204 Notification of conclusions of review

(1) Revenue Scotland must notify the appellant of the conclusions of the review and its reasoning within—

(a) the period of 45 days beginning with the relevant day, or
(b) such other period as may be agreed.

(2) In subsection (1) “relevant day” means the day when Revenue Scotland notified the appellant of Revenue Scotland's view of the matter in question.

(3) Where Revenue Scotland is required to undertake a review but does not give notice of the conclusions within the period specified in subsection (1), the review is treated as having concluded that Revenue Scotland's view of the matter in question (see section 202(1)) is upheld.

(4) If subsection (3) applies, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

205 Effect of conclusions of review

(1) If Revenue Scotland gives notice of the conclusions of a review (see section 204)—

(a) the conclusions are to be treated as if they were contained in a settlement agreement (see section 211(2)), but
(b) section 211(3) (withdrawal from agreement) does not apply in relation to that notional agreement.

(2) Subsection (1) does not apply to the matter in question if, or to the extent that—

(a) the appellant and Revenue Scotland enter into mediation and conclude that mediation by entering into a settlement agreement, or
(b) the appellant gives notice of appeal under section 207.

Chapter 3

Appeals

206 Right of appeal

(1) An appellant may appeal to the tribunal against an appealable decision.

(2) An appellant may not give notice of appeal under section 207 if subsection (3), (4) or (5) applies.

(3) This subsection applies where—
(a) the decision which the appellant seeks to appeal is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and
(b) the enquiry has not been completed.

(4) This subsection applies where—

(a) the appellant has given notice of review in relation to the same matter in question, and
(b) the review has not been concluded or treated as concluded.

(5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 211(3).

(6) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

207 Notice of appeal

(1) Notice of appeal must be given—

(a) in writing,
(b) within 30 days of the specified date,
(c) to the tribunal.

(2) In subsection (1) “specified date” means—

(a) in a case to which section 206(3) applies—

(i) the date the appellant was given notice that the enquiry was completed, or
(ii) no such notice having been given, the date the enquiry is completed by virtue of section 84(1)(b),

(b) where the appellant does not request a review under section 199, the date on which the appellant was notified of the appealable decision,

(c) where the appellant requests such a review, the date on which the conclusions of review are notified to the appellant under section 204,

(d) where, following a review under section 202, the appellant and Revenue Scotland entered into mediation, the date either Revenue Scotland or the appellant gave notice of withdrawal from mediation,

(e) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.

(3) The notice of appeal must specify the grounds of appeal.

208 Late notice of appeal

(1) This section applies in a case where—

(a) notice of appeal may be given to the tribunal under this Part, but
(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—
(a) Revenue Scotland agrees, or
(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested in writing that Revenue Scotland does so and Revenue Scotland is satisfied—
   (a) that there was reasonable excuse for not giving the notice before the relevant time limit, and
   (b) that the request has been made without unreasonable delay.

(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(4A) A decision of the tribunal under subsection (2)(b) is final.

(5) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

Disposal of appeal

(1) This section applies if notice of appeal is given under section 207.

(2) The tribunal is to determine the matter in question and may conclude that Revenue Scotland's view of the matter in question is to be—
   (a) upheld,
   (b) varied, or
   (c) cancelled.

Reviews and appeals not to postpone recovery of tax

(1) Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal.

(2) The Scottish Ministers may by regulations make provision for the postponement of any such tax, penalty or interest pending reviews or appeals, including provision—
   (a) for applications by appellants to Revenue Scotland for postponement of amounts of tax, penalty and interest,
   (b) for the effect of any determination by Revenue Scotland on such applications,
   (c) for agreements between appellants and Revenue Scotland as to postponement of amounts of tax, penalty and interest,
   (d) for applications to the tribunal for such postponement,
   (e) for appeals in relation to such determinations by Revenue Scotland and decisions by the tribunal on such applications.

(3) Regulations under subsection (2) may modify any enactment (including this Act).
211 Settling matters in question by agreement

(1) In relation to a review, mediation or an appeal under this Part, “settlement agreement” means an agreement between the taxpayer and Revenue Scotland that is—

(a) entered into—

(i) before the review is concluded,

(ii) as the conclusion of the mediation, or

(iii) before the appeal is determined, and

(b) to the effect that the decision reviewed, taken to mediation or appealed should be upheld without variation, varied in a particular manner or cancelled.

(2) Where a settlement agreement is entered into in relation to a review, mediation or an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was entered into, the tribunal had determined an appeal in relation to the matter in question and had upheld the decision without variation, varied it in that manner or cancelled it, as the case may be.

(2A) But a settlement agreement is not to be treated as a decision of the tribunal for the purposes of section 31 or 33.

(3) Subsection (2) does not apply if, within 30 days from the date when the settlement agreement was entered into, the appellant gives notice in writing to Revenue Scotland that the appellant wishes to withdraw from the agreement.

(4) Where a settlement agreement is not in writing—

(a) subsection (2) does not apply unless the fact that an agreement was entered into, and the terms agreed, are confirmed by notice in writing given by Revenue Scotland to the appellant or by the appellant to Revenue Scotland, and

(b) the references in subsections (2) and (3) to the time when the agreement was entered into are to be read as references to the time when the notice of confirmation was given.

(5) References in this section to an agreement being entered into with an appellant, and to the giving of notice by or to the appellant, include references to an agreement being entered into, or notice being given by or to, a person acting on behalf of the appellant in relation to the review, mediation or appeal.

212 Application of this Part to joint buyers

(1) This section applies where, in relation to land and buildings transaction tax, there are two or more buyers who are or will be jointly entitled to the interest acquired by the land transaction.

(2) In a case where some (but not all) of the buyers give notice of review under section 200—

(a) notification of the review must be given by Revenue Scotland to each of the other buyers whose identity is known to it,

(b) any of the other buyers may be a party to the review if they notify Revenue Scotland in writing,
(c) the agreement of all the buyers is required if the review is to be settled by
agreement,

(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be
given to each of the other buyers whose identity is known to Revenue Scotland, and

(e) section 205 (effect of conclusions of review) applies in relation to all of the
buyers.

(3) In a case where the buyers and Revenue Scotland agree to enter into mediation—

(a) notification of the agreement must be given by Revenue Scotland to each of the
buyers whose identity is known to it,

(b) any of the buyers may be a party to the mediation if they notify Revenue Scotland,
and

(c) the agreement of all the buyers is required if the mediation is to be settled by
agreement.

(4) In the case of an appeal relating to the transaction—

(a) the appeal may be brought by any of the buyers,

(b) notice of the appeal must be given by the buyers bringing the appeal to each of the
other buyers,

(c) the agreement of all the buyers is required if the appeal is to be settled by
agreement,

(d) if the appeal is not settled, any of the buyers are entitled to be parties to the
appeal, and

(e) the tribunal’s decision on the appeal binds all of the buyers.

(5) This section has effect subject to—

(a) the provisions of schedule 17 to the LBTT(S) Act 2013 (relating to partnerships),
and

(b) the provisions of schedule 18 to that Act (relating to trustees).

213 Application of this Part to trustees

(1) This section applies where, in relation to land and buildings transaction tax, the buyers
in the land transaction are a trust.

(2) In a case where some (but not all) of the trustees give notice of review under section
200—

(a) notification of the review must be given by Revenue Scotland to each of the other
relevant trustees whose identity is known to it,

(b) any of the other relevant trustees may be a party to the review if they notify
Revenue Scotland in writing,

(c) the agreement of all the relevant trustees is required if the review is to be settled by
agreement,
(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the relevant trustees whose identity is known to Revenue Scotland, and

(e) section 205 (effect of conclusions of review) applies in relation to all of the relevant trustees.

(3) In a case where the trust and Revenue Scotland agree to enter into mediation—
   (a) notification of the agreement must be given by Revenue Scotland to each of the relevant trustees whose identity is known to it,
   (b) any of the relevant trustees may be a party to the mediation if they notify Revenue Scotland, and
   (c) the agreement of all the relevant trustees is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—
   (a) the appeal may be brought by any of the relevant trustees,
   (b) notice of the appeal must be given by the trustee or trustees bringing the appeal to each of the other relevant trustees,
   (c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,
   (d) if the appeal is not settled, any of the relevant trustees are entitled to be parties to the appeal, and
   (e) the tribunal's decision on the appeal binds all of the relevant trustees.

(5) In this section “relevant trustees” has the meaning given by paragraph 16 of schedule 18 to the LBTT(S) Act 2013.

(6) This section has effect subject to the provisions of schedule 18 to the LBTT(S) Act 2013 (relating to trustees).

214 References to the “tribunal”

In this Part “the tribunal” means—

(a) the First-tier Tribunal,

(b) where determined by or under tribunal rules, the Upper Tribunal.

215 Interpretation

(1) In this Part—
   (a) “matter in question” means the matter to which a review, mediation or appeal relates,
   (b) a reference to a notification is a reference to a notification in writing.

(2) In this Part, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—
   (a) notification of Revenue Scotland's view under section 202(1), and
   (b) notification of the conclusions of a review under section 204.
(3) But if a notification falling within paragraph (a) or (b) of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

**PART 12**

**FINAL PROVISIONS**

**Interpretation**

**216** General interpretation

In this Act—

“the LBTT(S) Act 2013” means the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11),

“the LT(S) Act 2014” means the Landfill Tax (Scotland) Act 2014 (asp 2),

“designated officer” means a member of staff of Revenue Scotland or other person who is, or a category of members of staff or other persons who are, designated by Revenue Scotland for the purposes of this Act,

“information notice” has the meaning given by section 123(1),

“notice of appeal” means a notice under section 207,

“notice of review” means a notice under section 200,

“Revenue Scotland determination” means a determination under section 86,

“tribunal” has the meaning given by section 214.

**217** Index of defined expressions

Schedule 5 contains an index of expressions defined or otherwise explained in this Act.

**Subordinate legislation**

**218** Orders and regulations under this Act are subject to the negative procedure.

(1) Subsection (1) does not apply to—

(a) orders and regulations for which provision is made in subsection (3) or (4),

(b) orders under section 224(2).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

(a) section 30(1),

(aa) section 30A,

(b) section 45(1),

(ba) section 45A(1),

(bb) section 71D(1),

(c) section 72(2),
(da) section 102(1),
(db) section 144A,
(fa) section 159A(1),
(ia) section 166A(1),
(ja) section 180A(1),
(ka) section 181G(1),
(l) section 185(1),
(la) section 194A,
(n) section 198(6),
(o) section 210(2),
(p) paragraph 5D(1) of schedule 3.

(4) Orders and regulations under the following provisions which contain provision which adds to, replaces or omits any part of the text of an Act are also subject to the affirmative procedure—
(b) section 219(1).

(5) Orders and regulations under this Act may—
(a) make different provision for different purposes (including for different devolved taxes),
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(6) Subsection (5)(b) does not apply to orders under section 219(1).

Ancillary provision

219 Ancillary provision
(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.
(2) An order under subsection (1) may modify any enactment (including this Act).

Modification of enactments

220 Minor and consequential modifications of enactments
Schedule 4 makes minor and consequential amendments and repeals of enactments.

Crown application

221 Crown application: criminal offences
(1) No contravention by the Crown of any provision of or made under this Act makes the Crown criminally liable.
(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

5 222  Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<table>
<thead>
<tr>
<th>Crown land</th>
<th>Appropriate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate</td>
<td>The Crown Estate Commissioners</td>
</tr>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government department having the management of the land</td>
</tr>
<tr>
<td>Land an interest in which belongs to an office-holder in the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which belongs to a Government department</td>
<td>The relevant Government department</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration</td>
<td>The relevant office-holder in the Scottish Administration</td>
</tr>
<tr>
<td>Land an interest in which is held in trust for Her Majesty for the purposes of a Government department</td>
<td>The relevant Government department</td>
</tr>
</tbody>
</table>

(3) “Government department” means a department of the Government of the United Kingdom”.

223  Crown application: Her Majesty

Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

224  Commencement

(1) This section, sections 218, 219, 221, 222, 223 and 225 and paragraphs 7(5) and 8(5) of schedule 4 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.
225 Short title

The short title of this Act is the Revenue Scotland and Tax Powers Act 2014.
Revenue Scotland and Tax Powers Bill
Schedule 1—Revenue Scotland

SCHEDULE 1
(introduced by section 2(3))

REVENUE SCOTLAND

Membership

5 1 (1) Revenue Scotland is to consist of no fewer than 5 and no more than 9 members appointed by the Scottish Ministers.

(2) Ministers are to appoint one of the members to chair Revenue Scotland (“the Chair”).

(3) Ministers may by order amend sub-paragraph (1) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.

10 (4) Membership of Revenue Scotland is for such period and on such terms as Ministers may determine.

(5) A member may resign by giving notice in writing to Ministers.

(6) A person who is (or who has been) a member may be reappointed.

Disqualification

15 2 (1) A person may not be appointed as a member of Revenue Scotland (and may not continue as a member) if that person—

(a) is (or becomes)—

(i) a member of the Scottish Parliament,

(ii) a member of the House of Commons,

(iii) a member of the National Assembly for Wales,

(iv) a member of the Northern Ireland Assembly,

(v) a member of the European Parliament,

(vi) a Minister of the Crown,

(vii) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,

(viii) an office-holder in the Scottish Administration,

(ix) a civil servant,

(b) is (or has been) insolvent,

(c) is (or has been) disqualified as a company director under the Company Directors Disqualification Act 1986 (c.46) (or any analogous disqualification provision, anywhere in the world), or

(d) is (or has been) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (or any analogous disqualification provision, anywhere in the world).

(2) For the purposes of sub-paragraph (1)(b) a person is (or has been) insolvent if—

(a) the person’s estate is or has been sequestrated,
(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,

(c) the person is (or has been) the subject of any other kind of arrangement analogous to those described in paragraphs (a) and (b), anywhere in the world.

5 Removal of members

3 The Scottish Ministers may, by giving notice in writing, remove a member if—

(a) any of sub-paragraphs (1)(a) to (d) of paragraph 2 apply to the member,

(b) the member has been absent from meetings of Revenue Scotland for a period longer than 6 months without permission from Revenue Scotland, or

(c) Ministers consider that the member is otherwise unfit to be a member or is unable to carry out the member’s functions.

4 Remuneration and expenses

(1) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such remuneration as it may, with the approval of the Scottish Ministers, determine.

(2) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such sums as it may, with the approval of Ministers, determine by way of reimbursement of expenses incurred by them in carrying out their functions.

5 Committees

(1) Revenue Scotland may establish committees for any purpose relating to its functions.

(2) Revenue Scotland may determine the composition of its committees.

(3) Revenue Scotland may appoint persons who are not members of Revenue Scotland to be members of a committee, but those persons are not entitled to vote at meetings of the committee.

6 Procedure

(1) Revenue Scotland may regulate its own procedure (including quorum) and that of any committee.

(2) The validity of any proceedings or acts of Revenue Scotland (or of any committee) is not affected by—

(a) any vacancy in its membership,

(b) any defect in the appointment of a member, or

(c) disqualification of a person as a member after appointment.
Internal delegation by Revenue Scotland

7 (1) Revenue Scotland may authorise—
   (a) a member,
   (b) a committee, or
   (c) the chief executive or any other member of staff,

   to exercise such of its functions (and to such extent) as it may determine.

   (2) Sub-paragraph (1) does not affect Revenue Scotland’s responsibility for the exercise of its functions.

Chief executive and other staff

8 (1) Revenue Scotland is to employ a chief executive.

   (2) The person employed as chief executive may not be a member of Revenue Scotland.

   (3) The first person employed as chief executive is to be appointed by the Scottish Ministers on such terms as they may determine.

   (4) Before appointing the first chief executive, Ministers must consult the Chair (if a person holds that position).

   (5) Each subsequent chief executive is to be appointed by Revenue Scotland on such terms as it may, with the approval of Ministers, determine.

   (6) Revenue Scotland may appoint other members of staff on such terms as it may, with the approval of Ministers, determine.

Powers

9 In addition to any other powers it has, Revenue Scotland may do anything which it considers—
   (a) necessary or expedient in connection with the exercise of its functions,
   (b) incidental or conducive to the exercise of those functions.

SCHEDULE 2
(introduced by section 24(4))

THE SCOTTISH TAX TRIBUNALS

PART 1

APPOINTMENT OF MEMBERS

President of the Tax Tribunals: eligibility for appointment

1 (1) A person is eligible for appointment as President of the Tax Tribunals only if qualifying under sub-paragraphs (2) and (3).

   (2) The person qualifies under this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as—

   (a) a solicitor or advocate in Scotland, or
(b) a solicitor or barrister in England, Wales or Northern Ireland.

(3) The person qualifies under this sub-paragraph if the person has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate.

First-tier Tribunal: ordinary members

2 (1) The Scottish Ministers must appoint persons as ordinary members of the First-tier Tribunal.

(1A) Before appointing a person as an ordinary member, the Scottish Ministers must consult the Lord President.

(2) A person is eligible for appointment only if the person meets the criteria as to qualifications, experience and training that the Scottish Ministers prescribe by regulations.

First-tier Tribunal: legal members

3 (1) The Scottish Ministers must appoint persons as legal members of the First-tier Tribunal.

(1A) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 4.

4 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 5 years, as a solicitor or advocate in Scotland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

Upper Tribunal: legal members

5 (1) The Scottish Ministers must appoint persons as legal members of the Upper Tribunal.

(1A) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 6.

6 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.
Disqualification from office

7 A person is disqualified from appointment, and from holding a position, as President of the Tax Tribunals or as a member of the Tax Tribunals if the person is or becomes—

(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(ba) a member of the National Assembly for Wales,
(bb) a member of the Northern Ireland Assembly,
(c) a member of the European Parliament,
(d) a Minister of the Crown,
(e) a member of the Scottish Government,
(f) a civil servant.

Eligibility under regulations

8 (1) Regulations under paragraph 4(2) may describe a person by reference to the matters mentioned in sub-paragraph (2A), (3) or (6).

(2) Regulations under paragraph 6(2) may describe a person by reference to the matters mentioned in sub-paragraph (3A), (4) or (6).

(2A) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (1)) is—

(a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
(b) engagement in practice as such for a period of not less than 5 years.

(3) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (1)) are—

(a) previous practice for a period of not less than 5 years as—

(i) a solicitor or advocate in Scotland, or
(ii) a solicitor or barrister in England, Wales or Northern Ireland, and
(b) subsequent engagement in any of the activities listed in sub-paragraph (5).

(3A) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (2)) is—

(a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
(b) engagement in practice as such for a period of not less than 10 years.

(4) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (2)) are—

(a) previous practice for a period of not less than 10 years as—

(i) a solicitor or advocate in Scotland, or
(ii) a solicitor or barrister in England, Wales or Northern Ireland, and
(b) subsequent engagement in any of the activities listed in sub-paragraph (5).

(5) The activities referred to in sub-paragraph (3)(b) and (4)(b) are—
Revenue Scotland and Tax Powers Bill  
Schedule 2—The Scottish Tax Tribunals
Part 2—Conditions of membership etc.

(a) exercising judicial functions in any court or tribunal,
(b) practice or employment as a lawyer of any kind,
(c) whether or not in the course of practice or employment as a lawyer—
   (i) advising on the application of the law,
   (ii) drafting documents intended to affect rights or obligations under the law,
   (iii) assisting persons involved in a legal or other process for the resolution of disputes as to the law,
   (iv) acting as a mediator or arbitrator for the purpose of resolving disputes that are (or could be) the matter of legal proceedings,
(d) teaching or researching law at or for an educational institution.

The matters mentioned in this sub-paragraph (also referred to in sub-paragraphs (1) and (2)) are suitability attributable to experience in law through current or previous engagement in—

(a) any of the activities listed in sub-paragraph (5), or
(b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.

9 (1) The Scottish Ministers may by regulations make provision—
(a) as regards the calculation of the 5-year period mentioned in paragraph 4(1) or 8(2A) or (3)(a) (for example, by reference to recent or continuous time),
(b) as regards the calculation of the 10-year period mentioned in paragraph 6(1) or 8(3A) or (4)(a) (for example, by reference to recent or continuous time),
(c) to which paragraph 8(3)(a) or 8(4)(a) is subject (for example, by reference to debarment from practice),
(d) for the purpose of paragraph 8(6), about—
   (i) the criteria for suitability (for example, by reference to equivalence to past or present practice as a solicitor),
   (ii) the nature of experience required (for example, by reference to engagement for a particular period of time (within the United Kingdom or elsewhere)).

(2) The Scottish Ministers may by regulations modify the list in paragraph 8(5).

PART 2

CONDITIONS OF MEMBERSHIP ETC.

Application of this Part

10 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) The following paragraphs of this Part also apply in relation to the position of President of the Tax Tribunals—
(a) paragraph 15 (with the modification that the reference in paragraph 15(c) to the President of the Tax Tribunals is to be read as a reference to the Scottish Ministers), and

(b) paragraph 16.

5 Initial period of office

11 A person who is appointed to a position as a member of the Tax Tribunals holds the position for the period of 5 years beginning with the date of the appointment.

Reappointment

12 (1) Unless sub-paragraph (3) applies, a member of the Tax Tribunals is to be reappointed as such at the end of each period for which the position is held.

(2) Reappointment under sub-paragraph (1) is to the position for the period of 5 years beginning with the date of the reappointment.

(3) This sub-paragraph applies if—

(a) the member has declined to be reappointed,

(b) the member is ineligible for reappointment,

(c) the President of the Tax Tribunals has recommended to the Scottish Ministers that the member should not be reappointed.

(4) In sub-paragraph (1) the reference to the period for which a position is held is to—

(a) the period for which the position is held in accordance with paragraph 11, or

(b) any further period for which the position is held by virtue of reappointment in accordance with sub-paragraphs (1) and (2).

13 For the purpose of paragraph 12(3)(b), a member is ineligible for reappointment only if the member would not be eligible for appointment to the position in accordance with the relevant provisions of Part 1 of this schedule were the member being appointed to the position for the first time.

14 For the purpose of paragraph 12(3)(c), the President of the Tax Tribunals may recommend to the Scottish Ministers that a member should not be reappointed only if satisfied that—

(a) the member has failed to comply with—

(i) any of the relevant terms and conditions of membership, or

(ii) any other requirement imposed on the member by or under this Act, or

(b) the tribunal concerned no longer requires—

(i) a member with the qualifications, experience and training of that member, or

(ii) the same number of members for the efficient disposal of its business.
Appointment to position of President

14A(1) Sub-paragraph (2) applies where a legal member of the First-tier Tribunal or of the Upper Tribunal becomes by appointment President of the Tax Tribunals.

(2) The appointment mentioned in sub-paragraph (1) supersedes the earlier appointment as a legal member.

Termination of appointment

15 A member of the Tax Tribunals ceases to hold the position to which the member was appointed if the member—

(a) becomes disqualified from holding the position (see paragraph 7),

(b) is removed from the position under paragraph 40, or

(c) resigns the position by giving notice in writing to the President of the Tax Tribunals.

Pensions etc.

16 (1) The Scottish Ministers may make arrangements as to—

(a) the payment of pensions, allowances and gratuities to or in respect of members of the Tax Tribunals or former members,

(b) contributions or other payment towards provision for such pensions, allowances and gratuities.

(3) Under sub-paragraph (1), such arrangements may (in particular)—

(a) include provision relating to payment of compensation for loss of office,

(b) make different provision for different types of member or other different purposes.

Oaths

17 (1) Each of the members of the Tax Tribunals must take the required oaths in the presence of the President of the Tax Tribunals.

(2) In this paragraph, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868 (c.72).

Other conditions

18 (1) Other than as provided for elsewhere in this Act or under it, the Scottish Ministers may determine the terms and conditions on which the members of the Tax Tribunals hold their positions.

(2) Under sub-paragraph (1), a determination may (in particular)—

(a) include provision for sums to be payable by way of remuneration, allowances and expenses,

(b) make different provision for different types of member or other different purposes.
PART 3
CONDUCT AND DISCIPLINE

Application of this Part

19 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) Paragraphs 20 to 22 also apply to the position of the President of the Tax Tribunals.

Conduct Rules

20 The Scottish Ministers are responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 21(1) may make provision.

21 (1) The Scottish Ministers may make rules for the purposes of or in connection with—
(a) the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals,
(b) the review of any such determination.

(2) Rules under sub-paragraph (1) may include provision about (in particular)—
(a) the circumstances in which an investigation must or may be undertaken,
(b) the making of a complaint by any person,
(c) the steps that are to be taken by a person making a complaint before it is to be investigated,
(d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),
(e) the time limits for taking steps and procedures for extending such time limits,
(f) the person by whom an investigation (or part of an investigation) is to be carried out,
(g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the President of the Tax Tribunals or any other person,
(h) the making of recommendations by the person carrying out an investigation (or part of one),
(i) the obtaining of information relating to a complaint,
(j) the keeping of a record of an investigation,
(k) the confidentiality of communications or proceedings,
(l) the publication of information or its supply to any person.

22 Rules under paragraph 21(1)—
(a) may make different provision for different purposes,
(b) are to be published in such manner as the Scottish Ministers may determine.
Reprimand etc.

23 (1) Where the condition in sub-paragraph (2) is met in relation to a member of the Tax Tribunals, the President of the Tax Tribunals may, for disciplinary purposes, give the member—

(a) formal advice,
(b) a formal warning, or
(c) a reprimand.

(2) The condition is that—

(a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 21(1), and
(b) the person carrying out the investigation has recommended that the President exercise the power conferred by sub-paragraph (1).

24 Paragraph 23 does not limit what the President of the Tax Tribunals may do—

(a) informally,
(b) for other purposes, or
(c) where no advice or warning is given in a particular case.

Suspension of membership

25 (1) If the President of the Tax Tribunals considers that it is necessary for the purpose of maintaining public confidence in the Tax Tribunals, the President may suspend a member of the tribunals.

(2) Suspension under sub-paragraph (1)—

(a) is for such period as the President may specify when suspending the member,
(b) may be revoked or extended subsequently by the President.

26 Suspension under paragraph 25(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

Judicial Complaints Reviewer

27 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).

(2) The functions are—

(a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 21(1) to consider whether the investigation has been carried out in accordance with the rules,
(b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Scottish Ministers,
(c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules, and
(d) to make written representations to the Scottish Ministers about procedures for handling the investigation of matters concerning the conduct of members of the Tax Tribunals.

(3) The Scottish Ministers are to have regard to any written representations made under sub-paragraph (2)(d).

(4) In sub-paragraph (2)(a), “relevant person” means—
   (a) the person whose complaint led to the carrying out of the investigation, or
   (b) the member of the Tax Tribunals with respect to whom the investigation has been carried out.

28 (1) Sub-paragraph (2) applies where a case is referred to the Scottish Ministers by the Judicial Complaints Reviewer under paragraph 27(2)(b).

(2) The Scottish Ministers may—
   (a) vary or revoke wholly or partly the determination made in the case to which the investigation relates,
   (b) cause a fresh investigation to be carried out,
   (c) confirm the determination in the case, or
   (d) deal with the referral in such other way as the Scottish Ministers consider appropriate.

PART 4
FITNESS AND REMOVAL

Application of this Part

29 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) This Part also applies to the position of the President of the Tax Tribunals subject to the modifications mentioned in paragraph 41.

Constitution and procedure

30 (1) The Scottish Ministers must constitute a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals.

(2) The Scottish Ministers may constitute a fitness assessment tribunal—
   (a) in such other circumstances as they think fit, and
   (b) following consultation with the President.

(3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

31 The Scottish Ministers may make rules as to the procedure to be followed in proceedings at a fitness assessment tribunal.
Revenue Scotland and Tax Powers Bill

Schedule 2—The Scottish Tax Tribunals

Part 4—Fitness and removal

Composition and remuneration

32 (1) A fitness assessment tribunal is to consist of—

(a) one person who is, or has been—
   (i) a judge of the Court of Session (except a temporary judge), or
   (ii) a sheriff (except a part-time sheriff),

(b) one person who is—
   (i) where the member under investigation is an ordinary member, another ordinary member,
   (ii) where the member under investigation is a legal member, another legal member, and
   (c) one person who does not fall (and has never fallen) within a category of person referred to in paragraph (a) or (b).

(2) The selection of persons to be members of the fitness assessment tribunal is to be made by the Scottish Ministers with the agreement of the Lord President.

33 (1) The Scottish Ministers—

(a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,

(b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.

(2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

Proceedings before fitness assessment tribunal

34 (1) A fitness assessment tribunal may require any person—

(a) to attend its proceedings for the purpose of giving evidence,

(b) to produce documents in the person’s custody or under the person’s control.

(2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.

35 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 34(1)—

(a) refuses or fails, without reasonable excuse—
   (i) to comply with the requirement,
   (ii) while attending the tribunal proceedings to give evidence, to answer any question,

(b) deliberately alters, conceals or destroys any document which the person is required to produce.

(2) The Court of Session may, on an application made to it by the tribunal—

(a) make such order for enforcing compliance or otherwise as it thinks fit, or
(b) deal with the matter as if it were a contempt of the Court.

**Suspension during investigation**

36 (1) Sub-paragraph (2) applies if the President of the Tax Tribunals requests the Scottish Ministers to constitute a fitness assessment tribunal to investigate whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

(2) The President may suspend the member from the position at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
   (a) the President revokes it, or
   (b) the report is laid as required by paragraph 39(3).

37 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
   (a) recommends that a member of the Tax Tribunals who is subject to its investigation should be suspended from the position as member of the tribunals,
   (b) does so in writing at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(2) The Scottish Ministers may suspend the member from the position at any time before laying the report as required by paragraph 39(3).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
   (a) the Scottish Ministers revoke it, or
   (b) the report is laid as required by paragraph 39(3).

38 Suspension under paragraph 36(2) or 37(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

**Report and removal**

39 (1) A report by a fitness assessment tribunal must—
   (a) be in writing, and
   (b) contain reasons for its conclusions.

(2) As soon as reasonably practicable after it is completed, such a report must be submitted by the fitness assessment tribunal to—
   (a) the Scottish Ministers, and
   (b) the President of the Tax Tribunals.

(3) The Scottish Ministers must lay before the Scottish Parliament each report submitted under sub-paragraph (2).

40 (1) If the relevant condition is met, the Scottish Ministers may remove a member of the Tax Tribunals from the position of member of the tribunals.

(2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 39(2) concluding that the member is unfit to hold the position of member of the Tax Tribunals.
Application of this Part to the President of the Tax Tribunals

41 (1) This Part of this schedule applies in relation to the President of the Tax Tribunals with the following modifications.

(2) In paragraph 30, sub-paragraphs (1) and (2)(b) do not apply.

(3) Paragraph 32 is to apply in relation to a fitness assessment tribunal constituted to investigate and report on whether the President is unfit to hold that position as it applies to a legal member of the Tax Tribunals.

(4) In paragraph 36—

(a) sub-paragraph (1) does not apply,

(b) the references in sub-paragraphs (2) and (3)(a) to the President are to be read as references to the Scottish Ministers.

(5) Paragraph 39(2)(b) does not apply.

Interpretation

42 In this Part of this schedule, the references to unfitness to hold the position of member of the Tax Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.

SCHEDULE 3
(introduced by section 105)

CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

Introduction

1 This schedule applies to a claim under section 97, 98 or 99.

Making of claims

2 (1) A claim must be made in such form as Revenue Scotland may determine.

(2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.

(3) The form of claim may require—

(a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim,

(b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct,

(c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).

(4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.
Duty to keep and preserve records

3 (1) A person who wishes to make a claim must—
   (a) keep such records as may be needed to enable the person to make a correct and complete claim, and
   (b) preserve those records in accordance with this paragraph.

(2) The records must be preserved until the latest of the following times—
   (a) the end of the period of 3 years beginning with the day on which the claim was made,
   (b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed,
   (c) where the claim is amended and there is no enquiry into the amendment, the time when Revenue Scotland no longer has power to enquire into the amendment.

(3) The Scottish Ministers may by regulations—
   (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
   (b) provide that those records include supporting documents so specified.

(4) Regulations under this paragraph may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(5) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

Preservation of information etc.

4 The duty under paragraph 3 to preserve records may be satisfied—
   (a) by preserving them in any form and by any means, or
   (b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by Revenue Scotland.

Penalty for failure to keep and preserve records

5 (1) A person (“P”) who fails to comply with paragraph 3 in relation to a claim that the person makes is liable to a penalty not exceeding £3,000, subject to the following exception.

(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to it.

Reasonable excuse for failure to keep and preserve records

5A(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with paragraph 3, liability to a penalty under paragraph 5 does not arise in relation to that failure.

(2) For the purposes of sub-paragraph (1)—
(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties under paragraph 5

5B(1) Where a person becomes liable for a penalty under paragraph 5, Revenue Scotland must—

(a) assess the penalty, and
(b) notify the person.

(2) An assessment of a penalty under paragraph 5 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

Enforcement of penalties under paragraph 5

5C(1) A penalty under paragraph 5 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 5B was issued,
(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under paragraph 5 is to be treated for enforcement purposes as an assessment to tax.

Power to change penalty provisions in paragraphs 5 to 5C

5D(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under paragraphs 5 to 5C.

(2) Regulations under sub-paragraph (1) may include provision—

(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under sub-paragraph (1) may not create criminal offences.

(4) Regulations under sub-paragraph (1) may modify any enactment (including this Act).
(5) Regulations under sub-paragraph (1) do not apply to a failure which began before the
date on which the regulations come into force.

Amendment of claim by claimant

6 (1) The claimant may amend the claim by notice in writing to Revenue Scotland.

5 (2) No such amendment may be made—

(a) more than 12 months after the day on which the claim was made, or
(b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the

period—

(i) beginning with the day on which notice is given, and

(ii) ending with the day on which the enquiry under that paragraph is

completed.

Correction of claim by Revenue Scotland

7 (1) Revenue Scotland may by notice in writing to the claimant amend a claim so as to

correct obvious errors or omissions in the claim (whether errors of principle,

arithmetical mistakes or otherwise).

(2) No such correction may be made—

(a) more than 9 months after the day on which the claim was made, or
(b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the

period—

(i) beginning with the day on which notice is given, and

(ii) ending with the day on which the enquiry under that paragraph is

completed.

(3) A correction under this paragraph is of no effect if, within 3 months from the date of

issue of the notice of correction, the claimant gives notice rejecting the correction.

(4) Notice under sub-paragraph (3) must be given to Revenue Scotland.

Giving effect to claims and amendments

8 (1) As soon as practicable after a claim is made, amended or corrected under paragraph 6 or

7, Revenue Scotland must give effect to the claim or amendment by discharge or

repayment of tax.

(2) Where Revenue Scotland enquires into a claim or amendment—

(a) sub-paragraph (1) does not apply until a closure notice is given under paragraph

10 (completion of enquiry), and then it applies subject to paragraph 12 (giving

effect to amendments under paragraph 10), but

(b) Revenue Scotland may at any time before then give effect to the claim or

amendment, on a provisional basis, to such extent as it thinks fit.
Notice of enquiry

9 (1) Revenue Scotland may enquire into a person's claim or amendment of a claim if it gives the claimant notice of its intention to do so (“notice of enquiry”) before the end of the period of 3 years after the day on which the claim was made.

5 (2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

Completion of enquiry

10 (1) An enquiry under paragraph 9 is completed—

(a) when Revenue Scotland by notice (a “closure notice”) informs the claimant that it has completed its enquiries and states its conclusions, or

(b) no closure notice having been given, 3 years after the date on which the claim was made.

(2) A closure notice must be given no later than 3 years after the date on which the claim was made.

(3) A closure notice must either—

(a) state that in the opinion of Revenue Scotland no amendment of the claim is required, or

(b) if in Revenue Scotland's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

(4) In the case of an enquiry into an amendment of a claim, sub-paragraph (3)(b) applies only so far as the deficiency or excess is attributable to the amendment.

(5) A closure notice takes effect when it is issued.

Direction to complete enquiry

11 (1) The claimant may apply to the tribunal for a direction that Revenue Scotland gives a closure notice within a specified period.

(2) Any such application is to be subject to the relevant provisions of tribunal rules.

(3) The tribunal must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 10

12 (1) Within 30 days after the date of issue of a notice under paragraph 10(3)(b) (closure notice that amends claim), Revenue Scotland must give effect to the amendment by making such adjustment as may be necessary, whether—

(a) by way of assessment on the claimant, or

(b) by discharge or repayment of tax.

(2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.
Appeals against amendments under paragraph 10

13 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.

(2) Notice of the appeal must be given—

(a) in writing,

(b) within 30 days after the date on which the closure notice was issued,

(c) to Revenue Scotland.

(3) The notice of appeal must specify the grounds of appeal.

(4) Part 11 (reviews and appeals) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under that Part.

(5) On an appeal against an amendment made by a closure notice, the tribunal may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.

(6) Where any such amendment is varied, whether by the tribunal or by the order of a court, paragraph 12 (giving effect to amendments under paragraph 10) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

SCHEDULE 4
(introduced by section 220)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Environment Act 1995

A1(1) The Environment Act 1995 (c.25) is amended as follows.

(2) In section 51 (provision of information)—

(a) after subsection (1) insert—

“(1A) Nothing in this section authorises the disclosure by SEPA of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of that Act.”,

(b) after subsection (5) insert—

“(6) In subsection (1A), “protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(3) In section 113 (disclosure of information)—

(a) after subsection (1) insert—

“(1A) Nothing in this section authorises the disclosure by SEPA to any person of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of that Act.”,

(b) in subsection (5), after the definition of “local enforcing authority” insert—
““protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 00),”.

Public Finance and Accountability (Scotland) Act 2000

1 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (Keeper of the Registers of Scotland: financial arrangements), after “Sums” insert “(other than payments of or in connection with land and buildings transaction tax)”.

Ethical Standards in Public Life etc. (Scotland) Act 2000

2 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Freedom of Information (Scotland) Act 2002

3 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 2 of schedule 1 (Scottish public authorities), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies” at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Services Reform (Scotland) Act 2010

5 In the Public Services Reform (Scotland) Act 2010 (asp 8), in schedule 8 (listed public bodies), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Records (Scotland) Act 2011

6 In the Public Records (Scotland) Act 2011 (asp 12), in the schedule, under the heading “Scottish Administration” at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Land and Buildings Transaction Tax (Scotland) Act 2013

7 (1) The LBTT(S) Act 2013 is amended as follows.

(1A) In section 10 (substantial performance without completion), after subsection (5) insert—

“(5A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

(1B) In section 11 (contract providing for conveyance to third party), after subsection (6) insert—
“(6A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

(1C) In section 27 (reliefs), after subsection (2) insert—

“(2A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

(1D) In section 32 (contingency ceases or consideration ascertained: less tax payable), after subsection (2) insert—

“(2A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

(2) In section 35 (form and content of returns), in subsection (1)—

(a) the word “and” after paragraph (a) is repealed,

(b) after paragraph (b) insert “, and

(c) be made in such manner as specified by the Tax Authority.”.

(2A) Section 37 (amendment of returns) is repealed.

(3) In section 48 (joint buyers), after subsection (3) insert—

“(3A) See also section 212 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc. where joint buyers).”.

(4) In section 50 (trusts), after subsection (2) insert—

“(3) See also section 213 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc.: trustees).”.

(5) In section 54 (the Tax Authority)—

(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,

(b) subsection (2) is repealed.

(6) Section 55 (delegation of functions to Keeper) is repealed.

(7) Section 56 (review and appeal) is repealed.

(8) In section 68 (subordinate legislation)—

(a) in subsection (2), paragraph (h) is repealed,

(b) in subsection (3), paragraph (c) is repealed,

(c) after subsection (6) insert—

“(6A) Subsection (4)(b) is without prejudice to—

(a) anything previously done by reference to an order mentioned in subsection (5), or

(b) the making of a new order.”.

(9) In section 70(1) (commencement), “55,” is repealed.

(10) In schedule 2 (chargeable consideration), in paragraph 16(1)(a)(ii), for “1982” substitute “1992”.

(11) In schedule 5 (multiple dwellings relief), in paragraph 18(b), for “effect” substitute “effective”.

938
(12) In schedule 17 (partnerships), in paragraph 35 (election by property-investment partnership), after sub-paragraph (3) insert—

“(3A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

(13) In schedule 19 (leases), in paragraph 25 (agreement for lease substantially performed etc.), after sub-paragraph (7) insert—

“(7A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act (asp 00).”.

Landfill Tax (Scotland) Act 2014

8 (1) The LT(S) Act 2014 is amended as follows.

(2) In section 25 (accounting for tax and time for payment), for paragraph (b) substitute—

“(b) make returns in relation to such accounting periods,”.

(3) After section 25 insert—

“25A Form and content of returns

(1) A return under this Act must—

(a) be in the form specified by the Tax Authority,
(b) contain such information specified by the Tax Authority, and
(c) be made in such manner as specified by the Tax Authority.

(2) The Tax Authority may specify different forms and information for different kinds of return.

(3) A return is treated as containing any information provided by the person making it for the purpose of completing the return.”.

(3A) Section 28 (evidence about tax status) is repealed.

(4) Section 29 (recovery of overpaid tax) is repealed.

(4A) Sections 32 and 33 (record keeping) are repealed.

(5) In section 34 (the Tax Authority)—

(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,
(b) subsection (2) is repealed.

(6) Section 35 (delegation of functions to SEPA) is repealed.

(7) Section 36 (review and appeal) is repealed.

(8) In section 41 (subordinate legislation)—

(a) in subsection (2), paragraph (d) is repealed,
(b) in subsection (7), paragraph (c) is repealed (but not the word “and” immediately following it).

(9) In section 43 (commencement), “35,” is repealed.

Tribunals (Scotland) Act 2014

9 (1) The Tribunals (Scotland) Act 2014 (asp 10) is amended as follows.
(2) In schedule 1 (listed tribunals), in Part 1, after paragraph 10 (the entry for “A Police Appeals Tribunal”) insert—

“10A The First-tier Tax Tribunal for Scotland
10B The Upper Tax Tribunal for Scotland”.

(3) In Part 2 of that schedule, after paragraph 13(10) insert—

“(10A) The entries in paragraphs 10A and 10B relate to the functions exercisable by the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland by virtue of the Revenue Scotland and Tax Powers Act 2014 or any other enactment.”.

SCHEDULE 5
(introduced by section 217)

INDEX OF DEFINED EXPRESSIONS

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>LBTT(S) Act 2013</td>
<td>section 216</td>
</tr>
<tr>
<td>LT(S) Act 2014</td>
<td>section 216</td>
</tr>
<tr>
<td>appealable decision</td>
<td>section 198</td>
</tr>
<tr>
<td>appellant</td>
<td>section 199(1)</td>
</tr>
<tr>
<td>business assets</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>business documents</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>business premises</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>carrying on a business</td>
<td>section 113</td>
</tr>
<tr>
<td>closure notice</td>
<td>section 84(1) (for the purposes of Part 6) and paragraph 10(1) of schedule 3 (for the purposes of that schedule)</td>
</tr>
<tr>
<td>contact details</td>
<td>section 192(4)</td>
</tr>
<tr>
<td>contract settlement</td>
<td>section 109(8)</td>
</tr>
<tr>
<td>designated officer</td>
<td>section 216</td>
</tr>
<tr>
<td>devolved tax</td>
<td>section 3(3)</td>
</tr>
<tr>
<td>filing date</td>
<td>section 73</td>
</tr>
</tbody>
</table>
## Schedule 5—Index of defined expressions

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-tier Tribunal</td>
<td>section 19(5)(a)</td>
</tr>
<tr>
<td>general anti-avoidance rule</td>
<td>section 57(2)</td>
</tr>
<tr>
<td>information notice</td>
<td>section 123(1)</td>
</tr>
<tr>
<td>judicial member</td>
<td>section 56</td>
</tr>
<tr>
<td>Keeper</td>
<td>section 4(1)(a)</td>
</tr>
<tr>
<td>legal member</td>
<td>section 56</td>
</tr>
<tr>
<td>Lord President</td>
<td>section 56</td>
</tr>
<tr>
<td>matter in question</td>
<td>section 215(1)(a)</td>
</tr>
<tr>
<td>notice of appeal</td>
<td>section 216</td>
</tr>
<tr>
<td>notice of enquiry</td>
<td>section 76(5) (for the purposes of Part 6) and paragraph 9(1) of schedule 3 (for the purposes of that schedule)</td>
</tr>
<tr>
<td>notice of review</td>
<td>section 216</td>
</tr>
<tr>
<td>ordinary member</td>
<td>section 56</td>
</tr>
<tr>
<td>protected taxpayer information</td>
<td>section 14(1)</td>
</tr>
<tr>
<td>Revenue Scotland assessment</td>
<td>section 91</td>
</tr>
<tr>
<td>Revenue Scotland determination</td>
<td>section 216</td>
</tr>
<tr>
<td>SEPA</td>
<td>section 4(1)(b)</td>
</tr>
<tr>
<td>settlement agreement</td>
<td>section 211(1)</td>
</tr>
<tr>
<td>statutory records</td>
<td>section 114</td>
</tr>
<tr>
<td>tax position</td>
<td>section 112</td>
</tr>
<tr>
<td>Tax Tribunals</td>
<td>section 19(5)(c)</td>
</tr>
<tr>
<td>taxpayer notice</td>
<td>section 115(3)</td>
</tr>
<tr>
<td>third party</td>
<td>section 192(1)(c)</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>third party notice</td>
<td>section 116(4)</td>
</tr>
<tr>
<td>tribunal</td>
<td>section 216</td>
</tr>
<tr>
<td>tribunal rules</td>
<td>section 46(2)</td>
</tr>
<tr>
<td>Upper Tribunal</td>
<td>section 19(5)(b)</td>
</tr>
</tbody>
</table>
Revenue Scotland and Tax Powers Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

Introduced by: John Swinney
On: 12 December 2013
Bill type: Government Bill
REVENUE SCOTLAND AND TAX POWERS BILL

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8.A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Revenue Scotland and Tax Powers Bill as amended at Stage 2.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Revenue Scotland and Tax Powers Bill is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. It follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”) that received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Act 2014 (“LT(S)A 2014”) which received Royal Assent on 21 January 2014.

4. The Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as the tax authority responsible for collecting Scotland’s devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

THE BILL

OVERVIEW

5. The Bill as amended at Stage 2 comprises 261 sections (5 sections were removed and 41 new sections added at Stage 2) and five schedules and is divided into 12 Parts as follows:

- **PART 1** provides an overview of the Bill’s structure in relation to the different Parts and schedules.
PART 2 establishes Revenue Scotland and provides for its general functions and responsibilities.

PART 3 makes provision about the use and protection of taxpayer and other information.

PART 4 sets out in detail the composition and operational arrangements of the new two-tier Scottish Tax Tribunals.

PART 5 outlines the general anti-avoidance rule applying to avoidance of the two devolved taxes.

PART 6 sets out the powers and duties of taxpayers and Revenue Scotland, outlines the arrangements and time limits for taxpayer self-assessments and Revenue Scotland assessments and the arrangements for handling of double or overpayment of tax.

PART 7 makes provision for Revenue Scotland’s investigatory powers.

PART 8 sets out the matters in relation to which penalties may be imposed.

PART 9 makes provision about the interest payable on unpaid tax and on penalties.

PART 10 contains provisions on debt enforcement by Revenue Scotland.

PART 11 sets out the review and appeals process.

PART 12 outlines final provisions including an index of defined expressions, subordinate legislation and ancillary powers.

PART 1 – OVERVIEW OF BILL

6. Section 1 sets out the content of the Bill and provides a brief description of what each Part does.

PART 2 - REVENUE SCOTLAND

7. Part 2 formally establishes Revenue Scotland and introduces schedule 1. It sets out Revenue Scotland’s functions, its independence from and relationship with the Scottish Ministers in the exercise of those functions, including the payment of tax receipts into the Scottish Consolidated Fund, its powers of delegation, and procedures for the publication and reporting of its Charter of standards and values, corporate plan and annual report.

Establishment of Revenue Scotland

Section 2 - Revenue Scotland

8. This section establishes Revenue Scotland as a corporate body with a separate legal personality to that of the Scottish Ministers. Revenue Scotland’s Gaelic name (Teachd-a-steach Alba) has equal legal status. Section 2 also introduces schedule 1 which is concerned with the membership, procedures and staffing of Revenue Scotland.

1 Revenue Scotland in its current form is an administrative Division of the Scottish Government.
9. Revenue Scotland is expected to be part of the Scottish Administration, within the meaning of section 126(8) of the Scotland Act 1998, by virtue of an order under section 104 of that Act.

**Functions of Revenue Scotland**

*Section 3 - Functions of Revenue Scotland*

10. Subsection (1) sets out Revenue Scotland’s general function as the collection and management of the devolved taxes (devolved taxes having the meaning given by section 80A(4) of the Scotland Act 1998). By virtue of section 51(3) of the Commissioners for Revenue and Customs Act 2005 (c.11), the reference to collection and management has the same meaning as references to care and management in older tax statutes. The effect of this is that jurisprudence concerning the proper bounds of the tax authority’s role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions.

11. Subsection (2) sets out the particular functions relating to Revenue Scotland as:

- the provision of information, advice and assistance to the Scottish Ministers on matters concerning tax; reflecting that the Scottish Ministers will lead on devolved tax policy development and future legislation;

- the provision of information, assistance and advice to enable taxpayers, their agents and other persons to comply with the requirements of the devolved taxes;

- the efficient resolution of disputes on matters of tax liability or compliance, including by mediation (other forms of dispute resolution being review and appeal under Part 11 of the Bill); and

- the protection of the revenue against tax fraud (that is to say, tax evasion) and tax avoidance; Revenue Scotland might do this through robust whilst proportionate compliance activity, through application of Targeted Anti-Avoidance Rules (TAARs) or through application of the General Anti-Avoidance Rule (see Part 5 of the Bill).

**Delegation of functions by Revenue Scotland**

*Section 4 - Delegation of functions by Revenue Scotland*

12. Subsection (1) provides a power for Revenue Scotland to delegate any of its functions to the Keeper of the Registers of Scotland (RoS) with respect to LBTT and to the Scottish Environment Protection Agency (SEPA) with respect to SLfT (although Revenue Scotland will retain responsibility and accountability for the collection and management of both devolved taxes). Subsection (2) provides that in the delegation of these functions, both RoS and SEPA must comply with any directions Revenue Scotland gives to each regarding how to carry out the functions. Subsection (3) gives Revenue Scotland the power to change or revoke anything regarding the delegation or directions of these functions at any time.

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2 The leading English case is the "Fleet Street casuals case"; Inland Revenue v National Federation of Self-employed and Small Businesses Ltd [1982] A.C. 617.

3 Tax evasion by taxpayers or agents is a criminal offence at common law; Strathern v Fogal 1922 J.C. 73; HM Advocate v Turnbull (Robert S) 1951 J.C. 96.
13. Subsection (4) provides that Revenue Scotland must publish information regarding any delegation or directions of its functions and must also lay a copy of this information before the Scottish Parliament (subsection (5)), unless it considers that to do so would impact upon the ability to carry out its functions effectively. RoS and SEPA may be reimbursed by Revenue Scotland for any expenditure incurred in exercising its delegated functions in accordance with subsection (8).

Money

Section 5 – Payments into the Scottish Consolidated Fund

14. This section provides that, subject to deduction of payments in connection with repayments, interest on repayments and payments treated as repayments, Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund. This is consistent with the general position of Scottish Administration bodies set out in section 64(3) of the Scotland Act 1998. Paragraph 1 of schedule 4 (minor and consequential modifications) makes a consequential amendment to section 9 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) so that RoS may direct receipts in connection with LBTT to the Scottish Consolidated Fund.

Section 6 – Rewards

15. This section provides that Revenue Scotland may pay a reward to a person for a service relating to a function of Revenue Scotland, an example being information which leads to the collection of undeclared tax.

Independence of Revenue Scotland

Section 7 - Independence of Revenue Scotland

16. This section makes provision for Revenue Scotland’s independence in that the Scottish Ministers must not direct or otherwise seek to control Revenue Scotland in the exercise of its functions. Revenue Scotland’s independence is, however, subject to any contrary provisions made in this or any other enactment of the Scottish Parliament.

Ministerial guidance

Section 8 - Ministerial guidance

17. This section sets out that the Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions and that Revenue Scotland must have regard to that guidance. The guidance provided must be published, as considered appropriate by Ministers, unless the Scottish Ministers consider that to do so would impact upon the ability to carry out its functions effectively.

Provision of information, advice or assistance to Ministers

Section 9 - Provision of information, advice or assistance to the Scottish Ministers

18. This section sets out that Revenue Scotland must provide the Scottish Ministers with information or advice relating to its functions when required to do so and in such format as Ministers may determine.
Charter of standards and values

Section 10 - Charter of standards and values

19. This section provides that Revenue Scotland must prepare and publish a Charter (including laying it before the Scottish Parliament) setting out: the standards of behaviour and values its members and staff are expected to adhere to when dealing with taxpayers, their agents and other persons; and the standards of behaviour and values it expects such persons themselves to adhere to when dealing with Revenue Scotland. Revenue Scotland must consult on the Charter and review and revise it as and when it considers it appropriate to do so.

Corporate plan

Section 11 - Corporate plan

20. This section provides that Revenue Scotland must prepare a corporate plan. Subsections (5), (7) and (8) relate specifically to the planning period for each corporate plan. Subsection (7) sets out that the first plan is to be published no later than a date to be appointed by an order made by the Scottish Ministers and that subsequent plans are to be submitted no later than the end date specified by that order and thereafter at three-yearly intervals. Subsection (5) provides that Revenue Scotland may review and submit a revised plan at any time for the approval of Ministers and subsection (8) enables Ministers by order to substitute such other period as they consider appropriate for the planning period.

21. The remaining subsections together set out procedures for the approval and publication of the corporate plan. The plan must describe Revenue Scotland’s main objectives, the outcomes by which these objectives may be measured and its main activities for the duration of the planning period. Each plan must be submitted to the Scottish Ministers for approval, with approval being subject to any modifications as agreed between Ministers and Revenue Scotland. Following approval, a copy of the plan must be laid before the Scottish Parliament and published as Revenue Scotland considers appropriate.

Annual report

Section 12 - Annual report

22. This section sets out a requirement for Revenue Scotland to prepare and publish an annual report (including sending a copy of the report to the Scottish Ministers and laying it before the Scottish Parliament) as soon as possible after the end of each financial year. The annual report might contain, for example, details of how Revenue Scotland has demonstrated the standards of behaviour and values in the Charter of standards and values referred to in section 10. Revenue Scotland may also publish other reports and information it considers relevant and appropriate to the exercise of its functions.

23. On the basis that Revenue Scotland will be part of the Scottish Administration, the accountability and audit provisions of Part 2 of the Public Finance and Accountability (Scotland) Act 2000 will apply, including the duty to prepare accounts under section 19.
PART 3 – INFORMATION

Use of information by Revenue Scotland etc.

Section 13 - Use of information by Revenue Scotland and other persons

24. Section 13 allows for information (whether taxpayer information or other information) to be disclosed and used within and between Revenue Scotland, RoS and SEPA. In the case of Revenue Scotland, this would allow information obtained in relation to one devolved tax to be used in the context of another devolved tax. RoS and SEPA may only participate in sharing if there has been a delegation under section 4, in which case they may use tax information for land registration and environmental purposes respectively (and vice versa). But section 13 does not extend to sharing outside of Revenue Scotland, RoS and SEPA (for which see section 15(3)).

Protected taxpayer information

Section 14 - Protected taxpayer information

25. Section 14 establishes the concept of “protected taxpayer information”. “Protected taxpayer information” is identifiable information concerning taxpayers and other persons (for example their personal or business associates) that becomes held by Revenue Scotland, RoS or SEPA in the exercise of tax functions. “Person” includes both natural and legal persons, so individuals and corporations are equivalently protected. Identifiable information not concerning tax functions (for example information about staff or contractors) is not “protected taxpayer information”.

Section 15 - Confidentiality of protected taxpayer information

26. Section 15 prohibits Revenue Scotland officials from disclosing protected taxpayer information unless the disclosure is expressly permitted in subsection (3). Breach of this requirement is a criminal offence (see section 17). The grounds for lawful disclosure in that subsection include disclosure with the consent of the person or persons to whom the protected taxpayer information relates, and disclosure in connection with legal proceedings (whether civil or criminal). Revenue Scotland may also disclose protected taxpayer information in accordance with existing or future statutory provisions such as Part 2A of the Public Finance and Accountability (Scotland) Act 2000 (data matching for the detection of fraud etc.).

27. Section 15 applies not only to Revenue Scotland staff but also to individuals working for delegates of Revenue Scotland or otherwise exercising functions on behalf of Revenue Scotland, for example an advocate engaged to conduct litigation for Revenue Scotland in the higher courts.

Section 16 - Protected taxpayer information: declaration of confidentiality

28. Revenue Scotland officials (and the other individuals mentioned in paragraph 27) must make a formal declaration acknowledging their statutory duty of confidentiality under section 15. Subsections (2) and (3) provide for when and how the declaration is to be made.
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

Other limits on use and disclosure of information

Section 16A – Disclosure of information prohibited or restricted by statute or agreement

29. Section 16A reflects that the special statutory protection for taxpayer information provided for in Part 3 of the Bill is additional to the existing legal protections that may apply to taxpayer and other forms of information, for example the Data Protection Act 1998 (c.29) which includes as data protection principle seven that appropriate technical and organisational measures be taken to protect all personal data. Accordingly, the permissive effect of sections 13(1) and 15(3) is subject to any prohibitions or restrictions provided for in other enactments or agreements.

Section 16B – Protected taxpayer information: use by the Keeper

30. Section 16B specifically addresses the position of RoS and prohibits RoS from making use of protected taxpayer information in connection with RoS’ power to provide consultancy, advisory or other commercial services. See also paragraph A1 of schedule 4 which makes specific provision about protected taxpayer information and SEPA.

Offence of wrongful disclosure

Section 17 - Wrongful disclosure of protected taxpayer information

31. Section 17 makes it a criminal offence to breach section 15, that is to say to disclose protected taxpayer information where there is not specific statutory authority under section 15(3). The penalty is imprisonment and/or a fine, with the length of sentence and the amount of the fine being higher on solemn prosecution (conviction on indictment) (see subsection (3)). It is a defence where a person reasonably believed that disclosure was lawful or the information disclosed had already lawfully been made public.

32. Subsection (4) clarifies that other legal measures may be taken against a person who breaches section 15, for example disciplinary measures in terms of employment law or a breach of confidence action.

PART 4 – THE SCOTTISH TAX TRIBUNALS

CHAPTER 1 — INTRODUCTORY

Section 18 - Overview

33. This section provides an overview of Part 4 of the Bill which provides for the establishment of the Tax Tribunals to hear appeals and exercise other functions in relation to devolved taxes.
CHAPTER 2 — ESTABLISHMENT AND LEADERSHIP

Establishment

Section 19 - The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland
34. This section provides for the establishment of the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland, referred to as the First-tier Tribunal and the Upper Tribunal and collectively as the Tax Tribunals in this Bill.

Leadership

Section 20 - President of the Tax Tribunals
35. This section provides for the leadership of the Tax Tribunals. The Tax Tribunals will be led by the President of the Tax Tribunals who will be appointed by the Scottish Ministers. The section provides that the President of the Tax Tribunals is to be appointed on such terms and conditions that are determined by the Scottish Ministers.

Section 21 - Functions of the President of the Tax Tribunals
36. This section provides that the President of the Tax Tribunals is the senior member of the Tax Tribunals and has the functions laid out in this Act.

Section 22 - Business arrangements
37. This section sets out the President’s functions in relation to the business of the Tax Tribunals and responsibility for the welfare of the members of the Tax Tribunals.

Section 23 - Temporary President
38. This section provides for the Scottish Ministers to appoint a temporary president (after consulting with the Lord President). The temporary president will be appointed from the legal members of the Tax Tribunals. All functions of the President can be carried out by a Temporary President. As such, all reference to the President in this Bill can be taken as applying to a Temporary President.

CHAPTER 3 — MEMBERSHIP

Membership of Tax Tribunals

Section 24 - Members
39. This section provides that the First-tier Tribunal’s membership will be made up of ordinary and legal members. The Upper Tribunal will be made up of legal members and Court of Session judges. Schedule 2 provides further details about ordinary and legal members.
Judicial members

Section 25 – Judicial members

40. This section provides that a Court of Session judge may sit as a member of the Upper Tribunal if authorised to do so by the President of the Tax Tribunals. Such an authorisation would have to be approved by the Lord President and by the person involved.

Status and capacity

Section 26 – Status and capacity of members

41. This section provides for the members of the Tax Tribunals to have judicial capacity for the purpose of making a decision on any case before the Tax Tribunals.

CHAPTER 4 — DECISION-MAKING AND COMPOSITION

Decision-making and composition: general

Section 27 - Decisions in the First-tier Tribunal

42. This section sets out the composition of a panel hearing a case in the First-tier Tribunal and details the President’s responsibility for selecting the size and composition of the panel and the individual members that are to sit on the panel. The President may choose him or herself.

Section 28 - Decisions in the Upper Tribunal

43. This section sets out the President’s responsibility for selecting the legal member or members who will make up the panel in the Upper Tribunal. The President may choose him or herself.

Section 30 - Composition of the Tribunals

44. This section provides for the Scottish Ministers to make regulations regarding the composition of the Tax Tribunals and may differentiate between decision making on a case heard at first instance or on appeal.

Decision by two or more members

Section 30A – Voting for decisions

45. Section 30A allows the Scottish Ministers, by affirmative regulations, to make provision regarding how decisions are voted for in panels of two or more members and how ties are resolved.

Section 30B – Chairing members

46. Section 30B makes provision for chairing members where a decision is being taken by two or more members. Subsection (1) specifies that tribunal rules may make provision for determining who will be the chairing member in a case before the First-tier or Upper Tribunal. Subsection (2) makes further provision for what can be specified in tribunal rules in relation to chairing members.
CHAPTER 5 — APPEAL OF DECISIONS

Appeal from First-tier Tribunal

Section 31 - Appeal from the First-tier Tribunal

47. This section provides that most decisions of the First-tier Tribunal can be appealed to the Upper Tribunal by a party in the case on a point of law. The appeal needs either the permission of the First-tier Tribunal or the Upper Tribunal. Subsection (5) lists the provisions where decisions of the First-tier Tribunal are final and cannot be appealed.

Section 32 - Disposal of an appeal under section 31

48. This section provides for the Upper Tribunal’s consideration of an appeal from the First-tier Tribunal. When reaching a decision the Upper Tribunal may quash the decision of the First-tier Tribunal, remake the decision or remit the case back to the First-tier Tribunal with any directions the Upper Tribunal sees fit.

Appeal from Upper Tribunal

Section 33 - Appeal from the Upper Tribunal

49. This section provides for an appeal from the Upper Tribunal to the Court of Session. Such an appeal would only be allowed on a point of law and would require the permission of the Upper Tribunal or the Court of Session. Subsection (5) lists the provisions where decisions of the Upper Tribunal are final and cannot be appealed.

Section 34 - Disposal of an appeal under section 33

50. This section provides for the Court of Session’s consideration of an appeal from the Upper Tribunal. When reaching a decision, the Court of Session may quash the decision of the Upper Tribunal, remake the decision or remit the case back to the Upper Tribunal with any directions the Court of Session sees fit.

Section 35 - Procedure on second appeal

51. This section makes provision for “second appeals” — appeals to the Court of Session from the Upper Tribunal, where the decision being appealed was itself a decision on an appeal from the First-tier Tribunal. This reflects that section 214 allows for certain types of proceedings to begin in the Upper Tribunal, if tribunal rules so provide. Second appeals must raise an important point of principle or practice, or there must be some other compelling reason for a second appeal to proceed. The Court of Session has the powers of either tribunal if remaking the decision appealed. The Court may remit the case either to the Upper Tribunal or to the First-tier Tribunal. And where the Court remits the case to the Upper Tribunal, the Upper Tribunal may itself remit the case to the First-tier Tribunal. Where it does so, however, it must send to that tribunal any directions given by the Court of Session to the Upper Tribunal.
Further provision on permission to appeal

Section 36 - Process for permission

52. This section provides for the Scottish Ministers, by regulations, to specify a time limit within which permission for an appeal must be sought. A refusal to give permission is not appealable.

CHAPTER 6 — SPECIAL JURISDICTION

Section 37 - Judicial review cases

53. This section provides for judicial review. The Court of Session may remit such a petition for judicial review to the Upper Tribunal if the Court of Session is content that the petition does not seek anything other than the exercise of the Court’s judicial review function and the petition falls within a category specified by an act of sederunt made by the Court for the purposes of this subsection. The Court of Session also has to be satisfied that the matter in question falls within the functions and expertise of the tribunal.

Section 38 - Decision on remittal

54. This section sets out that, when considering a petition remitted from the Court of Session, the Upper Tribunal in determining the issues raised has the same powers as the Court of Session and will apply the same principles that the Court of Session would when considering a petition for judicial review. An order made by the Upper Tribunal in these circumstances will have the same effect as if it was made by the Court of Session. This section does not limit the right of appeal from the Upper Tribunal to the Court of Session.

Section 39 - Additional matters

55. This section sets out that any step or order made by the Court of Session in a remitted case is to be treated as if it was made by the Upper Tribunal, further provisions on cases remitted from the Court of Session to the Upper Tribunal may be made in the tribunal rules.

Section 40 - Meaning of judicial review

56. This section defines what is meant by a petition to the Court of Session for a judicial review and to exercise the Court of Session’s judicial review function.

CHAPTER 7 — POWERS AND ENFORCEMENT

Section 41 - Venue for hearings

57. This section provides that the Tax Tribunals may convene at any time or place subject to any provision in tribunal rules, which may allow the President of the Tax Tribunals to determine the question.

Section 42 - Conduct of cases

58. This section provides that the Tax Tribunals’ powers, authority, rights and privileges in relation to the things set out in subsection (3) will be set out in tribunal rules and may reference any authority exercisable by a sheriff or the Court of Session.
Section 43 - Enforcement of decisions

59. This section provides that a decision of the Tax Tribunals will be enforceable by provisions laid out in the tribunal rules, by making reference to the means of enforcing an order from a sheriff or the Court of Session.

Section 44 - Award of expenses

60. This section sets out that the Tax Tribunals may award expenses as laid out in the tribunal rules.

Section 45 - Additional powers

61. This section provides that the Scottish Ministers may, by regulations, confer on the Tax Tribunals additional powers necessary or expedient for the exercise of their functions.

Section 45A – Offences in relation to proceedings

62. Section 45A allows the Scottish Ministers, by affirmative regulations, to create certain types of offences in relation to proceedings before the First-tier and Upper Tribunals. This allows offences to be created in connection with tribunals for things like making false statements and concealing or destroying evidence. Section 45A(1)(b) allows regulations to be made specifying circumstances in which a person cannot be compelled to give or produce evidence. Section 45A(2) sets out the maximum penalties regulations may apply to any offences created.

CHAPTER 8 — PRACTICE AND PROCEDURE

Tribunal rules: general

Section 46 - Tribunal rules

63. This section provides for rules regulating the practice and procedure for both tiers of the Scottish Tax Tribunal to be established (subsection (1)), to be known as Scottish Tax Tribunal Rules (subsection (2)). Tribunal rules are to be contained in negative regulations made by the Scottish Ministers, as prescribed in subsection (3).

Section 47 - Exercise of functions

64. This section provides that tribunal rules may state, in relation to functions exercised by members of the Tax Tribunals, how and by whom a function is to be exercised. They may provide for something to require further authorisation, permit something to be done on a person’s behalf and allow specified persons to make certain decisions.

Section 48 - Extent of rule-making

65. This section provides that tribunal rules may apply to both tribunals or specifically to one or other tribunal. They may make particular provision for different types of proceedings or purposes.
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

Particular matters

Section 49 - Proceedings and steps
66. This section sets out that tribunal rules may make provision for proceedings of a case before the tax tribunal. In particular, they may detail how a case is to be brought, allow for the withdrawal of a case, set time limits for applications and taking particular steps, allow for two or more cases to be conjoined and specify when the tribunals may act on their own initiative.

Section 50 - Hearings in cases
67. This section sets out that tribunal rules may provide for when matters can be dealt with without a hearing, in a private hearing or at a public hearing. They will also detail when notice of a hearing has to be given, who may appear on behalf of a party in a case and who may attend to provide support to a party in a case or as a witness in a case. Tribunal rules will also detail when particular persons may appear or be represented at a hearing, and specify when a hearing may go ahead without notice in the absence of a particular member. Tribunal rules may also allow two or more sets of proceedings to be taken concurrently and may also cover when a case may be adjourned to allow the parties to try and resolve the dispute by alternative dispute resolution methods. The tribunal rules will also set out when reporting restrictions may be imposed.

Section 51 - Evidence and decisions
68. This section sets out that tribunal rules will cover giving evidence and administering oaths. Tribunal rules will also provide for the payment of expenses to persons in certain defined circumstances. Rules might, for example, state that a document which had been posted to a person would be presumed to have been duly served on that person, unless the contrary was proved. Tribunal rules may also make provisions relating to decisions of the Tax Tribunals, including how decisions are made, the incorporation of findings of fact, the recording of, issuing of and publication of such decisions.

Issuing directions

Section 52 - Practice directions
69. This section sets out that the President of the Tribunals may issue directions relating to practice and procedure in both the First-tier and Upper Tribunal. Directions may include guidance and instruction on decision making, may revoke earlier directions and may make different provision for different purposes. Such directions may be published in a way the President thinks appropriate.

CHAPTER 9 — ADMINISTRATION

Section 53 - Administrative support
70. This section sets out the Scottish Ministers duty to provide for the property, services and personnel the Tribunals require to carry out their function. The Scottish Ministers must have regard to any representations from the President of the Tax Tribunals on matter concerning administrative support.
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

Section 54 - Guidance

71. This section sets out that the President of the Tax Tribunals may issue such guidance relating to the administration of the Tax Tribunals as the President of the Tax Tribunals sees fit. Such guidance will generally be published. Members of the tax tribunals and officials supporting them must have regard to any guidance.

Section 55 - Annual reporting

72. This section provides that the President must produce an annual report and provides details of what the annual report must cover. The report must be given to the Scottish Ministers at the end of each financial year. The Scottish Ministers have a duty to lay a copy of the report before the Parliament prior to publishing it.

CHAPTER 10 — INTERPRETATION

Section 56 - Interpretation

73. This section defines various expressions used in this Part, including “judicial member” and the “Lord President”.

PART 5 – THE GENERAL ANTI-AVOIDANCE RULE

Introductory

Section 57 - The general anti-avoidance rule: introductory

74. This section sets out the overall purpose of this Part of the Bill – to enable Revenue Scotland to counteract tax advantages in relation to the devolved taxes that arise from tax avoidance schemes that are artificial. Subsection (2) provides that the sections in this Part, taken together, are to be known as the general anti-avoidance rule (GAAR). Under UK legislation set out in the Finance Act 2013, provision is made for a general anti-abuse rule. Although the terms “avoidance” and “abuse” do not have exact definitions, avoidance generally refers to a spectrum of activities designed to reduce tax liability, while abuse is often used to describe highly contrived schemes. Subsequent sections in Part 5 define the terms used and provide more detail about how the provisions as a whole are to work. The GAAR is intended to operate in tandem with Targeted Anti-Avoidance Rules (TAARs) and the “Ramsay principle” of purposive statutory interpretation applied by the Scottish courts and tribunals.

Artificial tax avoidance arrangements

Section 58 - Tax avoidance arrangements

75. This section sets out the definition of a “tax avoidance arrangement”. Subsection (2) gives a broad definition of an “arrangement”, which includes transactions, schemes, agreements etc., either individually or combined in parts and stages. This definition is kept broad so that a wide range of arrangements can be considered to determine whether they constitute tax avoidance arrangements.

76. Subsection (1) defines a “tax avoidance arrangement” as an arrangement (defined in subsection (2)) which appears to have as its main purpose or one of its main purposes the obtaining of a “tax advantage”. The test for determining whether or not an arrangement has such
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

a purpose is that it would be reasonable in all the circumstances to conclude that it did. Section 60 defines a tax advantage.

Section 59 - Meaning of “artificial”

77. This section sets out the definition of “artificial” in the context set out in section 57 – that the purpose of this Part of the Bill is to give power to counteract “tax avoidance schemes that are artificial”.

78. The section sets out two tests for deciding whether a tax avoidance scheme is artificial. An arrangement is artificial if it satisfies either test. The first test is set out in subsection (2). It is that the arrangement under consideration is artificial if, in all the circumstances, it is not a reasonable course of action in relation to the tax legislation in question. Subsections (2)(a) and (2)(b) make further provision to assist in determining the question, by reference to the substantive results of the arrangement. Subsection (2)(a) provides that if the substantive results of the arrangement are consistent with any principles on which the tax legislation in question is known to be based, and the results are consistent with the policy objectives of the legislation, this would be a relevant factor in deciding that the course of action is reasonable in all the circumstances and, therefore, not artificial.

79. Subsection (2)(b) adds a further ground for determining reasonableness: whether the arrangement is intended to exploit any shortcomings in the tax legislation in question. Another way of describing this would be exploiting a ‘loophole’ or ‘loopholes’ in tax legislation. If an arrangement is intended to exploit shortcomings, the effect of subsection (2)(b) is that such an arrangement would not be a reasonable course of action in all the circumstances and so is likely to be artificial.

80. The grounds for determining reasonableness set out in subsection (2) are not exhaustive, meaning that Revenue Scotland can take account of other factors in determining whether entering into a tax avoidance arrangement was a reasonable course of action or not.

81. The second test is set out in subsection (3). It is that a tax avoidance arrangement is artificial if the arrangement lacks economic or commercial substance.

82. Subsection (4) then provides examples of characteristics of a tax avoidance arrangement that could indicate that an arrangement lacks economic or commercial substance. These are where:

- the manner of carrying out the arrangement would not normally be employed in reasonable business conduct
- the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole
- elements in the arrangement effectively offset each other or cancel each other out
- the transactions are circular in nature
- the arrangement results in a tax advantage not reflected in the business risks undertaken by the taxpayer.
83. These characteristics are not exhaustive but illustrative. They are intended to be helpful to taxpayers and to Revenue Scotland in determining under subsection (3) whether a tax avoidance arrangement is artificial.

84. Subsection (5) provides an example of characteristics of a tax avoidance arrangement that could indicate that the arrangement is not artificial. The example given is where:
   - A tax avoidance arrangement accords with established practice and at the time it was entered into, Revenue Scotland had indicated that it accepted this practice.

85. As in subsection (4), this example is not exhaustive but illustrative. This subsection is only applicable where both conditions are fulfilled – that is, that a tax avoidance arrangement accords with established practice, and that Revenue Scotland had indicated its acceptance of that practice at the time it was entered into. It is expected that Revenue Scotland will publish guidance about acceptance of established practice, either at its own initiative or in response to requests from taxpayers or agents.

86. Finally, subsection (7) provides that, where a tax avoidance arrangement forms part of any other arrangements, then in determining whether it is artificial or not these other arrangements must be considered.

Section 60 - Meaning of “tax advantage”

87. This section sets out the criteria for determining whether a tax advantage exists or not. A tax advantage could consist of:
   - Relief or increased relief from tax
   - Repayment or increased repayment of tax
   - Avoidance or reduction of a charge to tax or an assessment to tax
   - Avoidance of a possible assessment to tax
   - Deferral of payment of tax or advancement of a repayment of tax.

88. These criteria are not exhaustive.

89. Subsection (2) provides that in determining whether a tax avoidance arrangement has resulted in a tax advantage, Revenue Scotland may take account of the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

Section 61 - Counteracting tax advantages

90. This section provides Revenue Scotland with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes. Subsection (1) provides that Revenue Scotland may make any adjustments that it considers to be just and reasonable in order to counteract a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the tax in relation to which a tax advantage has been gained, or in respect of any other tax.
91. Subsection (3) makes clear that the adjustments made to counteract a tax liability include adjustments that impose or increase a tax liability, and that tax is to be charged in accordance with the adjustment. Subsection (4) provides that the adjustment made to counteract a tax advantage may take the form of a tax assessment, a modification to an existing assessment, an amendment, or the disallowance of a claim (for a relief or reduction in tax) amongst other things.

92. Subsection (5) requires that in counteracting a tax advantage Revenue Scotland is obliged to adhere to the procedures and steps set out in later sections in this Part of the Bill.

93. Subsection (6) provides that the power to make adjustments is subject to any time limit set out in Part 6 or any other enactment.

Section 62 - Proceedings in connection with the general anti-avoidance rule

94. This section makes provision in relation to court actions arising from the operation of the GAAR in relation to the devolved taxes. Subsection (1) provides that, where Revenue Scotland makes adjustments to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.

95. Subsection (2) provides that, in determining any issues in connection with the GAAR, a court or tribunal is obliged to take account of guidance published by Revenue Scotland about the GAAR which was extant when the tax avoidance arrangement in question was entered into.

96. Subsection (3) provides that a court or tribunal may also take account of guidance, statements or other material in the public domain at the time the tax avoidance arrangement in question was entered into, and may also take account of evidence of established practice at that time.

Section 63 - Notice to taxpayer of proposed counteraction of tax advantage

97. This section sets out Revenue Scotland’s responsibility for notifying a taxpayer when it is intending to counteract a tax advantage in relation to the devolved taxes.

98. Subsection (1) provides that if a member of staff in Revenue Scotland who is designated to deal with GAAR issues (“a designated officer”) considers that a tax advantage has arisen from a tax avoidance arrangement that is artificial, and that the tax advantage should be counteracted, the designated officer must notify the taxpayer in writing.

99. Subsection (2) specifies that a notification must include a statement of the tax avoidance arrangement and the tax advantage; an explanation of why the designated officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial; and that the tax advantage should be counteracted, the designated officer must notify the taxpayer in writing.

100. Subsection (3) provides that a notice to a taxpayer may also describe the steps that the taxpayer can take to avoid the proposed counteraction.
101. Subsection (4) provides that when a taxpayer receives a notice under this section, they have 45 days in which to respond to the notice by making written representations. Subsection (5) gives the designated officer power to increase the number of days within which written representations may be made to more than 45 days, if the taxpayer makes a written request. Subsection (6) provides that the designated officer must take account of any representations made by the taxpayer in response to the notification given under subsection (1) and (2).

Section 64 - Final notice to taxpayer of counteraction of tax advantage

102. This section provides that where a taxpayer has been sent a notice under section 63(1), after the period for making representations about the notice has expired, the designated officer must provide the taxpayer with another written notice setting out whether or not the tax advantage arising from the tax avoidance arrangement is to be counteracted as proposed in the earlier notice.

Section 64A – Counteraction of tax advantages: payment of tax charged etc.

103. Section 64A provides that, where a taxpayer has been sent a notice of counteraction under section 64, the taxpayer must pay any tax amount, penalty or interest which is payable within 30 days of the notice being issued.

104. Subsection (2) stipulates that if the tax advantage is to be counteracted, the notice must explain the adjustments required to give effect to the counteraction, and any steps required of the taxpayer in this regard.

Section 65 - Assumption of tax advantage

105. This section gives a designated officer power to give a taxpayer a notice under section 63 and under section 64 where the designated officer thinks that a tax advantage in relation to the devolved taxes might have arisen to the taxpayer. Subsection (2) makes clear that this enables a designated officer to send a notification to a taxpayer on the assumption that a tax advantage does arise.

General anti-avoidance rule: commencement and transitional provision

Section 66 - General anti-avoidance rule: commencement and transitional provision

106. This section makes provision relating to when the GAAR comes into effect and for transitional arrangements. Subsection (1) provides that the GAAR has effect in relation to a tax avoidance arrangement entered into on or after the date that the GAAR provisions come into force. Subsection (2) provides that where the tax avoidance arrangement forms part of another arrangement that was entered into before the GAAR came into force, this other arrangement is to be ignored for the purposes of section 59(7) (which provides that all parts of an arrangement of which a tax avoidance arrangement forms part are to be considered in deciding if a tax avoidance arrangement is artificial). Subsection (3) provides that the earlier arrangements should be taken into account, if, as a result of taking them into account, the tax avoidance arrangement would not be artificial.
PART 6 – TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1 — OVERVIEW

Section 67 - Overview

107. This section provides an overview of the matters that are dealt with in this Part of the Bill, namely the assessment of devolved tax.

CHAPTER 2 — TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

Duties to keep records

Section 69 - Duty to keep and preserve records

108. This section sets out the duty of a person who is required to deliver a return in relation to devolved taxes to keep and preserve records that are needed to complete that return. A person who is liable to be registered for a devolved tax must: a) keep and preserve any records that may be needed to enable the person to notify Revenue Scotland about their intention to carry out, or to cease to carry out, taxable activities; b) make and preserve records relating to material at a landfill site. It lists the types of records that generally need to be kept and sets out the maximum time period for which records need to be kept whilst permitting Revenue Scotland to specify an earlier date.

109. It allows the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved. The regulations are subject to negative procedure and may make reference to things specified in a notice published and not withdrawn by Revenue Scotland. Examples are given of documents that may be deemed as “supporting documents”.

Section 70 - Preservation of information etc.

110. This section provides that the duty in section 69 to preserve records under that section may be satisfied by preserving records (or the information contained in them) in an alternative form (such as microfiche or an electronic facsimile) and by any means. This is subject to any conditions or exceptions that may be prescribed by the Scottish Ministers in regulations. Such regulations are subject to the negative procedure.

Penalties for failing to keep and preserve records

Section 71 - Penalty for failure to keep and preserve records

111. This section provides for a penalty of a maximum of £3,000 for a failure to comply with section 69 (duty to keep and preserve records), with the exception that no penalty is incurred if Revenue Scotland is satisfied that the required facts which would have been demonstrated by the records are provided to Revenue Scotland by other documentary evidence.

Section 71A – Reasonable excuse for failure to keep and preserve records

112. This section provides that, if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person’s behalf for a failure to comply with section 69, then the person is not liable to pay a penalty arising from that failure. The section also clarifies some circumstances in which reasonable excuse does not apply.
Section 71B – Assessment of penalties under section 71

113. This section provides that, where a person becomes liable for a penalty under section 71, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of the penalty must be made within 12 months of the person becoming liable to the penalty.

Section 71C – Enforcement of penalties under section 71

114. This section provides that a penalty under section 71 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review or appeal against the penalty is given (under section 200 or 207 respectively), the penalty must be paid within 30 days of the review being concluded or the appeal determined or withdrawn, whichever applies. If mediation has been entered into following review, the penalty must be paid within 30 days of notice of withdrawal from mediation being given (if this applies).

Section 71D – Power to change penalty provisions in sections 71 to 71C

115. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 2 of Part 6. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

Duty to keep and preserve records: further provision

Section 72 - Further provision: land and buildings transaction tax

116. This section applies to LBTT and sets out that the Scottish Ministers may make regulations (subject to affirmative procedure) to specify records and supporting documents that a buyer must keep and preserve in relation to land transactions that do not have to be notified. A land transaction may not initially be notifiable under the LBTT(S)A 2013. But it can become notifiable later, for instance where a lease continues after the end of its original term.

117. Regulations under this section may apply the provisions in sections 69 to 71C (concerning a taxpayer’s duty to keep and preserve records and the associated penalty for failing to comply with the duty) to a buyer in a land transaction that is not notifiable. Any expressions used in this section and in LBTT(S)A 2013 have the meaning given in that Act.

CHAPTER 3 — TAX RETURNS

Filing dates

Section 73 - Dates by which tax returns must be made

118. This section provides a definition of “filing date”, being the date on which tax returns for the devolved taxes are due. A person who fails to make a return on or before the filing date is liable to a penalty under section 150 of the Bill.
Amendment and correction of returns

Section 74 - Amendment of return by taxpayer

119. This section provides for the amendment of a tax return by the taxpayer and allows Revenue Scotland to specify the form and content of any notice of such an amendment. It sets out that the taxpayer must make an amendment within 12 months of either the filing date (which is defined) or any other dates that the Scottish Ministers may prescribe by order (and different provision may be made for different devolved taxes). The power for the taxpayer to amend the return by notice under this section does not apply where sections 78(2A) and 84(3A) apply, which involve Revenue Scotland making its own amendment to the return either during the course, or on completion, of an enquiry.

Section 75 - Correction of return by Revenue Scotland

120. This section provides that Revenue Scotland may correct returns for obvious errors or omissions by notice to the taxpayer. The correction must be within 12 months from the date the return or amended return is made. The taxpayer may amend the return to reject the correction during the amendment period, which is provided for in section 74(3). However, if that period has expired, the taxpayer can amend the return within three months of the date the notice of correction was issued by Revenue Scotland.

CHAPTER 4 — REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

Section 76 - Notice of enquiry

121. This section sets out that a designated officer (defined in section 216) may enquire into a tax return, provided that notice of intention to carry out an enquiry is given to the taxpayer or the person who submitted the return on their behalf (the ‘relevant person’) within the period set out. It also limits the number of notices of enquiry that may be made in relation to any particular tax return.

Section 77 - Scope of enquiry

122. This section sets out the scope of an enquiry into a tax return and limits the scope of a subsequent enquiry on a return to amendments made after the completion of that enquiry, if that prior enquiry had been completed before the expiry of the amendment period (provided for in section 74(3)), during which the taxpayer can make amendments to their return.

Amendment of return during enquiry

Section 78 - Amendment of self-assessment during enquiry to prevent loss of tax

123. This section provides for the amendment of a tax return by a designated officer during the course of an enquiry. The amendment can only be made where the designated officer forms the opinion that the amount stated in the self-assessment contained in the return is insufficient and that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown. Where an enquiry is made into an amended return under section 74 and is limited by provision under section 77(2) and (3), it limits the ability of the designated officer to make their
own amendment under this section to any tax deficiency which is attributable to the taxpayer’s amendment made under section 74.

124. Where a designated officer issues notice of an amendment under this section, section 74 no longer applies and the taxpayer cannot therefore submit any further amendment of their own. The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section at the same time as the notice of the amendment is given. The period in which an enquiry is in progress is defined for the purposes of this section and section 79.

**Referral during enquiry**

**Section 79 - Referral of questions to appropriate tribunal during enquiry**

125. This section provides for the referral of questions to the appropriate tribunal (defined in section 83) during an enquiry. It requires notice of the referral to be given jointly by the relevant person (defined in section 76(2)(a)) and the designated officer.

**Section 80 - Withdrawal of notice of referral**

126. This section provides for the withdrawal of a notice made under section 79 by a designated officer or the relevant person (defined in section 76(2)(a)).

**Section 81 - Effect of referral on enquiry**

127. This section sets out the effect of referral under section 79 on an enquiry. It provides that a closure notice or an application for a closure notice cannot be made while proceedings under section 79 are in progress and defines what “in progress” means in this context.

**Section 82 - Effect of determination**

128. This section provides that the determination of any question by the appropriate tribunal under section 79 is binding on the parties. It requires the designated officer to take the determination into account when making any amendments to the return (under section 78 or section 84) and limits the question determined from being reopened.

**Section 83 - “Appropriate tribunal”**

129. This section sets out which are the relevant tribunals for the referral of questions under section 79.

**Completion of enquiry**

**Section 84 - Completion of enquiry**

130. This section provides for completion of an enquiry. An enquiry is completed when a designated officer notifies the relevant person (defined in section 76(2)(a)) that the enquiry is complete (a “closure notice”). The closure notice must state the conclusions reached in the enquiry and must be given no later than three years after the relevant date (defined in section 76(3)). If no closure notice is given, an enquiry is also treated as complete three years after the relevant date. A designated officer can make an amendment of a return and give it to the
relevant person with the closure notice. The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section within 30 days of the closure notice being given. Where a designated officer issues notice of an amendment under this section, section 74 no longer applies and the taxpayer cannot therefore submit any further amendment of their own.

**Section 85 - Direction to complete enquiry**

131. This section provides for the person who made the return to apply to the tribunal to give a direction that Revenue Scotland should issue a closure notice. The tribunal must give the direction unless it is satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.

**CHAPTER 5 — REVENUE SCOTLAND DETERMINATIONS**

**Section 86 - Determination of tax chargeable if no return made**

132. This section provides that, in the circumstances where a designated officer has reason to believe a person is liable to pay tax, and that person has not filed a tax return with Revenue Scotland by the date by which it believes a return was required to be made (the “relevant filing date”), Revenue Scotland may make a determination of the amount of tax to be charged. Notice of the determination must be given to the person believed to be liable for the chargeable tax, including a statement of the date on which the notice was issued. A determination cannot be made more than five years after the relevant filing date or, if the Scottish Ministers by order prescribe another date, five years after that date. The taxpayer must pay the amount of tax chargeable as a result of a determination under this section immediately upon receipt of the determination.

**Section 87 - Determination to have effect as a self-assessment**

133. This section provides that a determination by Revenue Scotland has the same effect for enforcement purposes (i.e. the collection and recovery of tax as provided for in Part 10 of this Bill) as if it were a self-assessment made by the person liable for the chargeable tax. Under these provisions, a determination by Revenue Scotland does not affect a person’s liability to a penalty for failure to make a tax return (under sections 150 to 150H).

**Section 88 - Determination superseded by actual self-assessment**

134. This section provides that, where a person makes a tax return after Revenue Scotland has made a determination of chargeable tax, the self-assessed tax return will supersede Revenue Scotland’s determination. This provision does not apply when a person makes a tax return more than five years after the power to make the determination was first exercisable by Revenue Scotland, or more than three months after the date on which the determination was issued, whichever is the later. In instances where proceedings have commenced for the recovery of tax following a Revenue Scotland determination, and during those proceedings Revenue Scotland receives a self-assessment that supersedes its determination, the proceedings may continue as if they were for the recovery of so much of the self-assessed tax which remains due and not yet paid.
CHAPTER 6 — REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayments

Section 89 - Assessment where loss of tax

135. This section provides a designated officer with the power to make an assessment to make good a loss of tax where an amount that should have been assessed has not been, an amount assessed is less than it should be or relief that has been given is or has become excessive.

Section 90 - Assessment to recover excessive repayment of tax

136. This section provides for an assessment to be made to recover an excessive repayment of tax including any interest that may have been paid.

Section 91 - References to “Revenue Scotland assessment”

137. This section provides for references to “Revenue Scotland assessment” in the Bill to mean assessments made under section 89 or 90.

Section 92 - References to the “taxpayer”

138. This section provides that, in section 93, references to the “taxpayer” in relation to an assessment under section 89 mean the chargeable person and, in relation to an assessment under section 90, mean the person to whom the excessive repayment of tax was made.

Conditions for making Revenue Scotland assessments

Section 93 - Conditions for making Revenue Scotland assessments

139. This section limits the circumstances in which a Revenue Scotland assessment can be made under section 89 or 90 to situations which arose because of careless or deliberate behaviour by the taxpayer, a person acting on behalf of the taxpayer or a person who was a partner of the taxpayer at the relevant time. It also prohibits a Revenue Scotland assessment being made under those provisions if the situation was attributable to a mistake in the calculation of the tax liability that was in accordance with generally prevailing practice at the time the return was made.

Section 94 - Time limits for Revenue Scotland assessments

140. This section provides the time limits under which a Revenue Scotland assessment may be made. The general time limit for the making of a Revenue Scotland assessment is five years from the “relevant date”. This time limit is extended to 20 years where the loss of tax is attributable to deliberate behaviour by the taxpayer or a “related person”. A Revenue Scotland assessment to recover excessive repayment of tax is not late if it is made within 12 months of that repayment. If a taxpayer has died, a Revenue Scotland assessment may be made on a taxpayer’s personal representatives within three years of death and is limited to “relevant dates” within five years before the death. It also sets out how any objection to a Revenue Scotland assessment on the basis of the time limits can be made and defines “relevant date” and “related person”.
Section 95 - Losses brought about carelessly or deliberately

141. This section provides the definition of a loss of tax or situation brought about carelessly or deliberately by or on behalf of a person for the purposes of sections 93 and 94.

Notice of assessment and other procedure

Section 96 - Assessment procedure

142. This section provides the procedure for serving notice of a Revenue Scotland assessment on a taxpayer and also specifying what the notice of such an assessment must state (such as the amount of tax due, the date on which the notice is issued, the date by which the amount must be paid and the date by which any notice of review or appeal against the assessment must be given – see sections 200 and 207 for the relevant time limits relating to notices of review and appeal). The amount, or further amount, of tax chargeable (or tax or interest that is to be repaid) must be paid within 30 days of the date on which the assessment is issued.

CHAPTER 7 — RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

Section 97 - Relief in case of double assessment

143. This section provides that a taxpayer can make a claim to Revenue Scotland for relief if they believe they have been assessed more than once for the same matter.

Overpaid tax etc.

Section 98 - Claim for relief for overpaid tax etc.

144. This section provides that a taxpayer may make a claim to Revenue Scotland for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax to be discharged.

Order changing tax basis not approved

Section 99 - Claim for repayment if order changing tax basis not approved

145. This section relates to situations where an order intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within 28 days of it being laid.

146. When such an order is made, the changes to the tax basis set out in it (which might be changes to tax rates or bands, and in the case of SLfT, changes to the definition of a disposal to landfill, changes to the definition of landfill site activities, or changes to the types of qualifying materials, the disposal of which is taxable) can apply immediately, so taxpayers’ liability will change as soon as the order is made. If the proposed changes are not approved by Parliament within 28 days, then the Order falls. This section provides that in such a situation, a taxpayer can make a claim for repayment of the amount of additional tax paid during the period when the Order was in force.
147. Subsection (2) allows a taxpayer to make a claim to Revenue Scotland for the amount of additional tax paid because of the Order that fell, and any related penalty or interest. Subsection (3) sets out which Orders are relevant to this section. Subsection (5) provides that any claim must be made within two years of the ‘relevant date’ which is defined in subsection (6).

**Defence of unjustified enrichment**

*Section 100 - Defence to certain claims for relief under section 98 or 99*

148. This section provides that Revenue Scotland can reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. This would happen if the taxpayer was not the person who ultimately bore the cost of the tax. For example, for SLfT, while the tax is paid by the landfill site operator it is ultimately borne by those charged for depositing waste at the site.

*Section 101 - Unjustified enrichment: further provision*

149. This section explains circumstances in which a repayment would constitute unjustified enrichment where the payment of tax was made by someone other than the taxpayer. Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched. The taxpayer may show that a certain amount would be appropriate compensation for the loss or damage resulting from the mistaken assumption and this may be taken into account.

*Section 102 - Unjustified enrichment: reimbursement arrangements*

150. This section provides that the Scottish Ministers may make regulations (subject to the affirmative procedure) under which certain reimbursement arrangements may count for the purposes of section 100 (and so do not allow Revenue Scotland to defend the claim for repayment on the ground of unjust enrichment). The regulations may also provide for the conditions that such reimbursement arrangements must comply with, and for other reimbursement arrangements to be disregarded for the purpose of section 100 (so that the fact that the person claiming a repayment may be reimbursing others does not stop Revenue Scotland using the unjust enrichment defence). Subsection (2) defines “reimbursement arrangements” as arrangements made by the person claiming under which the repaid tax is passed on to the persons who actually bore the cost of paying the tax in the first place. For example, if a landfill site operator had overpaid tax, having collected that tax from the person who disposed of the waste, then to return an overpayment of tax to the landfill site operator may lead to the operator being unjustly enriched (if the person who disposed of the waste cannot be found to be reimbursed).

151. Subsection (3) sets out the elements of reimbursement arrangements which may be required by the regulations provided for in subsection (1). These arrangements include setting a period for reimbursement to take place, repayment to Revenue Scotland if reimbursement does not take place and requires interest paid by Revenue Scotland on a repayment to be treated in the same way as the repayment, as well as records to be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out.
Section 103 - Reimbursement arrangements: penalties

152. This section provides that regulations made under section 102 may make provision for penalties to be imposed where an obligation by virtue of subsection 102(4) is breached. Regulations may set out circumstances in which a penalty is payable, the amounts payable, and other arrangements for penalties, which may be different for different taxes. The regulations may not create criminal offences.

Other defences to claims

Section 104 - Cases in which Revenue Scotland need not give effect to a claim

153. This section provides a list of situations (other than unjust enrichment) in which Revenue Scotland does not need to make a repayment or discharge an assessment or determination. The situations are: where a mistake is made in a claim, or where a claim is made or not made by mistake; where other provisions in the Bill provide means of seeking relief; where a claimant could have sought relief under other provisions in the Bill but time limits on those provisions have expired; where the same matter has been put to a court or tribunal by the claimant, has been withdrawn from a court or tribunal, or time limits for putting it to a court or tribunal have passed; where the amount paid is the result of enforcement action or agreement between Revenue Scotland and the claimant; and where the amount paid is excessive but was calculated following normal procedures at the time, unless the tax charged was contrary to EU law.

Procedure for making claims

Section 105 - Procedure for making claims etc.

154. This section sets out that schedule 3 applies in relation to claims made under sections 97, 98 and 99.

Section 106 – Time-limit for making claims

155. This section provides that claims for relief from double assessment or overpayment of tax made under section 97 or 98 must be made within five years of the date the tax return was required and must be made separately from any tax return made to Revenue Scotland.

Section 107 - The claimant: partnerships

156. This section provides that, where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax if it had been correct.

Section 108 - Assessment of claimant in connection with claim

157. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for Revenue Scotland to make an assessment on the claimant in respect of the tax, then Revenue Scotland can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is final (e.g. following the result of a review or appeal).
Contract settlements

Section 109 - Contract settlements

158. This section makes provision for the effect of contract settlements (defined in subsection (8)). The effect of subsection (1) is that an overpayment of tax can still be reclaimed under section 98 or 99 even though it was paid under a contract settlement. Subsection (3) to (7) apply to situations where tax was paid by someone under a contract settlement but that person who was not the person from whom it was due. In this circumstance a claim for relief from overpayment can be made by the person who paid the amount. In such a case, however, the way some of the defences available to Revenue Scotland under section 104 operate is modified, as is section 108. And where such a claim is made, Revenue Scotland can set any amount repaid to the person who paid against any amount payable by the taxpayer.

PART 7 – INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1 — INVESTIGATORY POWERS: INTRODUCTORY

Overview

Section 110 - Investigatory powers of Revenue Scotland: overview

159. This section sets out an overview of Part 7 of the Bill.

Interpretation

Section 112 - Meaning of “tax position”

160. This section sets out the definition of a “tax position” as referred to throughout this Part of the Bill. A tax position can include a person’s past, present and future liability to pay any devolved tax or associated penalties and also includes any claims, elections, applications and notices in connection with the liability to pay any devolved tax.

Section 113 – Meaning of “carrying on a business”

161. This section sets out the definition of a “carrying on a business” as referred to throughout this Part of the Bill. A business includes the letting of property, the activities of a charity, the activities of a local authority and also any other public authority. The section also confers powers on the Scottish Ministers to make further provision by regulations regarding what is or is not to be treated as carrying on a business in this Part of the Bill. Such regulations are subject to the negative procedure.

Section 114 – Meaning of “statutory records”

162. This section sets out the definition of “statutory records” as referred to throughout this Part of the Bill.
CHAPTER 2 — INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

Section 115 - Power to obtain information and documents from taxpayer

163. This section provides that where a designated officer reasonably requires a document or information to check a taxpayer’s position and considers it reasonable that the taxpayer should provide the document or information, the designated officer can write to a taxpayer and ask for that. Such a request is known as a ‘taxpayer notice’.

Section 116 - Power to obtain information and documents from third party, Section 117 - Approval of taxpayer notices and third party notices and Section 118 - Copying third party notice to taxpayer

164. These three sections provide that where the designated officer knows the identity of a taxpayer and wants to check that taxpayer’s tax position, the designated officer can give a notice to a third party requiring that party to provide information or document(s) for the purpose of checking the tax position of the taxpayer. Such a notice is a “third party notice”. The taxpayer would have to agree to the third party notice or a tribunal would need to approve it, subject to certain conditions being met. The tribunal may also approve a third party notice that does not name the taxpayer if the tribunal accepts that having the taxpayer’s name in the third party notice might negatively affect tax assessment or collection. The designated officer must give a copy of the third party notice to the relevant taxpayer unless the tribunal decides that the designated officer has reasonable grounds for believing that doing so might negatively affect tax assessment or collection.

Section 119 - Power to obtain information and documents about persons whose identity is not known

165. This section provides that, where a designated officer wants to check the tax position of a person (or class of persons) but does not know their identity, the designated officer may give a notice to another person requiring them to produce a document or provide information. The tribunal must have approved the giving of the notice beforehand and can only do so if it is satisfied that certain conditions are met.

Section 120 – Third party notices and notices under section 119: groups of undertakings

166. This section provides for arrangements for third party notices or notices under section 119 where the tax authority wishes to check the tax position of a parent undertaking and any of its subsidiary undertakings (for example a parent company and its subsidiary companies). Subsection (2) provides that such notices need only state the purpose of the notice, the name of the taxpayer and the name of the parent undertaking.

167. Subsection (4) provides that a third party notice given to a parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking need only state that purpose. For the purposes of section 117(6) any references to naming the taxpayer are to making that statement. Subsection (5) clarifies how the provisions of other related sections apply to such notices.

168. Subsection (7) provides that the meanings of parent and subsidiary undertakings reflect those set out in sections 1161-1162 and Schedule 7 of the Companies Act 2006 (c.46).
Section 121 – Third party notices and notices under section 119: partnerships

169. This section provides for arrangements for third party notices or notices under section 119 where the tax authority wishes to check the tax position of one or more persons in a business partnership.

Section 122 - Power to obtain information about persons whose identity can be ascertained

170. This section allows a designated officer to issue a notice to someone requiring them to provide information about a taxpayer (either a single person or class of persons), in order to establish the taxpayer’s identity. The notice can only be given with tribunal approval to do so. The tribunal can only approve the giving of the notice if it is satisfied that conditions A to D in subsections (2) to (6) are met. Under this section, the designated officer may require any of the following information: name, last known address and the date of birth.

Section 123 - Notices

171. This section sets out the definition of an information notice as a notice which is issued under sections 115, 116, 119 and 122 of this Bill. An information notice may specify or describe the information or documents to be provided and must state the notice has been issued with the approval of a tribunal where this is the case. Any decision of the tribunal under sections 117, 118, 119 and 122 of the Bill is final.

Section 124 - Complying with information notices

172. This section sets out that a person issued with an information notice must provide the required information or documents at a time, location (which cannot be in a place solely used as a dwelling) or in such form or means as is specified in the information notice. A person who fails to comply with an information notice is liable to a penalty under section 167 of the Bill.

Section 125 - Producing copies of documents

173. This section provides that where an information notice requires the person to produce a document, the person may be able to produce a copy of the document (unless the notice specifically requests, or a designated officer subsequently requests, the original document). The ability to produce a copy of the document is subject to any conditions or exceptions set out in regulations made by the Scottish Ministers. Such regulations are subject to the negative procedure.

Section 126 - Further provision about powers relating to information notices

174. This section provides the Scottish Ministers with a power to make regulations regarding the form and content of information notices and the manner and time period for complying with such notices. Such regulations are subject to the negative procedure.

CHAPTER 3 — RESTRICTIONS ON POWERS IN CHAPTER 2

Section 127 - Information notices: general restrictions

175. This section provides for some general restrictions on information notices, including that a person is required to produce a document only if it is in their possession or power. Furthermore, unless the tribunal has given its approval, an information notice may not require a
person to produce a document if the whole of it originates more than five years before the date of
the notice. An information notice issued to check the tax position of someone who has died
cannot be given more than four years after the death.

Section 128 - Types of information

176. This section sets out provision on types of information that an information notice cannot
require, including journalistic material, information that relates to the conduct of a pending
review or appeal in relation to tax and also information contained in certain types of personal
records. Information in personal records covered by this exclusion provision relates to a
person’s health and/or different types of counselling or assistance given to that person.

Section 129 - Taxpayer notices following a tax return

177. This section sets out restrictions on when taxpayer notices may be given. A taxpayer
notice cannot be given in relation to a transaction or an accounting period (to check the tax
position for those) where a person has made a tax return in relation to that transaction or
accounting period. However, a taxpayer notice could be given where a notice of enquiry had
been given and the enquiry was not completed or where a designated officer suspected an issue
with the assessed tax liability (including any reliefs) for the transaction or accounting period.

Section 130 - Protection for privileged communications between legal advisers and clients

178. This section provides that information notices (a term defined in section 123) do not
require a person to provide privileged information or parts of documents that are privileged.
This refers to information or documents that benefit from the confidentiality that arises in
information or documents between a professional legal adviser and a client. The section gives
the Scottish Ministers a power to make provision by regulations for the tribunal to resolve
disputes as to whether or not information or documents are privileged. Such regulations are
subject to the negative procedure.

Section 131 - Protection for auditors

179. This section provides that an information notice does not require an auditor to provide
any information held or to produce documents where that information or those documents relate
to the function or role of an auditor.

Section 132 - Auditors: supplementary

180. This section sets out the circumstances in which an information notice to an auditor
would apply. Subsection (1) requires the auditor to comply with an information notice where
information explaining any information or document given to any client in the role of tax
accountant has assisted the client in preparing for, or delivering a document to, Revenue
Scotland. Subsection (2) requires the auditor to comply with a notice under section 119 requiring
the auditor to provide information or document about the identity or address of a taxpayer.
Subsection (3) allows the auditor not to comply with subsections (1) and (2) if the information or
documents have already been provided to a designated officer.
CHAPTER 4 — INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises

Section 133 - Power to inspect business premises

181. This section provides that a designated officer can enter a business premises and inspect the premises (including buildings, structures, land and transport), assets and documents where it is reasonable to do so to check a person’s tax position. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling. A person who deliberately obstructs a designated officer (or a person authorised by the officer) in the course of an inspection under this section, and which has been approved by the tribunal, is liable to a penalty under section 167.

Section 134 - Powers to inspect business premises of involved third parties

182. This section provides that a designated officer can enter a business premises of an involved third party and inspect the premises, assets and documents where it is reasonable to do so to check a position in regard to a devolved tax, whether the person’s identity was known or not. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling. A person who deliberately obstructs a designated officer (or a person authorised by the officer) in the course of an inspection under this section, and which has been approved by the tribunal, is liable to a penalty under section 167.

Section 135 - Carrying out inspections under section 133 or 134

183. This section sets out conditions for inspections on business premises as provided for under sections 133 and 134. Subsections (1) and (2) provide that such inspections may only be carried out at a time agreed with the occupier of the premises or at any reasonable time if either:

a) the occupier of the premises is given at least seven days’ notice in writing of the time of the inspection; or
b) the designated officer has reasonable grounds for believing that giving advance notice of the inspection is likely to seriously inhibit or prejudice the collection of tax (for example, the officer had concerns that the person was likely to try and destroy or remove important evidence in advance of an inspection).

184. Subsection (3) provides that where subsection (2)(b) applies (i.e. no advance notice of the inspection is given), a written notice must be provided to the occupier or someone else who appears to be in charge of the premises at the time. If no one is present at the time, the notice must be left in a prominent place on the premises. Subsection (4) provides that a notice given in advance of an inspection (under subsection (2)(a)) or at the time of an inspection (under subsection (3)) must state the possible consequences of obstructing the designated officer from exercising the power to carry out the inspection. If such a notice has been given with the approval of the tribunal, it must state this (in order that the occupier is aware that if they deliberately obstruct the designated officer in the course of carrying out the inspection then they are liable to the penalty under section 167).

Section 135A – Carrying out inspections under section 133 or 134: further provision

185. This section provides further powers, in subsections (2) to (5), available to a designated officer carrying out an inspection of business premises under section 133 or 134. These include: taking any other person(s) with them onto the premises (including a constable where there is
serious obstruction); taking any equipment or materials required for the purpose of the inspection (for example heavy machinery); examining or investigating anything considered necessary in the circumstances of the inspection; directing that the premises (or any part of the premises) be left undisturbed for as long as is reasonably necessary for the purposes of any examination or investigation.

186. The power to take equipment or machinery can be exercised either at a time agreed with the occupier or at any other reasonable time. The power can only be exercised at any reasonable time either: a) where a notice was issued under section 135(2)(a) informing the occupier in advance that the officer intended to exercise the power; or b) where it is deemed by the officer that there are reasonable grounds for believing that giving advance notice that the power will be exercised would seriously prejudice the assessment or collection of tax.

Inspection for valuation etc.

Section 136 - Power to inspect property for valuation etc. and Section 137 - Carrying out of inspections under section 136

187. These sections provide that a designated officer may enter and inspect premises for the purpose of valuing the premises if it is reasonably required to check a person’s tax position. Section 137 sets out the conditions under which such an inspection can be carried out. A person who deliberately obstructs a designated officer (or a person authorised by the officer) in the course of an inspection under this section, and which has been approved by the tribunal, is liable to a penalty under section 167 of the Bill.

Approval of tribunal for premises inspections

Section 138 - Approval of tribunal for premises inspections

188. This section provides that a designated officer may ask the tribunal to approve an inspection under sections 133, 134 or 136 or to approve the exercise of any of the powers in section 135A in relation to an inspection under section 133 or 134. The tribunal must be satisfied the inspection or powers to be exercised are justified, unless certain conditions outlined in subsection (4) apply. The application to the tribunal can be made without notice, and any decision of the tribunal is final.

Other powers in relation to premises

Section 139 - Power to mark assets and to record information

189. This section provides that while inspecting premises, assets or documents (for valuation and/or for checking a tax position), assets can be marked to show that they have been inspected and relevant information can be obtained and recorded.

Section 140 - Power to take samples

190. This section provides for a designated officer to be able to enter business premises and take samples of material on the premises if they have reason to believe that it is reasonably required to allow the person’s tax position to be checked. The power to take samples includes the power to carry out experimental borings or other works on the business premises and to
install, keep or maintain monitoring or other apparatus there. The power to enter premises does not include power to enter any part of the premises used as a dwelling.

**Restriction on inspection of documents**

*Section 141 - Restriction on inspection of documents*

191. This section sets out that a designated officer may not inspect a document if an information notice given at the time of the inspection could not require the occupier to produce the document (for example, if the document is legally privileged).

**CHAPTER 5 — FURTHER INVESTIGATORY POWERS**

*Section 142 - Power to copy and remove documents*

192. Section 142 provides a power to a designated officer to copy, make extracts and remove documents. The officer may also retain the document for a reasonable period of time. Subsection (3) allows the person who produced the document to request a receipt for it and a copy of it. Subsection (4) clarifies that the designated officer must not charge for providing either the receipt or the copy.

193. Subsection (6) provides that where a document that has been removed is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

*Section 143 - Computer records*

194. This section applies to any provision of this Part of the Bill or Part 8 that relates to the production of documents or the inspection, copying or removal of documents. Subsection (3) allows a designated officer at a reasonable time to obtain access to, inspect, and check the operation of any computer or other equipment used in connection with a relevant document. Subsection (4) clarifies that a relevant document is a document that someone is required to produce or which may be inspected, copied or removed by a designated officer. Subsection (5) allows the designated officer to require the person in charge of the computer to provide help to fulfil the requirements of subsection (3). Subsection (6) provides that if someone obstructs the officer or does not assist the officer within a reasonable time, then that person may have to pay a financial penalty of £300.

**CHAPTER 6 — REVIEWS AND APPEALS AGAINST INFORMATION NOTICES**

*Section 144 - Review or appeal against information notices*

195. This section provides for the circumstances under which a person can and cannot request a review or appeal in relation to the giving of an information notice or requirements contained in an information notice.

*Section 144A – Power to modify section 144*

196. This section provides a power for the Scottish Ministers to modify by order (subject to affirmative procedure) whether the decisions in section 144(2)-(7) relating to the giving of information notices and the requirements contained within such information notices are
appealable (generally or in certain circumstances only) or not appealable for the purposes of section 198(1)(f).

Section 145 – Disposal of reviews and appeals in relation to information notices

197. This section provides that a person who has requested a review or an appeal in relation to a decision arising from an information notice must comply, where the information notice is upheld or varied, with the conclusion or requirements of the review or appeal.

CHAPTER 7 — OFFENCES RELATING TO INFORMATION NOTICES

Section 146 (Offence of concealing etc. documents following information notice) and Section 147 (Offence of concealing etc. documents following information notification)

198. These two sections provide for the creation of offences relating to concealing, destroying or otherwise disposing of documents either: a) required by an information notice which is approved by the tribunal (see section 146); or b) likely to be required by an information notice and the person has been informed by a designated officer of that fact (and that the officer intends or is required to seek the approval of the tribunal to the giving of the information notice – see section 147). If a person is convicted of an offence under either of these sections, the person is liable to: a) a fine not exceeding the statutory maximum on summary conviction; or b) on conviction on indictment, imprisonment for up to two years and/or a fine.

PART 8 – PENALTIES

CHAPTER 1 — PENALTIES: INTRODUCTORY

Overview

Section 148 - Penalties: overview

199. This section provides an overview of the structure of Part 8 of the Bill.

Double jeopardy

Section 149 - Double jeopardy

200. This section provides that a person is not liable to any penalty under the Bill if the person has already been convicted of an offence on the same matter.

CHAPTER 2 — PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

Penalty for failure to make returns

Section 150 - Penalty for failure to make returns

201. This section provides that a person is liable to a penalty where they fail to make a tax return (defined in the provisions listed in the table) on or before the filing date (as defined in section 73). Where a person’s failure either falls: a) within more than one provision listed in the table; or b) within more than one provision in sections 150A to 150H, the person is liable to a penalty for each of those returns and failures. Sections 150A to 150D apply in relation to a
return listed in the table which is connected to LBTT. Sections 150E to 150H apply in relation to a return listed in the table which is connected to SLfT.

**Amounts of penalties: land and buildings transaction tax**

*Sections 150A to 150D – Land and buildings transaction tax: first penalty for failure to make return; 3 month penalty for failure to make return; 6 month penalty for failure to make return; 12 month penalty for failure to make return*

202. Section 150A provides that the penalty amount for a person who fails to make a LBTT tax return on time (under section 181) is a fixed £100. Sections 150B to 150D provide for additional (and higher) penalty amounts if the person has not submitted the return three, six and 12 months after the penalty date, which is defined in section 150(1C) as the day after the filing date.

**Amounts of penalties: Scottish landfill tax**

*Sections 150E to 150H – Scottish landfill tax: first penalty for failure to make return; multiple failures to make return; 6 month penalty for failure to make return; 12 month penalty for failure to make return*

203. Section 150E provides that the penalty amount for a person who fails to make a SLfT tax return on time (under section 181) is a fixed £100. Section 150F provides for additional (and higher) penalty amounts if the person fails to make other SLfT returns on time within a specified penalty period. A penalty period is one which is begun under section 150E(3) and, unless extended under section 150F(2)(c), ends 12 months after the filing date for the return.

204. Sections 150G and 150H provide that a person is liable to further tax-g geared penalties if the person’s failure to make a return continues six and 12 months respectively after the penalty date, as defined in section 150(1C).

**Penalties for failure to pay tax**

*Section 151 – Failure to pay tax*

205. This section provides that a person is liable to a penalty where they fail to pay an amount of tax (“Amount of tax payable” in the table) on or before a certain date (“Date after which penalty incurred” in the table). Where a person’s failure either falls: a) within more than one amount of tax payable listed in the table; or b) within more than one provision in sections 151A to 151E, the person is liable to a penalty for each of those amounts of tax and failures. Section 151A applies in relation to LBTT and sections 151B to 151E apply in relation to SLfT.

*Section 151A – Land and buildings transaction tax: amounts of penalties for failure to pay tax*

206. This section provides that the penalty amount for a penalty under section 151 in relation to LBTT is 5% of the unpaid tax. If any amount of tax is still unpaid five months after the person first became liable to a penalty under section 181, the person is liable to a further penalty of 5% of the outstanding amount. If any amount of tax is still unpaid 11 months after the person first became liable to a penalty under section 181, the person is liable to a further penalty of 5% of the outstanding amount.
Sections 151B to 151E – Scottish landfill tax: first penalty for failure to pay tax; penalties for multiple failures to pay tax; 6 month penalty for failure to pay tax; 12 month penalty for failure to pay tax

207. Section 151B provides that the penalty amount for a penalty under section 151 in relation to SLfT is 1% of the unpaid tax. Section 151C provides for additional (and higher) penalty amounts if the person fails to pay further amounts of tax on time within a specified penalty period. A penalty period is one which is begun under section 151B(3) and, unless extended under section 151C(2)(c), ends 12 months after the filing date for the return.

208. Sections 151D and 151E provide that a person is liable to further tax-geared penalties if any amount of tax remains unpaid six and 12 months after the penalty date, as defined in section 151(1B).

Penalties under Chapter 2: general

Section 152 - Interaction of penalties under section 150 with other penalties and Section 153 - Interaction of penalties under section 151 with other penalties

209. These two sections provide that any penalty applied as a result of a failure to make a tax return or failure to pay tax on time is reduced by the amount of any other penalty (which is not related to a failure to make a return on time or to pay tax on time) which is applied and determined by the same tax liability. In other words, for a reduction under this section to be possible, the other penalty amount must be calculated: a) against the same tax liability; and b) using ‘tax-geared’ or ‘percentage-based’ means (and so does not include a penalty where the amount is fixed or in a variable ‘up to’ category).

Section 154 - Reduction in penalty under section 150 for disclosure

210. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to make a return. This applies only where a person discloses information to Revenue Scotland which has been previously withheld by the failure to submit a tax return. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

Section 155 - Suspension of penalty under section 151 during currency of agreement for deferred payment

211. This section provides that a person who has failed to pay tax by the due date can make a request to Revenue Scotland to have the payment deferred and Revenue Scotland can then choose whether or not to agree to the deferral of payment for a specified period as well as specifying any conditions of that deferral.

212. If payment is deferred, any penalty the person might have incurred during the specified period for failing to pay tax is not applied. If the person breaks the agreement (by either failing to pay the tax due when the deferral period ends or failing to comply with any condition of that deferral) the person becomes liable for any penalty that Revenue Scotland issues a notice to the
person about. If the deferral agreement is further varied the agreement applies until the end of the new agreement.

Section 156 - Special reduction in penalty under sections 150 and 151
213. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied due to either a failure to make a tax return or a failure to pay tax on or before the due date. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer’s ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a decision of the tribunal or court in relation to the penalty.

Section 157 - Reasonable excuse for failure to make return or pay tax
214. This section provides that if a person satisfies Revenue Scotland or the tribunal that there is reasonable excuse on the person’s behalf for a failure to either make a return or make a payment, then the person is not liable to pay a penalty arising from that failure. The section also clarifies some circumstances in which reasonable excuse does not apply.

Section 158 - Assessment of penalties under sections 150 and 151
215. Subsection (1) provides that where a person becomes liable for a penalty due to a failure to make a return or pay tax, Revenue Scotland must assess the penalty, notify the person that a penalty has been incurred, and state in the notice the period or transaction against which the penalty is assessed. Subsection (2) provides that the penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification. Subsection (3) provides that the assessment of the penalty is to be treated for enforcement purposes as an assessment of tax and may be combined with an existing assessment to tax. Subsections (4) and (5) make provision for a supplementary and replacement assessments to be made in respect of a penalty applied under this sections 150 and 151 if the penalty was calculated in reference to the amount of tax the person was liable to pay or failed to pay and it subsequently becomes clear that this amount was an over or under estimate.

Section 159 - Time limit for assessment of penalties under sections 150 and 151
216. This section provides that assessment of a penalty due to a failure to make a return or pay tax must be made on or before the later of one of these two dates:
   a) two years from the filing date (in the case of a failure to make a return) or the last date on which payment may be made without paying a penalty (in the case of failing to pay tax); or
   b) for a failure to make a tax return:
      • 12 months from either the end of the appeal period or if there is no such assessment, 12 months from the date on which that liability is ascertained or that it is ascertained the liability is nil.

   for a failure to pay tax:
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

- 12 months from either the end of the appeal period or if there is no such assessment, 12 months from the date on which the amount of tax was ascertained.

Section 159A – Power to change penalty provisions in Chapter 2

217. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 2 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

CHAPTER 3 — PENALTIES RELATING TO INACCURACIES

Section 160 - Penalty for inaccuracy in taxpayer document

218. This section provides that a person is liable to a penalty under this section where they give Revenue Scotland a document that falls under one of the provisions listed in the table and two conditions are met. The first condition is that the error amounts or leads to an understatement of the tax liability, a false or inflated statement of a loss or a false or inflated claim for relief or repayment of tax. The second condition is that in Revenue Scotland’s judgement the error is either careless or deliberate on the person’s behalf. A penalty is payable for each error in a document.

Section 160A – Amount of penalty for error in taxpayer document

219. This section provides for the amount of a penalty that is payable under section 160. Different amounts apply depending on whether the failure was careless or deliberate (as determined under section 160) and are calculated with reference to the potential lost revenue. Potential lost revenue is defined in sections 163A to 163D.

Section 161 - Suspension of penalty for careless inaccuracy under section 160

220. This section provides that Revenue Scotland may, by means of a written notice, suspend all or part of a penalty which is applied where a taxpayer submits a document to Revenue Scotland containing an error and which is due to careless behaviour by the taxpayer. Subsection (2) requires that a notice served by Revenue Scotland must specify what part of the penalty is being suspended, a period not exceeding two years and the conditions of suspension with which the taxpayer must comply. Subsection (3) allows Revenue Scotland to suspend all or part of a penalty only if it meant that if a taxpayer complied with the condition of suspension the taxpayer would avoid liability to further penalties incurred under section 160 for careless inaccuracy.

Section 162 - Penalty for inaccuracy in taxpayer document attributable to another person

221. This section provides that a penalty is payable by a person (“T”): a) where another person (“P”) submits a document to Revenue Scotland that falls under one of the provisions listed in the table in section 160; b) the document contains an inaccuracy attributable to T either deliberately supplying P with false information or deliberately withholding information from P with the intention of creating the inaccuracy and the inaccuracy leads to either an understatement in the tax liability or a false/inflated claim for loss or repayment of tax a penalty is payable by T.
whether or not P is liable to a penalty under section 160 for the same inaccuracy. The penalty amount is calculated with reference to the potential lost revenue and is 100% of the potential lost revenue. Potential lost revenue is defined in sections 163A to 163D.

Section 163 - Under-assessment by Revenue Scotland

222. This section provides that a penalty is payable by a person where an assessment issued by Revenue Scotland (as defined under section 91) understates the tax liability and the person has failed to take reasonable steps to inform Revenue Scotland of that fact within 30 days of receiving the understatement. Revenue Scotland must consider whether the person knew, or should reasonably have known, about the under-assessment. References to a Revenue Scotland assessment include a Revenue Scotland determination (as defined under section 86). The penalty amount is calculated with reference to the potential lost revenue and is 30% of the potential lost revenue. Potential lost revenue is defined in sections 163A to 163D.

Section 163A – Potential lost revenue: normal rule; Section 163B – Potential lost revenue: multiple errors; Section 163C – Potential lost revenue: losses; Section 163D – Potential lost revenue: delayed tax

223. Section 163A defines “potential lost revenue” (used in the calculation of the penalty amounts in sections 160, 162 and 163) as the additional amount due and payable (either to or from Revenue Scotland) in respect of tax as a result of correcting the inaccuracy (under sections 160 and 162) or under-assessment (under section 163).

224. Section 163B provides that where a penalty under section 160 is for more than one inaccuracy, if a calculation of potential lost revenue depends on the order in which inaccuracies are corrected then careless inaccuracies are to be corrected before deliberate inaccuracies. In calculating potential lost revenue, account is to be taken of any overstatement in a document given by the same person in the same tax period. When calculating the amount of a penalty under section 160, no account will be taken of a potential overpayment by another person except where specifically allowed for elsewhere in the Bill.

225. Section 163C provides that where an inaccuracy has the result of a loss being recorded wholly for the purpose of reducing the amount of tax payable then section 163A will apply in terms of calculating potential lost revenue. Where an inaccuracy has the result of a loss being recorded partially for the purpose of reducing the amount of tax payable then potential lost revenue will be calculated: a) with reference to the part of the loss used to reduce the amount of tax payable; and b) 10% of the loss that has not been used to reduce the amount of tax payable. This applies where no loss would have been recorded apart from the inaccuracy and also to where a different loss would have been recorded because of the inaccuracy. The potential lost revenue is nil where the nature of the loss means there is no reasonable prospect of the loss being used to reduce a tax liability.

226. Section 163D provides that where an inaccuracy results in an amount of tax being declared later than it should have been, the potential lost revenue is 5% of the delayed tax for each year of the delay. If the delay is less than one year then the potential lost revenue is a percentage equivalent to 5% per year for each separate period of delay. This section does not apply to cases where section 163C applies.
Section 164 - Special reduction in penalty under sections 160, 162 and 163

227. This section provides that Revenue Scotland may reduce a penalty (including any interest applied) if it thinks it reasonable to do so because of special circumstances and the penalty is applied under sections 160, 162 and 163. A person’s ability to pay tax or the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment of another are not reasons under which the penalty can be reduced.

Section 165 - Reduction in penalty under sections 160, 162 and 163 for disclosure

228. This section provides for Revenue Scotland to be able to reduce a penalty applied due to sections 160, 162 and 163. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

Section 166 - Assessment of penalties under sections 160, 162 and 163

229. This section provides that where a person becomes liable for a penalty under sections 160, 162 and 163, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.

230. The assessment of a penalty due to an error in a taxpayer document attributable to either the taxpayer or another person must be made within 12 months of either the end of the appeal period for the decision correcting the inaccuracy or the date on which the inaccuracy is corrected, whichever applies. The assessment of a penalty due to an under-assessment of tax by Revenue Scotland must be made within 12 months of either the end of the appeal period for the assessment of tax which corrected the under-statement or the date on which the understatement is corrected, whichever applies.

Section 166A – Power to change penalty provisions in Chapter 3

231. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 3 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

CHAPTER 4 — PENALTIES RELATING TO INVESTIGATIONS

Section 167 - Penalties for failure to comply or obstruction

232. This section provides that a person is liable to pay a fixed penalty for either failing to comply with an information notice or deliberately obstructing a designated officer in the course of an inspection or exercise of a power that has been approved by the tribunal under section 138. Failing to comply with an information notice includes concealing, destroying or disposing of a document in breach of the provisions under sections 171 and 172.
Section 168 - Daily default penalties for failure to comply or obstruction

233. This section provides that a person is liable to a further fixed penalty for each subsequent day they continue to fail to comply with an information notice or deliberately obstructs a designated officer in the course of an inspection approved by the tribunal.

Section 169 - Penalties for inaccurate information or documents

234. This section provides that a person is liable in certain circumstances to pay a fixed penalty if, in the course of complying with an information notice, they submit a document which contains an error. The circumstances in which the penalty is payable are: if the error is due to careless or deliberate behaviour; if the person is aware of the error at the time of submitting the document but fails to tell Revenue Scotland; or if the person discovers the error after submitting the document but fails to take reasonable steps to inform Revenue Scotland. Where there is more than one error in a document, a fixed penalty is payable for each error.

Section 171 - Concealing, destroying etc. documents following information notice

235. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document that is the subject of an information notice addressed to them, unless particular circumstances apply as set out in subsections (2) and (3). A person in breach of section 171 is liable to a penalty under section 167 on the grounds that the breach is deemed as a failure to comply with an information notice for the purposes of determining liability to the penalty.

Section 172 - Concealing, destroying etc. documents following information notification

236. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document if a designated officer has informed the person that the document is, or is likely to be, the subject of an information notice addressed to that person. This section does not apply if the person acts after either at least six months since the person received the last such notification from an officer or if an information notice has been issued. A person in breach of section 172 is liable to a penalty under section 167 on the grounds that the breach is deemed as a failure to comply with an information notice for the purposes of determining liability to the penalty.

Section 173 - Failure to comply with time limit

237. This section provides that a penalty is not payable by a person failing to comply with an information notice or obstructing an officer during an investigation if a designated officer allows them further limited time to correct the failure and the person then does so.

Section 174 - Reasonable excuse for failure to comply or obstruction

238. This section provides for a person not being liable to a fixed or daily penalty (under section 167 and 168) for failure to comply with an information notice or obstructing a designated officer (or a person authorised by that officer) during an inspection, if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.
Section 175 - Assessment of penalties under sections 167, 168 and 169

This section provides that where a person becomes liable for a penalty under section 167, 168 or 169, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of a fixed or daily penalty arising from a failure to comply with an information notice or obstructing an officer during an inspection must be made within 12 months of the person becoming liable to the penalty. An assessment of a penalty due to an error in a taxpayer document submitted following an information notice must be made within 12 months on the date that the error first came to the attention of a designated officer and within six years of the date on which the person became liable to the penalty.

Section 176 - Enforcement of penalties under sections 167, 168 and 169

This section provides that a penalty under section 167, 168 or 169 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review is given against the penalty, the penalty must be paid within 30 days of the review being concluded. If mediation is entered into following a review, the penalty must be paid within 30 days of the person or Revenue Scotland giving notice of withdrawal from mediation (where this is the case). If notice of an appeal against the penalty is given, the penalty must be paid within 30 days of the appeal being determined or withdrawn.

Section 177 - Increased daily default penalty

This section provides that where a person continues to fail to comply with an information notice or obstructs an inspection and the daily default penalty has been applied for more than 30 days, a designated officer may make an application to the tribunal for an increase in the daily penalty. The tribunal may approve an increased amount up to a maximum of £1,000 for each applicable day and must have regard to factors including the likely cost of complying with the notice and the benefits to the person or anyone else arising from the non-compliance. If the tribunal approves the request, the increased daily penalty would then apply from the date of the tribunal’s decision until such time as the person complies with the information notice or inspection.

Section 178 - Enforcement of increased daily default penalty

This section provides that an increased daily default penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

Section 179 - Tax-related penalty

This section provides that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 167; the person continues to fail to comply with an information notice or continues to obstruct an investigation; a designated officer believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been if they had complied; a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so. In determining the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties.
already applied as a result of a continued failure to comply with an information notice or obstruction to an officer carrying out an inspection.

Section 180 - Enforcement of tax-related penalty
244. This section provides that a penalty applied under section 179 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

Section 180A – Power to change penalty provisions in Chapter 4
245. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 4 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

CHAPTER 5 — OTHER ADMINISTRATIVE PENALTIES

Section 181 - Penalty for failure to register for tax etc.
246. This section provides that a penalty is payable where a person fails to comply with a requirement imposed by or under section 22 or 23 of the LT(S)A 2014 (deemed as a “relevant requirement”) and that failure was careless or deliberate. The section also defines what is meant by a failure which is careless.

Section 181A – Amount of penalty for failure to register for tax etc.
247. This section provides the penalty amounts for a penalty under section 181. Different amounts apply depending on whether the failure was careless or deliberate (as determined under section 181) and are calculated with reference to the potential lost revenue. Potential lost revenue is defined as the amount of tax (if any) for which the person is liable in the period between the date from which they were liable to be registered for tax and the date on which Revenue Scotland received notification of (or became aware of) the person’s liability to be registered.

Section 181B – Interaction of penalties under section 181 with other penalties
248. This section provides that the amount of any penalty under section 181 is to be reduced by the amount of any other penalty (apart from any penalty relating to failure to make a return on time or failure to pay tax on time) if it is applied and determined by reference to the same tax liability. In other words, for a reduction under this section to be possible the other penalty amount must be calculated: a) against the same tax liability; and b) using ‘tax-g geared’ or ‘percentage-based’ means (and so does not include a penalty where the amount is fixed or in a variable ‘up to’ category).

Section 181C – Reduction in penalty under section 181 for disclosure
249. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to comply with a “relevant requirement” (as specified in section 181(1)(a)). The section applies when the person liable to the penalty discloses the failure to Revenue Scotland. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person
has no reason to believe that Revenue Scotland has discovered or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

Section 181D – Special reduction in penalty under section 181

250. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied under section 181. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer’s ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a decision of the tribunal or court in relation to the penalty.

Section 181E – Reasonable excuse for failure to register for tax etc.

251. This section provides that if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person’s behalf for a failure to comply with a “relevant requirement” (as specified in section 181(1)(a)), then the person is not liable to pay a penalty arising from that failure. The section also clarifies some circumstances in which reasonable excuse does not apply.

Section 181F – Assessment of penalties under section 181

252. This section provides that where a person becomes liable for a penalty under section 181, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.

253. The assessment of a penalty under section 181 must be made within 12 months of either the end of the appeal period for the assessment of unpaid tax related to the failure to comply with the ‘relevant requirement’ or, if there is no such assessment, the date on which the amount of unpaid tax is ascertained.

Section 181G – Power to change penalty provisions in Chapter 5

254. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 5 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.
PART 9 – INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

Section 182 - Interest on unpaid tax

255. This section provides that interest is payable by the taxpayer on unpaid tax. Interest is payable from the “relevant date” until the tax is paid. Subsection (2) confers a power on the Scottish Ministers to make, by regulations, further provision to specify the date for payment of the devolved tax. Such regulations are subject to the negative procedure. If the taxpayer lodges an amount of money with Revenue Scotland in respect of the tax payable then the amount on which interest is payable is reduced by the amount lodged. Regulations made by the Scottish Ministers under section 185 will specify the rate at which interest will be calculated.

Section 183 - Interest on penalties

256. This section provides that interest is payable by the taxpayer on unpaid penalties. If penalties are not paid on the date they are due, then interest is payable from that date until the penalty is paid. Regulations made by the Scottish Ministers under section 185 will specify the rate at which interest will be calculated.

Section 184 - Interest on repayment of tax overpaid etc.

257. This section provides that interest is payable by Revenue Scotland to the taxpayer on any repayment of tax, repayment on penalties or repayment of interest (on either tax or penalties). Interest also applies to repayment of any amount lodged with Revenue Scotland by the taxpayer in respect of the tax payable. Regulations made under section 185 will set out the rate at which interest on repayment will be calculated.

Section 185 - Rates of interest

258. This section provides that Ministers will specify the rate of interest to be paid in sections 182, 183 and 184 in regulations subject to the affirmative procedure. Different rates may be set for different taxes and different penalties.

PART 10 – ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1 — ENFORCEMENT: GENERAL

Issue of tax demands and receipts

Section 186 - Issue of tax demands and receipts

259. This section provides Revenue Scotland with a power to demand a sum of tax that is due and payable from a taxpayer. Revenue Scotland must provide a receipt upon payment of the tax.

Fees for payment

Section 187 - Fees for payment

260. This section provides the Scottish Ministers with a power to make regulations specifying any fee associated with particular methods of payment (such as credit cards). Such regulations are subject to the negative procedure. The fee charged to the person making the payment must
not exceed what is reasonable to do so with regards to the costs incurred by Revenue Scotland (or a person authorised by it) in accepting or processing the payment.

Certification of matters by Revenue Scotland

Section 188 – Certification of matters by Revenue Scotland

261. This section provides for certificates of Revenue Scotland relating to: returns not being made to Revenue Scotland as required under any enactment; sums payable to Revenue Scotland under any enactment not having been paid; notifications not being made to Revenue Scotland as required under any enactment. Their purpose is to provide evidence to the court in support of any debt or action which Revenue Scotland administers, avoiding the need for lengthy documentation. The decision whether to accept such evidence is for the court.

Court proceedings

Section 189 - Court proceedings

262. This section provides that a taxpayer may be sued in order to recover tax that is due and payable.

Summary warrant

Section 190 - Summary warrant

263. This section provides that a designated officer may apply to the sheriff for a summary warrant where a person does not pay an amount due. The application to the sheriff must include a certificate which states that the sum due has been requested and has remained unpaid for at least 14 days. The sheriff must then issue the summary warrant which authorises the recovery of the sum payable by the means set out in subsection (6). In addition to the sum of tax due, the sheriff officers’ fees and expenses reasonably incurred are also chargeable against the taxpayer. Although not listed in section 190 it should be noted that, depending on the circumstances, Revenue Scotland may also choose to submit a petition for sequestration following a summary warrant should it (the summary warrant) fail to resolve the issue of the outstanding amount due to Revenue Scotland.

Recovery of penalties and interest

Section 191 - Recovery of penalties and interest

264. This section provides that any penalty or interest payable is to be treated as though it was an amount of unpaid tax.

CHAPTER 2 — ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

Section 192 - Requirement for contact details for debtor

265. This section provides that sections 193, 194 and 195 apply where Revenue Scotland is owed money by a debtor but has no contact details and a designated officer reasonably believes that a third party (which must be a company or local authority and cannot be a charity or an organisation operating on behalf of a charity) holds the contact details.
Section 193 - Power to obtain details

266. This section provides a designated officer of Revenue Scotland with a power, by means of a written notice, to require the third party to provide the contact details of the debtor outlined in section 192. The notice must name the debtor. The third party is obliged to provide contact details of the debtor in accordance with the timescale and in the form set out in the notice.

Section 194 – Reviews and appeals against notices or requirements

267. This section provides the third party with a right of review or appeal against a notice under section 193 but only on the basis that it would be unduly onerous to comply.

Section 194A – Power to modify section 194

268. This section provides a power for the Scottish Ministers to modify by order (subject to affirmative procedure) section 194(2). Such orders can provide as to whether certain decisions in relation to the giving of notices under section 193, or any requirements contained within such notices, are appealable (generally or in certain circumstances only) or not appealable for the purposes of section 198(1)(g).

Section 195 - Penalty

269. These two sections provide that in the event that the third party fails to comply with a notice under section 193, a £300 penalty would apply. Section 196 confers the Scottish Ministers with a power to change the amount of the penalty by order if it appears to Ministers that there has been a change in the value of money since the last relevant date (either when this section came into force or on previous dates when this penalty has been changed). Such orders are subject to the affirmative procedure.

PART 11 – REVIEWS AND APPEALS

CHAPTER 1 — INTRODUCTORY

Overview

Section 197 - Overview

270. This section sets out an overview of the provisions of this Part of the Bill relating to the review and appeal of certain decisions of Revenue Scotland.

Appealable decisions

Section 198 - Appealable decisions

271. This section sets out the types of decision by Revenue Scotland which can be reviewed and appealed, and types of decision which cannot. It also states that the Scottish Ministers may, by order, add, change or remove a type of decision from either of the lists in subsections (1) and (4).
CHAPTER 2 — REVIEWS

Review of appealable decisions

Section 199 - Right to request review
272. This section provides a right to a taxpayer to request that Revenue Scotland should review a decision. It states that no steps of a review will be undertaken until the end of any existing enquiry process. In certain listed circumstances, review is incompetent.

Section 200 - Notice of review
273. This section provides for giving notice of review. Someone who wishes to ask Revenue Scotland to review a decision must do so within 30 days of the specified date (which generally will be the date of being told about that decision). The notice should be in writing to Revenue Scotland and must state the grounds of the review.

Section 201 - Late notice of review
274. This section provides the rules for a review requested outside the time limits. Notice of review may be given after the time limit if Revenue Scotland agrees or where the tribunal gives permission for the late notice. Subsection (3) requires Revenue Scotland to agree to the notice of review being given outside the time limit if the notice is in writing and Revenue Scotland agrees that there was a reasonable excuse for the notice of review being late and that there had been no unreasonable delay to the issue of the notice. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

Section 202 - Duty of Revenue Scotland to carry out review
275. This section sets out the duties of Revenue Scotland to initiate a review by giving the appellant notice within 30 days, or within a reasonable period where 30 days is insufficient, of its view on the matter in question. Subsection (2) disapplies subsection (1) if the appellant has already given a notice of review in relation to the same matter or if Revenue Scotland has concluded a review of the matter already.

Section 203 - Nature of review etc.
276. This section provides for the carrying out of reviews by Revenue Scotland. Revenue Scotland will take into account any steps taken before in deciding the matter in question, and any evidence provided by the taxpayer at a reasonable stage. The review may determine that Revenue Scotland’s view of the matter in question is upheld, varied or cancelled.

Section 204 - Notification of conclusions of review
277. This section requires Revenue Scotland to notify the appellant of the result of the review within 45 days (or within another agreed period) of the appellant being notified under section 202 of Revenue Scotland’s view on the matter in question. Subsection (3) provides that, where Revenue Scotland does not give notice of its conclusion about the review within the required time period, the review is treated as having concluded that Revenue Scotland’s view (given under section 202) is upheld. Subsection (4) provides that in such circumstances, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

Section 205 - Effect of conclusions of review
278. This section sets out that the conclusion of the review has the effect of a settlement agreement unless the taxpayer enters into mediation with Revenue Scotland or gives notice of appeal to the tribunal.

CHAPTER 3 — APPEALS

Section 206 - Right of appeal
279. This section provides a right of appeal to the tribunal, and states that an appellant may not appeal to the tribunal if a review is ongoing, an enquiry is in progress, or the appellant has entered into a settlement agreement with Revenue Scotland.

Section 207 - Notice of appeal
280. This section sets out the way in which an appeal can be raised. An appellant must give notice in writing to the tribunal within 30 days of the completion of an enquiry, of being notified of the decision they wish to appeal, of the conclusion of a review, of a decision to withdraw from mediation, or of a decision to withdraw from a settlement agreement.

Section 208 - Late notice of appeal
281. This section applies where no notice of appeal has been given before the relevant time limit. Notice of appeal may be given after the time limit if Revenue Scotland agrees or where the tribunal may give permission for the late notice (a decision to refuse permission not being appealable). Subsection (3) requires Revenue Scotland to agree to the notice of appeal being given outside the time limit if the notice is in writing and Revenue Scotland agrees that there was a reasonable excuse for the notice of appeal being late and that there had been no unreasonable delay to the issue of the notice. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

Section 209 - Disposal of appeal
282. This section provides that the tribunal should determine in an appeal whether Revenue Scotland’s view of the matter being appealed should be upheld, varied, or cancelled. Part 4 of the Bill contains further provision about appeals to the tribunal, and about appeals from the tribunal to the Court of Session.

CHAPTER 4 — SUPPLEMENTARY

Section 210 – Reviews and appeals not to postpone recovery of tax
283. Subsection (1) provides that where a review or appeal takes place, any tax charged or interest or penalty continues to apply and remains payable as if there had been no review or appeal. Subsection (2) gives the Scottish Ministers a power to make regulations for the postponement of any tax, penalty or interest pending reviews or appeals. Regulations may include provision about: applications by appellants to postpone amounts of tax, penalties and interest; the effect of any determination by Revenue Scotland on such applications; agreements between appellants and Revenue Scotland about the postponement of amounts of tax, penalties and interest; applications to the tribunal for such postponement; and appeals against
determinations by Revenue Scotland and decisions by the tribunal on such applications. Such regulations are subject to the affirmative procedure.

Section 211 - Settling matters in question by agreement

284. This section sets out the rules by which reviews, mediation and appeals can be settled by agreement between the appellant and Revenue Scotland, including the time limit for the appellant to withdraw from such an agreement. Subsection (1) defines what is meant by a ‘settlement agreement’. Subsection (2) provides that the consequences of a settlement agreement are to be the same as if the tribunal had determined the outcome of an appeal, unless the appellant notifies Revenue Scotland within 30 days that the appellant wishes to withdraw from the agreement (subsection (3)). Subsection 2A provides that a settlement agreement is not to be treated as a decision of the Tribunal in terms of onward appeal as provided for in Sections 31 and 33. Subsection (4)(a) provides that where the settlement agreement is not in writing, subsection (2) does not apply unless the fact that the agreement was reached is confirmed in writing by Revenue Scotland to the appellant or by the appellant to Revenue Scotland. Subsection (4)(b) provides that if the agreement is not in writing, then the date that the confirmation notice was given is to be taken as the date of the agreement between Revenue Scotland and the appellant. In this section, references to an appellant include a person acting on behalf of the appellant in relation to the review, mediation or appeal.

Section 212 - Application of this Part to joint buyers

285. This section provides for situations when one or some (but not all) the buyers in a land transaction seek a review, mediation or appeal of a tax assessment in relation to LBTT. In this situation, in accordance with subsection (2), Revenue Scotland must notify all the buyers whose identity is known of the review, mediation or appeal; any of the buyers may participate in the review, mediation or appeal; and the agreement of all the buyers is required before Revenue Scotland can enter into a settlement agreement. Subsection (4)(e) provides that in the case of an appeal relating to the transaction, the tribunal’s decision binds all of the buyers.

Section 213 - Application of this Part to trustees

286. This section provides for situations when the buyer in relation to LBTT is a trust, and where one or some (but not all) of the trustees seek a review, mediation or appeal of a tax assessment. In a review or mediation, Revenue Scotland must notify all the trustees whose identity is known of the review or mediation; any of the trustees may participate in the review or mediation; and the agreement of all the trustees is required before Revenue Scotland can enter into a settlement agreement. In an appeal, the trustee bringing the appeal must inform the other trustees, all trustees may take part in the appeal, and the decision of the tribunal is binding on all trustees.

Section 214 - References to the “tribunal”

287. This section sets out the definition of the term “the tribunal” for the purposes of this Part of the Bill to mean the First-tier Tribunal or the Upper Tribunal (where determined by tribunal rules). This reflects that tribunal rules might provide for certain types of proceedings to begin in the Upper Tribunal (in which case an appeal to the Court of Session will not be a “second appeal” within the meaning of section 35).
Section 215 - Interpretation

288. This section defines expressions used in this Part of the Bill and makes other interpretative provision, including about the meaning of the term “matter in question”. It also makes clear that a reference to a notification means a notification in writing and that a reference to an appellant includes a person acting on behalf of the appellant except in certain circumstances.

PART 12 – FINAL PROVISIONS

Interpretation

Section 216 – General Interpretation

289. This section provides a list and explanation of general terms which are used throughout the Bill.

Section 217 – Index of defined expressions

290. This section introduces schedule 5 which contains an index of the main expressions defined or explained in the Bill.

Subordinate legislation

Section 218 – Subordinate legislation

291. This section sets out the parliamentary procedure to which the various delegated powers will be subject.

Ancillary provision

Section 219 – Ancillary provision

292. This section provides a power for the Scottish Ministers to make ancillary provision in relation to the Bill.

Modifications of enactments

Section 220 – Minor and consequential modifications of enactments

293. This section introduces schedule 4 which sets out minor and consequential amendments and repeals of enactments made as a result of the provisions in the Bill.

Crown application

Section 221 – Crown application: criminal offences

294. The Bill applies to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). In line with usual practice for Acts of the Scottish Parliament, section 221 has effect that the Crown cannot be found criminally liable in terms of the offences created by the Bill, such as those set out in sections 146 (offence of concealing etc. documents following information notice) and 147 (offence of concealing etc. documents following information notification). However, through the mechanism in subsection (2) any
unlawful conduct on the part of Crown bodies can be declared unlawful. Subsection (3) clarifies that section 221 does not exempt civil servants from criminal prosecution; this has particular relevance to the offence in section 17 (wrongful disclosure of protected taxpayer information).

Section 222 – Crown application: powers of entry

295. This section provides that power of entry in relation to Crown land can be granted only with the consent of the appropriate authority. The section sets out a table defining for the purposes of this Bill what is considered “Crown land” and who the relevant authority is.

Section 223 – Crown application: Her Majesty

296. This section provides that nothing in this Bill affects Her Majesty in Her private capacity.

Commencement and short title

Section 224 – Commencement

297. This section sets out those sections which will come into force on the day after Royal Assent and states that the other provisions come into force at a time specified in order(s) made by the Scottish Ministers.

Section 225 – Short title

298. This section provides that the short title of the Bill, once passed, would be the Revenue Scotland and Tax Powers Act 2014.

SCHEDULE 1 – REVENUE SCOTLAND

299. This schedule is introduced by section 2 and makes further provisions on the membership, procedures and staffing of Revenue Scotland.

Revenue Scotland

Membership

300. Paragraph 1 sets out provisions for the membership of Revenue Scotland. No fewer than five and no more than nine members are to be appointed by the Scottish Ministers, one of whom is to be appointed to the role of Chair. The minimum and maximum number of members may be amended by an order made by Ministers. Ministers will determine the period and terms of appointment of members of Revenue Scotland, and may reappoint those who already are or may have been members. A member may resign from Revenue Scotland by giving written notice to Ministers.

Disqualification

301. Paragraph 2 sets out those persons to be disqualified from becoming members or holding membership of Revenue Scotland. These persons include Ministers, elected members of the Scottish, UK and European Parliaments, local authority councillors, officers of the Crown and civil servants. A person would also be disqualified if they are or have been insolvent, disqualified as a company director under the Company Directors Disqualification Act 1986
(c.46), or disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Removal of members
302. Paragraph 3 provides that the Scottish Ministers can remove a member should that member become disqualified as described above. Ministers may also remove a member if that member has been absent from meetings of Revenue Scotland for a period longer than six months without permission from Revenue Scotland, or Ministers consider that the member is otherwise unfit to be a member or is unable to carry out their functions as a member. Ministers are required to give a member written notice of their removal from Revenue Scotland.

Remuneration and expenses
303. Paragraph 4 makes provision for Revenue Scotland, with the approval of Ministers, to determine the remuneration of its members and members of its committees, and for the reimbursement of expenses incurred by those members when carrying out their functions.

Committees
304. Paragraph 5 makes provision for Revenue Scotland to establish committees for any purpose relating to its functions. Revenue Scotland may also determine the composition of its committees and appoint persons to those committees who are not members of Revenue Scotland. Persons appointed as a member of a committee, but who are not members of Revenue Scotland, are not entitled to a vote at the meetings of the committee.

Procedure
305. Paragraph 6 sets out that Revenue Scotland may regulate its own procedures and that of its committees. The validity of proceedings set by Revenue Scotland and its committees is not affected by any membership vacancy, any defect in the appointment of a member or the subsequent disqualification of a member after appointment.

Internal delegation by Revenue Scotland
306. Paragraph 7 provides that Revenue Scotland may authorise a member, a committee, the chief executive or any other member of staff to exercise its functions. Internal delegation of authority does not affect Revenue Scotland’s responsibility for the exercise of those functions. “External” delegation of functions is provided for in section 4 of the Bill.

Chief Executive and other staff
307. Paragraph 8 provides for Revenue Scotland to employ a chief executive and that the person holding this position may not be a member of Revenue Scotland. The Scottish Ministers may appoint the first chief executive of Revenue Scotland through consultation with the Chair (should a person hold that position at the time of appointment of the chief executive). Each subsequent chief executive may be appointed by Revenue Scotland, with approval of Ministers, on such terms as it may determine. Revenue Scotland may also, again with approval of Ministers, appoint other members of staff on such terms as it may determine.
Powers

308. Paragraph 9 provides Revenue Scotland with powers to do what it considers necessary or expedient in connection with the exercise of its functions, or incidental or conducive to the exercise of those functions.

SCHEDULE 2 – THE SCOTTISH TAX TRIBUNALS

Part 1 – Appointment of members

President of the Tax Tribunals: eligibility for appointment

309. Paragraph 1 sets out that a person, to be appointed as President of the Tax Tribunals, must satisfy the Scottish Ministers that their experience and training is appropriate. An individual must have been practising for 10 years as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland.

First-tier Tribunal: ordinary members

310. Paragraph 2 provides that the Scottish Ministers must appoint ordinary members of the First-tier Tribunal (after consulting the Lord President) and will, by regulations, define the experience, qualifications and training required to be appointed as an ordinary member of the First-tier Tribunal.

First-tier Tribunal: legal members

311. Paragraphs 3 and 4 provide that the Scottish Ministers must appoint legal members of the First-tier Tribunal (after consulting the Lord President). To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and be practising and have at least five years’ experience as a solicitor or advocate in Scotland. A person meets the criteria set out in subparagraphs (3) and (4) if the person meets a description to be specified by the Scottish Ministers in regulations (see also paragraph 8).

Upper Tribunal: legal members

312. Paragraphs 5 and 6 provide that the Scottish Ministers must appoint legal members of the Upper Tribunal (after consulting the Lord President). To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and be practising and have at least 10 years’ experience as a solicitor or advocate in Scotland. A person meets the criteria set out in subparagraphs (5) and (6) if the person meets a description to be specified by the Scottish Ministers in regulations (see also paragraph 8).

Disqualification from office

313. Paragraph 7 lists positions that would disqualify a person from being President or a member of the Tax Tribunals.
Eligibility under regulations

314. Paragraphs 8 and 9 provide further detail about the content of the regulations that can be made under paragraphs 4(2) and 6(2). In particular, they allow for regulations to take account of practice as an English lawyer or in legal work outside of practice or employment as a lawyer.

Part 2 – Conditions of membership etc.

Application of this Part

315. Paragraph 10 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Initial period of office

316. Paragraph 11 allows that a person appointed to the Tax Tribunals holds the position for five years.

Reappointment

317. Paragraphs 12, 13 and 14 allow for the reappointment of members of the Tax Tribunal for a period of five years and sets out the exceptions that would prevent reappointment.

Termination of appointment

318. Paragraph 15 sets out the three ways in which a member of the Tax Tribunals can cease to hold the position.

Pensions etc.

319. Paragraph 16 provides for the Scottish Ministers to make arrangements in relation to pensions, allowances and gratuities.

Oaths

320. Paragraph 17 sets out that all members of the Tax Tribunals must swear an oath in the presence of the President of the Tax Tribunals.

Other conditions

321. Paragraph 18 provided that Scottish Minister may set the terms and conditions on which members of the Tax Tribunal hold the position.

Part 3 - Conduct and discipline

Application of this Part

322. Paragraph 19 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.
Conduct rules

323. Paragraphs 20, 21 and 22 set out the Scottish Ministers’ responsibility for the conduct of members of the Tax Tribunals, provides power for Ministers to make regulations regarding the conduct and details what these regulations may contain.

Reprimand etc.

324. Paragraphs 23 and 24 provide for disciplinary action to be taken against members of the Tax Tribunal by the President of the Tax Tribunals.

Suspension of membership

325. Paragraphs 25 and 26 provide for the suspension of members of the Tax Tribunal by the President of the Tax Tribunals.

Judicial Complaints Reviewer

326. Paragraphs 27 and 28 set out the role of the Judicial Complaints Reviewer, established under the Judiciary and Courts (Scotland) Act 2008 (asp 6), in relation to the Tax Tribunals.

Part 4 – Fitness and removal

Application of this Part

327. Paragraph 29 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Constitution and procedure

328. Paragraphs 30 and 31 set out the arrangements that relate to a fitness assessment tribunal. The purpose of the fitness assessment tribunal is to determine whether a member of the Tax Tribunal is fit to hold the position of member of the tribunals, as set out in subparagraph 30(3).

Composition and remuneration

329. Paragraphs 32 and 33 provide for who will sit on a fitness assessment tribunal and their remuneration.

Proceedings before fitness assessment tribunal

330. Paragraphs 34 and 35 provide for the proceedings a fitness assessment tribunal will follow.

Suspension during investigation

331. Paragraphs 36, 37 and 38 provide for the suspension of a member of the Tax Tribunals at any time before a fitness assessment tribunal reports.
Report and removal
332. Paragraphs 39 and 40 set out the reporting arrangements of a fitness assessment panel and allow for the removal of a member of the Tax Tribunals if the member is found to be unfit.

Application of this Part to the President of the Tax Tribunals
333. Paragraph 41 sets out which paragraphs of Part 4 of Schedule 1 apply to the President of the Tax Tribunals.

Interpretation
334. Paragraph 42 sets out how unfitness to hold a position as a member of the Tax Tribunals should be interpreted.

SCHEDULE 3 – CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

Introduction
335. As set out in paragraph 1, this schedule applies to a claim under section 97, 98 or 99 of this Bill.

Making of claims
336. Paragraph 2 provides for the process by which someone may make a claim under section 97, 98 or 99. Revenue Scotland may determine the form by which a claim must be made. Making a claim for repayment of tax requires evidence that the tax has been paid.

Duty to keep and preserve records
337. Paragraph 3 provides that a person who wishes to make a claim under section 97, 98 or 99 must keep and preserve any records that may be needed to enable the person to make a correct and complete claim. It lists the types of records that generally need to be kept and sets out the maximum time period for which such records need to be kept.

338. It allows the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved under paragraph 3. The regulations are subject to negative procedure and may make reference to things specified in a notice published and not later withdrawn by Revenue Scotland. Examples are given of documents that may be deemed as “supporting documents”.

Preservation of information etc.
339. Paragraph 4 provides that the duty in paragraph 3 to preserve records under that paragraph may be satisfied by preserving records (or the information contained in them) in an alternative form (such as microfiche or an electronic facsimile) and by any means, subject to any conditions or exceptions that may be prescribed by Revenue Scotland.
Penalty for failure to keep and preserve records

340. Paragraph 5 provides that there is a penalty for failing to keep records, but that the penalty is not incurred if other documentary evidence can show the same information.

Reasonable excuse for failure to keep and preserve records

341. Paragraph 5A provides that if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person’s behalf for a failure to comply with paragraph 3 of this schedule, then the person is not liable to pay a penalty under paragraph 5 of this schedule arising from that failure. The section also clarifies some circumstances in which reasonable excuse does not apply.

Assessment of penalties under paragraph 5

342. Paragraph 5B provides that, where a person becomes liable for a penalty under paragraph 5, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of the penalty must be made within 12 months of the person becoming liable to the penalty.

Enforcement of penalties under paragraph 5

343. Paragraph 5C provides that a penalty under paragraph 5 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review or appeal against the penalty is given (under section 200 or 207 respectively), the penalty must be paid within 30 days of the review being concluded or the appeal determined or withdrawn, whichever applies. If mediation has been entered into following review, the penalty must be paid within 30 days of notice of withdrawal from mediation being given (if this applies).

Power to change penalty provisions in paragraphs 5 to 5C

344. Paragraph 5D provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under paragraphs 5 to 5C of this schedule. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this paragraph do not apply to a failure which began before the date on which the regulations came into force.

Amendment of claim by claimant

345. Paragraph 6 provides that a claimant can amend their claim within 12 months, unless Revenue Scotland gives notice during that period that it is carrying out an enquiry.

Correction of claim by Revenue Scotland

346. Paragraph 7 provides that Revenue Scotland may correct obvious errors or omissions in a claim, within nine months of the claim being made. The claimant may reject this correction within three months.

Giving effect to claims and amendments

347. Paragraph 8 provides that Revenue Scotland should make repayment or discharge a determination as soon as practicable after a claim is made. Revenue Scotland may give effect to this on a provisional basis.
Notice of enquiry

348. Paragraph 9 provides that Revenue Scotland may enquire into a claim or amendment of a claim. Revenue Scotland must give the claimant notice that it is going to carry out an enquiry within three years of the claim being made or amended. A claim or amendment may only be subject to one notice of enquiry.

Completion of enquiry

349. Paragraph 10 provides that Revenue Scotland will notify a claimant when its enquiries have been completed and state the conclusions of the enquiry. The closure notice must be issued within three years of the date of the claim and must state either that no amendment is required, or that the claim is insufficient or excessive and amend it to reflect this.

Direction to complete enquiry

350. Paragraph 11 provides that a claimant may apply to the tribunal for a direction that Revenue Scotland issue a closure notice, and completes its enquiry, within a specified period. The tribunal must give a direction unless there are reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 10

351. Paragraph 12 provides that, once a closure notice has been issued, Revenue Scotland must carry out an assessment, make a repayment or discharge a determination within 30 days.

Appeals against amendments under paragraph 10

352. Paragraph 13 provides that a claimant may appeal against a closure notice, and sets out the procedure by which that appeal must be made.

SCHEDULE 4 – MINOR AND CONSEQUENTIAL MODIFICATIONS

353. Schedule 4 makes consequential amendments to listed Acts of the Scottish Parliament. One of the effects is that Revenue Scotland is made subject to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) and the other Acts generally applicable to devolved public bodies. The legislation for LBTT and SLfT is also amended in consequence of the provisions of the Bill, for example to provide that references to the ‘Tax Authority’ in LBTT(S)A 2013 and LT(S)A 2014 mean Revenue Scotland.

SCHEDULE 5 – INDEX OF DEFINED EXPRESSIONS

354. Schedule 5 provides an index to definitions used in the Bill.
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

REVENUE SCOTLAND AND TAX POWERS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee (“the Committee”) in its consideration of the Revenue Scotland and Tax Powers Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were introduced, amended or removed from the Bill at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 30A - Power for the Scottish Ministers to make regulations regarding voting in a case before the First-Tier Tribunal or Upper Tribunal which is to be decided by two or more members

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
</tr>
<tr>
<td>Amended or new:</td>
<td>new</td>
</tr>
</tbody>
</table>

Provision

2. In relation to the power in section 30A, sections 27 and 28 make provision about how decisions in the Scottish Tax Tribunals are to be made. The power in section 30A allows the Scottish Ministers to provide for how decisions are to be voted for when tribunals are composed of 2 or more members, for example by giving a chairing member a casting vote in the event of a tie or for a decision to be made unanimously or by majority.

Reason for taking power

3. The Scottish Tax Tribunals set up as part of the Bill will at some point in the future be transferred into the new Scottish Tribunals Service structure set up as a result of the provisions in the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The process of this transfer will be made easier if the legislation underpinning the Scottish Tax Tribunals mirrors that in the 2014 Act.

4. A number of the amendments made to the Bill at Stage 2 were therefore to align the provisions concerning the Scottish Tax Tribunals with those set out in the 2014 Act. The
This document relates to the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (SP Bill 43A)

regulation making power in section 30A has been added at Stage 2 to mirror the equivalent power in section 41 of the 2014 Act.

5. If a panel of the First-tier or Upper Tribunal consists of an even number of members, a tie is naturally possible. Generally, a tie is something that needs to be dealt with. In addition, it may be that it is appropriate to make provision for particular types of decisions to be taken unanimously (for example, in important cases). This is all for the sake of ensuring legal certainty and clarity in decision-making.

Reason for choice of procedure

6. Affirmative procedure is considered to be appropriate as this power concerns the question of how decisions are made in the Scottish Tribunals and the similar regulation making power in section 41 of the 2014 Act is subject to affirmative procedure.

Section 45A – Offences in relation to proceedings

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

7. This power allows the Scottish Ministers to create offences and criminal penalties in connection with proceedings before the Scottish Tax Tribunals. Subsection (1)(a) of section 45A describes the things which may be made an offence.

8. As well as allowing offences or criminal penalties to be created in respect of failure or refusal to give or produce evidence, this power allows the Scottish Ministers to specify the circumstances in which a person can refuse to give or produce evidence in proceedings before the Scottish Tax Tribunals. Section 45A(2) sets out maximum penalties that may be provided for in the regulations. If the offence is triable summarily only then the maximum penalties would be imprisonment for not more than 12 months or a fine not exceeding level 5 on the standard scale (or both). If the offence is triable either summarily or on indictment the maximum penalties would be, on summary conviction, imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (or both). On conviction on indictment, the maximum penalties would be imprisonment not exceeding 2 years or a fine (or both). Before making regulations under subsection (1), the Scottish Ministers must obtain the Lord President’s approval.

Reason for taking power

9. As explained in paragraph 4, a number of the amendments made to the Bill at Stage 2 were to align the provisions concerning the Scottish Tax Tribunals with those set out in the 2014 Act. The regulation making power in section 45A has been added at Stage 2 to mirror the equivalent power in section 67 of the 2014 Act. This power allows offences and criminal penalties to be created within the Scottish Tax Tribunals system where it is required and appropriate to do so in relation to the devolved taxes.
Reason for choice of procedure

10. Affirmative procedure is considered to be appropriate, alongside a requirement for the approval of the Lord President, as this power concerns the creation of criminal offences and penalties. The similar regulation making power in section 67 of the 2014 Act is subject to affirmative procedure.

Section 46(1) - Power to make Scottish Tax Tribunal Rules

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative procedure
Amended or new: amended

Provision

11. This power allows the Scottish Ministers to make Scottish Tax Tribunal Rules regulating the practice and procedure to be followed in proceedings in the Scottish Tax Tribunals. Tribunal Rules may also contain other provision appropriate for the Tax Tribunals including provision regarding the exercising of their functions. Various sections in the Bill allow Tribunal Rules to make provision on matters relating to the work of the Scottish Tax Tribunals.

12. A number of other provisions in the Bill were added or amended at Stage 2 in relation to Tribunal Rules made under section 46(1). These are:

- Section 30B(1) - This power allows the Scottish Ministers to provide in Tribunal Rules for who is to chair when tribunals are composed of more than one member. It is considered that this matter is appropriately addressed in Rules as it is largely an operational, rather than substantive question. All members of tribunals will have equal judicial capacity in all their functions, by virtue of section 26. The type and qualification of members who will comprise a tribunal is determined by composition regulations, made under section 30(1), and subject to the affirmative procedure.

  The determination of the identity of the particular member who is to chair is not a question of principle, and is therefore most appropriately dealt with operationally by Rules made under section 30B(1). Also to be noted is the reference to types of members or particular expertise (and that different provision can be made for different purposes).

- Section 41(2) – this allows Tribunal Rules to provide where and when the Scottish Tax Tribunals are to be convened. The Rules may allow the President of the Tax Tribunals to determine this question.

- Section 49(2)(ca) – this allows Tribunal Rules to make provision for conjoining applications in certain circumstances.

- Section 50(2)(ea) – this allows Tribunal Rules to make provision for hearings in two or more proceedings to be held together.
Section 51(4) – this allows Tribunal Rules to make provision about the form, manner, content, recording, issuing and publication of tribunal decisions.

Reason for taking power

13. Rules governing the practice and procedure to be followed in proceedings in the Scottish Tax Tribunals relate to technical procedural matters which will be detailed and may need to be amended from time to time. It is not therefore appropriate to set out these matters on the face of the Bill.

14. The Bill as introduced proposed that Scottish Tax Tribunal Rules be made by an Act of Sederunt by the Court of Session. Until the Scottish Tax Tribunals become judicially administered by the proposed Scottish Courts and Tribunals Service, with Rules drafted under the auspices of the Scottish Civil Justice Council (“SCJC”), Tribunal Rules will instead be made by the Scottish Ministers rather than the Court of Session. This is a similar arrangement as is proposed under paragraph 4 of schedule 9 to the 2014 Act, which requires that the Scottish Ministers make Tribunal Rules in regulations which are subject to negative procedure.

Reason for choice of procedure

15. Negative procedure is considered to be appropriate because Tribunal Rules will be technical and administrative in nature. The corresponding provision in the 2014 Act provides that regulations making Tribunal Rules are subject to negative procedure.

Section 70(b) - Power to prescribe conditions or exceptions to the ability to preserve information in records in any form or by any means.

Power conferred on: the Scottish Ministers  
Power exercisable by: regulations made by statutory instrument  
Parliamentary procedure: negative procedure  
Amended or new: new

Provision

16. The provision allows the Scottish Ministers to make regulations that provide for conditions or exceptions to the provision in section 70(b) that the duty in section 69 to preserve records may be satisfied by preserving the information contained in the records in any form and by any means.

Reason for taking power

17. At Stage 1 the Committee queried why section 70(b) of the Bill as introduced allowed for such conditions or exceptions to be specified in writing by Revenue Scotland. The Committee recommended that it would be more appropriate for the power in section 70(b) as introduced to be exercisable by a form of subordinate legislation which would be subject to scrutiny by Parliamentary procedure, rather than by an informal specification written by Revenue Scotland and which would not be subject to Parliamentary scrutiny.
18. The Scottish Government accepted this recommendation and undertook to introduce a new regulation making power at Stage 2, subject to negative procedure, for the Scottish Ministers to specify the conditions or exceptions to the section 70(b) provision.

Reason for choice of procedure

19. Negative procedure is considered to be appropriate because this power generally involves setting conditions or exceptions which are administrative in nature. The power will provide flexibility to amend the conditions and exceptions in the light of experience.

Section 71D(1) - Power to make provision (or further provision) about penalties under Part 6, Chapter 2 (failure to keep and preserve records).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

20. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 6, Chapter 2 of the Bill for failure to keep and preserve records as required under section 69. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

21. This power is necessary in order to make further provision, or to amend current provision in light of experience, about penalties relating to a failure to keep and preserve records.

22. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

23. While detail has now been included in the Bill, it is still necessary to include this power to allow some flexibility around the penalty provisions. For example, the penalty amount may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

Reason for choice of procedure

24. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.
Section 72(2) - Power for the Scottish Ministers to make regulations that make provision for keeping and preserving records that relate to transactions that are not notifiable for Land and Buildings Transaction Tax (“LBTT”).

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative procedure  
**Amended or new:** amended  

**Provision**

25. The provision allows the Scottish Ministers to make regulations that provide for the keeping and preservation of records in relation to LBTT transactions that are not notifiable. The regulations may apply sections 69 to 71C (with or without modifications) to buyers where the transaction does not need to be notified.

**Reason for taking power**

26. To allow the Scottish Ministers to be able to require records relating to a LBTT transaction that is not notifiable to be kept and preserved. If a buyer in such a transaction fails to keep and preserve these records, the buyer can be liable to the penalty in section 71.

27. At Stage 2 the Bill was amended to include four new sections (71A to 71D) in relation to the penalty in section 71 for failing to keep and preserve records. A necessary amendment was also made to section 72(4) to ensure that the scope of the sections to which the regulations can apply was widened to include three of these new sections (sections 71A to 71C).

**Choice of procedure**

28. Affirmative procedure is considered appropriate because regulations made under section 72(2) can make sections 69 to 71C apply to LBTT transactions that are not notifiable, including making a buyer in such a transaction liable to the penalty in section 71.

Section 102(1) - Power to make regulations preventing reimbursement where this would unjustly enrich the claimant.

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative procedure  
**Amended or new:** amended  

**Provision**

29. The provision allows the Scottish Ministers to make regulations that prevent any reimbursement for the purposes of a defence of unjustified enrichment. Unjustified enrichment may occur where a repayment of tax is made to a taxpayer, but the taxpayer has not ultimately borne the cost of the tax. Section 103 provides that the regulations may make provision for penalties for breaches of obligations imposed by virtue of section 102(4).
Reason for taking power

30. To ensure that the Scottish Ministers have the power to prevent a repayment of tax unjustly enriching a claimant. A repayment of tax could proceed if the arrangements to reimburse the persons who ultimately paid the tax comply with the regulations.

31. Records must be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out. Given the importance of ensuring that any repayment of tax is reimbursed to the persons who ultimately paid the tax, penalties could also apply for non-compliance with obligations set out in the regulations.

Reason for choice of procedure

32. At Stage 1 the Committee queried why regulations made under this power were only subject to affirmative procedure where primary legislation was being amended. The Committee took the view that as these regulations can include provision about a penalty under section 103 of the Bill (as introduced), to ensure consistency with the other penalty-related regulation making powers in the Bill, regulations under section 102(4) should always be subject to affirmative procedure, whether primary legislation is being amended or not.

33. Having taken account of the Committee’s recommendation, the Bill has been amended at Stage 2 so that regulations made under the power in section 102(1) are now always subject to affirmative procedure.

Section 144A - Power to modify section 144(2)-(7) in relation to whether certain decisions about information notices are appealable or not appealable.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

34. This power allows the Scottish Ministers to modify section 144(2)-(7) to provide for whether certain decisions or requirements relating to information notices are:

- appealable for the purposes of section 198(1)(f)
- to be appealable only on certain grounds or in certain circumstances
- not appealable

35. An information notice is defined in section 123(1) of the Bill (as amended at Stage 2) as being a notice issued under section 115, 116, 119 or 122 of the Bill. Section 144 of the Bill already provides for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances. Section 198(1)(f) and 198(2) provide that a decision of Revenue Scotland in relation to the giving of an information notice is appealable, subject to section 144.
Reason for taking power

36. This power is necessary in order to modify, in the light of experience or for compliance or operational effectiveness purposes, the list of decisions relating to information notices that are appealable or not appealable.

Reason for choice of procedure

37. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. A similar order making power in section 198(6) of the Bill to amend the list of Revenue Scotland decisions that are appealable or not appealable is also subject to affirmative procedure.

Section 159A(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 2 (failure to make returns or pay tax on time).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure
Amended or new: new

Provision

38. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 2 of the Bill for failure to make a return by the filing date or failure to pay tax on time. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

39. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to a failure to make a return before the filing date or pay tax on time. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

40. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

41. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.
Section 166A(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 3 (giving documents with inaccuracies to Revenue Scotland or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax).

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative procedure  
**Amended or new:** new

**Provision**

42. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 3 of the Bill which covers giving Revenue Scotland a document containing an inaccuracy or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax.

43. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

**Reason for taking power**

44. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to giving Revenue Scotland a document containing an inaccuracy or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

45. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

**Reason for choice of procedure**

46. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.
Section 180A(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 4, apart from the penalty in section 179.

Power conferred on:  the Scottish Ministers
Power exercisable by:  regulations made by statutory instrument
Parliamentary procedure:  affirmative procedure
Amended or new:  new

Provision

47. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 4 of the Bill which relate to investigations by Revenue Scotland. Such penalties include a failure (or continued failure) to comply with an information notice, obstruction (or continued obstruction) of an inspection and giving Revenue Scotland inaccurate information or documents in relation to an information notice. The regulations cannot make provision about the penalty in section 179, which is decided by the Upper Tribunal.

48. Such provision which can be made includes the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

Reason for taking power

49. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to investigations in Part 8, Chapter 4 of the Bill. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

50. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

51. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.
Section 181G(1) - Power to make provision (or further provision) about penalties under Part 8, Chapter 5, failing to register or unregister for tax.

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative procedure  
**Amended or new:** new

**Provision**

52. This power allows the Scottish Ministers to make provision, or further provision, about penalties under Part 8, Chapter 5 of the Bill which relate to a failure to register or unregister for Scottish Landfill Tax (“SLfT”), as required by sections 22 and 23 of the Landfill Tax (Scotland) Act 2014.

53. Such provision which can be made includes the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.

**Reason for taking power**

54. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties relating to registration for SLfT. For example, the penalty amounts may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

55. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

**Reason for choice of procedure**

56. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

Section 194A - Power to modify section 194(2) in relation to whether certain decisions about notices under section 193 are appealable or not appealable.

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** affirmative procedure  
**Amended or new:** new
57. This power allows the Scottish Ministers to modify section 194(2) to make further provision about whether certain decisions or requirements relating to a notice under section 193 are:

- appealable for the purposes of section 198(1)(g)
- to be appealable only on certain grounds or in certain circumstances
- not appealable

58. Section 193 provides a designated officer with the power to give a notice to a third party requiring them to provide the contact details of a debtor to Revenue Scotland. Section 194(2) of the Bill already provides that a third party receiving such a notice can only give notice of review or appeal on the grounds that to comply with such a notice would be unduly onerous. Section 198(1)(g) and 198(3) provide that a decision of Revenue Scotland in relation to the giving of a notice under section 193 is appealable, subject to section 194(2).

Reason for taking power

59. This power is necessary in order to modify, in the light of experience or for compliance or operational effectiveness purposes, whether certain decisions or requirements relating to a notice given under section 193 are appealable or not appealable.

Reason for choice of procedure

60. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation. A similar order making power in section 198(6) of the Bill to amend the list of Revenue Scotland decisions that are appealable or not appealable is also subject to affirmative procedure.

Schedule 3 paragraph 5D(1) - Power to make provision (or further provision) about penalties under paragraphs 5 to 5C in schedule 3 (failure to keep and preserve records as required under schedule 3, paragraph 3).

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Provision

61. This power allows the Scottish Ministers to make provision, or further provision, about penalties under paragraphs 5 to 5C of schedule 3 to the Bill. Such penalties relate to a failure to keep and preserve records in relation to a claim under section 97, 98 or 99 of the Bill, and as required under paragraph 3 of schedule 3. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. The regulations cannot create criminal offences but can modify primary legislation. Provision made under these regulations does not apply to a failure which began before the date on which the regulations came into force.
Reason for taking power

62. This power is necessary in order to make further provision, or amend current provision in light of experience, about penalties for a failure to keep and preserve records in relation to a claim under section 97, 98 or 99 of the Bill. For example, the penalty amount may need to be amended in the future to account for changes in the value of money (inflation or deflation) and the time limits applying to assessment or enforcement of the penalty may need to be amended for compliance or operational effectiveness purposes.

63. The Finance Committee recommended in its Stage 1 report that all penalty-related provisions should be set out in full in primary legislation. A similar request regarding penalty amounts was also made by the Committee. A number of Stage 2 amendments were made to this effect, including a range of regulation making powers for the Scottish Ministers to make further provision about penalties in the Bill.

Reason for choice of procedure

64. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION REMOVED AT STAGE 2

Section 73(1) on introduction – Power to make regulations about the dates by which tax returns must be made to Revenue Scotland.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

65. This regulation making power has been removed following amendment of the Bill at Stage 2. The power concerned enabled the Scottish Ministers by regulations to make provision about the dates by which tax returns must be made to Revenue Scotland.

66. It was decided that the dates by which tax returns must be made to Revenue Scotland should be provided for in tax-specific legislation and not in the Revenue Scotland and Tax Powers Bill. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 73(1) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 150(2) on introduction – Power to make further provision about penalties for failure to make a tax return

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure
Provision

67. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 159A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 150 of the Bill, which relates to a failure to make a tax return on or before the filing date.

68. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 150(2) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 151(2) on introduction – Power to make further provision about penalties for failure to pay tax on or before the due date

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<th>Power conferred on:</th>
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<td>Power exercisable by:</td>
<td>regulations made by Scottish statutory instrument</td>
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<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
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Provision

69. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 159A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 151 of the Bill, which relate to a failure to pay tax on or before the due date.

70. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 151(2) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 160(7) on introduction – Power to make further provision about penalties for errors in taxpayer documents

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<tr>
<td>Power exercisable by:</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
</tr>
</tbody>
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Provision

71. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 166A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 160 of the Bill, which relate to submitting documents to Revenue Scotland containing inaccuracies.
72. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 160(7) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 162(4) on introduction – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

73. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 166A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 162 of the Bill, which relate to submitting documents to Revenue Scotland containing inaccuracies attributable to another person.

74. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 162(4) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 163(3) on introduction – Power to make further provision about penalties for failure to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

75. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 166A. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 162 of the Bill, which relate to failing to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability.

76. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 163(3) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.
Section 170(1) on introduction – Power to make further provision about the amount of penalties relating to failure to comply with an information notice, obstruction of an officer during an inspection or providing inaccurate information or documents as a result of an information notice.

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

77. This order making power has been removed following amendment of the Bill at Stage 2 and replaced with the new regulation making power at section 180A. The power concerned enabled the Scottish Ministers by order to change the penalty amounts in sections 167, 168 and 169 of the Bill as introduced where it was felt that there had been a change in the value of money since the amounts were last set.

78. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 170(1) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.

Section 181(2) on introduction – Power to make further provision about penalties for failure to comply with a requirement imposed by or under section 22 or 23 of the Landfill Tax (Scotland) Act 2014

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

79. This regulation making power has been removed following amendment of the Bill at Stage 2 and replaced with the regulation making power at section 181G. The power concerned enabled the Scottish Ministers by regulations to make further provision about penalties under section 181 of the Bill, which relate to failing to comply with a requirement imposed by or under section 22 or 23 of the Landfill Tax (Scotland) Act 2014.

80. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 181(2) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.
Section 196(1) on introduction – Power to change the amount of a penalty arising from a third party failing to comply with a notice to supply contact details of a debtor

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

81. This order making power has been removed following amendment of the Bill at Stage 2 and replaced with the new regulation making power at section 180A. The power concerned enabled the Scottish Ministers by order to change the penalty amount in section 195 of the Bill as introduced where it was felt that there had been a change in the value of money since the amounts were last set.

82. The Bill as amended at Stage 2 has placed all detail regarding penalties into primary legislation as well as creating new regulation making powers to make further provision about penalties for each of Chapters 2, 3, 4 and 5 of Part 8. There is accordingly no requirement now for the power conferred on the Scottish Ministers in section 196(1) of the Bill as introduced and it has therefore been removed by virtue of amendments made to the Bill at Stage 2.
CORRESPONDENCE FROM THE CABINET SECRETARY FOR FINANCE, EMPLOYMENT AND SUSTAINABLE GROWTH TO THE CONVENER, DATED 31 JULY 2014

REVENUE SCOTLAND AND TAX POWERS BILL: STAGE 3

During the Committee’s consideration of the Bill at Stage 2 on 11 June I promised to reflect further on points which were raised by Malcolm Chisholm and Gavin Brown relating to sections 59 and 151 of the Bill respectively. Having done so I would like to explain the amendments I intend to lodge at Stage 3 to address both of these issues; and also to outline the reasons for other Government amendments which I will be bringing forward, all of which I believe are essentially minor and technical.

Section 59: Meaning of “artificial”

As you are aware, section 59 of the Bill provides that a tax avoidance arrangement is artificial if either Condition A or Condition B is met. As originally introduced the Bill provided that Condition B is met if the arrangement lacks commercial substance. However the Committee recommended at paragraph 38 of its Stage 1 Report:

“that the references to commercial substance in subsection (3) & (4) of section 59 need to be broadened to cover non-commercial transactions that have real economic consequences for the taxpayer and the reference to reasonable business conduct in subsection (4) extended to include personal conduct.”

I brought forward two amendments at Stage 2 which were designed to meet the Committee’s recommendation, by providing first that Condition B is met if the arrangement lacks either economic or commercial substance; and second that an additional example of something which might indicate that an arrangement lacks economic or commercial substance is where the arrangement results in a tax advantage which is not reflected in the business risks undertaken by the taxpayer.

The Committee agreed both of these amendments but Malcolm Chisholm asked why I had not specifically extended the reference to “reasonable business conduct” to cover “reasonable personal conduct”, and pointed out that the example cited by the Committee was the matter of a personal gift that has no commercial substance and would not normally be employed in reasonable business conduct.

I propose to address this point by lodging a further amendment to make it expressly clear that the example in section 59(4)(a) of something which might indicate that an arrangement lacks economic or commercial substance is “whether the arrangement is carried out by a person in a manner which would not normally be employed in reasonable business conduct.”

This amendment, together with those already made at Stage 2, would put it beyond doubt that Condition B and the associated example in section 59(4)(a) covers transactions between individuals as well as companies or businesses. It is intended to address in full what I understand to be the thinking behind the Committee’s recommendation at paragraph 38 of its Stage 1 Report, together with Malcolm Chisholm’s specific point about personal gifts which have no commercial substance (but which would have economic substance).

I have taken advice on whether we should also amend section 59(4)(a) to refer to arrangements carried out by a person in a manner which would not normally be employed in
reasonable personal or business conduct, and have reflected carefully on that advice. I have reached the view, for the following reasons, that it would not be appropriate to make that particular amendment:

- The concept of ‘reasonable personal conduct’ would be highly subjective and there is therefore a real risk of introducing uncertainty about the scope of Condition B, potentially giving taxpayers an opportunity to blunt the effectiveness of this aspect of the GAAR by claiming that their conduct is reasonable personal conduct;

- The examples in section 59(4)(a) – (e) of something which might indicate that an arrangement lacks economic or commercial substance are all closely based on recent EU Council Directives which means that Revenue Scotland and the Scottish Tax Tribunals would be able to rely on EU jurisprudence, which would not be possible if we depart from the terms of the corresponding EU Directives; and

- Genuine gifts would not need to be considered against Conditions A or B because they would not be tax avoidance arrangements under section 59(1) of the Bill, as obtaining a tax advantage would not be one of the main purposes of the arrangement. If however there were concealed consideration, and this came to light, the transaction would be taxable on the basis of the concealed consideration. The taxpayer would also be liable to be charged at common law with fraudulently evading an obligation to pay tax.

**Section 151: Penalty for failure to pay tax**

As recommended by the Committee in its Stage 1 Report, I lodged a series of amendments at Stage 2 which were designed to set out the penalties regime in full on the face of the Bill rather than leaving this to secondary legislation. While the Committee welcomed that approach, Gavin Brown suggested that making the penalty if tax is outstanding payable the day after the due date could be a little harsh on the taxpayer on some occasions, for example if there has been a genuine oversight or error by the taxpayer or if there has been a bureaucratic error by Revenue Scotland.

Once again, I undertook to reflect further on this point, and having done so I propose to lodge an amendment to the table in section 151 in respect of Land and Buildings Transaction Tax to provide that the date after which a penalty is incurred is 30 days after the date by which the amount of tax due must be paid. I hope this provides the element of flexibility that Gavin Brown called for at Stage 2.

I do not however believe that a similar amendment is necessary in relation to Scottish landfill tax, since by definition that tax applies to landfill site operators who will be required to make regularly quarterly returns to Revenue Scotland and will therefore be well aware of their obligations in that respect. If however a landfill operator is able to satisfy Revenue Scotland under section 157 of the Bill that there is a reasonable excuse for a failure to make a return then the penalty in section 151 does not arise in relation to that failure. That would cover circumstances in which, for example, there were genuine reasons beyond a landfill operator’s control which meant that the operator was unable to pay the tax on time.

**Other Government Stage 3 amendments**

In addition to the two issues which members of the Committee raised at Stage 2, I will be lodging further Government amendments at Stage 3 to improve the clarity and consistency of the Bill and also the interface between the Revenue Scotland and Tax Powers Bill and the two tax-specific Acts which Parliament has already passed, the Land and Buildings
Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014. None of these amendments will represent any change in our thinking on policy aspects of the Bill; and although there will be a significant number of amendments, I hope that you and other colleagues will agree that they are all entirely minor and technical in character.

In conclusion, I would like to express my thanks once again to the Committee for the substantial work which it has done in considering, taking evidence and reporting on all three tax Bills which the Government has brought forward in the current Session, and the non-partisan approach which it has adopted throughout. I have no doubt that the legislation we have passed is much the better as a result.

JOHN SWINNEY
Delegated Powers and Law Reform Committee

47th Report, 2014 (Session 4)

Revenue Scotland and Tax Powers Bill as amended at stage 2

Published by the Scottish Parliament on 13 August 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

47th Report, 2014 (Session 4)

Revenue Scotland and Tax Powers Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 12 August 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Revenue Scotland and Tax Powers Bill as amended at Stage 2 ("the Bill")\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill is the third of three related Bills brought forward as a consequence of measures enacted in the Scotland Act 2012. It follows the Land and Buildings Transaction Tax (Scotland) Act 2013 which received Royal Assent on 31 July 2013, and the Landfill Tax (Scotland) Act which received Royal Assent on 21 January 2014.

3. In broadest outline, the Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - "the devolved taxes". It establishes Revenue Scotland as a new non-Ministerial Department which will be the tax authority responsible for collecting Scotland's devolved taxes from 1 April 2015.

4. The Bill puts in place a statutory framework which will apply to the devolved taxes, and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

5. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill ("the SDPM\(^2\)).

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\(^1\) Revenue Scotland and Tax Powers Bill [as amended at Stage 2] available at:

\(^2\) Revenue Scotland and Tax Powers Bill Supplementary Delegated Powers Memorandum available at:
http://www.scottish.parliament.uk/S4_Bills/RSTP_SDPM_.pdf
6. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 25th report of 2014.

DELEGATED POWERS PROVISIONS

7. The Committee considered each of the new, removed or substantially amended delegated powers provisions in the Bill after Stage 2.

8. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below, and that it is content with the Parliamentary procedure to which they are subject:

   • Section 30A – Voting for decisions
   • Section 45A – Offences in relation to proceedings
   • Section 54(2) to (4) – Guidance by the President of the Tax Tribunals
   • Section 70(b) – Preservation of information etc.
   • Section 71D – Power to change penalty provisions in sections 71 to 71C
   • Section 72(4) – Further provision: land and buildings transaction tax (“LBTT”)
   • Section 144A - Power to modify section 144
   • Section 159A - Power to change penalty provisions in Chapter 2 of Part 8
   • Section 166A - Power to change penalty provisions in Chapter 3 of Part 8
   • Section 180A - Power to change penalty provisions in Chapter 4 of Part 8 (apart from penalties under section 179)
   • Section 181G - Power to change penalty provisions in Chapter 5 of Part 8
   • Section 194A - Power to modify section 194
   • Paragraphs 8 and 9 of Schedule 2 – Eligibility under regulations for appointment to the First-tier Tribunal and Upper Tribunal
   • Paragraph 5D of Schedule 3 - Power to change penalty provisions in paragraphs 5 to 5C

9. In light of amendments made at stage 2, the delegated powers provisions listed below have been removed from the Bill. The Committee reports that it finds the removal of these powers to be acceptable.

   • Section 73(1) on introduction – Power to make regulations about the dates by which tax returns must be made to Revenue Scotland
• Section 150(2) on introduction – Power to make further provision about penalties for failure to make a tax return

• Section 151(2) on introduction – Power to make further provision about penalties for failure to pay tax on or before the due date

• Section 160(7) on introduction – Power to make further provision about penalties for errors in taxpayer documents

• Section 162(4) on introduction – Power to make further provision about penalties for errors in taxpayer documents attributable to another person

• Section 163(3) on introduction – Power to make further provision about penalties for failure to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability

• Section 170(1) on introduction – Power to make further provision about the amount of penalties relating to failure to comply with an information notice, obstruction of an officer during an inspection or providing inaccurate information or documents as a result of an information notice

• Section 181(2) on introduction – Power to make further provision about penalties for failure to comply with a requirement imposed by or under section 22 or 23 of the Landfill Tax (Scotland) Act 2014

• Section 196(1) on introduction – Power to change the amount of a penalty arising from a third party failing to comply with a notice to supply contact details of a debtor

10. The Committee’s comments and, where appropriate, recommendations on the remaining new, removed or substantially altered delegated powers in the Bill as amended are detailed below.

Section 46(1) - Power to make Scottish Tax Tribunal Rules

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: negative

11. As in the Bill at Stage 1, this power enables the making of Scottish tax tribunal rules, regulating the practice and procedure to be followed in proceedings in the Scottish Tax Tribunals. Various sections in the Bill allow tribunal rules to make provision on matters relating to the work of the Scottish Tax Tribunals.

12. A number of other provisions in the Bill were added or amended at Stage 2 in relation to tribunal rules made under section 46(1). These are:

• Section 30B(1) - This power allows the Scottish Ministers to provide in tribunal rules for who is to chair when tribunals are composed of more than one member.
Section 41(2) – this allows tribunal rules to provide where and when the Scottish Tax Tribunals are to be convened. The rules may allow the President of the Tax Tribunals to determine this question. This provision implements an undertaking which the Scottish Government gave to the Committee, to amend the provision in light of its Stage 1 Report.

Section 49(2)(ca) – this allows tribunal rules to make provision for conjoining applications in certain circumstances.

Section 50(2)(ea) – this allows tribunal rules to make provision for hearings in two or more proceedings to be held together.

Section 51(4) – this allows tribunal rules to make provision about the form, manner, content, recording, issuing and publication of tribunal decisions.

13. The Committee finds that the amendments to the powers in the following sections, in connection with tribunal rules, are acceptable in principle: Sections 30B(1), 41(2), 46, 49(2)(ca), 50(2)(ea), 51(4). The Committee also reports that it is content that the exercise of the powers is subject to the negative procedure.

14. The Committee further reports on the amended section 46(1) as follows:

- The Committee notes that section 46 as amended provides that the Scottish Tax Tribunal Rules would be made by the Scottish Ministers by regulations, rather than by the Court of Session by Act of Sederunt. Section 46 as amended puts in place a similar arrangement to that enacted by paragraph 4 of schedule 9 to the Tribunals (Scotland) Act 2014. That paragraph is a transitional provision which enables the Scottish Ministers to make tribunal rules in regulations until the Scottish Civil Justice Council (SCJC) and the Court of Session are involved in making the rules.

- The Committee also notes that, until the Scottish Tax Tribunals become judicially administered by the proposed Scottish Courts and Tribunals Service, with rules drafted under the auspices of the SCJC, the Tax Tribunal Rules will be made by the Scottish Ministers rather than by the Court of Session. The Committee simply notes in that regard that section 46(3) is not framed as a transitional arrangement. Accordingly, it appears that the intended position that the Tax Tribunal Rules would in future be made by the Court of Session would be dependent upon appropriate provisions being enacted in future under the powers in the Tribunals (Scotland) Act 2014, to achieve that position.
Section 102 – Unjustified enrichment: reimbursement arrangements

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: affirmative (section 218)

15. At Stage 1, the Committee queried why regulations made under this power were only subject to affirmative procedure where primary legislation was being amended. The Committee took the view that as these regulations can include provision about a penalty under section 103 of the Bill (as introduced), to ensure consistency with the other penalty-related regulation making powers in the Bill, regulations under section 102 should always be subject to affirmative procedure.

16. The Bill has been amended at Stage 2, seeking to implement the Committee’s recommendation.

17. Section 218(3)(da) makes the change of procedure, referring to section 102(1). Sections 102 and 103 repeatedly refer to the regulations under section 102 - not only 102(1). Specifically, section 103 which enables the provision for penalties refers to the regulations under section 102.

18. The Committee notes that section 218(3)(da) seeks to implement the Committee’s recommendation at Stage 1 that the exercise of the powers in section 102 should be subject to the affirmative procedure.

19. The Committee reports, however, that the paragraph (da) should refer to section 102, rather than 102(1), given that sections 102 and 103 repeatedly refer to the regulations under the whole of section 102.

Other provisions referred to in the Stage 1 Report

20. The Committee notes that its Stage 1 report made recommendations on two other provisions, where the Scottish Government undertook to bring forward amendments, but the provisions were not so amended at Stage 2. The Committee’s recommendations on these provisions remain the same as at Stage 1.

21. First, the Committee noted at Stage 1 that the Scottish Government would bring forward an amendment to provide that a copy of the Ministerial guidance to Revenue Scotland issued in terms of section 8(1) shall be laid before Parliament.

22. Second, the Committee noted that the Scottish Government would bring forward an amendment to paragraph 31 of schedule 2, so that there is provision for the publication of the rules for the procedures at a fitness assessment tribunal made under that paragraph. This would be consistent with the provision for the rules under paragraph 21 of that schedule.
23. The Committee reports that its recommendations on these provisions remain the same as at Stage 1 and in so doing, invites the Scottish Government to respond to those recommendations.
DELEGATED POWERS AND LAW REFORM COMMITTEE

EXTRACT FROM THE MINUTES

24th Meeting, 2014 (Session 4)

Tuesday 12 August 2014

Present:
Nigel Don (Convener) Mike MacKenzie
Margaret McCulloch Stuart McMillan (Deputy Convener)
John Scott Stewart Stevenson

Apologies were received from Richard Baker.

Revenue Scotland and Tax Powers Bill: The Committee considered the delegated powers provisions in this Bill after Stage 2.
Revenue Scotland and Tax Powers Bill: After Stage 2

11:41

The Convener: Item 3 is consideration of delegated powers provisions in the Revenue Scotland and Tax Powers Bill after stage 2.

Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum, and they will have seen the briefing paper.

Stage 3 consideration of the bill is due to take place on Tuesday 19 August. The committee may therefore wish to agree its conclusions today. The committee is invited to give particular consideration to a number of powers.

The committee may wish to note that section 46 as amended provides that the Scottish tax tribunal rules would be made by the Scottish ministers by regulations, rather than by the Court of Session by act of sederunt. Section 46 as amended puts in place a similar arrangement to that which is enacted by paragraph 4 of schedule 9 to the Tribunals (Scotland) Act 2014. That paragraph is a transitional provision that enables the Scottish ministers to make tribunal rules in regulations until the Scottish Civil Justice Council and the Court of Session are involved in making the rules.

The committee may also wish to note that, until the Scottish tax tribunals become judicially administered by the Scottish courts and tribunals service, with rules drafted under the auspices of the Scottish Civil Justice Council, the tax tribunal rules will be made by the Scottish ministers rather than by the Court of Session.

In that regard, section 46(3) is not framed as a transitional arrangement. Accordingly, it appears that the intended position—that the tax tribunal rules would in future be made by the Court of Session—would be dependent on appropriate provisions being enacted in future under the powers in the Tribunals (Scotland) Act 2014 in order to achieve that position.

Does the committee agree to note the matters that I have outlined in relation to the amended section 46 and report on them accordingly?

Members indicated agreement.

The Convener: The powers in sections 71D(2)(b), 159A(2)(b), 166A(2)(b), 180A(2)(b), 181G(2)(b) and paragraph 5D(2)(b) to schedule 3 enable provision or further provision about the amounts of several penalties that are specified in the bill.

Specifically, they enable the Scottish ministers to change penalty amounts, with no limit on the extent to which they may be changed. The committee may consider that, as a matter of principle, and as expressed by the committee in relation to previous bills, the bill should state suitable maximum levels of permitted increase in the amounts of penalty, beyond which any amounts specified in regulations could not go.

The specific level of those caps is a policy matter and therefore not for the committee to make a recommendation on. However, the committee may wish to report that it does not consider it appropriate to confer on the Scottish ministers an unlimited discretion to change the penalty amounts, and that it considers that the setting of maximum penalties is a matter on which the Parliament should legislate in the bill.

Do members wish to make any comments?

John Scott: It seems perhaps unreasonable that there are no caps on those amounts. It may be the policy intention, in order to create a deterrent effect, to have an unlimited level for penalties that may be applied, but if that is the case it should be made clearer. At present I am left with the feeling that it is, at best, unclear.

Stewart Stevenson: I support the general thrust of what John Scott says. It does not seem that it would be particularly constraining for the bill to contain specified limits that were passed by the Parliament at the outset. Section 71D(1) states:

“The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.”

The penalties can, subsequently, be changed—there is a parliamentary procedure for that. Similarly, paragraph 5D(1) of schedule 3 contains a substantial provision that allows ministers to produce regulations for parliamentary consideration about anything related to penalties.

It would be unsatisfactory for us to have a lacuna between the passing of the bill and the laying of secondary legislation specifying the penalty amounts. It would be far better for there to be a statement in the bill of what the limits are at the point at which the bill is passed, given that the Government can produce regulations to make changes to those amounts at a later date. The committee has previously adopted that position in other contexts.

John Scott: It would be reasonable at the very least to seek an explanation of why the Government has chosen to approach the matter in this way rather than state the amounts in the bill.
The Convener: Do members share my concern that, in principle, penalties should be specified by the Parliament, preferably in primary legislation?

John Scott: Yes.

The Convener: To what extent do we feel that, in principle, it is appropriate that a change to a specified penalty should be in subordinate legislation? Do members share my view that the affirmative procedure must be used? I am trying to put some flesh on the principle that we have agreed before in the context of what we have in front of us.

Stewart Stevenson: The Government is likely to say to us that the act will not commence without its having indicated what the penalties are to be. However, the bill, as passed, will contain no penalties.

A commencement order, which could include commencement of the sections that relate to penalties, of which there are a number, could be produced by the current Government or a successor Government, and commencement orders are not subject to parliamentary procedure—that is the window through which the Parliament could find itself not having had the opportunity to formally agree moving to a regime in which there are no penalties. There is that legal window if the commencement order is passed before the ministers have produced orders to set the penalties, and that is unsatisfactory in the legal process.

Ministers could commit to producing the commencement order and making it subject to parliamentary procedure, but that would be a rather unusual approach. The simpler way of dealing with the matter would be for them to lodge an amendment that provided for an initial setting of the penalties and limits, which they would have the powers to change at any subsequent point through parliamentary procedure.

The Convener: I confess that I am a little bit confused and need to turn to our legal advisers. Will the Government set the numeric limits of the penalties when the bill has been passed?

Colin Gilchrist (Legal Adviser): The bill as it stands contains no provision for a maximum penalty. It is the power to make further provisions in regulations that would provide for an increase in the penalty.

The Convener: So we do not expect the bill to contain any numbers for a financial penalty for any offence.

Colin Gilchrist: The bill specifies the initial penalty amounts.

The Convener: It contains the initial amounts.

Colin Gilchrist: Yes, but with regard to the power to amend or increase the penalty, the bill itself does not set out a maximum amount.

The Convener: That was my understanding, but I am not convinced that it is necessarily the point that Stewart Stevenson was raising.

Stewart Stevenson: May I stand corrected, convener, as I clearly have been.

The Convener: Okay. I just want to ensure that we are all talking about the same thing. The bill specifies the initial amounts. What they are is not our concern, because that is at the very least a policy issue, but am I entitled to remain concerned that they can be changed to any extent by subordinate legislation under the affirmative procedure? Is my understanding correct?

Colin Gilchrist: That is correct.

The Convener: Thank you very much for that, Mr Stevenson, but it takes me back to my initial question about the extent to which the committee feels that in principle such an approach is acceptable if the original penalties are in the bill.

Stewart Stevenson: I suspect that we have to go back to paragraph 5D(2) of schedule 3, under which regulations can change “the circumstances in which a penalty is payable, ... the amounts of penalties, ... the procedure for issuing penalties”, appeals on penalties and the enforcement of penalties. Unless that provision were to be changed, it would always be possible to change the amounts of penalties at a future date—and I do not think that that would exclude the possibility of their being unlimited.

Now that the situation has been made clear and my confusion has, I hope, been somewhat addressed on the question whether there would be unlimited penalties without the Parliament’s agreement, the bottom line is that my concerns are substantially less than they were a few minutes ago when I was in my more confused position.

John Scott: Thanks to the further clarification that we have received, I agree with Mr Stevenson.

The Convener: That brings me to my other point that any changes to the penalties will, as I understand it, be made for any cause, whereas my understanding of the policy statement that we have seen is that the issue is about dealing with
the value of money, otherwise known as inflation. To what extent does the committee share my view that if the power is intended to cover anything that we would call inflation it should simply say so? Would that not put in the bill what we would expect it to contain—in other words, the real intention?

Stewart Stevenson: I take a different view. When the Government introduces an order to change penalties, it is up to that Government, whatever it might be at that point, to proffer its explanation and reasons for doing so. I am content to move on and not consider this particular matter further, given that, as a result of our intervention in the first place, we now have an amended bill that sets out penalties.

The Convener: Do members have any other comments?

Stuart McMillan (West Scotland) (SNP): With regard to what you suggest, convener, I would consider that writing a reference to inflation into the bill would be a policy rather than a procedural matter.

The Convener: Am I right in thinking, therefore, that I might have talked us into a position where the committee is now content with the provision, given that the initial penalties are set out in the bill and the Government's option for changing those numbers—which is bound to be upwards—is through the affirmative procedure but without being subject to any explanation because, as Stewart Stevenson has correctly pointed out, the Government at the time might have its own reasons and would simply need to give them to the Parliament?

Stewart Stevenson: That is my position, convener.

Members indicated agreement.

The Convener: It is suggested that the committee might wish to be content with all other provisions in the bill that have been amended at stage 2 to insert, substantially alter or remove provisions conferring powers to make subordinate legislation. Are we content to report accordingly?

Members indicated agreement.

The Convener: The committee might wish to note that its stage 1 report made recommendations on two other provisions on which the Scottish Government undertook to lodge amendments. However, the provisions were not so amended at stage 2.

First, the committee noted at stage 1 that the Scottish Government would lodge an amendment to provide that a copy of the ministerial guidance to Revenue Scotland issued under section 8(1) be laid before the Parliament. Secondly, the committee noted that the Scottish Government would lodge an amendment to paragraph 31 of schedule 2 to make provision to publish the rules for the procedures at a fitness assessment tribunal made under that paragraph. That would be consistent with the provision for rules made under paragraph 21 of the same schedule.

Does the committee agree to report that its recommendations on these provisions remain the same as at stage 1 and, in so doing, invite the Scottish Government to respond to them?

Members indicated agreement.

The Convener: In that case, I think that I have taken us to a position where we are comfortable with what the Government is proposing. That is not what we might have expected, but that is what discussion is all about.

As for the committee noting the point about section 218(3)(da) seeking to implement the committee's recommendation at stage 1 that the exercise of the powers in section 102 should be subject to the affirmative procedure, I believe that we are now comfortable with that.

Members indicated agreement.

The Convener: Does the committee agree to report, however, that paragraph 218(3)(da) should refer to section 102, rather than 102(1), given that sections 102 and 103 repeatedly refer to the regulations under the whole of section 102?

Members indicated agreement.
Revenue Scotland and Tax Powers Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 225
Long Title
Schedules 1 to 5

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 8

John Swinney

1 In section 8, page 3, line 36, at end insert—

<(3A) The Scottish Ministers must lay before the Scottish Parliament a copy of guidance published under subsection (3).>

John Swinney

2 In section 8, page 4, line 1, leave out <Subsection (3) does> and insert <Subsections (3) and (3A) do>

After section 37

John Swinney

3 After section 37, insert—

<Procedural steps where petition remitted>

(1) This section applies where the Court of Session remits a petition for judicial review under section 37(2).

(2) It is for the Upper Tribunal to determine—

(a) whether the petition has been made timeously, and

(b) whether to grant permission for the petition to proceed under section 27B of the Court of Session Act 1988 (“the 1988 Act”) (requirement for permission).

(3) Accordingly—

(a) the Upper Tribunal has the same powers in relation to the petition as the Court of Session would have had in relation to it under sections 27A to 27C of the 1988 Act,

(b) sections 27C and 27D of that Act apply in relation to a decision of the Upper Tribunal under section 27B(1) of that Act as they apply in relation to such a decision of the Court of Session.
(4) The references in section 27C(3) and (4) of the 1988 Act (oral hearings where permission refused) to a different Lord Ordinary from the one who refused or granted permission are to be read as references to different members of the Tribunal from those of whom it was composed when it refused or granted permission.

Section 41

John Swinney

4 In section 41, page 16, line 14, after <place> insert <in Scotland>

John Swinney

5 In section 41, page 16, line 16, after <where> insert <in Scotland>

Section 46

John Swinney

6 In section 46, page 18, line 38, at end insert—

(a) the President of the Scottish Tribunals, and
(b) such other persons as they consider appropriate.

Section 59

John Swinney

7 In section 59, page 24, line 9, after <out> insert <by a person>

Section 63

John Swinney

8 In section 63, page 26, line 6, leave out <written>

John Swinney

9 In section 63, page 26, line 16, leave out <written>

John Swinney

10 In section 63, page 26, line 18, leave out <written>

Section 64

John Swinney

11 In section 64, page 26, line 23, leave out <written>

Section 69

John Swinney

12 In section 69, page 28, line 26, leave out <in writing>
John Swinney
13 In section 69, page 28, line 32, leave out <in writing>  

Section 74

John Swinney
14 In section 74, page 31, line 23, leave out subsection (2)  

Section 75

John Swinney
15 In section 75, page 31, line 35, leave out <in writing>  

Section 78

John Swinney
16 In section 78, page 33, line 10, leave out <in writing>  

John Swinney
17 In section 78, page 33, line 17, leave out from <at> to end of line 18 and insert <immediately on receipt of notice of the amendment.>  

Section 84

John Swinney
18 In section 84, page 34, line 32, leave out <in writing>  

Section 89

John Swinney
19 In section 89, page 37, line 1, leave out <further> and insert <additional>  

Section 96

John Swinney
20 In section 96, page 39, line 1, leave out <further> and insert <additional>  

John Swinney
21 In section 96, page 39, line 9, leave out <further> and insert <additional>  

Section 115

John Swinney
22 In section 115, page 48, line 10, leave out <in writing>
Section 116

John Swinney
23 In section 116, page 48, line 21, leave out <in writing>

Section 119

John Swinney
24 In section 119, page 49, line 33, leave out <in writing>

Section 122

John Swinney
25 In section 122, page 51, line 38, leave out <in writing>

Section 125

John Swinney
26 In section 125, page 53, line 12, leave out <in writing>

Section 127

John Swinney
27 In section 127, page 53, line 33, leave out <4> and insert <3>

Section 135A

John Swinney
28 In section 135A, page 58, line 19, at end insert—

<(5A) The officer or a person authorised by the officer may take samples of material on the premises.

(5B) The power to take samples mentioned in subsection (5A) includes power—

(a) to carry out experimental borings or other works on the premises, and

(b) to install, keep or maintain monitoring and other apparatus there.

(5C) Any sample taken under subsections (5A) and (5B) is to be disposed of in such manner as Revenue Scotland may determine.>

Section 140

John Swinney
29 Leave out section 140

Section 143

John Swinney
30 In section 143, page 62, line 27, leave out <Section 149 and>
Section 144

John Swinney
31 In section 144, page 63, line 29, leave out <subsection (6)(b)(i)> and insert <this section>

Section 145

John Swinney
32 In section 145, page 64, line 6, leave out <in writing>

John Swinney
33 In section 145, page 64, line 16, leave out <in writing>

Section 146

John Swinney
34 In section 146, page 64, line 28, leave out <in writing>

Section 147

John Swinney
35 In section 147, page 65, line 4, leave out <informed> and insert <notified>

John Swinney
36 In section 147, page 65, line 4, leave out <in writing>

Section 150B

John Swinney
37 In section 150B, page 66, line 33, leave out <decide> and insert <decides>

John Swinney
38 In section 150B, page 66, line 34, leave out <give> and insert <gives>

Section 151

John Swinney
39 In section 151, page 69, line 13, column 4, leave out <(a) – (g)> and insert <(a), (d) and (f)>

John Swinney
40 In section 151, page 69, line 13, column 4, after <The> insert <date falling 30 days after the>

John Swinney
41 In section 151, page 69, line 14, column 4, at end insert—

(b), (c), (e) and (g) The date by which the amount must be paid.
In section 151, page 69, line 40, column 4, leave out \((a) - (g)\) and insert \((a), (b), (c), (e)\) and \((g)\)

In section 151, page 69, line 41, column 4, leave out \(<\text{of tax payable}>\)

In section 151, page 69, line 42, column 4, at end insert—

\[(d)\) and \((f)\) The date falling 30 days after the date by which the amount must be paid.\]

**Section 152**

In section 152, page 72, line 9, leave out \(<\text{section 150}>\) and insert \(<\text{this Chapter}>\)

In section 152, page 72, line 11, after \(<P>\) insert \(<\text{other than a penalty under this Chapter or section 181}>\)\)

In section 152, page 72, line 13, leave out subsection (2)

**Section 153**

Leave out section 153

**Section 154**

In section 154, page 72, line 25, leave out \(<\text{section 150}>\) and insert \(<\text{sections 150 to 150H}>\)

**Section 155**

In section 155, page 73, line 15, leave out \(<\text{section 151}>\) and insert \(<\text{sections 151 to 151E}>\)

**Section 156**

In section 156, page 73, line 31, leave out \(<\text{section 150 or 151}>\) and insert \(<\text{this Chapter}>\)

**Section 157**

In section 157, page 74, line 9, leave out \(<\text{section 150}>\) and insert \(<\text{sections 150 to 150H}>\)
John Swinney

53 In section 157, page 74, line 12, leave out <section 151> and insert <sections 151 to 151E>

Section 158

John Swinney

54 In section 158, page 74, line 23, leave out <section 150 or 151> and insert <this Chapter>

John Swinney

55 In section 158, page 74, line 29, leave out <section 150 or 151> and insert <this Chapter>

John Swinney

56 In section 158, page 74, line 31, leave out <section 150 or 151> and insert <this Chapter>

John Swinney

57 In section 158, page 74, line 34, leave out <section 150> and insert <sections 150 to 150H>

John Swinney

58 In section 158, page 75, line 4, leave out <section 151> and insert <sections 151 to 151E>

Section 159

John Swinney

59 In section 159, page 75, line 16, leave out <section 150 or 151> and insert <this Chapter>

John Swinney

60 In section 159, page 75, line 23, leave out <section 150> and insert <failure to make a return>

John Swinney

61 In section 159, page 75, line 28, leave out <section 151> and insert <failure to pay tax>

Section 161

John Swinney

62 In section 161, page 77, line 25, leave out <in writing>

Section 164

John Swinney

63 In section 164, page 80, line 28, leave out <section 160, 162 or 163> and insert <this Chapter>

Section 165

John Swinney

64 In section 165, page 81, line 4, leave out <section 160, 162 or 163> and insert <this Chapter>
Section 166

John Swinney

65 In section 166, page 81, line 29, leave out <section 160, 162 or 163> and insert <this Chapter>

John Swinney

66 In section 166, page 81, line 34, leave out <section 160, 162 or 163> and insert <this Chapter>

John Swinney

67 In section 166, page 81, line 36, leave out <section 160, 162 or 163> and insert <this Chapter>

Section 171

John Swinney

68 In section 171, page 84, line 3, leave out <in writing>

Section 172

John Swinney

69 In section 172, page 84, line 12, leave out <informed> and insert <notified>

John Swinney

70 In section 172, page 84, line 16, leave out <informed> and insert <notified>

Section 181B

John Swinney

71 In section 181B, page 88, line 31, after <P> insert <(other than a penalty under Chapter 2)>

John Swinney

72 In section 181B, page 88, line 33, leave out subsection (2)

Section 193

John Swinney

73 In section 193, page 95, line 22, leave out <in writing>

Section 195

John Swinney

74 In section 195, page 96, line 12, leave out <Section 149 and>

Section 198

John Swinney

75 In section 198, page 97, line 1, at end insert—

< ( ) a decision in relation to the registration of any person in relation to any taxable activity.>

8
Section 200

John Swinney
76 In section 200, page 98, leave out line 23

Section 201

John Swinney
77 In section 201, page 99, line 7, leave out <in writing>

Section 207

John Swinney
78 In section 207, page 101, leave out line 15

Section 208

John Swinney
79 In section 208, page 102, line 4, leave out <in writing>

Section 210

John Swinney
80 In section 210, page 102, line 36, at end insert—

<( ) Subsection (1) is subject to sections 71C(1) and 176(1) and to paragraph 5C(1) of schedule 3.>

Section 211

John Swinney
81 In section 211, page 103, line 18, leave out <in writing>

Section 212

John Swinney
82 In section 212, page 103, line 40, leave out <in writing>

Section 213

John Swinney
83 In section 213, page 104, line 36, leave out <in writing>

Section 215

John Swinney
84 In section 215, page 105, leave out line 34
Before section 216

**Communications from taxpayers to Revenue Scotland**

(1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to Revenue Scotland must comply with the requirements set out in subsection (2).

(2) The requirements are that the thing—

(a) must be in the form specified by Revenue Scotland,

(b) must contain the information specified by Revenue Scotland, and

(c) must be given in the manner specified by Revenue Scotland.

(3) Subsections (1) and (2) are subject to any different provision made in or under this Act.

Section 218

**In section 218, page 107, line 12, leave out <and regulations>**

**In section 218, page 107, line 12, leave out <the following provisions> and insert <section 219(1)>**

**In section 218, page 107, leave out line 15**

Schedule 2

**In schedule 2, page 112, line 31, leave out from <qualifying> to end of line 4 on page 113 and insert <the person—**

( ) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

( ) meets the criteria in either sub-paragraph (2) or (3).

(2) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.

(3) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers by regulations.

**In schedule 2, page 114, line 15, after <paragraph> insert <1(3) or>**
In schedule 2, page 115, line 20, after <paragraph> insert <1(2),>

In schedule 2, page 120, line 36, at end insert—

<( ) Rules under sub-paragraph (1) are to be published in such manner as the Scottish Ministers may determine.>

Schedule 3

In schedule 3, page 124, line 26, leave out <in writing>

In schedule 3, page 126, line 4, leave out <in writing>

In schedule 3, page 126, line 13, leave out <in writing>

In schedule 3, page 128, leave out line 5

In schedule 3, page 128, line 7, leave out <Revenue Scotland> and insert <the tribunal>

Schedule 4

In schedule 4, page 128, line 20, at end insert—

<Debtors (Scotland) Act 1987

(1) The Debtors (Scotland) Act 1987 (c.18) is amended as follows.

(2) In section 1 (time to pay directions)—

   (a) in subsection (5), after paragraph (d) insert—

   “(da) in an action by or on behalf of Revenue Scotland for payment of any sum recoverable under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,”,

   (b) after subsection (8A) insert—

   “(8B) In paragraph (da) of subsection (5)—

   “contract settlement” means any agreement made in connection with any person’s liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax,
“devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),
“settlement agreement” has the meaning given by section 211(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(3) In section 5 (time to pay orders)—
   (a) in subsection (4), after paragraph (d) insert—
      “(da) in relation to a debt including any sum recoverable by or on behalf of Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,”,
   (b) after subsection (8A) insert—
      “(8B) In paragraph (da) of subsection (4)—
      “contract settlement” means any agreement made in connection with any person’s liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax,
      “devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),
      “settlement agreement” has the meaning given by section 211(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(4) In section 106 (interpretation), in the definition of “summary warrant”, after paragraph (e) insert—
   “(f) section 190 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

John Swinney
99 In schedule 4, page 128, line 28, leave out <that Act> and insert <the Revenue Scotland and Tax Powers Act 2014 (asp 00)>

John Swinney
100 In schedule 4, page 128, line 37, leave out <that Act> and insert <the Revenue Scotland and Tax Powers Act 2014 (asp 00)>

John Swinney
101 In schedule 4, page 129, line 32, after <Act> insert <2014>

John Swinney
102 In schedule 4, page 130, line 2, after <Act> insert <2014>

John Swinney
103 In schedule 4, page 130, line 5, after <Act> insert <2014>

John Swinney
104 In schedule 4, page 130, line 6, after <payable)> insert<—
in subsection (2)(b), after “Authority” insert “under section 98 of the Revenue Scotland and Tax Powers Act 2014 (asp 00)”, and

John Swinney

105 In schedule 4, page 130, line 9, after <Act> insert <2014>

John Swinney

106 In schedule 4, page 130, line 14, at end insert—

<( )> After section 37 insert—

“37A Communications from taxpayers to the Tax Authority

(1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to the Tax Authority must comply with the requirements set out in subsection (2).

(2) The requirements are that the thing—

(a) must be in the form specified by the Tax Authority,

(b) must contain the information specified by the Tax Authority, and

(c) must be given in the manner specified by the Tax Authority.

(3) Subsections (1) and (2) are subject to any different provision made in or under this Act.”.

John Swinney

107 In schedule 4, page 130, line 14, at end insert—

<( )> In section 41(2) (application to defer payment in case of contingent or uncertain consideration), subsection (2) is repealed.

John Swinney

108 In schedule 4, page 130, line 25, at end insert—

<( )> In section 63(2)(a) (meaning of “effective date” of transaction), for “settlement” substitute “completion”.

John Swinney

109 In schedule 4, page 130, line 38, at end insert—

<( )> In schedule 10 (group relief)—

(a) in paragraph 1(2), after “withdrawn” insert—

“Part 3A provides for recovery of tax where relief is withdrawn,”,

(b) after paragraph 42 insert—

“PART 3A

RECOVERY OF RELIEF

Recovery of relief

42A This Part applies where—
(a) relief under this schedule is withdrawn or partially withdrawn and tax is chargeable,
(b) the amount so chargeable has been finally determined, and
(c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.

42B The following persons may, by notice under paragraph 42E, be required to pay the unpaid tax—

(a) the seller,
(b) any company that at any relevant time was a member of the same group as the buyer and was above it in the group structure,
(c) any person who at any relevant time was a controlling director of the buyer or a company having control of the buyer.

42C For the purposes of paragraph 42B(b)—

(a) a “relevant time” means any time between the effective date of the transaction which was exempt from charge by virtue of this schedule and the buyer ceasing to be a member of the same group as the seller, and
(b) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.

42D In paragraph 42B(c)—

“director”, in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c.1) (read with subsection (2) of that section) and includes a person falling within section 452(1) of the Corporation Tax Act 2010 (c.4),

“controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4)).

Recovery of relief: supplementary

42E The Tax Authority may give notice to a person within paragraph 42B requiring that person within 30 days of receipt of the notice to pay the amount that remains unpaid.

42F Any such notice must be given before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 42A(b).

42G The notice must state the amount required to be paid by the person to whom the notice is given.

42H The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
(b) for the purpose of appeals,

as if it were a notice of a Revenue Scotland assessment and that amount were an amount of tax due from that person.
42I A person who has paid an amount in pursuance of a notice under paragraph 42E may recover that amount from the buyer.

42J A payment in pursuance of a notice under paragraph 42E is not allowed as a deduction in computing any income, profits or losses for any tax purpose.

42K In paragraph 42H, “Revenue Scotland assessment” has the same meaning as in section 91 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

( ) In schedule 11 (reconstruction relief and acquisition relief)—

(a) in paragraph 1(2), after “withdrawn” insert—

“Part 4A provides for recovery of tax where relief is withdrawn,”,

(b) in paragraph 5, for “(c) and (d)” substitute “(b) and (c)”,

(c) in paragraph 9(a), for second “person” substitute “persons”,

(d) after paragraph 35 insert—

“PART 4A

RECOVERY OF RELIEF

Recovery of relief

35A This Part applies where—

(a) relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,

(b) the amount of tax chargeable has been finally determined, and

(c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.

35B The following persons may, by notice under paragraph 35E, be required to pay the unpaid tax—

(a) any company that at any relevant time was a member of the same group as the acquiring company and was above it in the group structure,

(b) any person who at any relevant time was a controlling director of the acquiring company or a company having control of the acquiring company.

35C For the purposes of paragraph 35B—

(a) “relevant time” means any time between the effective date of the relevant transaction and the change of control by virtue of which tax is chargeable, and

(b) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.

35D In paragraph 35B(b)—

“director”, in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c.1) (read with subsection (2) of that section) and includes a person falling within section 452(1) of the Corporation Tax Act 2010 (c.4),
“controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4)).

Recovery of relief: supplementary

35E The Tax Authority may give notice to a person within paragraph 35B requiring that person within 30 days of receipt of the notice to pay the amount that remains unpaid.

35F Any such notice must be given before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 35A(b).

35G The notice must state the amount required to be paid by the person to whom the notice is given.

35H The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and

(b) for the purpose of appeals,

as if it were a notice of a Revenue Scotland assessment and that amount were an amount of tax due from that person.

35I A person who has paid an amount in pursuance of a notice under paragraph 35E may recover that amount from the acquiring company.

35J A payment in pursuance of a notice under paragraph 35E is not allowed as a deduction in computing any income, profits or losses for any tax purpose.

35K In paragraph 35H, “Revenue Scotland assessment” has the same meaning as in section 91 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

John Swinney

110 In schedule 4, page 131, line 2, after <partnership)> insert <—

( ) in sub-paragraph (1), for “paragraph” substitute “Part”,

( )>

John Swinney

111 In schedule 4, page 131, line 4, after <Act> insert <2014>

John Swinney

112 In schedule 4, page 131, line 4, at end insert—

<( ) in paragraph 38 (application of group relief to certain partnership transactions), in sub-paragraph (4), for “42” substitute “42K”.

John Swinney

113 In schedule 4, page 131, line 8, after <Act> insert <2014>

John Swinney

114 In schedule 4, page 131, line 10, at end insert—

16
In section 15 (weight of materials disposed of)—
(a) in subsection (2)(c), for “an authorised person” substitute “a designated officer”,
(b) in subsection (4), for “an authorised person” substitute “a designated officer”, and
(c) after subsection (6) insert—
“(7) The regulations may include provision for penalties where a person fails to comply with a requirement imposed by or under the regulations.”.

John Swinney

115 In schedule 4, page 131, line 10, at end insert—
(a) In section 18 (credit: general), after subsection (6) insert—
“(6A) The regulations may provide for section 98 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) to apply (with or without modifications) to a claim under this section by a person who has ceased to be registrable as it applies to a claim under that section.”.

John Swinney

116 In schedule 4, page 131, line 10, at end insert—
(a) In section 22 (registration), in subsection (9), paragraph (b) is repealed.

John Swinney

117 In schedule 4, page 131, line 10, at end insert—
(a) In section 23 (information required to keep register up to date), in subsection (2), paragraph (b) is repealed.

John Swinney

118 In schedule 4, page 131, line 22, at end insert—

<25B Communications from taxpayers to the Tax Authority
(1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to the Tax Authority must comply with the requirements set out in subsection (2).

(2) The requirements are that the thing—
(a) must be in the form specified by the Tax Authority,
(b) must contain the information specified by the Tax Authority, and
(c) must be given in the manner specified by the Tax Authority.

(3) Subsections (1) and (2) are subject to any different provision made in or under this Act.”.

John Swinney

119 In schedule 4, page 131, line 22, at end insert—
(a) Section 26 (time of disposal where invoice issued) is repealed.
John Swinney

120 In schedule 4, page 131, line 24, at end insert—

<( ) In section 30(3)(a) (information: material at landfill sites), for “an authorised person” substitute “a designated officer”.>

John Swinney

121 In schedule 4, page 131, line 24, at end insert—

<( ) In section 31(1) (information: site restoration)—

(a) in paragraph (a), “in writing” is repealed, and
(b) in paragraph (b), “written” is repealed.>

John Swinney

122 In schedule 4, page 131, line 30, at end insert—

<( ) In section 39 (interpretation), for the definition of “authorised person” substitute—

“designated officer” has the meaning given by section 216 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (general interpretation).”>

John Swinney

123 In schedule 4, page 131, line 32, after <(2)> insert <

( ) after paragraph (b) insert—

“(ba) regulations under section 15 which make provision of the type mentioned in section 15(7),”>

John Swinney

124 In schedule 4, page 132, line 9, at end insert—

<Procurement Reform (Scotland) Act 2014

In the Procurement Reform (Scotland) Act 2014 (asp 12), in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13 (the entry for the Scottish Housing Regulator) insert—

“13A Revenue Scotland”>
Revenue Scotland and Tax Powers Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Publication of guidance
1, 2

Group 2: Tax Tribunals: membership and procedure
3, 4, 5, 6, 89, 90, 91, 92

Group 3: General anti-avoidance rule
7

Debate to end no later than 20 minutes after proceedings begin

Group 4: Communications between taxpayers and Revenue Scotland
8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 23, 24, 25, 26, 32, 33, 34, 35, 36, 62, 68, 69, 70, 73, 76, 77, 78, 79, 81, 82, 83, 84, 85, 93, 94, 95, 96, 106, 116, 117, 118, 121

Group 5: Payment of tax following amendment of return
17

Group 6: Minor and technical amendments
19, 20, 21, 30, 31, 37, 38, 74, 86, 87, 88, 99, 100, 101, 102, 103, 105, 107, 108, 110, 111, 113, 120, 122, 124

Group 7: Information notices: period after death in which notice may be given
27
Group 8: Information notices: taking of samples
28, 29

Debate to end no later than 40 minutes after proceedings begin

Group 9: Penalties for failure to pay tax
39, 40, 41, 42, 43, 44

Group 10: Penalties: miscellaneous
45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 71, 72

Group 11: Appeals
75, 80, 97

Group 12: Summary warrants
98

Group 13: Minor and consequential modifications of other enactments
104, 109, 112, 114, 115, 119, 123

Debate to end no later than 1 hour 10 minutes after proceedings begin
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 4, No. 27 Session 4

Meeting of the Parliament

Tuesday 19 August 2014

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-10828—That the Parliament agrees that, during stage 3 of the Revenue Scotland and Tax Powers Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 20 minutes.
Groups 4 to 8: 40 minutes
Groups 9 to 13: 1 hour 10 minutes.

The motion was agreed to.

Revenue Scotland and Tax Powers Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123 and 124.

Revenue Scotland and Tax Powers Bill - Stage 3: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-10822—That the Parliament agrees that the Revenue Scotland and Tax Powers Bill be passed.

After debate, the motion was agreed to (DT).
Revenue Scotland and Tax Powers Bill: Stage 3

15:21

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 proceedings on the Revenue Scotland and Tax Powers Bill. In dealing with amendments, members should have the bill as amended at stage 2, SP bill 43A; the marshalled list, SP bill 43A-ML; and the groupings, SP bill 43A-G.

The Deputy Presiding Officer (John Scott): For further information, the division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon, should there be one. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons now, or as soon as possible after I call the group. Members should now refer to the marshalled list of amendments, and we will get started.

Section 8—Ministerial guidance

The Deputy Presiding Officer: Amendment 1, in the name of the Cabinet Secretary for Finance, Employment and Sustainable Growth, is grouped with amendment 2.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The Delegated Powers and Law Reform Committee recommended in its stage 1 report on the bill that, where Scottish ministers give guidance to revenue Scotland under section 8 of the bill, a copy of that guidance should be laid before Parliament as well as being published. Amendments 1 and 2 will give effect to that recommendation.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[John Swinney]—and agreed to.

After section 37

The Deputy Presiding Officer: Amendment 3, in the name of the cabinet secretary, is grouped with amendments 4 to 6 and 89 to 92.

John Swinney: The amendments in the group relate to the Scottish tax tribunals that will be established by part 4 of the bill, and are entirely technical in nature. Amendments 3, 4 and 5 will simply bring certain provisions of the bill into line with corresponding provisions in the Courts
Reform (Scotland) Bill and the Tribunals (Scotland) Act 2014.

Amendment 6 will require Scottish ministers to consult the president of the Scottish tribunals, and such other persons as they consider appropriate, before making tribunal rules.

Amendment 89 relates to the eligibility criteria for the appointment of the president of the tax tribunals. The intention is to align the criteria with those for legal members of the upper tax tribunal.

Amendment 92 seeks to give effect to a recommendation of the Delegated Powers and Law Reform Committee by providing that any rules that are made by Scottish ministers about the procedure that is to be followed in proceedings at a fitness assessment tribunal are to be published.

I believe that the amendments in this group make minor and sensible adjustments.

I move amendment 3.

Iain Gray (East Lothian) (Lab): I welcome and support the amendments. They will bring the bill into line with corresponding provisions in the Courts Reform (Scotland) Bill, which seems right and proper, and with the effect that, in dealing with cases, the upper tribunal will have the same powers in relation to the petition as the Court of Session would have had.

In particular, we support amendment 89, which will bring the criteria for appointment of the president of the tax tribunals into line with the criteria for appointment of legal members of the upper tribunal. In so doing, it will rightly ensure that a person will be eligible for appointment only if that person has the qualifications, experience and training in tax law and practice that Scottish ministers consider to be appropriate.

The amendments in group 2 are welcome, and we support them.

Nigel Don (Angus North and Mearns) (SNP): As convener of the Delegated Powers and Law Reform Committee, I thank the cabinet secretary for taking on board our comments. A principle that we have adhered to in recent times is that we would like all guidance to be published. There seems to be no good reason why that should not be the case, and we are grateful to the cabinet secretary for taking our view on board.

John Swinney: I welcome the comments of Mr Don and Mr Gray. The amendments in the group will bring the relevant provisions into line with other elements of statute and will strengthen the bill, as a consequence.

Amendment 3 agreed to.

Section 41—Venue for hearings

Amendments 4 and 5 moved—[John Swinney]—and agreed to.

Section 46—Tribunal rules

Amendment 6 moved—[John Swinney]—and agreed to.

Section 59—Meaning of “artificial”

The Deputy Presiding Officer: We come to group 3. Amendment 7, in the name of the cabinet secretary, is in a group on its own.

John Swinney: Amendment 7 addresses an issue that was raised by the Finance Committee in its stage 1 report on the bill, and by Mr Chisholm at stage 2. It relates to condition B of the general anti-avoidance rule, which provides that a tax avoidance arrangement is artificial if it lacks economic or commercial substance. Amendment 7, together with the amendments that the Finance Committee agreed to at stage 2, will put it beyond doubt that condition B of the general anti-avoidance rule applies to transactions between individuals as well as to commercial transactions between companies. I believe that clarifying the scope of the GAAR in that way is a useful and sensible amendment, and I am grateful to Mr Chisholm for raising the point at stage 2.

I move amendment 7.

Iain Gray: I support amendment 7 and welcome the cabinet secretary’s recognition of the concerns that were raised at stages 1 and 2 by the committee, to which he has now responded.

As he said, amendment 7 will put it beyond doubt that condition B of the GAAR applies to transactions between individuals as well as to those between companies or businesses. Mr Chisholm pursued that point during stage 2, and we are delighted that the Scottish Government has recognised the point and has lodged the required amendment.

Amendment 7 agreed to.

Section 63—Notice to taxpayer of proposed counteraction of tax advantage

The Deputy Presiding Officer: We move on to group 4. Amendment 8, in the name of the cabinet secretary, is grouped with amendments 8 to 16, 18, 22 to 26, 32 to 36, 62, 68 to 70, 73, 76 to 79, 81 to 85, 93 to 96, 106, 116 to 118 and 121.

John Swinney: Although there are a large number of amendments in this group, they are all for a single purpose—to insert into the bill the two tax-specific acts new sections that will provide that any notice, application or other communication from a taxpayer to revenue Scotland must be in the form and manner, and
contain the information, that are specified by revenue Scotland. That, in turn, will make it possible to remove a large number of specific references throughout the bill and the two previous tax acts that require notices to be “in writing”.

I have always made it clear that we want to put in place a tax system that is simple to operate and user-friendly for taxpayers and their agents, and the amendments will give revenue Scotland the flexibility to provide for secure electronic communication with taxpayers and their agents while still allowing for paper or other forms of communication in appropriate cases.

I move amendment 8.

Amendment 8 agreed to.

Amendments 9 and 10 moved—[John Swinney]—and agreed to.

15:30

Section 64—Final notice to taxpayer of counteraction of tax advantage
Amendment 11 moved—[John Swinney]—and agreed to.

Section 69—Duty to keep and preserve records
Amendments 12 and 13 moved—[John Swinney]—and agreed to.

Section 74—Amendment of return by taxpayer
Amendment 14 moved—[John Swinney]—and agreed to.

Section 75—Correction of return by Revenue Scotland
Amendment 15 moved—[John Swinney]—and agreed to.

Section 78—Amendment of self-assessment during enquiry to prevent loss of tax
Amendment 16 moved—[John Swinney]—and agreed to.

The Deputy Presiding Officer (John Scott): We move to group 5. Amendment 17, in the name of the cabinet secretary, is the only amendment in the group.

John Swinney: Section 78 provides that a taxpayer must pay any tax that is due when revenue Scotland gives a notice of amendment under section 78. That is not quite right, because the point at which payment is due should be when the taxpayer receives the notice, not when revenue Scotland issues it. Amendment 17 seeks to make that change.

I move amendment 17.

Amendment 17 agreed to.

Section 84—Completion of enquiry
Amendment 18 moved—[John Swinney]—and agreed to.

Section 89—Assessment where loss of tax

The Deputy Presiding Officer: We move to group 6. Amendment 19, in the name of the cabinet secretary, is grouped with amendments 20, 21, 30, 31, 37, 38, 74, 86 to 88, 99, 100 to 103, 105, 107, 108, 110, 111, 113, 120, 122 and 124.

John Swinney: These 25 amendments are minor and technical in nature and in general will improve the clarity and consistency of the bill’s provisions, and the interface between the bill’s overarching framework and the first two tax-specific acts. Amendment 124 ensures that the Procurement Reform (Scotland) Act 2014 will, when it comes into force, apply to revenue Scotland in the same way that it will apply to other public bodies in Scotland.

I move amendment 19.

Amendment 19 agreed to.

Section 96—Assessment procedure
Amendments 20 and 21 moved—[John Swinney]—and agreed to.

Section 115—Power to obtain information and documents from taxpayer
Amendment 22 moved—[John Swinney]—and agreed to.

Section 116—Power to obtain information and documents from third party
Amendment 23 moved—[John Swinney]—and agreed to.

Section 119—Power to obtain information and documents about persons whose identity is not known
Amendment 24 moved—[John Swinney]—and agreed to.

Section 122—Power to obtain information about persons whose identity can be ascertained
Amendment 25 moved—[John Swinney]—and agreed to.
Section 125—Producing copies of documents

Amendment 26 moved—[John Swinney]—and agreed to.

Section 127—Information notices: general restrictions

The Deputy Presiding Officer: We move to group 7. Amendment 27, in the name of John Swinney, is the only amendment in the group.

John Swinney: Section 94(4)(a) imposes a three-year time limit after a taxpayer has died for revenue Scotland to issue an assessment to the taxpayer’s personal representatives, and amendment 27 will bring the time limit for a information notice that is given in connection with a deceased taxpayer into line with that section.

I move amendment 27.

Amendment 27 agreed to.

Section 135A—Carrying out inspections under section 133 or 134: further provision

The Deputy Presiding Officer: We move to group 8. Amendment 28, in the name of the cabinet secretary, is grouped with amendment 29.

John Swinney: Although section 140 provides a power to enter business premises and to take samples of material, it is not, as the bill stands, supported by a penalty. On reflection, I think it right that a person who obstructs a designated officer in the exercise of that power should be liable to a penalty under section 167. Amendment 28 seeks to provide for that by bringing the power to take samples of material on premises within the scope of a designated officer’s powers under section 135A. That means that we no longer need a power of entry coupled with the power to take samples.

Moreover, section 167(1)(b) provides that a person is liable to a penalty for obstructing an officer exercising any power under section 135A. Amendment 29 is consequential on amendment 28.

I move amendment 28.

Amendment 28 agreed to.

Section 140—Power to take samples

Amendment 29 moved—[John Swinney]—and agreed to.

Section 143—Computer records

Amendment 30 moved—[John Swinney]—and agreed to.

Section 144—Review or appeal against information notices

Amendment 31 moved—[John Swinney]—and agreed to.

Section 145—Disposal of reviews and appeals in relation to information notices

Amendments 32 and 33 moved—[John Swinney]—and agreed to.

Section 146—Offence of concealing etc documents following information notice

Amendment 34 moved—[John Swinney]—and agreed to.

Section 147—Offence of concealing etc documents following information notification

Amendments 35 and 36 moved—[John Swinney]—and agreed to.

Section 150B—Land and buildings transaction tax: 3 month penalty for failure to make return

Amendments 37 and 38 moved—[John Swinney]—and agreed to.

Section 151—Penalty for failure to pay tax

The Deputy Presiding Officer: We move to group 9. Amendment 39, in the name of the cabinet secretary, is grouped with amendments 40 to 44.

John Swinney: Amendments 39 and 40 address an issue that Gavin Brown raised at stage 2 about the date after which a taxpayer becomes liable to a penalty for late payment of tax. Section 151 provides that, for both devolved taxes, the taxpayer becomes liable for a penalty for late payment of tax on the day after payment was due. At stage 2, Mr Brown suggested that that could be harsh and asked whether there was scope for flexibility.

After considering the matter further, I believe that it would be fair to give the taxpayer 30 days to pay any overdue tax in relation to a land and buildings transaction tax return before they become liable for a penalty for late payment. However, I do not believe that a similar amendment is necessary in relation to a Scottish landfill tax return. Landfill operators will be required to make regular quarterly returns, so they will be fully aware of their tax obligations.

The amendments in the group will also give the taxpayer 30 days to pay tax that is due in relation to a revenue Scotland amendment under section 78, and a revenue Scotland determination under section 86, before becoming liable to a penalty. At
present, a penalty would be imposed immediately in both cases. On reflection, I believe that it would be fair to give the taxpayer 30 days to pay tax that is due before becoming liable to pay a penalty for late payment. I am grateful to Mr Brown for raising the issue at stage 2.

I move amendment 39.

Gavin Brown (Lothian) (Con): I support the amendments and am grateful to the cabinet secretary for lodging them. The idea of an instant penalty struck me as being a little harsh in some cases. The flexibility and changes that he has proposed strike the right balance, so I am pleased to support the amendments.

Amendment 39 agreed to.

Amendments 40 to 44 moved—[John Swinney]—and agreed to.

Section 152—Interaction of penalties under section 150 with other penalties

The Deputy Presiding Officer: We move to group 10. Amendment 45, in the name of the cabinet secretary, is grouped with amendments 46 to 61, 63 to 67, 71 and 72.

John Swinney: At stage 2, a number of amendments were made to part 8, which is on penalties, including the addition of a number of sections on penalties for failing to make a tax return and failing to pay tax. The amendments in the group will tidy cross-references in part 8 following the addition of the sections, and will align section 152 with the approach that is taken in section 181B, which was added at stage 2.

I move amendment 45.

Amendment 45 agreed to.

Amendments 46 and 47 moved—[John Swinney]—and agreed to.

Section 153—Interaction of penalties under section 151 with other penalties

Amendment 48 moved—[John Swinney]—and agreed to.

Section 154—Reduction in penalty under section 150 for disclosure

Amendment 49 moved—[John Swinney]—and agreed to.

Section 155—Suspension of penalty under section 151 during currency of agreement for deferred payment

Amendment 50 moved—[John Swinney]—and agreed to.

Section 156—Special reduction in penalty under sections 150 and 151

Amendment 51 moved—[John Swinney]—and agreed to.

Section 157—Reasonable excuse for failure to make return or pay tax

Amendments 52 and 53 moved—[John Swinney]—and agreed to.

Section 158—Assessment of penalties under sections 150 and 151

Amendments 54 to 58 moved—[John Swinney]—and agreed to.

Section 159—Time limit for assessment of penalties under sections 150 and 151

Amendments 59 to 61 moved—[John Swinney]—and agreed to.

Section 161—Suspension of penalty for careless inaccuracy under section 160

Amendment 62 moved—[John Swinney]—and agreed to.

Section 164—Special reduction in penalty under sections 160, 162 and 163

Amendment 63 moved—[John Swinney]—and agreed to.

Section 165—Reduction in penalty under sections 160, 162 and 163 for disclosure

Amendment 64 moved—[John Swinney]—and agreed to.

Section 166—Assessment of penalties under sections 160, 162 and 163

Amendments 65 to 67 moved—[John Swinney]—and agreed to.

Section 171—Concealing, destroying etc documents following information notice

Amendment 68 moved—[John Swinney]—and agreed to.

Section 172—Concealing, destroying etc documents following information notification

Amendments 69 and 70 moved—[John Swinney]—and agreed to.

Section 181B—Interaction of penalties under section 181 with other penalties

Amendments 71 and 72 moved—[John Swinney]—and agreed to.
Section 193—Power to obtain details
Amendment 73 moved—[John Swinney]—and agreed to.

Section 195—Penalty
Amendment 74 moved—[John Swinney]—and agreed to.

Section 198—Appealable decisions
The Deputy Presiding Officer: We move to group 11. Amendment 75, in the name of the cabinet secretary, is grouped with amendments 80 and 97.

John Swinney: Amendment 75 provides that any decision that revenue Scotland makes in relation to the registration of a person for tax purposes will be both appealable and reviewable. That is particularly relevant to sections 22 and 23 of the Landfill Tax (Scotland) Act 2014.

Amendment 80 corrects section 210 of the bill by providing that, in certain circumstances, the general rule that tax, penalties and interest are payable pending review or appeal will not apply. Amendment 97 will ensure consistency with the rule that all notices of appeal are given to the tribunal and not revenue Scotland.

I move amendment 75.
Amendment 75 agreed to.

Section 200—Notice of review
Amendment 76 moved—[John Swinney]—and agreed to.

Section 201—Late notice of review
Amendment 77 moved—[John Swinney]—and agreed to.

Section 207—Notice of appeal
Amendment 78 moved—[John Swinney]—and agreed to.

Section 208—Late notice of appeal
Amendment 79 moved—[John Swinney]—and agreed to.

Section 210—Reviews and appeals not to postpone recovery of tax
Amendment 80 moved—[John Swinney]—and agreed to.

Section 211—Settling matters in question by agreement
Amendment 81 moved—[John Swinney]—and agreed to.

Section 212—Application of this Part to joint buyers
Amendment 82 moved—[John Swinney]—and agreed to.

Section 213—Application of this Part to trustees
Amendment 83 moved—[John Swinney]—and agreed to.

Section 215—Interpretation
Amendment 84 moved—[John Swinney]—and agreed to.

Before section 216
Amendment 85 moved—[John Swinney]—and agreed to.

Section 218—Subordinate legislation
Amendments 86 to 88 moved—[John Swinney]—and agreed to.

Schedule 2—The Scottish Tax Tribunals
Amendments 89 to 92 moved—[John Swinney]—and agreed to.

Schedule 3—Claims for relief from double assessment and for repayment
Amendments 93 to 97 moved—[John Swinney]—and agreed to.

Schedule 4—Minor and consequential modifications
The Deputy Presiding Officer: We move to group 12. Amendment 98, in the name of the cabinet secretary, is in a group on its own.

John Swinney: Amendment 98 will amend the Debtors (Scotland) Act 1987 to ensure that the same enforcement machinery that is available to Her Majesty's Revenue and Customs for the recovery of tax, penalties and interest that are owed by taxpayers is also available to revenue Scotland.

The bill provides ample opportunities for taxpayers to challenge decisions that are taken by revenue Scotland if they disagree with them. However, once legal liability for tax has finally been determined, if a taxpayer fails to pay the tax that is due, revenue Scotland should be able to enforce that debt effectively, in the same way as HMRC.

I move amendment 98.
Amendment 98 agreed to.
Amendments 99 to 103 moved—[John Swinney]—and agreed to.

The Deputy Presiding Officer: We move to group 13. Amendment 104, in the name of the cabinet secretary, is grouped with amendments 109, 112, 114, 115, 119 and 123.

John Swinney: Schedule 4 to the Revenue Scotland and Tax Powers Bill makes a number of final consequential amendments to both tax-specific acts to ensure that they fit together properly and seamlessly with the overarching framework that is set out in the bill.

Amendments 104, 109 and 112 relate to amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013. Amendment 109 is the main substantive amendment in relation to those three amendments and concerns recovery of land and buildings transaction tax reliefs. The reliefs in question are group relief, reconstruction relief and acquisition relief, all of which must be claimed by the taxpayer in a land transaction return.

The LBTT act already provides for the withdrawal of those reliefs when the circumstances that justify relief are no longer in place, in which case the taxpayer must pay the tax for which they had earlier claimed. The legislative machinery that will be introduced by amendment 109 empowers Revenue Scotland to recover those sums of tax and makes appropriate adjustments to the Revenue Scotland and Tax Powers Bill for that purpose.

Amendments 114, 115, 119 and 123 relate to amendments to the Landfill Tax (Scotland) Act 2014.

Amendment 119, which allows for the alignment of waste data return periods and Scottish landfill tax return periods, was proposed in the consultation paper that we published in May 2014 on Scottish landfill tax subordinate legislation. I can confirm to Parliament that our proposals for aligning environmental and tax returns were welcomed by stakeholders. Aligning the periods will allow for greater clarity when conducting compliance checks, and for greater information technology synergies between the Scottish Environment Protection Agency and Revenue Scotland while, we hope, reducing some of the administrative burden on landfill operators.

The other amendment in the group that I will draw particular attention to is amendment 114, which will allow the forthcoming Scottish landfill tax regulations to penalise failures to use weighbridges. The aim is to deter landfill operators from taking advantage of using alternative methods of calculating weight when there is a working weighbridge on site. Amendment 123 will ensure that any penalty provisions that are included in regulations are subject to affirmative procedure.

I move amendment 104.

Amendment 104 agreed to.

Amendments 105 to 124 moved—[John Swinney]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Revenue Scotland and Tax Powers Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-10822, in the name of John Swinney, on the Revenue Scotland and Tax Powers Bill.

15:44

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): The Revenue Scotland and Tax Powers Bill has two main purposes. First, it will establish Revenue Scotland as the tax authority responsible for the collection and management of the two devolved taxes—the land and buildings transaction tax and the Scottish landfill tax—when they come into operation on 1 April 2015. The first two tax-specific acts are, of course, already on the statute book.

Secondly, the bill sets out in one place the statutory framework within which revenue Scotland will operate. That includes revenue Scotland’s constitution; the relationship between the taxpayer and the tax authority; revenue Scotland’s investigation and enforcement powers; and the new two-tier Scottish tax tribunals that will hear appeals against decisions that revenue Scotland has taken. It also includes a robust and distinctive approach to tackling tax avoidance, which I will say more about in a moment.

I am grateful for the very detailed and thorough scrutiny that the Finance Committee undertook at stages 1 and 2. Many of the amendments to the bill that have been agreed to at stages 2 and 3 reflect recommendations from the Finance Committee and the Delegated Powers and Law Reform Committee. The bill has been significantly improved during its parliamentary passage as a result. I put on record my thanks to both committees for the work that they have done.

We took the opportunity to lodge at stage 3 a significant number of minor and technical amendments that are designed to improve the clarity and consistency of the bill and the interface between the overarching framework and the first two tax-specific acts. I believe that those final amendments provide greater clarity, coherence and consistency across the full package of devolved tax legislation.

I would like to take a few moments to highlight some of the distinctive aspects of the new framework for the collection and management of devolved taxes.

Part 2 of the bill provides for the establishment of revenue Scotland as an office-holder in the Scottish Administration. That means that it will be directly accountable to the Parliament, not ministers. The bill sets out revenue Scotland’s statutory functions, with an emphasis on providing a service to taxpayers and their agents, and not just on collecting the devolved taxes.

The bill also places a duty on revenue Scotland to prepare and publish a charter that sets out the standards of behaviour and values that will be expected of taxpayers and which taxpayers can expect of revenue Scotland. Revenue Scotland is required to consult on the terms of the charter. That will provide a genuine opportunity for input from stakeholders and the wider public on the nature of the relationship between the taxpayer and the tax authority.

Part 4 establishes the Scottish tax tribunals, which will comprise a first tier and an upper tier under the leadership of a president. As colleagues will recall, the Parliament recently passed the Tribunals (Scotland) Act 2014, which paves the way for the establishment of the new unified Scottish tribunals. The intention is that, early in 2017, the tax tribunals will become part of the Scottish tribunals. However, arrangements need to be in place to hear appeals about the devolved taxes from 1 April 2015, so we need to establish self-standing tax tribunals for an interim period until the new unified arrangements are fully operational.

Part 5 sets out a general anti-avoidance rule, or GAAR. I am sure that I have support across the chamber for establishing a Scottish general anti-avoidance rule that takes the most robust approach possible to tax avoidance in relation to any devolved taxes. Artificial tax avoidance arrangements are unacceptable, and part 5 provides powers for revenue Scotland to take effective counteraction against any such schemes.

The bill provides two separate definitions of “artificiality”—condition A and condition B—to ensure that our approach is as wide ranging and comprehensive as possible. Condition A allows revenue Scotland to take counteraction where a tax avoidance arrangement is not a reasonable course of action, having regard to the principles and policy objectives on which the relevant tax legislation is based and to whether the arrangement is intended to exploit any shortcomings in that legislation. That will allow revenue Scotland, the Scottish tax tribunals and the courts to look at the spirit and intention of tax legislation, and not just the strict letter of the law. I believe that that purposive approach to legislation, supported by clear guidance from revenue Scotland to which the courts and tribunals must have regard, will make it possible to defeat ingenious but artificial and contrived avoidance schemes far more effectively than has previously been the case.
Condition B allows revenue Scotland to take counteraction against tax avoidance arrangements that lack either economic or commercial substance. It also sets out a number of examples that might indicate that an arrangement lacks economic or commercial substance—for example, if it is carried out in a manner that would not normally be employed in reasonable business conduct or consists of transactions that are circular in nature.

The amendments agreed to by Parliament at stage 3 further reinforce that approach by making it clear that the test relating to a lack of economic or commercial substance applies to transactions between individuals as well as to commercial transactions between companies. I am grateful to Malcolm Chisholm for raising that point at stage 2.

The approach that we have adopted to tackling tax avoidance is based on straightforward, commonsense tests that ordinary taxpayers would understand and endorse. I envisage that we would extend very much the same robust approach that we have adopted to tax avoidance in the bill if we were to take the opportunity to become responsible for other taxes.

Throughout the bill we have tried to strike a fair balance between the taxpayer on the one hand and the tax authority on the other. With that in mind, the bill ensures that taxpayers will have various opportunities to challenge decisions that are taken by revenue Scotland without having to resort to expensive legal action. First, they will be able to ask revenue Scotland to carry out an internal review, which will be undertaken by a person not associated with the original decision. If that does not resolve the dispute, revenue Scotland and the taxpayer will be able to enter into independent, third-party mediation if both parties agree to do so. Secondly, there will be a right of access to the new, two-tier Scottish tax tribunals and, ultimately, on a point of law, to the Court of Session. Those arrangements are robust and credible and will provide Scottish taxpayers with confidence in the administration of devolved taxes.

Part 8 sets out a penalties regime. In response to recommendations from both the Finance Committee and the Delegated Powers and Law Reform Committee, we lodged amendments at stages 2 and 3 to set out the detail of the penalties regime in full, including all penalty amounts. At the same time, the bill provides the flexibility for changes to the penalties regime to be made by order subject to the affirmative procedure, should that prove necessary in the light of experience.

The bill’s implementation will involve putting in place a significant amount of subordinate legislation by 1 April 2015, which is when revenue Scotland will come into being. Later this year, I intend to publish a consultation paper accompanied by drafts of all the subordinate legislation that needs to be in place by 1 April 2015. That will provide a full opportunity for consultation with interested parties well before the draft orders are laid before Parliament early in the new year. We have already published consultation papers setting out the proposed subordinate legislation for the land and buildings transaction tax and the Scottish landfill tax.

Although we are assuming responsibility for the collection and management of only a small portion of taxation, this is a new and exciting opportunity for the Scottish Parliament. Throughout the process there has been extensive consultation with the tax and legal professions as well as other stakeholders. The tax consultation forum and the devolved tax collaborative that we established have been closely involved throughout the process. We will maintain that open and consultative approach as we move towards the implementation of the devolved taxes on 1 April 2015.

I thank the Finance Committee once again for the very positive and constructive approach that it has taken throughout the bill’s parliamentary passage. The bill as passed is much the better for it. It provides a robust framework for the collection and management of the first two devolved taxes when they come into force on 1 April 2015. It also provides a solid foundation on which we can build in the event of this Parliament becoming responsible for a wider range of taxes.

I move,

That the Parliament agrees that the Revenue Scotland and Tax Powers Bill be passed.

15:53

Iain Gray (East Lothian) (Lab): In the stage 1 debate, I quoted Albert Einstein, as I do whenever I am given the opportunity. Einstein said:

“The hardest thing in the world to understand is the income tax.”

I doubt that Einstein ever had to worry about land and buildings transaction tax, and he certainly did not have to worry about landfill tax, so we can probably assume he was talking about the complexity of tax in general. When I looked back at that stage 1 debate, I saw that most of us began by noting how dull tax legislation is considered to be and how complicated it turns out to be—although I have spotted one accountant of my acquaintance who has been drawn to the public gallery by our deliberations, so these things are a matter of taste.

Perhaps it is a sign of the times that we live in that today’s debate—technical, pragmatic and, above all, consensual—feels rather like light relief
from what passes for political discourse the rest of the moment. The fact is that although we began with the shared purpose of creating revenue Scotland to administer and manage the devolved taxes—the landfill tax and the land and buildings transaction tax—it still turned out to be a complex task to get right sometimes, despite that consensus and shared purpose. That is all the more reason to congratulate the bill team on its work in drafting and redrafting the legislation to get us to the position that we are in today, where I think that we can be sure that the bill will be passed overwhelmingly—indeed, unanimously—at decision time.

The Finance Committee, on which I do not sit, deserves our thanks, too: first, for taking comprehensive, complicated and exhaustive evidence on the bill at stage 1; and, secondly, for dealing with some 300 amendments at stage 2. Perhaps unusually for me, I also want to praise the cabinet secretary for his efforts in steering the legislation through, including the further 140 amendments dealt with today. There have been almost 450 amendments since the bill was introduced and although we dealt with the 140 amendments in pretty short order this afternoon, they included some significant improvements in response to the committee’s scrutiny of the bill. I will mention some of them in a moment.

As the cabinet secretary noted, today marks not just the completion of the passage of the Revenue Scotland and Tax Powers Bill but the completion of a trilogy of linked bills that create the first devolved national taxes and the body that will administer and manage them. Therefore, we are completing a significant task today, and I am tempted to say to the cabinet secretary that, apart from pursuing the important matter of a future for the Ferguson shipyard, perhaps he should take the next few weeks off, put his feet up and stay out of trouble. However, I expect that he has other plans, which is a pity in a way because the task that he is completing today is real proof of the power and flexibility of the devolution settlement that I fear he will spend the next four weeks trying to destroy.

The three bills, of which this is the third, derive, of course, from the Calman process and the consequent Scotland Act 2012. They constitute a significant step forward in rebalancing the devolution settlement by securing new fiscal powers and decision making for this Parliament without breaking the social, economic and political union with the rest of the United Kingdom that provides us with such significant opportunities. Nonetheless, we have consensus for today on the bill.

That consensus started with the approach that was taken to creating a new tax system—the fundamental principle. The cabinet secretary made much of his starting point being Adam Smith’s four maxims for a tax system: certainty, convenience, efficiency and proportionality in relation to the ability to pay. He was right, and has had support across the chamber for that principle-based approach to the legislation.

It has been interesting to see how turning those maxims into detailed legislation is less straightforward than might have been assumed, as they can sometimes contradict themselves, but I think that some of the 400-odd amendments have taken us in the right direction. For example, we now have on the face of the bill greater certainty over penalties. More important, amendments both at stage 2 and at stage 3 today have made the definitions of what constitutes tax avoidance much clearer and more certain.

As the cabinet secretary knows, we have supported his approach to tax avoidance from the start. We agree with him that we should have a general anti-avoidance rule rather than a general anti-abuse rule. We agree that the double reasonableness test should be avoided, that the test should be of artificiality rather than of abusiveness and that arrangements where tax avoidance is one of the purposes—not just the sole or main purpose—should also be caught by the general rule. In other words, we agree with the cabinet secretary that the net should be cast wider than in previous legislation—as, indeed, it has been.

However, we have pursued further clarity, notably through Malcolm Chisholm in committee, and I am glad to acknowledge once again that the cabinet secretary has put it beyond doubt that the general rule applies to transactions between individuals as well as companies or businesses.

In his speech, the cabinet secretary referred to the consultation, guidance and secondary legislation that will follow the passing of the bill. We should acknowledge that there is still work to be done. Indeed, we will not know whether the bill meets the maxim of efficiency until it is tested in action; of certainty until consequent guidance and secondary legislation are completed; or of proportionality until tax rates are actually announced, which will have to happen quite soon, as the cabinet secretary must know.

However, we can claim a good piece of legislation—one that has been improved by the legislative process and which can, should and will, I am sure, be supported at decision time.

16:00

Gavin Brown (Lothian) (Con): It has been interesting and rewarding to be involved with the bill. I am extremely grateful to Professor Gavin
McEwen, who gave expert advice to the Finance Committee, and to all other stakeholders who participated in round-table discussions, gave formal evidence and wrote in to try to explain some of the finer complexities of tax.

Iain Gray quite rightly quoted Smith’s maxims. All those maxims have great merit on their own, but it has been very interesting to see that it is far trickier to obey them all at the same time in practice than in theory.

Although there was praise for most of the bill at stage 1, the biggest criticism that was made related to the provisions on penalties. Things had not been done quite rightly in that area and there was a strong view among stakeholders that the circumstances, amounts and factors to be taken into account ought to be on the face of the bill, and that procedure and administration could be left to secondary legislation. The bill team and the cabinet secretary acknowledged that during stage 1 and, helpfully and rightly, the cabinet secretary lodged a raft of amendments at stage 2.

The penalties provisions are now far clearer and have far broader support than they would have had if they had been left as they were at stage 1. For example, section 150, on failure to make a return, previously had no amount attached and simply gave the Government the power to produce regulations. Now, after amendments were agreed to at stage 2, firm amounts have been put against what would be paid in the absence of a return. The provisions have been helpfully divided into time periods: returns that are three, six or 12 months late will be treated differently and receive different penalties. Also, penalties have been split between the two taxes: the regime for land and buildings transaction tax is slightly different from that for landfill tax. Section 150 now does what it ought to do and gives some certainty, but, as the cabinet secretary said, the bill still allows the Government a degree of flexibility to make changes by order, should circumstances prove that to be necessary.

Another example relates to section 160, which is about penalties for an error in the tax return. Previously no penalty amount was set out; it was simply the case that regulations could be brought forward at some point. Now a clear percentage has been set out on what the penalty might be in relation to the tax. Indeed, it is quite helpful that the bill now splits the penalty into two categories: one for deliberate inaccuracies by the person completing the return; and one for inaccuracies that are deemed to be careless as opposed to deliberate. Those two categories are treated separately, as most people would argue they ought to be.

We now have consistency: the regime hangs together and makes sense to taxpayers. All those changes were welcomed when they were made and I welcome them again.

During this afternoon’s discussion of amendments, the cabinet secretary touched on the issue of a penalty for failure to pay tax. Everyone in the chamber agreed to today’s amendments in that regard. Previously, I had some concerns over the provision: there would have been, in effect, an instant penalty if the tax was not paid on or before the due date, which was a little harsh. The cabinet secretary agreed to reflect on the matter, and what has emerged is a good set of amendments that we considered today. They provide that, at least in the case of LBTT, taxpayers will have 30 days to pay the penalty.

There was criticism of the proposals for a charter of standards and values. The bill as introduced seemed to put a slightly greater obligation on the taxpayer than it did on revenue Scotland. Taxpayers had to obey; revenue Scotland had to “aspire” to the standards in the charter. The Government changed the wording, quite rightly, to provide that both sides must “adhere” to the charter. There will be reciprocity, as opposed to the balance being in favour of revenue Scotland.

Both the committees that considered the bill thought that ministerial guidance to revenue Scotland must be made public. That, too, has been provided for in an amendment that we considered today, which makes it clear that ministerial guidance will be laid before the Parliament.

The bill started well and has been improved, as the cabinet secretary said. We will happily support it at decision time.

16:06

Kenneth Gibson (Cunninghame North) (SNP): I thank the people who have been involved in the bill’s progress: the members of the Finance Committee; committee clerks; the committee’s adviser, Professor Gavin McEwen, who was mentioned by Gavin Brown; and the organisations and individuals who took the time to respond to the consultation and give evidence on the bill earlier this year.

It has been a long road, and from the outset the Finance Committee was aware of the complexities that are involved in a bill of this nature. As the committee’s convener, I was conscious of the need for close scrutiny. The technicalities of the bill are reflected in the large proportion of committee time that we dedicated to it.

As members know, the Scotland Act 2012 devolved the power to raise taxes on land
transactions and waste disposal to landfill. With the passage of the Revenue Scotland and Tax Powers Bill, important changes to the Scottish taxation landscape will be implemented. The bill makes provision for a Scottish tax system to collect and manage the land and buildings transaction tax and Scottish landfill tax.

Furthermore, the bill will establish revenue Scotland, which will be a new non-ministerial department. As of 1 April 2015, that department will be the new tax authority responsible for collecting Scotland’s devolved taxes. [Interuption.] The bill also provides for Scottish tax tribunals. [Interuption.]

**The Deputy Presiding Officer:** Microphone, Mr Gibson.

**Kenneth Gibson:** I apologise.

**The Deputy Presiding Officer:** That is much better. We can hear you now.

**Kenneth Gibson:** I can see how much attention members have been paying to my speech, given that I am about a third of the way through and I have only just realised that they could not hear me.

**The Deputy Presiding Officer:** Everyone was just enjoying you being quiet.

**Kenneth Gibson:** That is a great vote of confidence. Perhaps I should sit down now.

Under the bill, the relationship between the tax authority and taxpayers will be clarified. I am optimistic that the bill creates a strong statutory framework for devolved taxes, clearly defining the duties, rights and powers of the tax authority and taxpayers.

The framework is strongly underpinned by the principles of anti-avoidance, and the establishment of the anti-avoidance rule will enable the new body, revenue Scotland, to combat avoidance schemes that permit tax advantages. The approach is strongly supported by the Finance Committee and the Cabinet Secretary for Finance, Employment and Sustainable Growth.

Since the Parliament last debated the bill, the Finance Committee has considered amendments at stage two—more than 300 of them, as Iain Gray said. That involved a lengthy session with the cabinet secretary and his officials. The cabinet secretary demonstrated the importance of keeping fit as he nimbly responded to the myriad of amendments.

Many amendments related to minor technical or consequential issues and most concerned the drafting of the bill. For example, there was clarification that members of the Northern Ireland Assembly and National Assembly for Wales, like their Scottish and UK equivalents, are not eligible to stand for appointment to revenue Scotland, and that revenue Scotland must specifically address taxpayers and their agents in providing assistance and information. Tribunal procedures were clarified, in accordance with the Tribunals (Scotland) Act 2014.

Other amendments were lodged as a result of the committee’s scrutiny and recommendations. Of note are amendments to section 10, “Charter of standards and values” and section 13, “Use of information by Revenue Scotland”. Amendments were agreed to that will further protect taxpayers’ confidential information and ensure that revenue Scotland performs in an ethically sound manner.

Importantly, the general anti-avoidance framework was simplified following feedback from the committee’s consultations. Previously, three types of revenue Scotland officer had been proposed, but that has been refined and reduced to one. Revenue Scotland officers will now have the required specialist skills and level of seniority to adequately deal with the matters before them, which will ensure that procedures are dealt with and will eliminate unnecessary bureaucracy.

With the support of the committee and the cabinet secretary, as well as contributors such as the Scottish Trades Union Congress and Unison, further amendments were added to the general anti-avoidance rule. As it is the fundamental cornerstone of the bill, the amendments were carefully considered. In all, the changes will better secure the robustness of the legislation and ensure that it is fair.

I conclude by restating my firm support for the transfer of financial powers to the Scottish Parliament and by reiterating my thanks to my fellow committee members and all other contributors, notably the bill team and the Cabinet Secretary for Finance, Employment and Sustainable Growth. I believe that the bill is an important milestone that caters for the provision of future tax decisions being made in Scotland. It has been taken forward in a positive way by all parties in the Parliament, which was exemplified by the fact that there were no divisions at stage 3. I am sure that I speak for all my Finance Committee colleagues when I say that the bill has only whetted our appetite for further tax legislation in the months and years ahead.

16:11

**Michael McMahon (Uddingston and Bellshill) (Lab):** According to Denis Healey,

“The difference between tax avoidance and tax evasion is the thickness of a prison wall.”

The former chancellor was absolutely right because, although tax avoidance is simply clever financial planning, tax evasion is illegal. It is
understandable that, at a time when high-profile millionaire celebrities and multinational companies have been highlighted, the focus of deliberations on taxation is on that issue. It has become apparent that the public care more deeply than ever that we do not have a tax system that permits freeloaders.

The Scottish Government has got the balance just about right in legislating on how revenue Scotland will be tasked with dealing with avoidance and evasion within its responsibilities. There is flexibility in the rules but enough clarity to ensure that the rules are firm enough to follow. The amendments that the cabinet secretary has made and accepted have helped to clarify some areas in which there was originally some doubt. We had to get it right, because tax avoidance could have serious implications for business as a whole. There could also be implications for the public perception of our tax system. The system must maintain public confidence, and the perception that others can avoid their responsibilities can damage that confidence.

The clear view of the tax professionals who gave evidence to the Finance Committee was that the level of public scrutiny 10 years ago was much less than it is now. We heard that tax avoidance is not necessarily any greater than it was in years gone by, but that the greater public awareness of all the issues means that, when certain individuals or companies do not contribute their fair share to the public purse, there is a heightened sense of outrage. Those concerns are justified, which is why, when avoidance occurs, we have to make it easier to take action. I believe that the bill will do that.

In relation to the landfill tax, any avoidance could create economic distortions, as a business could seek a competitive advantage by acting illegally to avoid paying tax. I have visited the new Scottish Environment Protection Agency premises at the Maxim Park development at Eurocentral in my constituency and was pleased to meet the dedicated team of investigators who have been tasked with pursuing companies that, by many and varied means, seek to avoid paying landfill tax. That effort is already bearing fruit and I am confident that, increasingly, we will clamp down on those who try to dodge their responsibilities.

I therefore have no hesitation in endorsing the bill and I congratulate the cabinet secretary on guiding it so effectively to this point. I also thank the convener of and adviser to the Finance Committee for their efforts to ensure that this technical and complex bill passed through the parliamentary process as smoothly as possible.

From an exchange that I had with the cabinet secretary earlier this afternoon, I know that he gets concerned when I break the consensus, so I will not let him down. I will ask a question that has occurred to me. This bill and the two others that resulted from the further devolution of tax powers under the Scotland Act 2012 sailed through the legislative process on a sea of good will and widespread agreement. When the cabinet secretary came to the Finance Committee last week, his exasperation was evident that closure on the technical details of the block grant adjustment that is required under the new tax laws has not yet been achieved.

If the cabinet secretary cannot conclude in 18 months the process for a system that covers only 1.7 per cent of Scotland’s income, with all the parties involved in total agreement on its desirability and efficacy, how on earth does he expect to negotiate, agree and deliver an entire transfer of powers, set up and conclude applications for membership of NATO, the European Union and other bodies and set up a currency union all within 18 months of a yes vote in September? I do not expect the cabinet secretary to answer that, or to have to answer it, because it is a purely hypothetical question.

I thank him for his efforts in bringing the devolved taxes to fruition and I look forward to seeing how revenue Scotland uses the powers that have been given to it to the betterment of our system of taxation in Scotland.

16:15

**Willie Rennie (Mid Scotland and Fife) (LD):** I am grateful to the committee, the advisers, the clerks and the Government officials for their detailed work over a long time.

It is striking that this afternoon’s debate contrasts remarkably with the debates on the bill that we had a few months ago. It also contrasts with debates earlier this afternoon, when we were all heated. I felt the early adrenaline rush evaporate as this debate commenced.

The bill shows the effectiveness and value of devolution and the effectiveness of the Parliament. It is a direct consequence of the Scotland Act 2012. It is also a precursor to what I want to see: more powers being transferred to the Parliament here at Holyrood—perhaps only if there is a vote next month.

The bill also sets an important foundation for the expansion that I want of the Parliament’s powers on income tax, capital gains tax, inheritance tax and many other areas so that the Parliament raises the majority of the money that it spends. I also presume that, for SNP members, it sets a foundation for independence.

When the bill and revenue Scotland were first proposed, the aspiration was set out to save
significant sums of money—I think that £250 million was mentioned—because we would have a much simpler, more flexible, more agile system of tax collection in comparison with Her Majesty’s Revenue and Customs. Those ambitions will be tested on the two relatively small taxes for which we will be responsible initially. Everybody will watch closely to ensure that those bold ambitions are met, even if it is in a minor way.

As Iain Gray eloquently pointed out, the 450 or so amendments that have been made to the bill have revealed that raising tax is not a simple business. The people on the other side who want to avoid tax are smart and will spend a lot of time and money trying to avoid it. Therefore, we will have to work extremely hard and be extremely agile to ensure that we are as effective as, if not more effective than, HMRC.

HMRC has made some progress in recent years. It has managed to make 40 changes in tax law since 2010 and many of the loopholes have been closed. However, it is an on-going process to ensure that those who want to avoid tax are caught and make their contribution. Ultimately, we want public services to be properly funded to ensure that we get the services that we deserve and need.

I have great hopes for the bill. It is a great piece of work. I hope that it will be as effective as those who proposed it initially claimed that it would be.

With that, I pledge my party’s support.

16:18

John Mason (Glasgow Shettleston) (SNP): I am pleased to be able to take part in the debate. Taxation may or may not be everyone’s most exciting topic, but I find it extremely interesting, and the bill is particularly significant, as it is to become the underpinning legislation as we move forward, whatever the constitutional settlement.

As I said when I spoke on the subject in May, one of the problems of UK tax legislation has been its emphasis on the letter of the law as against the spirit or intention of the law. As a result, we have had situations in which the wider public has been clear that tax should have been paid but some taxpayers have avoided tax quite artificially. That has been referred to already.

That is particularly galling for ordinary members of the public who, whether employed, self-employed or retired, are pretty strictly regulated by the various tax authorities. Therefore, I welcome the more principles-based approach in the legislation. I hope that that approach will also be taken in future Scottish tax bills.

On the subject of principles, like others, I am happy to welcome the emphasis on Adam Smith’s maxims, including, in particular, the one that says that taxes should be proportionate to the ability to pay. In the committee, we discussed the intricacies of that approach, and the differences between proportionate and proportional. I admit that those differences have now escaped me. However, it is clear that there are some taxes, such as council tax, that are not really linked to the ability to pay, except in the loosest possible sense. I hope, as we move forward, we can remember that principle, and that new and amended taxes will be more proportionate.

The issue of certainty has come up many times as we consider the bill. That is one of Adam Smith’s maxims that we all support. However, I continue to think that the demand for certainty can sometimes be a smokescreen and can mean only more certainty for those who want to avoid paying tax. Therefore, I support the cabinet secretary’s insistence that we stick to a principles-based approach, including having a wider general anti-avoidance rule than seems to exist in the UK.

Only two relatively small taxes are being fully devolved, while income tax is not really being devolved at all, as we will have only partial control over one aspect of it. That could, frankly, give us the worst of both worlds, with an already complex UK income tax system becoming more complex and therefore more expensive to operate. That is the downside of devolution and, in particular, of sharing a tax rather than devolving it.

Another factor in this is the block-grant adjustment that Michael McMahon referred to. It is disappointing that, having promised to devolve those two taxes, it now seems that Westminster is attempting to backtrack and keep its hands on as much of them as it possibly can. That does not bode well for the vague assertion that more tax powers might—or may; or could; or should possibly, at some stage, given the right circumstances and the right Government at Westminster, and on the assumption that the UK does not leave the EU and does not go completely bankrupt—be devolved in the event of a no vote.

However, I prefer to be optimistic and look forward to our taking control of the whole range of taxes, as normal countries do. We will probably have to start off by modifying the UK system but, at some stage, we will have the challenging opportunity of writing our own legislation for those major taxes. I look forward to that exercise.

The great thing about what we are doing today is that we are setting out a direction of travel. We want to do things our way, in a way that fits Scotland’s needs. The bill is a good start, and I whole-heartedly support its approval.
The Deputy Presiding Officer (Elaine Smith):
That brings us to the closing speeches. I call Gavin Brown.

16:23

Gavin Brown: If that was John Mason being optimistic about the tax system, I hope that I am not here on the day when he is pessimistic.

Quite rightly, this has been a broadly consensual debate, with little to divide the chamber, either at stage 2 or at stage 3.

I was struck by something that the cabinet secretary said earlier. He pointed out just how much subordinate legislation will have to flow from not only this bill but the other tax bills that we passed earlier this year and at the end of last year. For all three, there is bound to be a raft of legislation. In some ways, today is only a starting point. There is more work to be done than we have done so far, and all of it has to be completed by 1 April next year. There is a huge amount to be done over the coming months by the Government, the Parliament and all those who are involved in taxation in Scotland.

Probably the first true test of revenue Scotland’s performance and way of doing business will involve the charter to which the cabinet secretary referred. Under section 10 of the bill, revenue Scotland has to create a charter of standards and values. As I indicated earlier, the section has been boosted by bringing in reciprocity between revenue Scotland and taxpayers. In pulling the charter together, revenue Scotland is to consult those whom it thinks are relevant. That will be its first challenge: how will it consult on what the charter ought to look like, who will it consult and will it take a proactive or a reactive approach? Everybody will be watching very carefully, because how the charter is constructed will tee up how revenue Scotland performs over the coming years.

I do not know whether there is information on this at the moment, but if the cabinet secretary has any information on the timing of the consultation on the charter we would certainly welcome hearing it in the chamber today.

I have a couple of other points to bring up. Section 3 refers to revenue Scotland’s resolution of disputes with taxpayers. The section contains the phrase “including by mediation”. Individual cases between taxpayers and revenue Scotland will clearly be operational matters and decisions on them will, quite rightly, be for revenue Scotland to take. However, I wonder whether including that phrase is a hint or a steer from the Government that, as a policy, it would like to see mediation being used by revenue Scotland. Perhaps I have read too much into that. I would certainly welcome any clarification on it from the Government.

A couple of members have talked about the block grant adjustment mechanism. This is not strictly and directly part of the stage 3 debate, but the cabinet secretary gave evidence to the Finance Committee last Wednesday about how things have moved forward in that regard. Perhaps the answer to this question is no, given that that was only a week ago, but has anything happened in the interim period and is there anything else that the cabinet secretary can share with the Parliament, so that we can see that process moving forward as fast as possible? That adjustment mechanism must be sorted out in the coming months, but everything else underpinning the bill—and indeed the other two tax bills—must be in place by 1 April next year. There is much for us all to do in the coming months.

16:27

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Iain Gray began his speech by quoting Einstein, to the effect that

“The hardest thing in the world to understand is the income tax.”

To be perfectly honest, and at the risk of being expelled from the Finance Committee, I think that the hardest thing in the world to understand is the Revenue Scotland and Tax Powers Bill. In view of that, I thank all those who helped me and, no doubt, others to understand better—namely, the adviser in particular, the clerks, the witnesses, the bill team and the cabinet secretary himself.

I also thank the cabinet secretary for taking on board so many of the committee’s recommendations in his stage 2 amendments and, of course, in further amendments today. I should thank him particularly for the amendment in which he picked up a point that I made in committee. Referring to artificiality in the GAAR, I asked why the reference to “reasonable business conduct” in section 59 should not be extended to include personal conduct. I welcome the amendment that the cabinet secretary lodged to deal with that issue.

The word “reasonable” has haunted our discussions. I even found myself at one point saying that the UK double reasonableness test was quite reasonable. In the end, I am quite happy to defer to the Government in that regard.

On the general anti-avoidance rule, there were some concerns that the bill had been drawn too broadly and that the language that was used in defining what constitutes a reasonable action was too vague. Part 5 of the bill outlines that any activity that has the obtaining of a tax advantage as the main purpose, or one of the main purposes,
of the arrangement may be deemed unlawful. I believe, however, that it is right to draw the rule quite widely as, historically—and specifically in the case of HMRC—the use of a more targeted or narrow approach has led to the emergence of loopholes that can be abused by businesses. Having the principles of the GAAR enshrined in the bill will, I hope, mitigate the need for any targeted rules for tax avoidance in future.

Further to that, although I recognise that the double reasonableness test may be construed as being unnecessarily complicated, its absence from this new legislation means that we must make absolutely certain that channels are made available to challenge any decision in a timely and fair manner. Therefore, a vigorous approach to tax avoidance must be balanced by a fair appeals system. I raised that issue at stage 1 in the committee with the cabinet secretary, and the committee recommended that he reconsider the restrictive rule governing appeals in the Court of Session and the number of members of the upper tax tribunal for appeals. I would welcome reassurance from the cabinet secretary, in his wind-up speech, about the fairness of the appeals system.

Another issue of fairness concerns the contrast between the advice that is offered by lawyers and accountants and to what extent it should be privileged. I believe that what is and is not privileged advice should apply equally to all advisers, whether or not they are lawyers. I would welcome a statement of the Government’s most up-to-date thinking on that matter.

Finally on fairness, equality between taxpayers and revenue Scotland is also important. Part 2 of the bill addresses the establishment of revenue Scotland and provides for its general functions and responsibilities as we take forward the devolution process. Looking at the final draft, it is reassuring to see that a number of the recommendations that were made at the committee stage have been taken on board by the cabinet secretary with regards to that process. That includes putting taxpayers and revenue Scotland on an even footing in the expectations that are placed upon them in the charter. That was not the case in previous stages of the bill. The change of language to “standards of behaviour and values which revenue Scotland is expected to adhere to”, rather than “aspire to”, will not only reassure taxpayers but firmly cement the duties of the new body on the face of the bill.

Section 10(3A) of the bill should also be welcome as it offers the assurance that the charter will be drafted and subsequently redrafted only after revenue Scotland consults such persons as it considers appropriate. That is good news, as the charter should not be skewed towards the interests of revenue Scotland but, rather, should represent the best practice for the widest number of stakeholders. I would, however, welcome a little more in the way of reassurance that revenue Scotland will engage with as many stakeholders as is practically possible, making it absolutely clear to Parliament who has been involved and for what reason.

With regard to the delegation to Registers of Scotland and the Scottish Environment Protection Agency of duties relating to land and buildings transaction tax and landfill tax respectively, I welcome the pledge to publish information concerning the nature of that delegation and to lay it before Parliament, and the fact that revenue Scotland will still be ultimately responsible for carrying out delegated functions. Those powers may be delegated as and when revenue Scotland sees fit. Although I support the theory behind that, I was somewhat concerned by some of the evidence on the balance of responsibilities and the pressures that that may bring. The Faculty of Advocates was keen to point out that certain powers, such as the power to levy a penalty or to make an assessment, are inherently the concern of the taxing authority, and that revenue Scotland should not be given carte blanche to delegate at will. Powers must be delegated according to what works best where. Some responsibilities are best kept within the remit of revenue Scotland.

The tax system that a country adopts goes fundamentally to the heart of what sort of society we wish to create. I believe that, within the framework of devolution, it is possible to achieve the best outcomes for Scotland. In co-operating so well, the Finance Committee and the cabinet secretary have provided Parliament with an effective foundation stone for fiscal devolution. The bill that is before us, with its enshrined charter of responsibilities, will encourage a relationship of respect between the taxpayer and the authority, based on transparency and accountability. I congratulate all members who have been involved with this process and hope that, in future years, the same approach will be applied. I support the bill and thank the Government for bringing forward this landmark legislation.

The Deputy Presiding Officer: I remind Parliament that our debates this afternoon are on a follow-on basis and therefore I trust that all members will be in the chamber for the next debate.

16:33

John Swinney: Iain Gray said that today marked the conclusion of the trilogy of bills. That got me thinking. There is Peter May, that great
Scots author, responsible for the Lewis trilogy of “The Blackhouse”, “The Lewis Man” and “The Chessmen”, and there is John Swinney, responsible for the trilogy of the Land and Buildings Transaction Tax (Scotland) Bill, the Landfill Tax (Scotland) Bill and the Revenue Scotland and Tax Powers Bill. It is not much of a sequel to other trilogies, but it is nonetheless very important legislation.

Iain Gray: In the spirit of the famous game “Scissors, paper, stone”, the fact is that Peter May’s product will eventually end up in landfill and be subject to the landfill tax that Mr Swinney has introduced.

John Swinney: It will not for a long time, I hope.

Today’s debate has been a welcome conclusion to a really good parliamentary process. I thank the bill team for their work—as Malcolm Chisholm said, this area of activity is complex, and just as I have had to navigate the Finance Committee through it, the bill team has first had to navigate me through it. The team has been exceptional in supporting me in developing the legislation.

In doing so, we have—as has been the case with all three tax bills—had an enormous amount of consultation of external stakeholders on its contents and provisions. On most of those, we have managed to reach agreement with external stakeholders, but on some we cannot get agreement.

I assure Malcolm Chisholm that the approach of engaging in maximum consultation and dialogue with external stakeholders will be the hallmark for progressing further dialogue and discussion on issues related to the charter. I also assure Gavin Brown that we will engage in extensive consultation and allow adequate time to ensure that the issues can be properly considered.

As Malcolm Chisholm said, the design of the tax system very much reflects the approach that we as a country want to take to our taxation arrangements. I initiated the process with reference to the Adam Smith principles of certainty, convenience, efficiency and proportionality to the ability to pay, in a way that was designed to set out how we could, in our 21st-century thinking, reflect some of the great foundations of thinking that Scotland has contributed to the world. Those values are an important consideration in setting out what we want to achieve from our tax system and the impact that we want it to have on our society.

We will take that approach in reflecting on the further provisions that are to be progressed in subordinate legislation. There will be a lot of subordinate legislation, and we will of course engage with Parliament on its contents.

One innovation in the bill has been, as we progress the great principles of Adam Smith, to design new mechanisms that are appropriate for the times. That is how I would characterise the general anti-avoidance rule. I made it clear to Parliament at the outset that I wanted the bill to define emphatically the intolerance that we in Scotland would show towards tax avoidance. I want us to err on the side of tax maximisation in the way in which we structure our legislative framework.

I invited Parliament to challenge the Government’s thinking with regard to whether we were able to translate that lofty aspiration into practical legislative form. We have listened carefully to the challenges that have come from Parliament in various areas, and we have responded significantly to them at stages 2 and 3.

The current constitutional debate has crept into the discussion today. My friend Michael McMahon did not disappoint in today’s debate, and he would be disappointed in me if I did not get on to some of that territory before I conclude my own contribution.

Michael McMahon and Gavin Brown spoke about the block grant adjustment process, which is an interesting contrast to the legislative process that we have undertaken in Parliament. Across the political spectrum, with all our different opinions on how we view the world, we in this Parliament have all managed to—I assume that we will, from what I am hearing this afternoon—reach a point of unanimity on the Revenue Scotland and Tax Powers Bill when we vote later today.

We have considered the issues in our own space, according to our own values and principles, and we have come to this conclusion. I have compromised on certain things, and we have reached agreement, and Parliament will unanimously support the bill.

I think that that serves as an interesting illustration of the fact that, when we as members of the Scottish Parliament work together on legislative provisions, we can come to good, logical and sensible conclusions. If we can do that on the Revenue Scotland and Tax Powers Bill, why cannot we do it on issues such as welfare reform, other measures on the tax system and how we should speak to the world through our international policy?

Mr Chisholm said that he felt that “the word reasonable has haunted our discussions” on the bill. I consider myself to be an entirely reasonable person, and I have tried my level best to display that reasonableness in getting to a position of unanimity. If we can have that reasonableness across the chamber on the bill
that we are debating, why cannot we have it on all
the issues on which such reasonableness would
allow us to advance our constitutional agenda in
fulfilment of our mission to deliver the very best for
the people of Scotland?

We would, of course, be able to make progress
on the block grant adjustment if all my
reasonableness were absorbed by the other party
to that discussion—Her Majesty's Treasury. The
lesson that I take from our consideration of the bill
is that, when we in Scotland all work together to
use the legislative framework that we have, we
can take good decisions that will be the hallmark
of how we should be governed in the years to
come.

I have expressed my remarks in a way that is
entirely consistent with my reasonable style and
with the optimistic tone of Mr Mason, which came
to the fore in the debate. I am sure that the people
of Scotland will reflect on the points that I have
made in the weeks to come, and that they will
come to the right—and the sensible—conclusion.
CONTENTS

Section

PART 1
OVERVIEW OF ACT

1 Overview of Act

PART 2
REVENUE SCOTLAND

Establishment of Revenue Scotland

2 Revenue Scotland

Functions of Revenue Scotland

3 Functions of Revenue Scotland

Delegation of Revenue Scotland functions

4 Delegation of functions by Revenue Scotland

Money

5 Payments into the Scottish Consolidated Fund

6 Rewards

Independence of Revenue Scotland

7 Independence of Revenue Scotland

Ministerial guidance

8 Ministerial guidance

Provision of information, advice or assistance to Ministers

9 Provision of information, advice or assistance to the Scottish Ministers

Charter of standards and values

10 Charter of standards and values

Corporate plan

11 Corporate plan

Annual report

12 Annual report
PART 3

INFORMATION

Use of information by Revenue Scotland etc.

13 Use of information by Revenue Scotland and other persons

Protected taxpayer information

14 Protected taxpayer information
15 Confidentiality of protected taxpayer information
16 Protected taxpayer information: declaration of confidentiality

Other limits on use and disclosure of information

16A Disclosure of information prohibited or restricted by statute or agreement
16B Protected taxpayer information: use by the Keeper

Offence of wrongful disclosure

17 Wrongful disclosure of protected taxpayer information

PART 4

THE SCOTTISH TAX TRIBUNALS

CHAPTER 1

INTRODUCTORY

18 Overview

CHAPTER 2

ESTABLISHMENT AND LEADERSHIP

Establishment

19 The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

Leadership

20 President of the Tax Tribunals
21 Functions of the President of the Tax Tribunals
22 Business arrangements
23 Temporary President

CHAPTER 3

MEMBERSHIP

Membership of Tax Tribunals

24 Members

Judicial members

25 Judicial members

Status and capacity

26 Status and capacity of members
CHAPTER 4

Decision-making and composition: general

Decisions in the First-tier Tribunal
Decisions in the Upper Tribunal
Composition of the Tribunals

Decisions by two or more members

Voting for decisions
Chairing members

CHAPTER 5

Appeal of decisions

Appeal from First-tier Tribunal

Appeal from Upper Tribunal

Further provision on permission to appeal

Process for permission

CHAPTER 6

Special jurisdiction

Judicial review cases
Procedural steps where petition remitted
Decision on remittal
Additional matters
Meaning of judicial review

CHAPTER 7

Powers and enforcement

Venue for hearings
Conduct of cases
Enforcement of decisions
Award of expenses
Additional powers
Offences in relation to proceedings
CHAPTER 8
PRACTICE AND PROCEDURE

Tribunal rules: general

46 Tribunal rules
47 Exercise of functions
48 Extent of rule-making

Particular matters

49 Proceedings and steps
50 Hearings in cases
51 Evidence and decisions

Issuing directions

52 Practice directions

CHAPTER 9
ADMINISTRATION

53 Administrative support
54 Guidance
55 Annual reporting

CHAPTER 10
INTERPRETATION

56 Interpretation

PART 5
THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

Artificial tax avoidance arrangements

58 Tax avoidance arrangements
59 Meaning of “artificial”
60 Meaning of “tax advantage”

Counteracting tax advantages

61 Counteracting tax advantages
62 Proceedings in connection with the general anti-avoidance rule
63 Notice to taxpayer of proposed counteraction of tax advantage
64 Final notice to taxpayer of counteraction of tax advantage
64A Counteraction of tax advantages: payment of tax charged etc.
65 Assumption of tax advantage

General anti-avoidance rule: commencement and transitional provision

66 General anti-avoidance rule: commencement and transitional provision
PART 6

TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1

OVERVIEW

67 Overview

CHAPTER 2

TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

Duties to keep records

69 Duty to keep and preserve records
70 Preservation of information etc.

Penalties for failing to keep and preserve records

71 Penalty for failure to keep and preserve records
71A Reasonable excuse for failure to keep and preserve records
71B Assessment of penalties under section 71
71C Enforcement of penalties under section 71
71D Power to change penalty provisions in sections 71 to 71C

Duty to keep and preserve records: further provision

72 Further provision: land and buildings transaction tax

CHAPTER 3

TAX RETURNS

Filing dates

73 Meaning of “filing date”

Amendment and correction of returns

74 Amendment of return by taxpayer
75 Correction of return by Revenue Scotland

CHAPTER 4

REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

76 Notice of enquiry
77 Scope of enquiry

Amendment of return during enquiry

78 Amendment of self-assessment during enquiry to prevent loss of tax

Referral during enquiry

79 Referral of questions to appropriate tribunal during enquiry
80 Withdrawal of notice of referral
81 Effect of referral on enquiry
82 Effect of determination
“Appropriate tribunal”

Completion of enquiry

Completion of enquiry
Direction to complete enquiry

CHAPTER 5

REVENUE SCOTLAND DETERMINATIONS

Determination of tax chargeable if no return made
Determination to have effect as a self-assessment
Determination superseded by actual self-assessment

CHAPTER 6

REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayment
Assessment where loss of tax
Assessment to recover excessive repayment of tax
References to “Revenue Scotland assessment”
References to the “taxpayer”

Conditions for making Revenue Scotland assessments
Conditions for making Revenue Scotland assessments
Time limits for Revenue Scotland assessments
Losses brought about carelessly or deliberately

Notice of assessment and other procedure
Assessment procedure

CHAPTER 7

RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment
Relief in case of double assessment

Overpaid tax etc.
Claim for relief for overpaid tax etc.

Order changing tax basis not approved
Claim for repayment if order changing tax basis not approved

Defence of unjustified enrichment
Defence to certain claims for relief under section 98 or 99
Unjustified enrichment: further provision
Unjustified enrichment: reimbursement arrangements
Reimbursement arrangements: penalties

Other defences to claims
Cases in which Revenue Scotland need not give effect to a claim
Procedure for making claims

105  Procedure for making claims etc.
106  Time-limit for making claims
107  The claimant: partnerships
108  Assessment of claimant in connection with claim

Contract settlements

109  Contract settlements

PART 7
INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1
INVESTIGATORY POWERS: INTRODUCTORY

Overview

110  Investigatory powers of Revenue Scotland: overview

Interpretation

112  Meaning of “tax position”
113  Meaning of “carrying on a business”
114  Meaning of “statutory records”

CHAPTER 2
INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

115  Power to obtain information and documents from taxpayer
116  Power to obtain information and documents from third party
117  Approval of taxpayer notices and third party notices
118  Copying third party notice to taxpayer
119  Power to obtain information and documents about persons whose identity is not known
120  Third party notices and notices under section 119: groups of undertakings
121  Third party notices and notices under section 119: partnerships
122  Power to obtain information about persons whose identity can be ascertained
123  Notices
124  Complying with information notices
125  Producing copies of documents
126  Further provision about powers relating to information notices

CHAPTER 3
RESTRICTIONS ON POWERS IN CHAPTER 2

127  Information notices: general restrictions
128  Types of information
129  Taxpayer notices following a tax return
130  Protection for privileged communications between legal advisers and clients
131  Protection for auditors
132  Auditors: supplementary
CHAPTER 4
INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises
133 Power to inspect business premises
134 Power to inspect business premises of involved third parties
135 Carrying out inspections under section 133 or 134
135A Carrying out inspections under section 133 or 134: further provision

Inspection for valuation etc.
136 Power to inspect property for valuation etc.
137 Carrying out inspections under section 136

Approval of tribunal for premises inspections
138 Approval of tribunal for premises inspections

Other powers in relation to premises
139 Power to mark assets and to record information

Restriction on inspection of documents
141 Restriction on inspection of documents

CHAPTER 5
FURTHER INVESTIGATORY POWERS
142 Power to copy and remove documents
143 Computer records

CHAPTER 6
REVIEWS AND APPEALS AGAINST INFORMATION NOTICES
144 Review or appeal against information notices
144A Power to modify section 144
145 Disposal of reviews and appeals in relation to information notices

CHAPTER 7
OFFENCES RELATING TO INFORMATION NOTICES
146 Offence of concealing etc. documents following information notice
147 Offence of concealing etc. documents following information notification

PART 8
PENALTIES
CHAPTER 1
PENALTIES: INTRODUCTORY

Overview
148 Penalties: overview
Double jeopardy

CHAPTER 2

Penalties for failure to make returns or pay tax

Penalties for failure to make returns

150 Penalty for failure to make returns

Amounts of penalties: land and buildings transaction tax
150A Land and buildings transaction tax: first penalty for failure to make return
150B Land and buildings transaction tax: 3 month penalty for failure to make return
150C Land and buildings transaction tax: 6 month penalty for failure to make return
150D Land and buildings transaction tax: 12 month penalty for failure to make return

Amounts of penalties: Scottish landfill tax
150E Scottish landfill tax: first penalty for failure to make return
150F Scottish landfill tax: multiple failures to make return
150G Scottish landfill tax: 6 month penalty for failure to make return
150H Scottish landfill tax: 12 month penalty for failure to make return

Penalties for failure to pay tax

151 Penalty for failure to pay tax
151A Land and buildings transaction tax: amounts of penalties for failure to pay tax
151B Scottish landfill tax: first penalty for failure to pay tax
151C Scottish landfill tax: penalties for multiple failures to pay tax
151D Scottish landfill tax: 6 month penalty for failure to pay tax
151E Scottish landfill tax: 12 month penalty for failure to pay tax

Penalties under Chapter 2: general

152 Interaction of penalties under Chapter 2 with other penalties
154 Reduction in penalty under sections 150 to 150H for disclosure
155 Suspension of penalty under sections 151 to 151E during currency of agreement for deferred payment
156 Special reduction in penalty under Chapter 2
157 Reasonable excuse for failure to make return or pay tax
158 Assessment of penalties under Chapter 2
159 Time limit for assessment of penalties under Chapter 2
159A Power to change penalty provisions in Chapter 2

CHAPTER 3

Penalties relating to inaccuracies

160 Penalty for inaccuracy in taxpayer document
160A Amount of penalty for error in taxpayer document
161 Suspension of penalty for careless inaccuracy under section 160
162 Penalty for inaccuracy in taxpayer document attributable to another person
163 Under-assessment by Revenue Scotland
163A Potential lost revenue: normal rule
163B Potential lost revenue: multiple errors
163C Potential lost revenue: losses
163D Potential lost revenue: delayed tax
164 Special reduction in penalty under sections 160, 162 and 163
165 Reduction in penalty under sections 160, 162 and 163 for disclosure
166 Assessment of penalties under sections 160, 162 and 163
166A Power to change penalty provisions in Chapter 3

CHAPTER 4

PENALTIES RELATING TO INVESTIGATIONS

167 Penalties for failure to comply or obstruction
168 Daily default penalties for failure to comply or obstruction
169 Penalties for inaccurate information or documents
171 Concealing, destroying etc. documents following information notice
172 Concealing, destroying etc. documents following information notification
173 Failure to comply with time limit
174 Reasonable excuse for failure to comply or obstruction
175 Assessment of penalties under sections 167, 168 and 169
176 Enforcement of penalties under sections 167, 168 and 169
177 Increased daily default penalty
178 Enforcement of increased daily default penalty
179 Tax-related penalty
180 Enforcement of tax-related penalty
180A Power to change penalty provisions in Chapter 4

CHAPTER 5

OTHER ADMINISTRATIVE PENALTIES

181 Penalty for failure to register for tax etc.
181A Amount of penalty for failure to register for tax etc.
181B Interaction of penalties under section 181 with other penalties
181C Reduction in penalty under section 181 for disclosure
181D Special reduction in penalty under section 181
181E Reasonable excuse for failure to register for tax etc.
181F Assessment of penalties under section 181
181G Power to change penalty provisions in Chapter 5

PART 9

INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax
183 Interest on penalties
184 Interest on repayment of tax overpaid etc.
185 Rates of interest
PART 10

ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1

ENFORCEMENT: GENERAL

Issue of tax demands and receipts

Issue of tax demands and receipts

Fees for payment

Fees for payment

Certification of matters by Revenue Scotland

Certification of matters by Revenue Scotland

Court proceedings

Court proceedings

Summary warrant

Summary warrant

Recovery of penalties and interest

Recovery of penalties and interest

CHAPTER 2

ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

Requirement for contact details for debtor

Power to obtain details

Reviews and appeals against notices or requirements

Power to modify section 194

Penalty

PART 11

REVIEWS AND APPEALS

CHAPTER 1

INTRODUCTORY

Overview

Overview

Appealable decisions

Appealable decisions
CHAPTER 2
REVIEW

Review of appealable decisions
199 Right to request review
200 Notice of review
201 Late notice of review
202 Duty of Revenue Scotland to carry out review
203 Nature of review etc.
204 Notification of conclusions of review
205 Effect of conclusions of review

CHAPTER 3
APPEALS

206 Right of appeal
207 Notice of appeal
208 Late notice of appeal
209 Disposal of appeal

CHAPTER 4
SUPPLEMENTARY

210 Reviews and appeals not to postpone recovery of tax
211 Settling matters in question by agreement
212 Application of this Part to joint buyers
213 Application of this Part to trustees
214 References to the “tribunal”
215 Interpretation

PART 12
FINAL PROVISIONS

Communications from taxpayers to Revenue Scotland
215A Communications from taxpayers to Revenue Scotland

Interpretation
216 General interpretation
217 Index of defined expressions

Subordinate legislation
218 Subordinate legislation

Ancillary provision
219 Ancillary provision

Modification of enactments
220 Minor and consequential modifications of enactments
Crown application

221 Crown application: criminal offences
222 Crown application: powers of entry
223 Crown application: Her Majesty

Commencement and short title

224 Commencement
225 Short title

Schedule 1—Revenue Scotland
Schedule 2—The Scottish Tax Tribunals
   Part 1—Appointment of members
   Part 2—Conditions of membership etc.
   Part 3—Conduct and discipline
   Part 4—Fitness and removal
Schedule 3—Claims for relief from double assessment and for repayment
Schedule 4—Minor and consequential modifications
Schedule 5—Index of defined expressions
Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Revenue Scotland and Tax Powers Bill

[AS PASSED]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

PART 1

OVERVIEW OF ACT

1 Overview of Act

This Act is arranged as follows—

Part 2 establishes Revenue Scotland and provides for its general functions and responsibilities,

Part 3 makes provision about the use and protection of taxpayer and other information,

Part 4 establishes the Scottish Tax Tribunals,

Part 5 puts in place a general anti-avoidance rule,

Part 6 contains provisions on the self-assessment system, the checking of tax returns by Revenue Scotland and claims for repayment of tax,

Part 7 makes provision for Revenue Scotland’s investigatory powers,

Part 8 sets out the matters in relation to which penalties may be imposed,

Part 9 makes provision about the interest payable on unpaid tax, on penalties and on tax repayments,

Part 10 contains provisions on debt enforcement by Revenue Scotland,

Part 11 sets out the system for the review, mediation and appeal of Revenue Scotland decisions, and

Part 12 contains general and final provisions.
PART 2

REVENUE SCOTLAND

Establishment of Revenue Scotland

2 Revenue Scotland

(1) There is established a body corporate to be known as Revenue Scotland.

(2) In Gaelic, Revenue Scotland is to be known as Teachd-a-steach Alba.

(3) Schedule 1 makes further provision about the membership, procedures and staffing of Revenue Scotland.

Functions of Revenue Scotland

3 Functions of Revenue Scotland

(1) Revenue Scotland’s general function is the collection and management of the devolved taxes.

(2) Revenue Scotland has the following particular functions—

(a) providing information, advice and assistance to the Scottish Ministers relating to tax,

(b) providing information and assistance to taxpayers, their agents and other persons relating to the devolved taxes,

(c) efficiently resolving disputes relating to the devolved taxes (including by mediation),

(d) protecting the revenue against tax fraud and tax avoidance.

(3) “Devolved taxes” has the meaning given by section 80A(4) of the Scotland Act 1998 (c.46).

Delegation of Revenue Scotland functions

4 Delegation of functions by Revenue Scotland

(1) Revenue Scotland may delegate—

(a) any of its functions relating to land and buildings transaction tax to the Keeper of the Registers of Scotland (“the Keeper”),

(b) any of its functions relating to Scottish landfill tax to the Scottish Environment Protection Agency (“SEPA”).

(2) Revenue Scotland may give directions to the Keeper or to SEPA as to how a delegated function is to be exercised and the Keeper and SEPA must comply with any such direction.

(3) Delegations or directions under this section may be varied or revoked at any time.

(4) Revenue Scotland must publish information about—

(a) delegations under this section, and

(b) directions given under this section.
Revenue Scotland must lay before the Scottish Parliament a copy of information published under subsection (4).

Subsections (4) and (5) do not apply to the extent that Revenue Scotland considers that publication of the information would prejudice the effective exercise of its functions.

Delegation of a function under this section does not affect—
(a) Revenue Scotland’s ability to exercise that function,
(b) Revenue Scotland’s responsibility for that function.

Revenue Scotland may reimburse the Keeper or SEPA for any expenditure incurred which is attributable to the exercise by the Keeper or SEPA of functions delegated under this section.

**Money**

**Payments into the Scottish Consolidated Fund**
(1) Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund.

But Revenue Scotland may do so after deduction of payments in connection with repayments, including payments of interest on—
(a) repayments, or
(b) payments treated as repayments.

**Rewards**
Revenue Scotland may pay a reward to a person in return for a service which relates to a function of Revenue Scotland.

**Independence of Revenue Scotland**

The Scottish Ministers must not—
(a) give directions relating to, or
(b) otherwise seek to control,
the exercise by Revenue Scotland of its functions.

This section is subject to any contrary provision made by or under this Act or any other enactment.

**Ministerial guidance**

The Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions.

Revenue Scotland must have regard to any guidance given by Ministers.

Ministers must publish any guidance given to Revenue Scotland under this section as they consider appropriate.
(3A) The Scottish Ministers must lay before the Scottish Parliament a copy of guidance published under subsection (3).

(4) Subsections (3) and (3A) do not apply to the extent that Ministers consider that publication of the guidance would prejudice the effective exercise by Revenue Scotland of its functions.

Provision of information, advice or assistance to Ministers

9 Provision of information, advice or assistance to the Scottish Ministers

(1) Revenue Scotland must provide the Scottish Ministers with such information, advice or assistance relating to its functions as Ministers may from time to time require.

(2) The information, advice or assistance must be provided in such form as Ministers determine.

Charter of standards and values

10 Charter of standards and values

(1) Revenue Scotland must prepare a Charter.

(2) The Charter must include—

(a) standards of behaviour and values which Revenue Scotland is expected to adhere to when dealing with taxpayers, their agents and other persons in the exercise of its functions, and

(b) standards of behaviour and values which Revenue Scotland expects taxpayers, their agents and other persons to adhere to when dealing with Revenue Scotland.

(3) Revenue Scotland must—

(a) publish the Charter as it considers appropriate,

(b) review the Charter from time to time, and

(c) revise the Charter when it considers it appropriate to do so.

(3A) Before publishing or revising the Charter, Revenue Scotland must consult such persons as it considers appropriate.

(4) Revenue Scotland must lay the first Charter and any revised Charter before the Scottish Parliament.

Corporate plan

11 Corporate plan

(1) Revenue Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval by the Scottish Ministers.

(2) The corporate plan must set out—

(a) Revenue Scotland’s main objectives for the planning period,

(b) the outcomes by reference to which the achievement of the main objectives may be measured, and

(c) the activities which Revenue Scotland expects to undertake during the planning period.
(3) Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Revenue Scotland.

(4) If Ministers approve a corporate plan, Revenue Scotland must—
   (a) publish the plan as Revenue Scotland considers appropriate, and
   (b) lay a copy of the plan before the Scottish Parliament.

(5) During the planning period to which a corporate plan relates, Revenue Scotland may review the plan and submit a revised corporate plan to Ministers for approval.

(6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

(7) “Planning period” means—
   (a) a first period specified by the Scottish Ministers by order, and
   (b) each subsequent period of 3 years.

(8) The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

**Annual report**

12 **Annual report**

(1) As soon as possible after the end of each financial year, Revenue Scotland must—
   (a) prepare and publish a report on the exercise of its functions during that year,
   (b) send a copy of the report to the Scottish Ministers, and
   (c) lay a copy of the report before the Scottish Parliament.

(2) “Financial year” means—
   (a) the period beginning with the establishment of Revenue Scotland and ending on 31 March in the following year, and
   (b) each subsequent period of a year ending on 31 March.

(3) Revenue Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

**PART 3**

**INFORMATION**

**Use of information by Revenue Scotland etc.**

13 **Use of information by Revenue Scotland and other persons**

(1) A relevant person may use information held by the person in connection with a function in connection with any other function.

(3) In this section and section 14 “relevant person” means any or all of the following persons—
   (a) Revenue Scotland,
   (b) a member of Revenue Scotland,
   (c) a committee of Revenue Scotland (and a member of any committee),
(d) the chief executive or any other member of staff of Revenue Scotland,
(e) a person to whom Revenue Scotland has delegated any of its functions,
(f) a member of staff of a person mentioned in paragraph (e).

(4) In this section and section 14 references to a “function” are references to—

(a) a function of any of the persons mentioned in subsection (3)(a) to (d),
(b) in the case of a person mentioned in subsection (3)(e)—
   (i) a function which Revenue Scotland has delegated to the person, and
   (ii) a function under any other enactment,
(c) in the case of a member of staff of a person mentioned in subsection (3)(e)—
   (i) a function which Revenue Scotland has delegated to the person and which
       the member of staff is exercising, and
   (ii) a function of the person under any other enactment which the member of
       staff is exercising.

Protected taxpayer information

14 Protected taxpayer information

(1) “Protected taxpayer information” means information relating to a person—

(a) which is held by a relevant person in connection with a function of Revenue
    Scotland, and
(b) by which a person may be identified.

(2) Subsection (1)(a) does not apply to information about internal administrative
    arrangements of Revenue Scotland or of a person to whom Revenue Scotland has
    delegated any of its functions (whether the information relates to members or staff of
    Revenue Scotland or of such a person or to other persons).

(3) For the purposes of subsection (1)(b), a person may be identified by information if—

(a) the person’s identity is specified in the information, or
(b) the person’s identity can be deduced from the information (whether from that
    information on its own or from that information taken together with other
    information disclosed by or on behalf of Revenue Scotland).

Confidentiality of protected taxpayer information

15 Confidentiality of protected taxpayer information

(1) A relevant official must not disclose protected taxpayer information unless the
    disclosure is permitted by subsection (3).

(2) In this section and section 16 “relevant official” means any individual who is or was—

(a) a member of Revenue Scotland,
(b) a member of a committee of Revenue Scotland,
(c) the chief executive or any other member of staff of Revenue Scotland,
(d) exercising functions on behalf of Revenue Scotland.

(3) A disclosure is permitted by this subsection if—
(a) it is made with the consent of each person to whom the information relates,
(b) it is made in accordance with any provision made by or under this Act or any
other enactment requiring or permitting the disclosure,
(ba) it is made for the purposes of obtaining services in connection with a function of
Revenue Scotland,
(c) it is made for the purposes of civil proceedings,
(d) it is made for the purposes of a criminal investigation or criminal proceedings or
for the purposes of the prevention or detection of crime,
(e) it is made in pursuance of an order of a court or tribunal,
(g) it is made to a person exercising functions on behalf of Revenue Scotland (other
than a person to whom Revenue Scotland has delegated any of its functions) for
the purposes of those functions.

16 Protected taxpayer information: declaration of confidentiality

(1) Each relevant official must make a declaration acknowledging the obligation of
confidentiality under section 15.

(2) A declaration must be made—
   (a) as soon as reasonably practicable following the person’s appointment, and
   (b) in such form and manner as Revenue Scotland may determine.

(3) For the purposes of subsection (2)(a)—
   (a) the renewal of a fixed term appointment is not to be treated as an appointment,
   (b) a person mentioned in section 15(2)(d) is to be treated as appointed when the
       person begins to exercise functions on behalf of Revenue Scotland.

Other limits on use and disclosure of information

16A Disclosure of information prohibited or restricted by statute or agreement

Sections 13(1) and 15(3) are subject to any provision which prohibits or restricts the use
of information and which is contained in—
   (a) this Act,
   (b) any other enactment,
   (c) an international or other agreement to which the United Kingdom, Her Majesty’s
       Government or the Scottish Ministers is or are party.

16B Protected taxpayer information: use by the Keeper

(1) This section applies to information that—
   (a) is held by the Keeper in connection with a function which Revenue Scotland has
delegated to the Keeper, and
   (b) is protected taxpayer information.

(2) The Keeper may not use that information in connection with the Keeper’s functions
under section 108 of the Land Registration etc. (Scotland) Act 2012 (asp 5).
Offence of wrongful disclosure

17 Wrongful disclosure of protected taxpayer information

(1) A person commits an offence if the person discloses protected taxpayer information contrary to section 15(1).

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed—

(a) that the disclosure was lawful under section 15, or
(b) that the information had already lawfully been made available to the public.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(4) This section does not affect the pursuit of any remedy or the taking of any action in relation to a contravention of section 15(1).

PART 4
THE SCOTTISH TAX TRIBUNALS

CHAPTER 1
INTRODUCTORY

18 Overview

This Part makes provision establishing tribunals to exercise functions in relation to devolved taxes and about—

(a) the leadership of those tribunals,
(b) the appointment, conduct, fitness and removal of members of those tribunals,
(c) the taking of decisions by and composition of those tribunals,
(d) appeals to and from, and other proceedings before, those tribunals, and
(e) the procedure before and administration of those tribunals (including the making of tribunal rules).

CHAPTER 2
ESTABLISHMENT AND LEADERSHIP

Establishment

19 The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

(1) There is established a tribunal to be known as the First-tier Tax Tribunal for Scotland.
(2) The First-tier Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.

(3) There is also established a tribunal to be known as the Upper Tax Tribunal for Scotland.

(4) The Upper Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.

(5) In this Act—
   (a) the First-tier Tax Tribunal for Scotland is referred to as the First-tier Tribunal,
   (b) the Upper Tax Tribunal for Scotland is referred to as the Upper Tribunal, and
   (c) collectively, they are referred to as the Tax Tribunals.

Leadership

20 President of the Tax Tribunals

(1) The Scottish Ministers must appoint a person as President of the Tax Tribunals.

(2) Before appointing such a person, the Scottish Ministers must consult the Lord President.

(3) The President of the Tax Tribunals is appointed on such terms and conditions as the Scottish Ministers may determine.

21 Functions of the President of the Tax Tribunals

(1) The President of the Tax Tribunals is the senior member of the Tax Tribunals.

(2) The President has the functions exercisable by him or her by or under this Act.

22 Business arrangements

(1) The President of the Tax Tribunals is responsible for making and maintaining appropriate arrangements for securing the efficient disposal of business in the Tax Tribunals.

(2) The President is responsible for ensuring that appropriate arrangements are made and maintained as to the welfare of the members of the tribunals.

23 Temporary President

(1) If there is a vacancy in the presidency of the Tax Tribunals, the Scottish Ministers may appoint a person as Temporary President during the vacancy.

(1A) Before appointing such a person, the Scottish Ministers must consult the Lord President.

(2) A person is eligible to be appointed as Temporary President only if the person is—
   (a) a legal member of the Tax Tribunals, or
   (b) eligible to be appointed as such a member.

(3) The functions of the President of the Tax Tribunals are exercisable by the Temporary President.

(4) Except where the context otherwise requires, a reference in or under this Part to the President includes the Temporary President.
(5) For the purposes of subsection (1) “vacancy” includes where the President of the Tax Tribunals has been suspended under paragraph 36(2) or 37(2) of schedule 2 (by virtue of paragraphs 29(2) and 41 of that schedule).

CHAPTER 3

MEMBERSHIP

Membership of Tax Tribunals

24 Members

(1) The First-tier Tribunal is to consist of its ordinary and legal members.

(2) The Upper Tribunal is to consist of its legal and judicial members.

(3) The President of the Tax Tribunals is, by virtue of holding that position, a member of both the First-tier Tribunal and the Upper Tribunal.

(4) Schedule 2 contains the following further provision about members of the Tax Tribunals—

(a) Part 1 contains provisions about the eligibility for and appointment to—

(i) the position of President of the Tax Tribunals,

(ii) ordinary and legal membership of the First-tier Tribunal,

(iii) legal membership of the Upper Tribunal,

(b) Part 2 contains provision about the terms and conditions on which members of the tribunals hold their positions,

(c) Part 3 contains provision about investigation of members’ conduct and imposition of disciplinary measures, and

(d) Part 4 contains provision about the assessment of members’ fitness and removal from position.

25 Judicial members

(1) A judge of the Court of Session (including a temporary judge but not the Lord President) is, by reason of holding judicial office, eligible to act as a member of the Upper Tribunal.

(2) Such a judge may act as a member of the Upper Tribunal only if authorised by the President of the Tax Tribunals to do so.

(3) An authorisation for the purpose of subsection (2) requires—

(a) the Lord President’s approval (including as to the judge to be authorised), and

(b) the agreement of the judge concerned.

(4) An authorisation for the purpose of subsection (2) remains in effect until such time as the President of the Tax Tribunals may determine (with the same approval and agreement requirements as are mentioned in subsection (3) applying accordingly).
Status and capacity

26 Status and capacity of members

(1) A member of either of the Tax Tribunals, whether that membership is as an ordinary or as a legal member, has judicial status and capacity for the purpose mentioned in subsection (3).

(2) For the avoidance of doubt, a judicial member of the Upper Tribunal has judicial status and capacity for the purpose mentioned in subsection (3) by reason of holding judicial office.

(3) The purpose referred to in subsections (1) and (2) is the purpose of holding the position and acting as member of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

CHAPTER 4

Decision-making and composition

Decision-making and composition: general

27 Decisions in the First-tier Tribunal

(1) The First-tier Tribunal's function of deciding any matter in a case before the tribunal is to be exercised by—

(a) two or more members of the tribunal, one of whom must be a legal member, or

(b) a legal member sitting alone.

(2) The member or members are to be chosen by the President of the Tax Tribunals (who may choose himself or herself).

(3) The President’s discretion in choosing the member or members is subject to—

(a) any relevant provisions in regulations made under section 30(1),

(b) any relevant directions given by virtue of section 32(5)(b).

28 Decisions in the Upper Tribunal

(1) The Upper Tribunal's function of deciding any matter in a case before the tribunal is to be exercised by one or more members chosen by the President of the Tax Tribunals (who may choose himself or herself).

(2) The President’s discretion in choosing the member or members is subject to—

(a) any relevant provisions in regulations made under section 30(1),

(b) any relevant directions given by virtue of section 34(5)(b).

30 Composition of the Tribunals

(1) The Scottish Ministers may by regulations make provision for determining the composition of—

(a) the First-tier Tribunal,

(b) the Upper Tribunal,
when convened to decide any matter in a case before the tribunal.

(2) Regulations under subsection (1) may treat separately the tribunal’s decision-making functions—

(a) at first instance,
(b) on appeal.

Decisions by two or more members

30A Voting for decisions

The Scottish Ministers may by regulations make provision for the purposes of sections 27(1) and 28(1) in so far as a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the tribunal, including—

(a) for a decision to be made unanimously or by majority,
(b) where a decision is to be made by majority, for the chairing member to have a casting vote in the event of a tie.

30B Chairing members

(1) Tribunal rules may make provision for determining the question as to who is to be the chairing member where a matter in a case before the First-tier Tribunal or the Upper Tribunal is to be decided by two or more members of the tribunal.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) allow the President of the Tax Tribunals to determine the question,
(b) specify criteria as against which the question is to be determined (including by reference to type of member or particular expertise).

CHAPTER 5

APPEAL OF DECISIONS

Appeal from First-tier Tribunal

31 Appeal from the First-tier Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made—

(a) by a party in the case,
(b) on a point of law only.

(3) An appeal under this section requires the permission of—

(a) the First-tier Tribunal, or
(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.
32 Disposal of an appeal under section 31

(1) In an appeal under section 31, the Upper Tribunal may uphold or quash the decision on the point of law in question.

(2) If the Upper Tribunal quashes the decision, it may—
   (a) re-make the decision,
   (b) remit the case to the First-tier Tribunal, or
   (c) make such other order as the Upper Tribunal considers appropriate.

(3) In re-making the decision, the Upper Tribunal may—
   (a) do anything that the First-tier Tribunal could do if re-making the decision,
   (b) reach such findings in fact as the Upper Tribunal considers appropriate.

(4) In remitting the case, the Upper Tribunal may give directions for the First-tier Tribunal’s reconsideration of the case.

(5) Such directions may relate to—
   (a) issues of law or fact (including the Upper Tribunal’s opinion on any relevant point),
   (b) procedural issues (including as to the members to be chosen to reconsider the case).

33 Appeal from the Upper Tribunal

(1) A decision of the Upper Tribunal in any matter in a case before the tribunal may be appealed to the Court of Session (sitting as the Court of Exchequer).

(2) An appeal under this section is to be made—
   (a) by a party in the case,
   (b) on a point of law only.

(3) An appeal under this section requires the permission of—
   (a) the Upper Tribunal, or
   (b) if the Upper Tribunal refuses its permission, the Court of Session.

(4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that there are arguable grounds for the appeal.

(5) This section is subject to section 36(2) and to sections 123(4), 138(6), 145(5) and 208(4A).
34 Disposal of an appeal under section 33

(1) In an appeal under section 33, the Court of Session may uphold or quash the decision on the point of law in question.

(2) If the Court quashes the decision, it may—
   (a) re-make the decision,
   (b) remit the case to the Upper Tribunal, or
   (c) make such other order as the Court considers appropriate.

(3) In re-making the decision, the Court may—
   (a) do anything that the Upper Tribunal could do if re-making the decision,
   (b) reach such findings in fact as the Court considers appropriate.

(4) In remitting the case, the Court may give directions for the Upper Tribunal’s reconsideration of the case.

(5) Such directions may relate to—
   (a) issues of law or fact (including the Court’s opinion on any relevant point),
   (b) procedural issues (including as to the member to be chosen to reconsider the case).

35 Procedure on second appeal

(A1) Section 33(4) is subject to subsections (1A) and (1B) as regards a second appeal.

(1) Section 34 is subject to subsections (2) and (3) as regards a second appeal.

(1A) For the purposes of subsection (A1), the Upper Tribunal or (as the case may be) the Court of Session may not give its permission to the making of a second appeal unless also satisfied that subsection (1B) applies.

(1B) This subsection applies where, in relation to the matter in question—
   (a) a second appeal would raise an important point of principle or practice, or
   (b) there is some other compelling reason for allowing a second appeal to proceed.

(2) For the purpose of subsection (1), subsections (2)(b) and (3)(a) of section 34 have effect in relation to a second appeal as if the references in them to the Upper Tribunal include, as alternative references, references to the First-tier Tribunal.

(3) Where, in exercising the choice arising by virtue of subsection (2) (and instead of re-making the decision in question), the Court of Session remits the case to the Upper Tribunal rather than the First-tier Tribunal—
   (a) the Upper Tribunal, instead of reconsidering the case itself, may remit the case to the First-tier Tribunal,
   (b) if the Upper Tribunal does so, it must send to the First-tier Tribunal any directions accompanying the Court’s remittal of the case to the Upper Tribunal.

(4) In this section “second appeal” means appeal under section 33 against a decision in an appeal under section 31.
Further provision on permission to appeal

36 Process for permission

(1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 31(3) or 33(3) must be sought.

(2) A refusal to give the permission required by section 31(3) or 33(3) is not appealable under section 31 or 33.

CHAPTER 6
SPECIAL JURISDICTION

37 Judicial review cases

10 (1) Subsection (2) applies where a petition is made to the Court of Session for judicial review.

(2) The Court may by order remit the petition to the Upper Tribunal if—

(a) both of conditions A and B are met, and

(b) having regard to the functions and expertise of the Tribunal in relation to the subject-matter of the petition, the Court considers that it is appropriate to do so.

(3) Condition A is that the petition does not seek anything other than the exercise of the Court’s judicial review function.

(4) Condition B is that the petition falls within a category specified by an Act of Sederunt made by the Court for the purpose of this subsection.

37A Procedural steps where petition remitted

(1) This section applies where the Court of Session remits a petition for judicial review under section 37(2).

(2) It is for the Upper Tribunal to determine—

(a) whether the petition has been made timeously, and

(b) whether to grant permission for the petition to proceed under section 27B of the Court of Session Act 1988 (“the 1988 Act”) (requirement for permission).

(3) Accordingly—

(a) the Upper Tribunal has the same powers in relation to the petition as the Court of Session would have had in relation to it under sections 27A to 27C of the 1988 Act,

(b) sections 27C and 27D of that Act apply in relation to a decision of the Upper Tribunal under section 27B(1) of that Act as they apply in relation to such a decision of the Court of Session.

(4) The references in section 27C(3) and (4) of the 1988 Act (oral hearings where permission refused) to a different Lord Ordinary from the one who refused or granted permission are to be read as references to different members of the Tribunal from those of whom it was composed when it refused or granted permission.
38 Decision on remittal

(1) The Upper Tribunal is to determine the issues raised in each petition remitted to it under section 37.

(2) In relation to a petition so remitted, the Upper Tribunal—

(a) has the same powers as the Court of Session has on a petition to it for judicial review,

(b) is to apply the same principles as the Court applies in the exercise of its judicial review function.

(3) An order made by the Upper Tribunal on a petition so remitted has the same effect as an order made by the Court of Session on a petition for judicial review (and the order is therefore enforceable accordingly).

(4) Subsection (3) does not limit the operation of section 33 in connection with a determination under subsection (1).

39 Additional matters

(1) Where a petition is remitted to the Upper Tribunal under section 37, any order made or step taken by the Court of Session in relation to the petition is to be treated as if made or taken by the tribunal (except the order by which the petition is so remitted (or an associated step)).

(2) Tribunal rules may make further provision with respect to the exercise by the Upper Tribunal of its functions under this Chapter.

40 Meaning of judicial review

In this Chapter—

(a) a reference to a petition to the Court of Session for judicial review is to an application to the supervisory jurisdiction of the Court,

(b) a reference to the exercise of the Court of Session’s judicial review function is to the exercise of the Court’s supervisory jurisdiction (and includes the making of any order in connection with or in consequence of the exercise of that function).

CHAPTER 7
POWERS AND ENFORCEMENT

41 Venue for hearings

(1) Each of the First-tier Tribunal and the Upper Tribunal may be convened at any time and place in Scotland to hear or decide a case or for any other purpose relating to its functions.

(2) Subsection (1) is subject to any provision made by tribunal rules as to the question of when and where in Scotland the Tax Tribunals are to be convened (and such rules may allow the President of the Tax Tribunals to determine the question).
42  **Conduct of cases**

(1) In relation to the things mentioned in subsection (3), each of the First-tier Tribunal and the Upper Tribunal has such powers, rights, privileges and other authority with respect to any case before it as are provided for in tribunal rules.

(2) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to any kind of authority by reference to any authority of a relevant description exercisable by the sheriff or the Court of Session.

(3) The things are—

   (a) the attendance or examination of witnesses,

   (b) the recovery, production or inspection of relevant materials,

   (c) the commissioning of reports of any relevant type,

   (d) other procedural, evidential or similar measures.

(4) In subsection (3)(b) “materials” means documents and other items.

43  **Enforcement of decisions**

(1) A decision made by the First-tier Tribunal or the Upper Tribunal in any matter in a case before it is enforceable by the means provided for in tribunal rules.

(2) Subsection (1) applies to a decision—

   (a) on the merits of such a case,

   (b) as to—

      (i) payment of a sum of money, or

      (ii) expenses by virtue of section 44, or

   (c) otherwise affecting the rights, obligations or interests of a party in such a case.

(3) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to a relevant order by reference to the means of enforcing an order of the sheriff or the Court of Session.

(4) In subsection (3), “relevant order” means an order of either of the Tax Tribunals giving effect to a decision to which subsection (1) applies.

44  **Award of expenses**

(1) In connection with proceedings in a case before the First-tier Tribunal or the Upper Tribunal, the tribunal may award expenses so far as allowed in accordance with tribunal rules.

(2) Where such expenses are awarded, the awarding tribunal is to specify by and to whom they are to be paid (and to what extent).

(3) Tribunal rules may make provision—

   (a) for scales or rates of awardable expenses,

   (b) for—

      (i) such expenses to be set-off against any relevant sums,
(ii) interest at the specified rate to be chargeable on such expenses where unpaid,

(d) stating the general or particular factors to be taken into account when exercising discretion as to such expenses,

(e) about such expenses in other respects.

5

(3A) Tribunal rules may make provision—

(a) for disallowing any wasted expenses,

(b) for requiring a person who has given rise to any wasted expenses to meet them.

(4) Rules making provision as described in subsection (3) or (3A) may also prescribe meanings for “relevant sums”, “specified rate” and “wasted expenses” as used in this section.

45 Additional powers

(1) The Scottish Ministers may by regulations confer on the First-tier Tribunal and the Upper Tribunal such additional powers as are necessary or expedient for the proper exercise of their functions.

(2) Regulations under subsection (1) may include provision—

(a) relying on the effect of an Act of Sederunt made by the Court of Session,

(b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) to apply to the making of a relevant Act of Sederunt as it does to the making of tribunal rules.

45A Offences in relation to proceedings

(1) The Scottish Ministers may by regulations make provision, in relation to proceedings before the First-tier Tribunal or the Upper Tribunal—

(a) for offences and penalties—

(i) for making a false statement in an application in a case,

(ii) for failure by a person to attend, or give evidence in, such proceedings when required to do so in accordance with tribunal rules,

(iii) for alteration, concealment or destruction by a person of, or failure by a person to produce, something that is required to be produced in such proceedings in accordance with tribunal rules,

(b) about the circumstances in which a person need not give evidence or produce something (for example, where a person could not be compelled to give evidence or produce something in proceedings in a case before the sheriff or in the Court of Session).

(2) The maximum penalties that may be provided for in regulations under subsection (1) are—

(a) for an offence triable summarily only, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both),

(b) for an offence triable either summarily or on indictment—
(i) on summary conviction, imprisonment for a term not exceeding 12 months
or a fine not exceeding the statutory maximum (or both),

(ii) on conviction on indictment, imprisonment for a term not exceeding 2
years or a fine (or both).

(3) Before making regulations under subsection (1), the Scottish Ministers must obtain the
Lord President’s approval.

CHAPTER 8

PRACTICE AND PROCEDURE

Tribunal rules: general

46 Tribunal rules

(1) There are to be rules—

(a) regulating the practice and procedure to be followed in proceedings at—

(i) the First-tier Tribunal,

(ii) the Upper Tribunal, and

(b) containing provision of other sorts appropriate with respect to the Tax Tribunals
(including in relation to the exercise by them of their functions).

(2) Rules of the kind mentioned in subsection (1) are to be known as Scottish Tax Tribunal
Rules (and in this Act they are referred to as tribunal rules).

(3) Tribunal rules are to be made by the Scottish Ministers by regulations.

(4) Before making regulations under subsection (3), the Scottish Ministers must consult—

(a) the President of the Scottish Tribunals, and

(b) such other persons as they consider appropriate.

47 Exercise of functions

(1) Tribunal rules may, in relation to any functions exercisable by the members of the Tax
Tribunals—

(a) state—

(i) how a function is to be exercised,

(ii) who is to exercise a function,

(b) cause something to require further authorisation,

(c) permit something to be done on a person’s behalf,

(d) allow a specified person to make a decision about any of those matters.

(2) Tribunal rules may make provision relying on the effect of directions issued, or to be
issued, under section 52.

48 Extent of rule-making

(1) Tribunal rules may make—
(a) provision applying—
   (i) equally to both of the First-tier Tribunal and the Upper Tribunal, or
   (ii) specifically to one of them,
(b) particular provision for each of them about the same matter.

2 (2) Tribunal rules may make particular provision for different types of proceedings.
(3) Tribunal rules may make different provision for different purposes in any other respects.
(4) The generality of section 46 is not limited by—
   (a) sections 49 to 51, or
   (b) any other provisions of this Act about the content of tribunal rules.

10 Particular matters

49 Proceedings and steps
   (1) Tribunal rules may make provision about proceedings in a case before the Tax Tribunals.
   (2) Rules making provision as described in subsection (1) may (in particular)—
    (a) provide for the form and manner in which a case is to be brought,
    (b) allow for the withdrawal of a case (with or without restrictions on subsequent proceedings as respects the same matter),
    (c) set time limits for—
     (i) making applications,
     (ii) taking particular steps,
    (ca) enable two or more applications to be conjoined in certain circumstances,
    (d) specify circumstances in which the tribunals may take particular steps on their own initiative.

50 Hearings in cases
   (1) Tribunal rules may make provision about hearings in a case before the Tax Tribunals.
   (2) Rules making provision as described in subsection (1) may (in particular)—
    (a) provide for certain matters to be dealt with—
     (i) without a hearing,
     (ii) at a private hearing,
     (iii) at a public hearing,
    (b) require notice to be given of a hearing (and for the timing of such notice),
    (c) specify persons who may—
     (i) appear on behalf of a party in a case,
     (ii) attend a hearing in order to provide support to a party or witness in a case,
(d) specify circumstances in which particular persons may appear or be represented at a hearing,

(e) specify circumstances in which a hearing may go ahead—

(i) at the request of a party in a case despite no notice of it having been given to another party in the case,

(ii) in the absence of a particular member chosen to exercise the function of deciding any matter in a case,

(ea) enable two or more sets of proceedings to be taken concurrently at a hearing in certain circumstances,

(f) allow for an adjournment of a hearing for the purpose of giving the parties in a case an opportunity to use a process of negotiation or mediation for resolving a dispute to which the case relates,

(g) allow for the imposition of reporting restrictions for particular reasons arising in a case.

51 Evidence and decisions

(1) Tribunal rules may, in connection with proceedings before the Tax Tribunals—

(a) make provision about the giving of evidence and the administering of oaths,

(b) modify the application of any other rules relating to either of those matters so far as they would otherwise apply to such proceedings.

(2) Tribunal rules may, in connection with proceedings before the Tax Tribunals, provide for the payment of expenses and allowances to a person who—

(a) gives evidence,

(b) produces a document, or

(c) attends such proceedings (or is required to do so).

(3) Tribunal rules may, in connection with proceedings before the Tax Tribunals, make provision by way of presumption (for example, as to the serving of something on somebody).

(4) Tribunal rules may make provision about decisions of the Tax Tribunals, including as to—

(a) the manner in which such decisions are to be made,

(b) the incorporation in such decisions of findings in fact,

(c) the recording, issuing, and publication of such decisions.

Issuing directions

52 Practice directions

(1) The President of the Tax Tribunals may issue directions as to the practice and procedure to be followed in proceedings at—

(a) the First-tier Tribunal,

(b) the Upper Tribunal.
Directions under subsection (1) may include instruction or guidance on the manner of making of any decision in a case.

Directions under subsection (1) may—

(a) vary or revoke earlier such directions,

(b) make different provision for different purposes (in the same respects as tribunal rules).

Directions under subsection (1) must be published in such manner as the President of the Tax Tribunals considers appropriate.

CHAPTER 9
ADMINISTRATION

53 Administrative support

(1) The Scottish Ministers must ensure that the Tax Tribunals are provided with such property, services and personnel as the Scottish Ministers consider to be reasonably required for the proper operation of the tribunals.

(2) The Scottish Ministers must have regard to any representations made to them by the President of the Tax Tribunals in relation to the fulfilment of the duty under subsection (1).

(3) In fulfilling the duty under subsection (1), the Scottish Ministers may—

(a) fund or supply property, services and personnel for use by the tribunals,

(b) appoint persons as members of staff of the tribunals.

(4) The Scottish Ministers may make arrangements as to—

(a) the payment of remuneration or expenses to or in respect of persons so appointed,

(b) the payment of pensions, allowances and gratuities to or in respect of persons so appointed,

(c) contributions or other payments towards provision of such pensions, allowances and gratuities.

(5) The references in subsection (4) to pensions, allowances and gratuities include pensions, allowances and gratuities to be paid by way of compensation for loss of office.

54 Guidance

(1) The President of the Tax Tribunals may issue such guidance about the administration of the Tax Tribunals as appears to the President to be necessary or expedient for the purpose of securing that the functions of the tribunals are exercised efficiently and effectively.

(2) The following persons are to have regard to any guidance issued under subsection (1)—

(a) members of the Tax Tribunals,

(b) members of staff of the tribunals,

(c) personnel supplied under section 53 for use by the tribunals.
(3) The President of the Tax Tribunals must publish any guidance issued under subsection (1) as the President considers appropriate.

(4) Subsection (3) does not apply to the extent that the President considers that publication of the guidance would prejudice the effective exercise by the Tax Tribunals of their functions.

Annual reporting

(1) The President of the Tax Tribunals is to prepare an annual report about the operation and business of the Tax Tribunals.

(2) An annual report is to be given to the Scottish Ministers at the end of each financial year.

(3) An annual report—
   (a) must explain how the Tax Tribunals have exercised their functions during the financial year,
   (b) may contain such other information as—
       (i) the President of the Tax Tribunals considers appropriate, or
       (ii) the Scottish Ministers require to be covered.

(4) The Scottish Ministers must—
   (a) publish each annual report in a manner suitable for bringing it to the attention of persons having an interest in the operation and business of the Tax Tribunals,
   (b) before so publishing it, lay a copy of the report before the Scottish Parliament.

CHAPTER 10

INTERPRETATION

Interpretation

In this Part—

a reference to—

(a) a legal member of the Tax Tribunals is to a person who is appointed under paragraph 3(1) or 5(1) of schedule 2,
(b) a judicial member of the Upper Tribunal is to a person who is authorised for the purpose of section 25(2),
(c) an ordinary member of the First-tier Tribunal is to a person who is appointed under paragraph 2(1) of schedule 2,

the “Lord President” means the Lord President of the Court of Session.
PART 5
THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

1. This Part has effect for the purpose of counteracting tax advantages arising from tax avoidance arrangements that are artificial.

2. The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

Artificial tax avoidance arrangements

58 Tax avoidance arrangements

1. An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.

2. An “arrangement”—
   (a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and
   (b) may comprise one or more stages or parts.

59 Meaning of “artificial”

1. A tax avoidance arrangement is artificial if condition A or B is met.

2. Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances, including—

   (a) whether the substantive results of the arrangement are consistent with—

      (i) any principles on which those provisions are based (whether express or implied), and

   (b) whether the arrangement is intended to exploit any shortcomings in those provisions.

3. Condition B is met if the arrangement lacks economic or commercial substance.

4. Each of the following is an example of something which might indicate that a tax avoidance arrangement lacks economic or commercial substance—

   (a) whether the arrangement is carried out by a person in a manner which would not normally be employed in reasonable business conduct,

   (b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,

   (c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,

   (d) whether transactions are circular in nature,
(e) whether the arrangement results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.

(5) The fact that—
(a) a tax avoidance arrangement accords with established practice, and
(b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,
is an example of something that might indicate that the arrangement is not artificial.

(6) The examples given in subsections (4) and (5) are not exhaustive.

(7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

60 Meaning of “tax advantage”

(1) A “tax advantage” includes in particular—
(a) relief or increased relief from tax,
(b) repayment or increased repayment of tax,
(c) avoidance or reduction of a charge to tax or an assessment to tax,
(d) avoidance of a possible assessment to tax, and
(e) deferral of a payment of tax or advancement of a repayment of tax.

(2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

(1) Revenue Scotland may make such adjustments as it considers just and reasonable to counteract the tax advantages that would (ignoring this Part) arise from a tax avoidance arrangement that is artificial.

(2) The adjustments may be made in respect of the tax in question or any other devolved tax.

(3) The adjustments that may be made include (but are not restricted to) those that impose or increase a liability to tax in any case where (ignoring this Part) there would be no liability or a smaller liability, and tax is to be charged in accordance with any such adjustment.

(4) Any adjustments required to be made under this section (whether by Revenue Scotland or the person to whom the tax advantage would arise) may be made by—
(a) the amendment of a return (see sections 74, 78 and 84),
(b) the correction of a return (see section 75),
(c) the making of a Revenue Scotland determination (see section 86),
(d) the making of a tax return (see section 88),
(e) the making of a Revenue Scotland assessment (see section 91),
(f) the entering into of a contract settlement (see section 109), or
(g) such other method as Revenue Scotland considers appropriate.

(5) No steps may be taken by Revenue Scotland unless the procedural requirements of sections 63 and 64 have been complied with.

(6) The power to make adjustments by virtue of this section is subject to any time limit imposed by or under Part 6, any other provision of this Act or any other enactment.

62 Proceedings in connection with the general anti-avoidance rule

(1) In proceedings before a court or tribunal in connection with the general anti-avoidance rule, Revenue Scotland must show—

(a) that there is a tax avoidance arrangement that is artificial, and
(b) that the adjustments made to counteract the tax advantages arising from the tax avoidance arrangement are just and reasonable.

(2) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal must take into account any guidance published by Revenue Scotland about the general anti-avoidance rule (at the time the tax avoidance arrangement was entered into).

(3) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal may take into account—

(a) guidance, statements or other material (whether by Revenue Scotland or anyone else) that was in the public domain at the time the tax avoidance arrangement was entered into, and
(b) evidence of established practice at that time.

63 Notice to taxpayer of proposed counteraction of tax advantage

(1) If a designated officer considers—

(a) that a tax advantage has arisen to a person (“the taxpayer”) from a tax avoidance arrangement that is artificial, and
(b) that the advantage should be counteracted under section 61,

the officer must give the taxpayer a notice to that effect.

(2) The notice must—

(a) specify the tax avoidance arrangement and the tax advantage,
(b) explain why the officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial,
(c) set out the counteraction that the officer considers should be taken, and
(d) inform the taxpayer of the period under subsection (4) for making representations.

(3) The notice may set out the steps that the taxpayer may take to avoid the proposed counteraction.

(4) If a notice is given to a taxpayer under subsection (1), the taxpayer has 45 days beginning with the day on which the notice is given to send representations to the designated officer in response to the notice.
(5) The designated officer may, on a request made by the taxpayer, extend the period during which representations may be made.

(6) The designated officer must take into account any representations made by the taxpayer.

64 Final notice to taxpayer of counteraction of tax advantage

(1) The designated officer must, after the expiry of the period in which representations may be made under section 63, give the taxpayer a notice setting out whether the tax advantage arising from the tax avoidance arrangement is to be counteracted under the general anti-avoidance rule.

(2) If the notice states that a tax advantage is to be counteracted, the notice must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it and the period within which those steps must be taken.

64A Counteraction of tax advantages: payment of tax charged etc.

(1) This section applies where—

(a) a designated officer gives a taxpayer a notice under section 64, and

(b) the notice sets out the adjustments required to give effect to the counteraction of a tax advantage.

(2) The taxpayer must pay any amount, or additional amount, of tax chargeable or penalty or interest imposed as a result of the adjustments before the end of the period of 30 days beginning with the date on which the notice is issued.

(3) Subsection (2) applies in place of any other provision of this Act or any other enactment which specifies a time limit for the payment of tax, penalty or interest.

65 Assumption of tax advantage

(1) A designated officer may give a notice under section 63 or 64 where the officer considers that a tax advantage might have arisen to the taxpayer.

(2) Accordingly, any notice given by a designated officer under section 63 or 64 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

General anti-avoidance rule: commencement and transitional provision

66 General anti-avoidance rule: commencement and transitional provision

(1) The general anti-avoidance rule has effect in relation to any tax avoidance arrangement entered into on or after the date on which this Part comes into force.

(2) Where the tax avoidance arrangement forms part of any other arrangements entered into before that day, those other arrangements are to be ignored for the purposes of section 59(7), subject to subsection (3).

(3) Account is to be taken of those other arrangements if, as a result, the tax avoidance arrangement would not be artificial.
PART 6
TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1
OVERVIEW

67 Overview
This Part makes provision about the assessment of devolved taxes including—
(a) taxpayers’ duties in relation to tax records,
(b) the timing of tax returns,
(c) amendment and correction of tax returns by taxpayers and Revenue Scotland,
(d) enquiries by Revenue Scotland into taxpayers’ self-assessments,
(e) determination by Revenue Scotland of tax due where no return is made,
(f) assessment by Revenue Scotland of tax due outwith enquiries where tax losses or other situations are brought about by taxpayers carelessly or deliberately, and
(g) claims for relief from double assessment and for repayment of tax.

CHAPTER 2
TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

69 Duty to keep and preserve records

(1) A person who is required to make a tax return in relation to a devolved tax must—
(a) keep any records that may be needed to enable the person to make a correct and complete return, and
(b) preserve those records in accordance with this section.

(2) The records mentioned in subsection (1) must be preserved until the end of the later of the relevant day and the date on which—
(a) an enquiry into the return is completed, or
(b) if there is no enquiry, a designated officer no longer has power to enquire into the return.

(2A) A person who is liable to be registered for tax (a “registrable person”) must—
(a) keep any records that may be needed to enable the registrable person to comply with a requirement to notify Revenue Scotland of the person’s intention—
(i) to carry out taxable activities, or
(ii) to cease to carry out taxable activities,
(b) make records relating to material at a landfill site or part of a landfill site, and
(c) preserve those records in accordance with this section.

(2B) The records mentioned in subsection (2A) must be preserved until the end of the relevant day.
(3) “The relevant day” in relation to records mentioned in subsection (1) means—
   (a) the fifth anniversary of the day on which the return is made or, if the return is amended, the day notice of the amendment is given under section 74, or
   (b) any earlier day that may be specified by Revenue Scotland.

(3A) The “relevant day” in relation to records mentioned in subsection (2A) means—
   (a) in the case of records mentioned in subsection (2A)(a), the fifth anniversary of the day on which the notice was given,
   (b) in the case of records mentioned in subsection (2A)(b), the fifth anniversary of the day on which the record was made, or
   (c) in either case, any earlier day that may be specified by Revenue Scotland.

(4) Different days may be specified for different purposes under subsection (3)(b) or (3A)(c).

(5) The records required to be kept and preserved under subsection (1) include—
   (a) details of any relevant transaction (including relevant instruments relating to any transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents),
   (b) details of any relevant taxable activity,
   (c) records of relevant payments, receipts and financial arrangements.

(6) The Scottish Ministers may by regulations—
   (a) provide that the records required to be kept and preserved under this section do, or do not, include records specified in the regulations, and
   (b) specify supporting documents that are required to be kept under this section.

(7) Regulations under this section may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(8) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

**Preservation of information etc.**

The duty under section 69 to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by the Scottish Ministers by regulations.

**Penalties for failing to keep and preserve records**

(1) A person (“P”) who fails to comply with section 69 in relation to a devolved tax is liable to a penalty not exceeding £3,000, subject to the following exception.
(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to Revenue Scotland.

71A Reasonable excuse for failure to keep and preserve records

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with section 69, liability to a penalty under section 71 does not arise in relation to that failure.

(2) For the purposes of subsection (1)—
(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

71B Assessment of penalties under section 71

(1) Where a person becomes liable to a penalty under section 71, Revenue Scotland must—
(a) assess the penalty, and
(b) notify the person.

(2) An assessment of a penalty under section 71 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

71C Enforcement of penalties under section 71

(1) A penalty under section 71 must be paid—
(a) before the end of the period of 30 days beginning with the date on which the notification under section 71B was issued,
(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 71 is to be treated for enforcement purposes as an assessment to tax.

71D Power to change penalty provisions in sections 71 to 71C

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
(2) Provision under subsection (1) includes provision—
   (a) about the circumstances in which a penalty is payable,
   (b) about the amounts of penalties,
   (c) about the procedure for issuing penalties,
   (d) about appealing penalties,
   (e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date
    on which the regulations come into force.

Duty to keep and preserve records: further provision

72 Further provision: land and buildings transaction tax

(1) This section applies in relation to land and buildings transaction tax.

(2) The Scottish Ministers may by regulations make provision for the keeping and
    preservation of records in relation to land transactions that are not notifiable.

(3) Regulations under this section may require the buyer in a land transaction which is not
    notifiable to—
    (a) keep such records as may be needed to enable the buyer to demonstrate that the
        transaction is not notifiable, and
    (b) preserve those records in accordance with the regulations.

(4) The regulations may apply sections 69 to 71C (with or without modifications) to a buyer
    mentioned in subsection (3) as those sections apply to a person mentioned in section
    69(1).

(5) Expressions used in this section and in the LBTT(S) Act 2013 have the meanings given
    in that Act.

CHAPTER 3
TAX RETURNS

Filing dates

73 Meaning of “filing date”

(3) In this Act “the filing date” in relation to a tax return is the date by which that return
    requires to be made by or under any enactment.

Amendment and correction of returns

74 Amendment of return by taxpayer

(1) A person (the “taxpayer”) who has made a tax return may amend the return by notice to
    Revenue Scotland.
An amendment under this section must be made by the end of the period of 12 months beginning with the relevant date (the “amendment period”).

The relevant date is—
(a) the filing date, or
(b) such other date as the Scottish Ministers may by order prescribe.

This section is subject to sections 78(2A) and 84(3A).

Revenue Scotland may correct any obvious error or omission in a tax return.

A correction under this section—
(a) is made by notice to the taxpayer, and
(b) is regarded as effecting an amendment of the return.

The reference in subsection (1) to an error includes, for instance, an arithmetical mistake or an error of principle.

A correction under this section must be made by the end of the period of 12 months beginning with the day on which the return was made.

A correction under this section has no effect if the taxpayer rejects it by—
(a) during the amendment period, amending the return so as to reject the correction, or
(b) after that period, giving a notice rejecting the correction.

A notice under subsection (5)(b) must be given to Revenue Scotland before the end of the period of 3 months beginning with the date of issue of the notice of correction.

A designated officer may enquire into a tax return if subsection (2) has been complied with.

Notice of the intention to make an enquiry must be given—
(a) to the person by whom or on whose behalf the return was made (“the relevant person”),
(b) before the end of the period of 3 years after the relevant date.

The relevant date is—
(a) the filing date, if the return was made on or before that date, or
(b) the date on which the return was made, if the return was made after the filing date.
(4) A return that has been the subject of one notice under this section may not be the subject of another, except a notice given in consequence of an amendment of the return under section 74.

(5) A notice under this section is referred to as a “notice of enquiry”.

77 **Scope of enquiry**

(1) An enquiry extends to anything contained in the tax return, or required to be contained in the return, that relates—

(a) to the question whether the relevant person is chargeable to the devolved tax to which the return relates, or

(b) to the amount of tax chargeable on the relevant person.

(2) Subsection (3) applies if the notice of enquiry is given as a result of the amendment of a return under section 74 after an enquiry into the return has been completed.

(3) The enquiry is limited to—

(a) matters to which the amendment relates, and

(b) matters affected by the amendment.

**Amendment of return during enquiry**

78 **Amendment of self-assessment during enquiry to prevent loss of tax**

(1) If, at a time when an enquiry is in progress into a tax return, a designated officer forms the opinion—

(a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and

(b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice to the relevant person amend the assessment to make good the deficiency.

(2) If the enquiry is one that is limited by section 77(2) and (3) to matters arising from an amendment of the return, subsection (1) applies only so far as the deficiency is attributable to the amendment.

(2A) Where a designated officer gives notice under subsection (1), section 74 does not apply.

(2B) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section immediately on receipt of notice of the amendment.

(3) For the purposes of this section and section 79 the period during which an enquiry is in progress is the whole of the period—

(a) beginning with the day on which the notice of enquiry is given, and

(b) ending with the day on which the enquiry is completed.
Referral of questions to appropriate tribunal during enquiry

79  (1) At any time when an enquiry is in progress into a tax return any question arising in connection with the subject-matter of the return may be referred to the appropriate tribunal for determination.

5  (2) Notice of the referral must be given to the appropriate tribunal jointly by the relevant person and a designated officer.

(3) More than one notice of referral may be given under this section in relation to an enquiry.

Withdrawal of notice of referral

80  A designated officer or the relevant person may withdraw a notice of referral under section 79.

Effect of referral on enquiry

81  (1) While proceedings on a referral under section 79 are in progress in relation to an enquiry—

15  (a) no closure notice may be given in relation to the enquiry, and

(b) no application may be made for a direction to give a closure notice.

(2) Proceedings on a referral are “in progress” where—

20  (a) notice of referral has been given and has not been withdrawn, and

(b) the question referred has not been finally determined.

(3) A question referred has been “finally determined” when—

25  (a) it has been determined by the appropriate tribunal, and

(b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

Effect of determination

82  (1) A determination under section 79 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary plea in an appeal.

30  (2) The designated officer conducting the enquiry must take the determination into account—

(a) in reaching conclusions on the enquiry, and

(b) in the formulation of any amendments of the tax return that may be required to give effect to those conclusions.

(3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary plea in that appeal.
“Appropriate tribunal”

(1) Where the question to be referred under section 79 is of the market value of any land, the appropriate tribunal is the Lands Tribunal for Scotland.

(2) In any other case a referral under section 79 is to be made to—

(a) the First-tier Tribunal,
(b) where determined by or under tribunal rules, the Upper Tribunal, or
(c) any other court or tribunal specified by the Scottish Ministers by order.

(3) References to the “appropriate tribunal” in sections 79 and 81 are to be read accordingly.

Completion of enquiry

(1) An enquiry under section 76 is completed—

(a) when a designated officer informs the relevant person by a notice (a “closure notice”) that the enquiry is complete and states the conclusions reached in the enquiry, or

(b) no closure notice having been given, 3 years after the relevant date.

(2) A closure notice must be given no later than 3 years after the relevant date.

(3) A closure notice must either—

(a) state that in the officer's opinion no amendment of the tax return is required, or

(b) make the amendments of the return required to give effect to the officer's conclusions.

(3A) Where a closure notice is given which makes amendments of a return as mentioned in subsection (3)(b), section 74 does not apply.

(4) A closure notice takes effect when it is issued.

(4A) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment made by a closure notice before the end of the period of 30 days beginning with the day on which the notice is given.

(5) In subsections (1) and (2) “relevant date” has the same meaning as in section 76.

Direction to complete enquiry

(1) The relevant person may apply to the tribunal for a direction that a closure notice is to be given within a specified period.

(2) The tribunal hearing the application must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.

(3) In this paragraph “the tribunal” means—

(a) the First-tier Tribunal, or

(b) where determined by or under tribunal rules, the Upper Tribunal.
CHAPTER 5
REVENUE SCOTLAND DETERMINATIONS

86 Determination of tax chargeable if no return made

(1) This section applies where—

(a) Revenue Scotland has reason to believe that a person (“P”) is chargeable to a devolved tax,

(b) P has not made a tax return in relation to that liability, and

(c) the relevant filing date has passed.

(2) “The relevant filing date” means the date by which Revenue Scotland believes a return was required to be made.

(3) Revenue Scotland may make a determination (a “Revenue Scotland determination”) to the best of its information and belief of the amount of tax to which P is chargeable.

(4) Notice of the determination must be given to P and must state the date on which it is issued.

(4A) P must pay the tax chargeable as a result of the determination immediately on receipt of notice of the determination.

(5) No Revenue Scotland determination may be made more than 5 years after the relevant date.

(6) The relevant date is—

(a) the relevant filing date, or

(b) such other date as the Scottish Ministers may by order prescribe.

87 Determination to have effect as a self-assessment

(1) A Revenue Scotland determination has effect for enforcement purposes as if it were a self-assessment made by P.

(2) In subsection (1) “for enforcement purposes” means for the purposes of Part 10.

(3) Nothing in this section affects any liability of a person to a penalty for failure to make a tax return.

88 Determination superseded by actual self-assessment

(1) If, after a Revenue Scotland determination has been made, P makes a tax return with respect to the tax in question, the self-assessment included in that return supersedes the determination.

(2) Subsection (1) does not apply to a return made—

(a) more than 5 years after the power to make the determination first became exercisable, or

(b) more than 3 months after the date of the determination, whichever is the later.

(3) Where—
(a) proceedings have been begun for the recovery of any tax charged by a Revenue Scotland determination, and
(b) before the proceedings are concluded the determination is superseded by a self-assessment,

the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not yet been paid.

CHAPTER 6
REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayment

89 Assessment where loss of tax
(1) This section applies if a designated officer comes to the view honestly and reasonably that—
(a) an amount of devolved tax that ought to have been assessed as tax chargeable on a person has not been assessed,
(b) an assessment of the tax chargeable on a person is or has become insufficient, or
(c) relief has been claimed or given that is or has become excessive.
(2) The designated officer may make an assessment of the amount or additional amount that ought in the officer’s opinion to be charged in order to make good to the Crown the loss of tax.

90 Assessment to recover excessive repayment of tax
(1) If an amount of tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid tax.
(2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.

91 References to “Revenue Scotland assessment”
In this Act “Revenue Scotland assessment” means an assessment under section 89(2) or 90(1), as the case may be.

92 References to the “taxpayer”
In sections 93 to 96 “taxpayer” means—
(a) in relation to an assessment under section 89, the person chargeable to the tax,
(b) in relation to an assessment under section 90, the person mentioned in section 90(1).
Conditions for making Revenue Scotland assessments

93 Conditions for making Revenue Scotland assessments

(1) A Revenue Scotland assessment may be made only where the situation mentioned in section 89(1) or 90(1) was brought about carelessly or deliberately by—

(a) the taxpayer,

(b) a person acting on the taxpayer’s behalf, or

(c) a person who was a partner of the taxpayer.

(2) But no Revenue Scotland assessment may be made if—

(a) the situation mentioned in section 89(1) or 90(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and

(b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

Time limits for Revenue Scotland assessments

94 Time limits for Revenue Scotland assessments

(1) The general rule is that no Revenue Scotland assessment may be made more than 5 years after the relevant date.

(2) An assessment of a person in any case involving a loss of tax or a situation brought about deliberately by the taxpayer or a related person may be made up to 20 years after the relevant date.

(3) An assessment under section 90 (assessment to recover excessive repayment of tax) is not out of time if it is made within the period of 12 months beginning with the date on which the repayment in question was made.

(4) If the taxpayer has died—

(a) any assessment on the personal representatives must be made within 3 years after the death, and

(b) an assessment is not to be made by virtue of subsection (1) in respect of a relevant date more than 5 years before the death.

(5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on a review or appeal against the assessment.

(6) In this section—

“related person”, in relation to the taxpayer, means—

(a) a person acting on the taxpayer’s behalf, or

(b) a person who was the partner of the taxpayer,

“relevant date” means—

(a) the filing date, or

(b) the date on which the return was made, if the return was made after the filing date.
95 Losses brought about carelessly or deliberately

(1) This section applies for the purposes of sections 93 and 94.

(2) A loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation.

(3) Subsection (4) applies where—

(a) information is provided to Revenue Scotland,

(b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and

(c) that person fails to take reasonable steps to inform Revenue Scotland.

(4) Any loss of tax or situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(5) References to a loss of tax or to a situation brought about deliberately by a person include a loss of tax or situation brought about as a result of a deliberate inaccuracy in a document given to Revenue Scotland by or on behalf of that person.

96 Assessment procedure

(1) Notice of a Revenue Scotland assessment must be served on the taxpayer.

(2) The notice must state—

(a) the tax due,

(b) the date on which the notice is issued,

(ba) the date by which—

(i) the amount or additional amount of tax chargeable as a result of the assessment (as mentioned in section 89(2)), or

(ii) the amount of tax or interest repaid that ought not to have been (as mentioned in section 90(1)),

must be paid, and

(c) the time within which any review or appeal against the assessment must be requested.

(2A) The—

(a) amount or additional amount of tax chargeable as a result of the assessment (as mentioned in section 89(2)), or

(b) amount of tax or interest repaid that ought not to have been (as mentioned in section 90(1)),

must be paid before the end of the period of 30 days beginning with the date on which the assessment is issued.

(3) After notice of the assessment has been served on the taxpayer, the assessment may not be altered except in accordance with the express provisions of this Part or of Part 5.
(4) Where a designated officer has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, the officer may entrust to some other designated officer the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

CHAPTER 7

RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

97 Relief in case of double assessment

A person who believes that tax has been assessed on that person more than once in respect of the same matter may make a claim to Revenue Scotland for relief against any double charge.

Overpaid tax etc.

98 Claim for relief for overpaid tax etc.

(1) This section applies where—

(a) a person has paid an amount by way of tax but believes the tax was not chargeable, or

(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, but the person believes the tax is not chargeable.

(2) The person may make a claim to Revenue Scotland for the amount to be repaid or discharged.

(3) Where this section applies, Revenue Scotland is not liable to give relief, except as provided in this Part or by or under any other provision of this Act.

(4) For the purposes of this section and sections 100 to 109, an amount paid by one person on behalf of another is treated as paid by the other person.

Order changing tax basis not approved

99 Claim for repayment if order changing tax basis not approved

(1) This section applies where a relevant order has ceased to have effect by virtue of a relevant provision and—

(a) a person has paid an amount by way of tax that would not have been payable but for the order, or

(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, that would not have been chargeable but for the order.

(2) The person may make a claim to Revenue Scotland—

(a) for the amount of tax, and

(b) any related penalty or interest,
to be repaid or discharged to the extent that it was paid, or assessed or determined as chargeable, in consequence of the relevant order.

(3) A “relevant order” is an order mentioned in column 1, and a “relevant provision”, in relation to such an order, is the provision mentioned in the corresponding entry in column 2, of the following table.

<table>
<thead>
<tr>
<th>Relevant orders</th>
<th>Relevant provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under the LBTT(S) Act 2013—</td>
<td></td>
</tr>
<tr>
<td>(a) a second or subsequent order under section 24(1),</td>
<td>Section 68(4)(b) of that Act</td>
</tr>
<tr>
<td>(b) a second or subsequent order under paragraph 3(1) of schedule 19.</td>
<td></td>
</tr>
<tr>
<td>Under the LT(S) Act 2014—</td>
<td></td>
</tr>
<tr>
<td>(a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal,</td>
<td>Section 41(3)(b) of that Act</td>
</tr>
<tr>
<td>(b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed,</td>
<td></td>
</tr>
<tr>
<td>(c) a second or subsequent order under section 13(2) or (5),</td>
<td></td>
</tr>
<tr>
<td>(d) an order under section 13(4),</td>
<td></td>
</tr>
<tr>
<td>(e) an order under section 14(7) other than one which provides only that an earlier order under section 14(7) is not to apply to material.</td>
<td></td>
</tr>
</tbody>
</table>

(4) A penalty or interest is related to an amount of tax to the extent that it—

(a) is attributable to the amount, and

(b) would not have been incurred but for the relevant order.

(5) A claim for repayment must be made before the end of the period of 2 years after the relevant date.

(6) The relevant date is—

(a) the filing date, or

(b) the date on which the tax return was made, if the return was made after the filing date.

(7) For the purposes of this section and sections 100 to 103, 105, 107 and 109, an amount paid by one person on behalf of another is treated as paid by the other person.
Expressions used in this section and in the LT(S) Act 2014 have the meanings given in that Act.

Defence of unjustified enrichment

Defence to certain claims for relief under section 98 or 99

(a) It is a defence to a claim for relief made under section 98 or 99 that repayment or, as the case may be, discharge of the amount would unjustly enrich the claimant.

Unjustified enrichment: further provision

(1) This section applies where—

(a) there is an amount paid by way of tax which (apart from section 100) would fall to be repaid or discharged to any person (“the taxpayer”), and

(b) the whole or a part of the cost of the payment of that amount to Revenue Scotland has, for practical purposes, been borne by a person other than the taxpayer.

(2) Where, in a case to which this section applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any provisions relating to a tax, that loss or damage is to be disregarded, except to the extent of the quantified amount, in the making of any determination—

(a) of whether or to what extent the repayment or discharge of an amount to the taxpayer would enrich the taxpayer, or

(b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3) In subsection (2) “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions.

(4) The reference in subsection (2) to provisions relating to a tax is a reference to any provisions of—

(a) any enactment, subordinate legislation or EU legislation (whether or not still in force) which relates to that tax or to any matter connected with it, or

(b) any notice published by Revenue Scotland under or for the purposes of any such enactment or subordinate legislation.

Unjustified enrichment: reimbursement arrangements

(1) The Scottish Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 100 except where the arrangements—

(a) contain such provision as may be required by the regulations, and

(b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to Revenue Scotland.
Revenue Scotland and Tax Powers Bill
Part 6—Tax returns, enquiries and assessments
Chapter 7—Relief in case of excessive assessment or overpaid tax

(2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 98 or 99 which—
(a) are made by any person for the purpose of securing that the person is not unjustly enriched by the repayment or discharge of any amount in pursuance of the claim, and
(b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland.

(3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—
(a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations,
(b) provision for the repayment of amounts to Revenue Scotland where those amounts are not reimbursed in accordance with the arrangements,
(c) provision requiring interest paid by Revenue Scotland on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay Revenue Scotland,
(d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to Revenue Scotland, or to a designated officer.

(4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—
(a) to make the repayments to Revenue Scotland that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c),
(b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d).

(5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to Revenue Scotland in accordance with the regulations and any such provision may allow for those matters to be determined by Revenue Scotland in accordance with the regulations.

103 Reimbursement arrangements: penalties

(1) Regulations under section 102 may make provision for penalties where a person breaches an obligation imposed by virtue of section 102(4).

(2) The regulations may in particular make provision including provision—
(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of repayments which the person would have been liable to make to Revenue Scotland if the obligation had been breached,
Revenue Scotland and Tax Powers Bill
Part 6—Tax returns, enquiries and assessments
Chapter 7—Relief in case of excessive assessment or overpaid tax

(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(3) But the regulations may not create criminal offences.

(4) Regulations made by virtue of this section may amend any enactment (including this Act).

Other defences to claims

104 Cases in which Revenue Scotland need not give effect to a claim

(1) Revenue Scotland need not give effect to a claim under section 98 if or to the extent that the claim falls within a case described in this section.

(2) Case A is where the amount of tax paid, or liable to be paid, is excessive because of—
(a) a mistake in a claim, or
(b) a mistake consisting of making, or failing to make, a claim.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C is where the claimant—
(a) could have sought relief by taking such steps within a period that has now expired, and
(b) knew or ought reasonably to have known, before the end of that period, that such relief was available.

(5) Case D is where the claim is made on grounds that—
(a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
(b) have been put to Revenue Scotland in the course of a review or appeal by the claimant relating to that amount that is treated as having been determined by the tribunal by virtue of section 211 (settling matters in question by agreement).

(6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
(a) the date on which a relevant appeal in the course of which the ground could have been put forward was determined by a court or tribunal (or is treated as having been so determined),
(b) the date on which the claimant withdrew a relevant appeal to a court or tribunal,
(c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(7) In subsection (6) “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.

(8) Case F is where the amount in question was paid or is liable to be paid—
(a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Revenue Scotland, or
(b) in accordance with an agreement between the claimant and Revenue Scotland settling such proceedings.

(9) Case G is where—

(a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant’s liability to tax, and

(b) liability was calculated in accordance with the practice generally prevailing at the time.

(10) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(11) For the purposes of subsection (10), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

**Procedure for making claims**

105 **Procedure for making claims etc.**

Schedule 3 applies in relation to claims under sections 97 to 99.

106 **Time-limit for making claims**

(1) A claim under section 97 or 98 must be made within the period of 5 years after the date by which the tax return, to which the payment by way of tax, or the assessment or determination relates, required to be made.

(2) A claim under section 98 may not be made by being included in a return.

107 **The claimant: partnerships**

(1) This section is about the application of sections 98 and 99 in a case where either—

(a) (in a case falling within section 98(1)(a) or 99(1)(a)) the person paid the amount in question in the capacity of a responsible partner or representative partner, or

(b) (in a case falling within section 98(1)(b) or 99(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity.

(2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under section 98 or 99 in respect of the amount in question.

(3) The relevant persons are all the persons who would have been liable as responsible partners to pay the amount in question had the payment been due or (in a case falling within section 98(1)(b) or 99(1)(b)) had the assessment or determination been correctly made.
Revenue Scotland and Tax Powers Bill
Part 6—Tax returns, enquiries and assessments
Chapter 7—Relief in case of excessive assessment or overpaid tax

108 Assessment of claimant in connection with claim

(1) This section applies where—

(a) a claim is made under section 98,

(b) the grounds for giving effect to the claim also provide grounds for a Revenue Scotland assessment on the claimant in respect of the tax, and

(c) such an assessment could be made but for a relevant restriction.

(2) In a case falling within section 107(1)(a) or (b), the reference to the claimant in subsection (1)(b) of this section includes any relevant person (as defined in section 107(3)).

(3) The following are relevant restrictions—

(a) the restrictions in section 93 (conditions for assessment where return has been delivered),

(b) the expiry of a time limit for making a Revenue Scotland assessment.

(4) Where this section applies—

(a) the relevant restrictions are to be disregarded, and

(b) the Revenue Scotland assessment is not out of time if it is made before the final determination of the claim.

(5) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on review, appeal or otherwise).

Contract settlements

109 Contract settlements

(1) In sections 98(1)(a) and 99(1)(a) the reference to an amount paid by a person by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.

(2) Subsections (3) to (7) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.

(3) In relation to a claim under section 98 in respect of that amount—

(a) the references to the claimant in section 104(5), (6) and (8) (Cases D, E and F) have effect as if they included the taxpayer,

(b) the reference to the claimant in section 104(9) (Case G) has effect as if it were a reference to the taxpayer, and

(c) the reference to the claimant in section 108(1)(b) has effect as if it were a reference to the taxpayer.

(4) In relation to a claim under section 98 or 99 in respect of that amount, references to tax in schedule 3 (as it applies to a claim under section 98 or 99) include the amount paid under the contract settlement.

(5) Subsection (6) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a Revenue Scotland assessment on the taxpayer in respect of the tax.
(6) Revenue Scotland may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.

(7) The obligations of Revenue Scotland and the taxpayer are discharged to the extent of any set-off under subsection (6).

(8) “Contract settlement” means an agreement made in connection with any person’s liability to make a payment to Revenue Scotland by or under this Act or any other enactment.

PART 7
INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1
INVESTIGATORY POWERS: INTRODUCTORY

Overview

110 Investigatory powers of Revenue Scotland: overview

This Part is arranged as follows—

(a) Chapter 2 sets out Revenue Scotland’s investigatory powers in relation to information and documents,

(b) Chapter 3 contains restrictions on the powers in Chapter 2,

(c) Chapter 4 sets out Revenue Scotland’s investigatory powers in relation to premises and other property,

(d) Chapter 5 sets out further investigatory powers,

(e) Chapter 6 is about reviews and appeals against information notices, and

(f) Chapter 7 sets out offences relating to information notices.

Interpretation

112 Meaning of “tax position”

(1) In this Part unless otherwise stated “tax position”, in relation to a person, means the person’s position as regards any devolved tax, including the person’s position as regards—

(a) past, present and future liability to pay any devolved tax,

(b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any devolved tax, and

(c) claims, elections, applications and notices that have been or may be made or given in connection with the person’s liability to pay any devolved tax,

(and references to a person’s position as regards a particular tax (however expressed) are to be interpreted accordingly).

(2) References in this Part to the tax position of a person include the tax position of—

(a) an individual who has died,
(b) a company that has ceased to exist.

(3) References in this Part to a person’s tax position are to the person’s tax position at any time or in relation to any period, unless otherwise stated.

(4) References to checking a person’s tax position include carrying out an investigation or enquiry of any kind.

113 Meaning of “carrying on a business”

(1) In this Part references to carrying on a business include—

(a) the letting of property,

(b) the activities of a charity, and

(c) the activities of a local authority and any other public authority.

(2) The Scottish Ministers may by regulations provide that for the purposes of this Part—

(a) the carrying on of an activity specified in the regulations, or

(b) the carrying on of such an activity (or any activity) by a person specified in the regulations,

is or is not to be treated as the carrying on of a business.

114 Meaning of “statutory records”

(1) For the purposes of this Part information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve by or under this Act, subject to subsections (2) and (3).

(2) To the extent that any information or document that is required to be kept and preserved by or under this Act—

(a) does not relate to the carrying on of a business, and

(b) is not also required to be kept or preserved by or under any other enactment relating to devolved tax,

it forms part of a person’s statutory records only to the extent that any accounting period or periods to which it relates has or have ended.

(3) Information and documents cease to form part of a person’s statutory records when the period for which they are required to be preserved by or under this Act has expired.

CHAPTER 2

INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

115 Power to obtain information and documents from taxpayer

(1) If the condition in subsection (2) is met, a designated officer may by notice require a person (“the taxpayer”)—

(a) to provide information, or

(b) to produce a document.

(2) That condition is that—
(a) the information or document is reasonably required by the officer for the purpose of checking the taxpayer’s tax position, and

(b) it is reasonable for the taxpayer to be required to provide the information or to produce the document.

(3) In this Part “taxpayer notice” means a notice under this section.

116 **Power to obtain information and documents from third party**

(1) If the condition in subsection (2) is met, a designated officer may by notice require a person—

(a) to provide information, or

(b) to produce a document.

(2) That condition is that—

(a) the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”), and

(b) it is reasonable for the person to be required to provide the information or to produce the document.

(3) A notice under this section must name the taxpayer to whom it relates, unless the tribunal has approved the giving of the notice and disapproved this requirement under section 117.

(4) In this Part “third party notice” means a notice under this section.

117 **Approval of taxpayer notices and third party notices**

(1) A designated officer may not give a third party notice without—

(a) the agreement of the taxpayer, or

(b) the approval of the tribunal.

(2) A designated officer may ask for the approval of the tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see sections 144 and 146).

(3) An application for approval under this section may be made without notice (except as required under subsection (4)).

(4) The tribunal may not approve the giving of a taxpayer notice or third party notice unless—

(b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,

(c) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and has been given a reasonable opportunity to make representations to a designated officer,

(d) the tribunal has been given a summary of any representations made by that person, and
(e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why a designated officer requires the information and documents.

(5) Paragraphs (c) to (e) of subsection (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.

(6) Where the tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the designated officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

118 Copying third party notice to taxpayer

(1) A designated officer who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the tribunal has disapproved this requirement.

(2) The tribunal may not disapprove that requirement unless the tribunal is satisfied that the officer applying has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

119 Power to obtain information and documents about persons whose identity is not known

(1) If the conditions in subsection (2) are met, a designated officer may by notice require a person—

(a) to provide information, or

(b) to produce a document.

(2) Those conditions are—

(a) that the information or document is reasonably required by the officer for the purpose of checking the tax position of—

(i) a person whose identity is not known to the officer, or

(ii) a class of persons whose individual identities are not known to the officer, and

(b) the tribunal has approved the giving of the notice.

(4) An application for approval may be made without notice.

(5) The tribunal may not approve the giving of a notice under this section unless it is satisfied that—

(a) the notice would meet the condition in subsection (2)(a),

(b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law relating to a devolved tax,

(c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax, and

(d) the information or document to which the notice relates is not readily available from another source.
120 Third party notices and notices under section 119: groups of undertakings

(1) This section applies where an undertaking is a parent undertaking in relation to another undertaking (a “subsidiary undertaking”).

(2) Where a third party notice is given to any person for the purpose of checking the tax position of the parent undertaking and any of its subsidiary undertakings—

(a) section 116(3) only requires the notice to state this and name the parent undertaking, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the parent undertaking.

(3) In relation to such a notice—

(a) in sections 117 and 118 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to the parent undertaking, but

(b) in section 144(2)(b) (no review or appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking and each of its subsidiary undertakings.

(4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—

(a) section 116(3) only requires the notice to state this, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement.

(5) In relation to such a notice—

(a) in section 117 (approval of notices), subsections (1) and (4)(e) do not apply,

(b) section 118(1) (copying third party notices to taxpayer) does not apply,

(c) section 129 (restriction on giving taxpayer notice following a tax return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings), and

(d) in section 144(2)(b) (no review or appeal in relation to a taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.

(7) In this section “parent undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given in sections 1161 and 1162 of, and schedule 7 to, the Companies Act 2006 (c.46).

121 Third party notices and notices under section 119: partnerships

(1) This section applies where a business is carried on by two or more persons in partnership.

(2) Where, in respect of a taxable event entered into or undertaken by or on behalf of the members of the partnership, any partner has made a tax return, section 129 has effect as if that return had been made by each of the partners.
(3) Where a third party notice is given for the purpose of checking the tax position of more than one of the partners (in their capacity as such)—

(a) section 116(3) only requires the notice to state this and give a name by which the partnership is known or under which it is registered for any purpose, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the partnership.

(4) In relation to such a notice given to a person other than one of the partners—

(a) in sections 117 and 118 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to at least one of the partners, and

(b) in section 144(2)(b) (no review or appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such)—

(a) in section 117 (approval of notices), subsections (1) and (4)(e) do not apply,

(b) section 118(1) (copying third party notices to taxpayer) does not apply, and

(c) in section 144(2)(b) (no review or appeal in relation to a taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

122 Power to obtain information about persons whose identity can be ascertained

(1) A designated officer may by notice require a person (“P”) to provide relevant information about another person (“the taxpayer”) if the tribunal approves the giving of the notice.

(1A) The tribunal may not approve the giving of a notice under this section unless satisfied that conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that—

(a) the taxpayer’s identity is not known to the officer, but

(b) the officer holds information from which the taxpayer’s identity can be ascertained.

(4) Condition C is that the officer has reason to believe that—

(a) P will be able to ascertain the taxpayer’s identity from the information held by the officer, and

(b) P obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “Relevant information” means all or any of the following—
(a) name,
(b) last known address, and
(c) date of birth (in the case of an individual).

(7) This section applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “taxpayer” are to be read accordingly).

123 Notices

(1) In this Part, “information notice” means a notice under section 115, 116, 119 or 122.

(2) An information notice may specify or describe the information or documents to be provided or produced.

(3) If an information notice is given with the approval of the tribunal, it must state that it is given with that approval.

(4) A decision of the tribunal under section 117, 118, 119 or 122 is final.

124 Complying with information notices

(1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
   (a) within such period, and
   (b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.

(2) Where an information notice requires a person to produce a document, it must be produced—
   (a) at a place agreed to by that person and a designated officer, or
   (b) at such place as a designated officer may reasonably specify.

(3) A designated officer must not specify for the purposes of subsection (2)(b) a place that is used solely as a dwelling.

(4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

125 Producing copies of documents

(1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Scottish Ministers.

(2) Subsection (1) does not apply where—
   (a) the notice requires the person to produce the original document, or
   (b) a designated officer subsequently makes a request to the person for the original document.

(3) Where a designated officer requests a document under subsection (2)(b), the person to whom the request is made must produce the document—
(a) within such period, and
(b) at such time and by such means (if any),
as is reasonably requested by the designated officer.

126 Further provision about powers relating to information notices

The Scottish Ministers may by regulations make further provision about—

(a) the form and content of information notices,
(b) the time periods for complying with information notices, and
(c) the manner of complying with information notices.

Chapter 3

Restrictions on powers in Chapter 2

127 Information notices: general restrictions

(1) An information notice requires a person to produce a document only if it is in the
person’s possession or power.

(2) An information notice may not require a person to produce a document if the whole of
the document originates more than 5 years before the date of the notice, unless the
notice is given with the approval of the tribunal.

(3) An information notice given for the purposes of checking the tax position of a person
who has died may not be given more than 3 years after the person’s death.

128 Types of information

(1) An information notice does not require a person to provide or produce—

(a) information that relates to the conduct of a pending review or appeal relating to
tax (or any part of a document containing such information), or
(b) journalistic material (or information contained in such material).

(2) In subsection (1)(b) “journalistic material” means material acquired or created for the
purposes of journalism.

(3) Material is to be treated as journalistic material if it is in the possession of someone who
acquired or created it for the purposes of journalism.

(4) A person who receives material from someone who intends that the recipient will use it
for the purposes of journalism is to be taken to have acquired it for those purposes.

(5) An information notice does not require a person to provide or produce personal records
or information contained in such records, subject to subsection (7).

(6) In subsection (5) “personal records” means documentary and other records concerning
an individual (“P”) (whether living or dead) who can be identified from them and
relating—

(a) to P’s physical or mental health,
(b) to spiritual counselling or assistance given or to be given to P, or
Part 7—Investigatory powers of Revenue Scotland
Chapter 3—Restrictions on powers in Chapter 2

(c) to counselling or assistance given or to be given to P, for the purposes of P’s personal welfare, by any voluntary organisation or by any individual who—

(i) by reason of an office or occupation has responsibilities for P’s personal welfare, or

(ii) by reason of an order of a court has responsibilities for P’s supervision.

(7) An information notice may require a person—

(a) to produce documents (or copies of documents) that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and

(b) to provide any information contained in such records that is not personal information.

129 Taxpayer notices following a tax return

(1) Where a person has made a tax return in relation to a devolved tax in relation to an accounting period, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that tax in relation to that accounting period.

(2) Where a person has made a tax return in relation to a devolved tax in relation to a transaction, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that transaction.

(3) Subsections (1) and (2) do not apply where (or to the extent that) either of condition A or B is met.

(4) Condition A is that a notice of enquiry has been given in respect of—

(a) the return, or

(b) a claim or election (or an amendment of a claim or election) made by the person in relation to—

(i) the accounting period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”), or

(ii) the transaction to which the return relates,

and the enquiry has not been completed.

(5) Condition B is that, as regards the person, a designated officer has reason to suspect that—

(a) an amount that ought to have been assessed to relevant tax for the accounting period or, as the case may be, the transaction may not have been assessed,

(b) an assessment to relevant tax for the accounting period or, as the case may be, the transaction may be or have become insufficient, or

(c) relief from relevant tax given for the accounting period or, as the case may be, the transaction may be or have become excessive.

(6) References in this section to the person who made the return are only to that person in the capacity in which the return was made.
130 Protection for privileged communications between legal advisers and clients

(1) An information notice does not require a person—
   (a) to provide privileged information, or
   (b) to produce any part of a document that is privileged.

(2) For the purposes of this Part, information or a document is privileged if it is information or a document in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.

(3) The Scottish Ministers may by regulations make provision for the resolution by the tribunal of disputes as to whether any information or document is privileged.

(4) The regulations may, in particular, make provision as to the custody of a document while its status is being decided.

131 Protection for auditors

(1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—
   (a) to provide information held in connection with the performance of the person’s functions under that enactment, or
   (b) to produce documents which are that person’s property and which were created by that person or on that person’s behalf for or in connection with the performance of those functions.

(2) Subsection (1) has effect subject to section 132.

132 Auditors: supplementary

(1) Section 131(1) does not have effect in relation to—
   (a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, Revenue Scotland, or
   (b) a document which contains such information.

(2) In the case of a notice given under section 119, section 131(1) does not have effect in relation to—
   (a) any information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or
   (b) a document which contains such information.

(3) Section 131 is not disappplied by subsection (1) or (2) if the information in question has already been provided, or a document containing the information has already been produced, to a designated officer.

(4) Where section 131 is disappplied in relation to a document by subsection (1) or (2), an information notice that requires the document to be produced has effect as if it required any part or parts of the document containing the information mentioned in subsection (1) or (2) to be produced.
133 Power to inspect business premises

(1) If the condition in subsection (2) is met, a designated officer may enter a person’s business premises and inspect—
   (a) the premises,
   (b) business assets that are on the premises,
   (c) business documents that are on the premises.

(2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the person’s tax position.

(3) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

(4) In this Chapter—

   “business assets” means assets that a designated officer has reason to believe are owned, leased or used in connection with the carrying on of a business by any person (but does not include documents),

   “business documents” means documents or copies of documents—
   (a) that relate to the carrying on of a business by any person, and
   (b) that form part of any person’s statutory records,

   “business premises”, in relation to a person, means premises (or any part of premises) that a designated officer has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person,

   “premises” includes any building or structure, any land and any means of transport.

134 Power to inspect business premises of involved third parties

(1) If the condition in subsection (2) is met, a designated officer may enter business premises of an involved third party and inspect—
   (a) the premises,
   (b) business assets that are on the premises, and
   (c) relevant documents that are on the premises.

(2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the position of any person or class of persons as regards a relevant devolved tax.

(3) In this section—

   “involved third party” means a person who is, or a category of persons who are, specified by the Scottish Ministers by order,

   “relevant documents” means such documents as may be so specified,
“relevant devolved tax” means such devolved tax as may be so specified.

(4) The powers under this section may be exercised whether or not the identity of that person is, or the individual identities of those persons are, known to the designated officer.

(5) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

135 Carrying out inspections under section 133 or 134

(1) An inspection under section 133 or 134 may be carried out only—

(a) at a time agreed to by the occupier of the premises, or

(b) if subsection (2) is satisfied, at any reasonable time.

(2) This subsection is satisfied if—

(a) the occupier of the premises has been given at least 7 days’ notice in writing of the time of the inspection, or

(b) the officer has reasonable grounds for believing that giving notice of the inspection would seriously prejudice the assessment or collection of tax.

(3) A designated officer seeking to carry out an inspection under subsection (2)(b) must provide a notice in writing as follows—

(a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,

(b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person,

(c) in any other case, the notice must be left in a prominent place on the premises.

(4) The notice referred to in subsection (2)(a) or (3) must state the possible consequences of obstructing the designated officer in the exercise of the power.

(5) If a notice referred to in subsection (2)(a) or (3) is given in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.

135A Carrying out inspections under section 133 or 134: further provision

(1) A designated officer carrying out an inspection under section 133 or 134 has the following powers.

(2) On entering the premises, the officer may take any person authorised by the officer and, if the officer has reasonable cause to apprehend any serious obstruction in the execution of the inspection, a constable.

(3) Subject to subsection (6), on entering the premises, the officer or a person authorised by the officer may take any equipment or materials required for any purpose for which the inspection is being carried out.

(4) The officer may make such examination or investigation the officer considers to be necessary in the circumstances.
(5) The officer may direct that the premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any such examination or investigation.

(5A) The officer or a person authorised by the officer may take samples of material on the premises.

(5B) The power to take samples mentioned in subsection (5A) includes power—
(a) to carry out experimental borings or other works on the premises, and
(b) to install, keep or maintain monitoring and other apparatus there.

(5C) Any sample taken under subsections (5A) and (5B) is to be disposed of in such manner as Revenue Scotland may determine.

(6) An officer or authorised person may exercise the power mentioned in subsection (3) only—
(a) at a time agreed to by the occupier of the premises, or
(b) if subsection (7) is satisfied, at any reasonable time.

(7) This subsection is satisfied if—
(a) in a case where notice was given under section 135(2)(a), that the notice informed the occupier of the premises that the officer or authorised person intended to exercise the power mentioned in subsection (3), or
(b) the officer has reasonable grounds for believing that giving notice of the exercise of that power would seriously prejudice the assessment or collection of tax.

(8) Section 135(3) to (5) apply to the exercise of the power mentioned in subsection (3) by virtue of subsection (7)(b) as they apply to an inspection carried out by virtue of section 135(2)(b).

**Inspection for valuation etc.**

136 **Power to inspect property for valuation etc.**

(1) A designated officer may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person’s tax position.

(2) A designated officer may enter premises and inspect—
(a) the premises,
(b) any other property on the premises,
for the purpose of valuing, measuring or determining the character of the premises or property.

(3) Subsection (2) only applies if the valuation, measurement or determination is reasonably required for the purposes of checking any person’s tax position.

(4) A person who the designated officer considers is needed to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.
Carrying out inspections under section 136

(1) An inspection under section 136 may be carried out only if condition A or B is met.

(2) Condition A is that—
   (a) the inspection is carried out at a time agreed to by a relevant person, and
   (b) the relevant person has been given notice in writing of the agreed time of the inspection.

(3) “Relevant person” means—
   (a) the occupier of the premises, or
   (b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.

(4) Condition B is that—
   (a) the inspection has been approved by the tribunal, and
   (b) any relevant person specified by the tribunal has been given at least 7 days’ notice in writing of the time of the inspection.

(5) A notice under subsection (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power.

(6) If a notice is given under this section in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.

(7) A designated officer seeking to carry out an inspection under section 136 must produce evidence of authority to carry out the inspection if asked to do so by—
   (a) the occupier of the premises, or
   (b) any other person who appears to the officer to be in charge of the premises or property.

Approval of tribunal for premises inspections

138 Approval of tribunal for premises inspections

(1) A designated officer may ask the tribunal—
   (a) to approve an inspection under section 133, 134 or 136, or
   (b) to approve the exercise, in relation to an inspection under section 133 or 134, of any of the powers mentioned in section 135A,

   (and for the effect of obtaining such approval see section 167 (penalties for failure to comply or obstruction)).

(2) An application for approval under this section may be made without notice (except as required under subsection (4)).

(3) The tribunal may not approve an inspection under section 133 or 134 unless the tribunal is satisfied that, in the circumstances, the inspection is justified.

(4) The tribunal may not approve an inspection under section 136 unless—
(b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the designated officer about that inspection,
(c) the occupier of the premises has been given a reasonable opportunity to make such representations,
(d) the tribunal has been given a summary of any representations made, and
(e) the tribunal is satisfied that, in the circumstances, the inspection is justified.
(5) Subsection (4)(c) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.
(6) A decision of the tribunal under this section is final.

Other powers in relation to premises

139 Power to mark assets and to record information

The powers under sections 133 to 137 include—
(a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and
(b) power to obtain and record information (whether electronically or otherwise) relating to the premises, property, assets and documents that have been inspected.

Restriction on inspection of documents

141 Restriction on inspection of documents

A designated officer may not inspect a document under this Chapter if (or to the extent that), by virtue of Chapters 2 and 3, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

Chapter 5

FURTHER INVESTIGATORY POWERS

142 Power to copy and remove documents

(1) Where a document is produced to, or inspected by, a designated officer, the officer may take copies of, or make extracts from, the document.
(2) Where a document is produced to, or inspected by, a designated officer, the officer may—
(a) remove the document at a reasonable time, and
(b) retain it for a reasonable period, if it appears to the officer to be necessary to do so.
(3) Where a document is removed in accordance with subsection (2), the person who produced the document may request—
(a) a receipt for the document, and
(b) a copy of the document.
(4) A designated officer must comply with a request under subsection (3) without charge.

(5) The removal of a document under this section is not to be regarded as breaking any lien claimed on the document.

(6) Where a document removed under this section is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

(7) In this section, references to a document include a copy of a document.

### Computer records

(1) This section applies to any provision of this Part or Part 8 (penalties) that—

(a) requires a person to produce a document or cause a document to be produced,

(b) requires a person to permit a designated officer—

   (i) to inspect a document, or

   (ii) to make or take copies of or extracts from or remove a document,

(c) makes provision about penalties or offences in connection with the production or inspection of documents, including with the failure to produce or permit the inspection of documents, or

(d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).

(2) A provision to which this section applies has effect as if—

(a) any reference in the provision to a document were a reference to anything in which information of any description is recorded, and

(b) any reference in the provision to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

(3) A designated officer may, at any reasonable time, obtain access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.

(4) In subsection (3) “relevant document” means a document that a person has been, or may be, required by or under a provision of this Part—

(a) to produce or cause to be produced, or

(b) to permit a designated officer—

   (i) to inspect,

   (ii) to make or take copies of or extracts from, or

   (iii) to remove.

(5) A designated officer may require—

(a) the person by whom or on whose behalf the computer is or has been so used, or

(b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
to provide the designated officer with such reasonable assistance as may be required for the purposes of subsection (3).

(6) A person who—

(a) obstructs the exercise of a power conferred by this section, or

(b) fails to comply within a reasonable time with a requirement under subsection (5),

is liable to a penalty of £300.

(7) Sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167.

CHAPTER 6

REVIEWs AND APPEALS AGAINST INFORMATION NOTICES

144 Review or appeal against information notices

(1) This section applies where a person seeks, under Part 11, to have a decision in relation to the giving of an information notice or in relation to any requirement in such a notice reviewed or appealed.

(2) The following are not appealable decisions for the purposes of section 198(1)(f)—

(a) a decision to give a taxpayer notice or third party notice if the tribunal approved the giving of the notice under section 117,

(b) a decision to include a requirement in such a notice if it is a requirement to provide any information, or produce any document, that forms part of a taxpayer’s statutory records.

(3) A person may give notice of review or notice of appeal in relation to a decision to give a third party notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

(4) But in a case to which section 120(4) or 121(5) applies, a notice of review or notice of appeal may be given on any grounds.

(5) A person may give notice of review or notice of appeal in relation to a decision to give a notice under section 119 or 122, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

(6) But in a case to which subsection (6A) applies—

(a) a notice of review or notice of appeal may be given on any grounds,

(b) a notice of review or notice of appeal may not be given in relation to a decision to include a requirement in a notice under section 119—

(i) if it is a requirement to provide any information, or produce any document, that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings, or

(ii) if it is a requirement to provide any information, or produce any document, that forms part of the partner’s statutory records.

(6A) This subsection applies where notice is given under section 119—
(a) to a parent undertaking for the purposes of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice, or

(b) to one or more partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice.

(7) In this section, “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meanings as in section 120.

144A Power to modify section 144

The Scottish Ministers may by order modify section 144(2) to (7) to provide for certain decisions in relation to the giving of information notices or in relation to any requirement in such notices—

(a) to be appealable for the purposes of section 198(1)(f),

(b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,

(c) to not be appealable.

145 Disposal of reviews and appeals in relation to information notices

(1) This section applies where a person gives notice of review or notice of appeal in relation to a decision relating to an information notice or a requirement in it.

(2) Where the conclusions of the review under section 203 uphold or vary the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement within such period as is reasonably specified by a designated officer.

(3) But subsection (2) does not apply where section 205(2) applies (conclusions of review not to have effect of settlement agreement if mediation entered into or notice of appeal given).

(4) Where the tribunal, under section 209 (disposal of appeals), upholds or varies the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement—

(a) within the period specified by the tribunal, or

(b) if the tribunal does not specify a period, within such period as is reasonably specified by a designated officer following the tribunal’s decision.

(5) A decision of the tribunal on an appeal to which this section applies is final.

CHAPTER 7

OFFENCES RELATING TO INFORMATION NOTICES

146 Offence of concealing etc. documents following information notice

(1) A person commits an offence if—

(a) the person is required to produce a document by an information notice the giving of which was approved by the tribunal, and
(c) the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) that document.

(2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person that the document must continue to be available for inspection (and has not withdrawn the notification).

(3) Subsection (1) does not apply, in a case to which section 125 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was so produced unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).

(4) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

147 Offence of concealing etc. documents following information notification

(1) A person commits an offence if the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document after the person has been notified by a designated officer that—
   (a) the document is to be, or is likely to be, the subject of an information notice addressed to that person, and
   (b) a designated officer either intends, under section 117, or is required, under section 119 or 122, to seek the approval of the tribunal to the giving of the notice in respect of the document.

(2) A person does not commit an offence under this section if the person acts after—
   (a) at least 6 months has expired since the person was (or was last) so informed, or
   (b) an information notice has been given to the person requiring the document to be produced.

(3) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
Chapter 2 sets out penalties relating to failure to make tax returns or to pay tax,
Chapter 3 sets out penalties relating to inaccuracies,
Chapter 4 sets out penalties relating to investigations, and
Chapter 5 sets out other administrative penalties.

Double jeopardy

A person is not liable to a penalty under this Act in respect of anything in respect of which the person has been convicted of an offence.

CHAPTER 2

Penalties for failure to make returns or pay tax

Penalties for failure to make returns

(1) A penalty is payable by a person (“P”) where P fails to make a tax return specified in the table below on or before the filing date (see section 73).

<table>
<thead>
<tr>
<th>Tax to which return relates</th>
<th>Return</th>
</tr>
</thead>
</table>
| 1. Land and buildings transaction tax | (a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.  
(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013. |

(1A) If P’s failure falls within more than one provision of this section or sections 150A to 150H, P is liable to a penalty under each of those provisions.

(1B) But where P is liable for a penalty under more than one provision of this section or sections 150A to 150H which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

(1C) In sections 150A to 150H “penalty date”, in relation to a return, means the day after the filing date.

(1D) Sections 150A to 150D apply in the case of a return falling within item 1 of the table.

(1E) Sections 150E to 150H apply in the case of a return falling within item 2 of the table.

Amounts of penalties: land and buildings transaction tax

Land and buildings transaction tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 150.
(2) P is liable to a penalty under this section of £100.

150B **Land and buildings transaction tax: 3 month penalty for failure to make return**

(1) P is liable to a penalty under this section if (and only if)—

(a) P’s failure continues after the end of the period of 3 months beginning with the penalty date,

(b) Revenue Scotland decides that such a penalty should be payable, and

(c) Revenue Scotland gives notice to P specifying the date from which the penalty is payable.

(2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).

(3) The date specified in the notice under subsection (1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in subsection (1)(a).

150C **Land and buildings transaction tax: 6 month penalty for failure to make return**

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

150D **Land and buildings transaction tax: 12 month penalty for failure to make return**

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—

(a) 100% of any liability to tax which would have been shown in the return in question, and

(b) £300.

(3) In any case not falling within subsection (2), the penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.
Amounts of penalties: Scottish landfill tax

150E Scottish landfill tax: first penalty for failure to make return

(1) This section applies in the case of a failure to make a return falling within item 2 of the table in section 150.

(2) P is liable to a penalty under this section of £100.

(3) In addition, a penalty period begins to run on the penalty date for the return.

(4) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under section 150F(2)(c).

150F Scottish landfill tax: multiple failures to make return

(1) This section applies if—

(a) a penalty period has begun under section 150E because P has failed to make a return (“return A”), and

(b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the table as return A.

(2) In such a case—

(a) section 150E(2) and (3) do not apply to the failure to make return B,

(b) P is liable to a penalty under this section for that failure, and

(c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.

(3) The amount of the penalty under this section is determined by reference to the number of returns that P has failed to make during the penalty period.

(4) If the failure to make return B is P’s first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.

(5) If the failure to make return B is P’s second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.

(6) If the failure to make return B is P’s third or subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.

(7) For the purposes of this section, in accordance with subsection (1)(b), the references in subsections (3) to (6) to a return are references to a return falling within the same item in the table as returns A and B.

(8) A penalty period may be extended more than once under subsection (2)(c).

150G Scottish landfill tax: 6 month penalty for failure to make return

(1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this section is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.
### Penalties for failure to make returns or pay tax

**150H Scottish landfill tax: 12 month penalty for failure to make return**

1. **(1)** P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

2. **(2)** Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—
   - (a) 100% of any liability to tax which would have been shown in the return in question, and
   - (b) £300.

3. **(3)** In any case not falling within subsection (2), the penalty under this section is the greater of—
   - (a) 5% of any liability to tax which would have been shown in the return in question, and
   - (b) £300.

**Penalties for failure to pay tax**

**151 Penalty for failure to pay tax**

1. **(1)** A penalty is payable by a person (“P”) where P fails to pay an amount of tax mentioned in column 3 of the following table on or before the date mentioned in column 4 of the table.

<table>
<thead>
<tr>
<th>Tax to which payment relates</th>
<th>Amount of tax payable</th>
<th>Date after which penalty incurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Land and buildings transaction tax</td>
<td>(a) Amount payable under section 40 of the LBTT(S) Act 2013. (b) Additional amount payable as a result of an adjustment under section 61 of this Act. (c) Additional amount payable as a result of an amendment under section 74 of this Act. (d) Additional amount payable as a result of an amendment under section 78 of this Act. (e) Additional amount payable as a result of an amendment under section 84 of this Act.</td>
<td>(a), (d) and (f) The date falling 30 days after the date by which the amount must be paid. (b), (c), (e) and (g) The date by which the amount must be paid.</td>
</tr>
</tbody>
</table>
Revenue Scotland and Tax Powers Bill
Part 8—Penalties
Chapter 2—Penalties for failure to make returns or pay tax

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</thead>
<tbody>
<tr>
<td>5</td>
<td>(f) Amount assessed under section 86 of this Act in the absence of a return. (g) Amount payable as a result of an assessment under section 89 of this Act.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>2. Scottish landfill tax (a) Amount payable under regulations made under section 25 of the LT(S) Act 2014. (b) Additional amount payable as a result of an adjustment under section 61 of this Act. (c) Additional amount payable as a result of an amendment under section 74 of this Act. (d) Additional amount payable as a result of an amendment under section 78 of this Act. (e) Additional amount payable as a result of an amendment under section 84 of this Act. (f) Amount assessed under section 86 of this Act in the absence of a return. (g) Amount payable as a result of an assessment under section 89 of this Act.</td>
<td>(a), (b), (c), (e) and (g) The date by which the amount must be paid. (d) and (f) The date falling 30 days after the date by which the amount must be paid.</td>
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</tbody>
</table>

(1A) If P’s failure falls within more than one provision of this section or sections 151A to 151E, P is liable to a penalty under each of those provisions.

(1B) In sections 151A to 151E “penalty date”, in relation to an amount of tax, means the day after the date mentioned in or for the purposes of column 4 of the table in relation to that amount.

(1C) Section 151A applies in the case of a payment falling within item 1 of the table.
(1D) Sections 151B to 151E apply in the case of a payment falling within item 2 of the table.

151A Land and buildings transaction tax: amounts of penalties for failure to pay tax

(1) This section applies in the case of a payment of tax falling within item 1 of the table in section 151.

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

151B Scottish landfill tax: first penalty for failure to pay tax

(1) This section applies in the case of a payment of tax falling within item 2 of the table in section 151.

(2) P is liable to a penalty of 1% of the unpaid tax.

(3) In addition, a penalty period begins to run on the penalty date for the payment of tax.

(4) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 of the table in section 151 for the payment, unless it is extended under section 151C(2)(c).

151C Scottish landfill tax: penalties for multiple failures to pay tax

(1) This section applies if—

(a) a penalty period has begun under section 151B because P has failed to make a payment (“payment A”), and

(b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the table in section 151 as payment A.

(2) In such a case—

(a) section 151B(2) and (3) do not apply to the failure to make payment B,

(b) P is liable to a penalty under this section for that failure, and

(c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.

(3) The amount of the penalty under this section is determined by reference to the number of defaults that P has made during the penalty period.

(4) If the default is P’s first default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.

(5) If the default is P’s second default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.

(6) If the default is P’s third or subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.

(7) For the purposes of this section—
Revenue Scotland and Tax Powers Bill
Part 8—Penalties
Chapter 2—Penalties for failure to make returns or pay tax

(a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable,

(b) in accordance with subsection (1)(b), the references in subsections (3) to (6) to a default are references to a default in relation to the tax to which payments A and B relate,

(c) a default counts for the purposes of those subsections if (but only if) the period to which the payment relates is less than 6 months,

(d) the amount of a default is the amount which P fails to pay.

(8) A penalty period may be extended more than once under subsection (2)(c).

151D Scottish landfill tax: 6 month penalty for failure to pay tax
If any amount of tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

151E Scottish landfill tax: 12 month penalty for failure to pay tax
If any amount of tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Penalties under Chapter 2: general

152 Interaction of penalties under Chapter 2 with other penalties
Where P is liable to a penalty under this Chapter which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P (other than a penalty under this Chapter or section 181), if the amount of the penalty is determined by reference to the same liability to tax.

154 Reduction in penalty under sections 150 to 150H for disclosure
(1) Revenue Scotland may reduce a penalty under sections 150 to 150H where P discloses information which has been withheld by a failure to make a return (“relevant information”).

(2) P discloses relevant information by—
(a) telling Revenue Scotland about it,
(b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
(c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

(3) Reductions under this section may reflect—
(a) whether the disclosure was prompted or unprompted, and
(b) the quality of the disclosure.

(4) Disclosure of relevant information—
(a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
(b) otherwise, is “prompted”.

(5) In relation to disclosure, “quality” includes timing, nature and extent.

155 Suspension of penalty under sections 151 to 151E during currency of agreement for deferred payment

(1) This section applies if—
   (a) P fails to pay an amount of tax when it becomes due and payable,
   (b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and
   (c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under sections 151 to 151E for failing to pay that amount, P is not liable to that penalty.

(3) But if—
   (a) P breaks the agreement, and
   (b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),
P becomes liable to that penalty at the date of the notice.

(4) P breaks an agreement if—
   (a) P fails to pay the amount of tax in question when the deferral period ends, or
   (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.

(5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

156 Special reduction in penalty under Chapter 2

(1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—
   (a) ability to pay, or
   (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—
   (a) remitting a penalty entirely,
   (b) suspending a penalty, and
   (c) agreeing a compromise in relation to proceedings for a penalty.
In this section references to a penalty include references to any interest in relation to the penalty.

The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

**Reasonable excuse for failure to make return or pay tax**

1. If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 150 to 150H does not arise in relation to that failure.

2. If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 151 to 151E does not arise in relation to that failure.

3. For the purposes of subsections (1) and (2)—
   - an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
   - where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
   - where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**Assessment of penalties under Chapter 2**

1. Where P becomes liable to a penalty under this Chapter, Revenue Scotland must—
   - assess the penalty,
   - notify the person, and
   - state in the notice the period, or the transaction, in respect of which the penalty is assessed.

2. A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

3. An assessment of a penalty under this Chapter—
   - is to be treated for enforcement purposes as an assessment to tax, and
   - may be combined with an assessment to tax.

4. In relation to penalties under sections 150 to 150H—
   - a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
   - a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.

5. In relation to penalties under sections 151 to 151E—
(a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,

(b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.

(6) An amendment made under subsection (5)(b)—

(a) does not affect when the penalty must be paid,

(b) may be made after the last day on which the assessment in question could have been made under section 159.

159  **Time limit for assessment of penalties under Chapter 2**

(1) An assessment of a penalty under this Chapter in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2) Date A is the last day of the period of 2 years beginning with—

(a) in the case of failure to make a return, the filing date, or

(b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.

(3) Date B is the last day of the period of 12 months beginning with—

(a) in the case of failure to make a return—

(i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or

(ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or

(b) in the case of failure to pay tax—

(i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or

(ii) if there is no such assessment, the date on which that amount of tax is ascertained.

(4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

159A **Power to change penalty provisions in Chapter 2**

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

CHAPTER 3

PENALTIES RELATING TO INACCURACIES

160 Penalty for inaccuracy in taxpayer document

10 (1) A penalty is payable by a person (“P”) where—
   (a) P gives Revenue Scotland a document of a kind mentioned in the table below, and
   (b) conditions A and B below are met.

(2) Condition A is that the document contains an inaccuracy which amounts to, or leads to—
   (a) an understatement of a liability to tax,
   (b) a false or inflated statement of a loss, exemption or relief, or
   (c) a false or inflated claim for relief or to repayment of tax.

(3) Condition B is that the inaccuracy was—
   (a) deliberate on P’s part (“a deliberate inaccuracy”), or
   (b) careless on P’s part (“a careless inaccuracy”).

(4) An inaccuracy is careless if it is due to a failure by P to take reasonable care.

(5) An inaccuracy in a document given by P to Revenue Scotland, which was neither deliberate nor careless on P’s part when the document was given, is to be treated as careless if P—
   (a) discovered the inaccuracy at some later time, and
   (b) did not take reasonable steps to inform Revenue Scotland.

(6) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

<table>
<thead>
<tr>
<th>Tax</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 1. Land and buildings transaction tax</td>
<td>(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.</td>
</tr>
<tr>
<td></td>
<td>(c) Application under section 41 of the LBTT(S) Act 2013.</td>
</tr>
</tbody>
</table>
Revenue Scotland and Tax Powers Bill
Part 8—Penalties
Chapter 3—Penalties relating to inaccuracies

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<tbody>
<tr>
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<td></td>
<td>(d) Amended return under section 74 of this Act.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(e) Claim under section 97, 98 or 99 of this Act.</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>(a) Return under regulations made under section 25 of the LT(S) Act 2014.</td>
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<tr>
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<td>(b) Amended return under section 74 of this Act.</td>
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<tr>
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<td></td>
<td>(c) Claim under section 97, 98 or 99 of this Act.</td>
</tr>
</tbody>
</table>

(6A) Section 160A applies in the case of a document falling within item 1 or 2 of the table.

160A Amount of penalty for error in taxpayer document

(1) This section sets out the penalty payable under section 160.
(2) For a deliberate inaccuracy, the penalty is 100% of the potential lost revenue.
(3) For a careless inaccuracy, the penalty is 30% of the potential lost revenue.
(4) In this section and sections 162 and 163, “potential lost revenue” has the meaning given in sections 163A to 163D.

161 Suspension of penalty for careless inaccuracy under section 160

(1) Revenue Scotland may suspend all or part of a penalty for a careless inaccuracy under section 160 by notice to P.
(2) A notice must specify—
   (a) what part of the penalty is to be suspended,
   (b) a period of suspension not exceeding 2 years, and
   (c) conditions of suspension to be complied with by P.
(3) Revenue Scotland may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under section 160 for careless inaccuracy.
(4) A condition of suspension may specify—
   (a) action to be taken, and
   (b) a period within which it may be taken.
(5) On the expiry of the period of suspension—
   (a) if P satisfies Revenue Scotland that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
   (b) otherwise, the suspended penalty or part becomes payable.
If, during the period of suspension of all or part of a penalty under section 160, P becomes liable for another penalty under that section, the suspended penalty or part becomes payable.

Penalty for inaccuracy in taxpayer document attributable to another person

A penalty is payable by a person (“T”) where—

(a) another person (“P”) gives Revenue Scotland a document of a kind mentioned in the table in section 160,

(b) the document contains a relevant inaccuracy, and

(c) the inaccuracy was attributable—

(i) to T deliberately supplying false information to P (whether directly or indirectly), or

(ii) to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.

A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,

(b) a false or inflated statement of a loss, exemption or relief, or

(c) a false or inflated claim for relief or to repayment of tax.

A penalty is payable by T under this section in respect of an inaccuracy whether or not P is liable to a penalty under section 160 in respect of the same inaccuracy.

The penalty payable under this section is 100% of the potential lost revenue.

Under-assessment by Revenue Scotland

A penalty is payable by a person (“P”) where—

(a) a Revenue Scotland assessment understates P’s liability to a devolved tax, and

(b) P has failed to take reasonable steps to notify Revenue Scotland, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.

In deciding what steps (if any) were reasonable, Revenue Scotland must consider—

(a) whether P knew, or should have known, about the under-assessment, and

(b) what steps would have been reasonable to take to notify Revenue Scotland.

The penalty payable under this section is 30% of the potential lost revenue.

In this section—

(c) “Revenue Scotland assessment” includes “Revenue Scotland determination”, and

(d) accordingly, references to an under-assessment include an under-determination.

Potential lost revenue: normal rule

The “potential lost revenue” in respect of—
(a) an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information), or
(b) a failure to notify an under-assessment,
is the additional amount due and payable in respect of tax as a result of correcting the inaccuracy or under-assessment.

(2) The reference in subsection (1) to the additional amount due and payable includes a reference to—
(a) an amount payable to Revenue Scotland having been erroneously paid by way of repayment of tax, and
(b) an amount which would have been repayable by Revenue Scotland had the inaccuracy or assessment not been corrected.

163B Potential lost revenue: multiple errors

(1) Where P is liable to a penalty under section 160 in respect of more than one inaccuracy, and the calculation of potential lost revenue under section 163A in respect of each inaccuracy depends on the order in which they are corrected, careless inaccuracies are to be taken to be corrected before deliberate inaccuracies.

(2) In calculating potential lost revenue where P is liable to a penalty under section 160 in respect of one or more understatements in one or more documents relating to a tax period, account is to be taken of any overstatement in any document given by P which relates to the same tax period.

(3) In subsection (2)—
(a) “understatement” means an inaccuracy that meets condition A in section 160, and
(b) “overstatement” means an inaccuracy that does not meet that condition.

(4) For the purpose of subsection (2) overstatements are to be set against understatements in the following order—
(a) understatements in respect of which P is not liable to a penalty,
(b) careless understatements,
(c) deliberate understatements.

(5) In calculating for the purposes of a penalty under section 160 potential lost revenue in respect of a document given by or on behalf of P, no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent than an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).

163C Potential lost revenue: losses

(1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is calculated in accordance with section 163A.

(2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has not been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is—
(a) the potential lost revenue calculated in accordance with section 163A in respect of any part of the loss that has been used to reduce the amount due and payable in respect of tax, plus

(b) 10% of any part that has not.

(3) Subsections (1) and (2) apply both—

(a) to a case where no loss would have been recorded but for the inaccuracy, and

(b) to a case where a loss of a different amount would have been recorded (but in that case subsections (1) and (2) apply only to the difference between the amount recorded and the true amount).

(4) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P’s circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

163D Potential lost revenue: delayed tax

(1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—

(a) 5% of the delayed tax for each year of the delay, or

(b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.

(2) This section does not apply to a case to which section 163C applies.

164 Special reduction in penalty under sections 160, 162 and 163

(1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

(b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

165 Reduction in penalty under sections 160, 162 and 163 for disclosure

(1) Revenue Scotland may reduce a penalty under this Chapter where a person makes a qualifying disclosure.
(2) A “qualifying disclosure” means disclosure of—
   
   (a) an inaccuracy,
   
   (b) a supply of false information or withholding of information, or
   
   (c) a failure to disclose an under-assessment.

(3) A person makes a qualifying disclosure by—

   (a) telling Revenue Scotland about it,

   (b) giving Revenue Scotland reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and

   (c) allowing Revenue Scotland access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(4) Reductions under this section may reflect—

   (a) whether the disclosure was prompted or unprompted, and

   (b) the quality of the disclosure.

(5) Disclosure of relevant information—

   (a) is “unprompted” if made at a time when the person making it has no reason to believe that Revenue Scotland has discovered or is about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and

   (b) otherwise, is “prompted”.

(6) In relation to disclosure, “quality” includes timing, nature and extent.

166 Assessment of penalties under sections 160, 162 and 163

(1) Where a person becomes liable to a penalty under this Chapter, Revenue Scotland must—

   (a) assess the penalty,

   (b) notify the person, and

   (c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under this Chapter—

   (a) is to be treated for enforcement purposes as an assessment to tax, and

   (b) may be combined with an assessment to tax.

(4) An assessment of a penalty under section 160 or 162 must be made before the end of the period of 12 months beginning with—

   (a) the end of the appeal period for the decision correcting the inaccuracy, or

   (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.
(5) An assessment of a penalty under section 163 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(6) In subsections (4) and (5) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(7) Subject to subsections (4) and (5), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

166A Power to change penalty provisions in Chapter 3

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,

(d) about appealing penalties,

(e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to—

(a) a failure which began before the date on which the regulations come into force, and

(b) an inaccuracy in any information or document provided to Revenue Scotland before that date.

CHAPTER 4

PENALTIES RELATING TO INVESTIGATIONS

167 Penalties for failure to comply or obstruction

(1) This section applies to a person who—

(a) fails to comply with an information notice, or

(b) deliberately obstructs a designated officer or a person authorised by the officer in the course of an inspection or in the exercise of a power that has been approved by the tribunal under section 138.

(2) The person is liable to a penalty of £300.
(3) The reference to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document in breach of section 171 or 172.

168 Daily default penalties for failure to comply or obstruction

(1) This section applies if the failure or obstruction mentioned in section 167(1) continues after the date on which a penalty is imposed under that section in respect of the failure or obstruction.

(2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

169 Penalties for inaccurate information or documents

(1) This section applies if—

(a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and

(b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is careless or deliberate.

(3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.

(4) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform Revenue Scotland at that time.

(5) Condition C is that the person—

(a) discovers the inaccuracy some time later, and

(b) fails to take reasonable steps to inform Revenue Scotland.

(6) The person is liable to a penalty not exceeding £3,000.

(7) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

171 Concealing, destroying etc. documents following information notice

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document that is the subject of an information notice addressed to the person, unless subsection (2) or (3) applies.

(2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person that the document must continue to be available for inspection and has not withdrawn the notification.

(3) Subsection (1) does not apply, in a case to which section 125 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that section unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).
172 Concealing, destroying etc. documents following information notification

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document if a designated officer has notified the person that the document is to be, or is likely to be, the subject of an information notice addressed to that person, unless subsection (2) applies.

(2) Subsection (1) does not apply if the person acts after—

(a) at least 6 months has expired since the person was (or was last) so notified, or
(b) an information notice has been given to the person requiring the document to be produced.

173 Failure to comply with time limit

A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 167 or 168 if the person did it within such further time (if any) as a designated officer may have allowed.

174 Reasonable excuse for failure to comply or obstruction

(1) Liability to a penalty under section 167 or 168 does not arise if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for the failure or the obstruction of a designated officer or of a person authorised by the officer.

(2) For the purposes of this section—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control,
(b) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
(c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

175 Assessment of penalties under sections 167, 168 and 169

(1) Where a person becomes liable for a penalty under section 167, 168 or 169 Revenue Scotland must—

(a) assess the penalty, and
(b) notify the person.

(2) An assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to subsection (3).

(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the latest of the following—

(a) the date on which the person became liable to the penalty,
(b) the end of the period in which notice of an appeal against the information notice could have been given, and

(c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.

(4) An assessment of a penalty under section 169 must be made—

(a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of a designated officer, and

(b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

176 Enforcement of penalties under sections 167, 168 and 169

(1) A penalty under section 167, 168 or 169 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under section 175 was issued,

(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,

(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or

(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 167, 168 or 169 is to be treated for enforcement purposes as an assessment to tax.

177 Increased daily default penalty

(1) This section applies if—

(a) a penalty under section 168 is assessed under section 175 in respect of a person’s failure to comply with a notice under section 119,

(b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and

(c) the person has been told that an application may be made under this section for an increased daily penalty to be imposed.

(2) If this section applies, a designated officer may make an application to the tribunal for an increased daily penalty to be imposed on the person.

(3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day on which the failure continues—

(a) the person is not liable to a penalty under section 168 for the failure, and

(b) the person is liable instead to a penalty under this section of an amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.

(5) In determining the amount the tribunal must have regard to—
(a) the likely cost to the person of complying with the notice,
(b) any benefits to the person of not complying with it, and
(c) any benefits to anyone else resulting from the person’s non-compliance.

(7) If a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(8) The notification must specify the day from which the increased penalty is to apply.

(9) That day and any subsequent day is an “applicable day” for the purposes of subsection (3).

178 Enforcement of increased daily default penalty

(1) A penalty under section 177 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 177 is to be treated for enforcement purposes as an assessment to tax.

179 Tax-related penalty

(1) This section applies where—

(a) a person becomes liable to a penalty under section 167,
(b) the failure or obstruction continues after a penalty is imposed under that section,
(c) a designated officer has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,
(d) before the end of the period of 12 months beginning with the relevant date, a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
(e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.

(2) The person is liable to a penalty of an amount decided by the Upper Tribunal.

(3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.

(4) Where a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(5) Any penalty under this section is in addition to the penalty or penalties under section 167 or 168.

(6) In subsection (1)(d), the “relevant date” means—

(a) in a case involving an information notice against which a person may appeal, the latest of—

(i) the date on which the person became liable to the penalty under section 167,
(ii) the end of the period in which notice of an appeal against the information notice could have been given, and
(iii) if notice of such an appeal is given, the date on which the appeal is
    determined or withdrawn, and

(b) in any other case, the date on which the person became liable to the penalty under
    section 167.

180  Enforcement of tax-related penalty

(1) A penalty under section 179 must be paid before the end of the period of 30 days
    beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 179 is to be treated for enforcement purposes as an assessment
to tax.

180A  Power to change penalty provisions in Chapter 4

(1) The Scottish Ministers may by regulations make provision (or further provision) about
    penalties under this Chapter (other than penalties under section 179).

(2) Regulations under subsection (1) may include provision—
    (a) about the circumstances in which a penalty is payable,
    (b) about the amounts of penalties,
    (c) about the procedure for issuing penalties,
    (d) about appealing penalties,
    (e) about enforcing penalties.

(3) Regulations under subsection (1) may also include provision for the purposes of sections
    143(6) and (7) and 195(2) and (3).

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(6) Regulations under subsection (1) do not apply to a failure or obstruction which began
    before the date on which the regulations come into force.

CHAPTER 5

OTHER ADMINISTRATIVE PENALTIES

181  Penalty for failure to register for tax etc.

(1) A penalty is payable by a person (“P”) where—
    (a) P fails to comply with a requirement imposed by or under section 22 or 23 of the
        LT(S) Act 2014 (“a relevant requirement”), and
    (b) the failure was—
        (i) deliberate on P’s part (“a deliberate failure”), or
        (ii) careless on P’s part (“a careless failure”).

(1A) A failure is careless if it is due to a failure by P to take reasonable care.

(1B) A failure by P to comply with a relevant requirement, which was neither deliberate nor
    careless on P’s part at an earlier time, is to be treated as careless if P—
(a) discovered the failure at some later time, and
(b) did not take reasonable steps to inform Revenue Scotland.

181A Amount of penalty for failure to register for tax etc.

181A(1) This section sets out the penalty payable under section 181.

181A(2) For a deliberate failure, the penalty is 100% of the potential lost revenue.

181A(3) For a careless failure, the penalty is 30% of the potential lost revenue.

181A(4) In the case of a relevant requirement relating to Scottish landfill tax, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period—

181A(5) In calculating potential lost revenue in respect of a failure to comply with a relevant requirement on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person.

181B Interaction of penalties under section 181 with other penalties

The amount of a penalty for which P is liable under section 181 is to be reduced by the amount of any other penalty incurred by P (other than a penalty under Chapter 2), if the amount of the penalty is determined by reference to the same liability to tax.

181C Reduction in penalty under section 181 for disclosure

181C(1) Revenue Scotland may reduce a penalty under section 181 where P discloses a failure to comply with a relevant requirement (“a relevant failure”).

181C(2) P discloses a relevant failure by—

181C(3) Reductions under this section may reflect—

181C(4) Disclosure of a relevant failure—

181C(5) In relation to disclosure, “quality” includes timing, nature and extent.
**181D Special reduction in penalty under section 181**

(1) Revenue Scotland may reduce a penalty under section 181 if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

(b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

**181E Reasonable excuse for failure to register for tax etc.**

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with a relevant requirement, liability to a penalty under section 181 does not arise in relation to that failure.

(2) For the purposes of subsection (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**181F Assessment of penalties under section 181**

(1) Where P becomes liable to a penalty under section 181, Revenue Scotland must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under section 181 must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.

(3) An assessment of a penalty under section 181—

(a) is to be treated for enforcement purposes as an assessment to tax, and

(b) may be combined with an assessment to tax.
(4) An assessment of a penalty under section 181 must be made within the period of 12 months beginning with—
   (a) the end of the appeal period for the assessment of tax unpaid by reason of the failure to comply with the relevant requirement in respect of which the penalty is assessed, or
   (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.

(5) In subsection (4) “appeal period” means the period during which—
   (a) an appeal could be brought, or
   (b) an appeal that has been brought has not been determined or withdrawn.

(6) Subject to subsection (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

181G Power to change penalty provisions in Chapter 5

(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

(2) Provision under subsection (1) includes provision—
   (a) about the circumstances in which a penalty is payable,
   (b) about the amounts of penalties,
   (c) about the procedure for issuing penalties,
   (d) about appealing penalties,
   (e) about enforcing penalties.

(3) Regulations under subsection (1) may not create criminal offences.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

PART 9

INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax

(1) Interest is payable on the amount of any unpaid tax from the relevant date until the tax is paid.

(2) For the purposes of this section, the “relevant date” is the date for payment of the tax which is specified by the Scottish Ministers in regulations.

(3) If an amount is lodged with Revenue Scotland in respect of the tax payable on a transaction, the amount on which interest is payable is reduced by that amount.

(4) Interest under this section is calculated at the rate specified in provision made under section 185.
183 Interest on penalties

(1) Interest is payable on the amount of any unpaid penalty from the date on which the penalty is due to be paid until it is paid.

(2) Interest under this section is calculated at the rate specified in provision made under section 185.

184 Interest on repayment of tax overpaid etc.

(1) A repayment by Revenue Scotland to which this section applies must be made with interest for the period between the relevant date and the date when the repayment is issued.

(2) This section applies to—

(a) any repayment of tax,

(b) any repayment of a penalty, and

(c) any repayment of interest (whether on tax or penalty).

(3) In the cases mentioned in subsection (2), the “relevant date” is the date on which the payment of the tax, penalty or interest was made.

(4) This section also applies to a repayment by Revenue Scotland of an amount lodged with it in respect of the tax payable in respect of a transaction.

(5) In the case mentioned in subsection (4), the “relevant date” is the date on which the amount was lodged with Revenue Scotland.

(6) Interest under this section is calculated at the rate specified in provision made under section 185.

185 Rates of interest

(1) The rate of interest that applies for the purposes of sections 182, 183 and 184 is the rate specified by the Scottish Ministers in regulations.

(2) Regulations under subsection (1) may—

(a) provide for different rates for different devolved taxes or different penalties,

(b) provide for circumstances in which alteration of a rate of interest is or is not to take place,

(c) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.
PART 10
ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1
ENFORCEMENT: GENERAL

Issue of tax demands and receipts

186
(1) Where tax is due and payable, Revenue Scotland may demand the sum charged from the person liable to pay it.

(2) On payment of the tax, Revenue Scotland must give a receipt.

Fees for payment

187
(1) The Scottish Ministers may by regulations provide that, where a person makes a payment to Revenue Scotland or a person authorised by Revenue Scotland using a method of payment specified in the regulations, the person must also pay a fee specified in, or determined in accordance with, the regulations.

(2) A method of payment may only be specified in regulations under this section if Revenue Scotland expects that it, or the person authorised by it, will be required to pay a fee or charge (however described) in connection with amounts paid using that method of payment.

(3) The fee provided for in regulations under this section must not exceed what is reasonable having regard to the costs incurred by Revenue Scotland, or a person authorised by it, in paying the fee or charge mentioned in subsection (2).

(4) Regulations under this section—

(a) may make provision about the time and manner in which the fee must be paid,

(b) may make provision generally or only for specified purposes.

Certification of matters by Revenue Scotland

188
(1) A certificate of Revenue Scotland—

(a) that a return required to be made to Revenue Scotland under this Act or any other enactment has not been made,

(b) that a relevant sum has not been paid,

(c) that a notification required to be made to Revenue Scotland under this Act or any other enactment has not been made,

is sufficient evidence of that fact until the contrary is proved.

(2) In subsection (1) “relevant sum” means a sum payable to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.
(2A) A copy of any document provided to Revenue Scotland for the purposes of this Act or any other enactment and certified by it to be such a copy is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document purporting to be such a certificate is to be treated as if it were such a certificate until the contrary is proved.

Court proceedings

189 Court proceedings

Tax due and payable may be sued for and recovered from the person liable to pay it as a debt due to the Crown by proceedings—

(a) in the sheriff court, or

(b) in the Court of Session (sitting as the Court of Exchequer).

Summary warrant

190 Summary warrant

(1) This section applies if a person does not pay an amount that is payable by that person to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.

(2) A designated officer may apply to the sheriff for a summary warrant.

(3) An application under subsection (2) must be accompanied by a certificate which—

(a) complies with subsection (4), and

(b) is signed by the officer.

(4) A certificate complies with this subsection if—

(a) it states that—

(i) none of the persons specified in the application has paid the sum payable by that person,

(ii) the officer has demanded payment from each such person of the sum payable by that person, and

(iii) the period of 14 days beginning with the day on which the demand is made has expired without payment being made, and

(b) it specifies the sum payable by each person specified in the application.

(5) The sheriff must, on an application by a designated officer under subsection (2), grant a summary warrant in (or as nearly as may be in) the form prescribed by Act of Sederunt.

(6) A summary warrant granted under subsection (5) authorises the recovery of the sum payable by—

(a) attachment,

(b) money attachment,

(c) earnings arrestment,

(d) arrestment and action of forthcoming or sale.
(7) Subject to subsection (8) and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment)—

(a) the sheriff officer’s fees, and

(b) any outlays reasonably incurred by that officer,

in connection with the execution of a summary warrant are to be chargeable against the person in relation to whom the summary warrant was granted.

(8) No fees are to be chargeable by the sheriff officer against the person in relation to whom the summary warrant was granted for collecting, and accounting to Revenue Scotland for, sums paid to that officer by that person in respect of the sum payable.

Recovery of penalties and interest

191 Recovery of penalties and interest

The provisions of this Chapter have effect in relation to the recovery of any unpaid amount by way of—

(a) penalty, or

(b) interest (whether on unpaid tax or penalty),

as though that amount were an amount of unpaid tax.

CHAPTER 2

ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

192 Requirement for contact details for debtor

(1) This Chapter applies where—

(a) a sum is payable by a person (“the debtor”) to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement,

(b) a designated officer reasonably requires contact details for the debtor for the purpose of collecting that sum,

(c) the officer has reasonable grounds to believe that a person (“the third party”) has any such details, and

(d) the condition in subsection (2) is met.

(2) The condition is that—

(a) the third party is a company or a local authority, or

(b) the officer has reasonable grounds to believe that the third party obtained the details in the course of carrying on a business.

(3) This Chapter does not apply if—

(a) the third party is a charity and obtained the details in the course of providing services free of charge, or

(b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.
(4) In this Chapter—

“business” includes—
(a) a profession, and
(b) a property business (within the meaning of section 263(6) of the Income Tax (Trading and Other Income) Act 2005 (c.5)),

“contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted.

193 Power to obtain details

(1) A designated officer may by notice require the third party to provide the contact details.

(2) The notice must name the debtor.

(3) If a notice is given under subsection (1), the third party must provide the details—
(a) within such period, and
(b) at such time, by such means and in such form (if any),
as is reasonably specified or described in the notice.

194 Reviews and appeals against notices or requirements

(1) This section applies where a third party seeks, under Part 11, to have a decision in relation to the giving of a notice under section 193 or in relation to any requirement in such a notice reviewed or appealed.

(2) A third party may give notice of review or notice of appeal in relation to a decision to give a notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.

194A Power to modify section 194

The Scottish Ministers may by order modify section 194(2) to provide for certain decisions in relation to the giving of notices under section 193 or in relation to any requirement in such notices—
(a) to be appealable for the purposes of section 198(1)(g),
(b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,
(c) to not be appealable.

195 Penalty

(1) This section applies if the third party fails to comply with the notice.

(2) The third party is liable to a penalty of £300.

(3) Sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167 (and references in those provisions to an information notice include a notice under this Chapter).
PART 11
REVIEWS AND APPEALS

CHAPTER 1
INTRODUCTORY

Overview

This Part makes provision about the review and appeal of certain decisions of Revenue Scotland including—

(a) which decisions are, and which are not, reviewable and appealable,
(b) the taxpayer’s right to have decisions reviewed and the nature and conduct of those reviews,
(c) the option of mediation following a review that doesn’t settle the matter in question,
(d) the taxpayer’s right to appeal decisions to the tribunal, whether following review or otherwise, and
(e) settling tax disputes by agreement and other supplementary matters.

Appealable decisions

198 The following decisions of Revenue Scotland are appealable decisions—

(1) a decision under section 61 to make adjustments to counteract a tax advantage,

(zb) a decision in relation to the registration of any person in relation to any taxable activity,
(a) a decision which affects whether a person is chargeable to tax,
(b) a decision which affects the amount of tax to which a person is chargeable,

(c) a decision which affects the amount of tax a person is required to pay,
(d) a decision which affects the date by which any amount by way of tax, penalty or interest must be paid,
(e) a decision in relation to a penalty under the following provisions—

(i) section 71,
(ii) section 103,
(iii) section 143,
(iv) Part 8,
(v) section 195,
(vi) paragraph 5 of schedule 3,
Revenue Scotland and Tax Powers Bill
Part 11—Reviews and appeals
Chapter 2—Reviews

(f) subject to subsection (2), a decision in relation to the giving of an information notice or in relation to the use of any of the other investigatory powers in Part 7,

(g) subject to subsection (3), a decision in relation to the giving of a notice under section 193.

(2) See section 144 for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances.

(3) See section 194 for the grounds on which decisions in relation to the giving of notices under section 193 are appealable.

(4) The following decisions of Revenue Scotland are not appealable decisions—

(za) the giving of a notice under section 63,

(a) the making of a Revenue Scotland determination,

(b) a decision to give a notice of enquiry under section 76 or paragraph 9 of schedule 3.

(5) The decisions mentioned in subsection (1) are appealable whether they are decisions under this Act or any other enactment.

(6) The Scottish Ministers may by order modify subsection (1) or (4) to—

(a) add a decision to either subsection,

(b) vary the description of a decision,

(c) remove a decision from either subsection.

CHAPTER 2
REVIEWS
Review of appealable decisions

199 Right to request review

(1) A person aggrieved by an appealable decision (the “appellant”) may request Revenue Scotland to review the decision.

(2) An appellant may not request review if subsection (2A), (2B) or (2C) applies.

(2A) This subsection applies where—

(a) the decision which the appellant seeks to review is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and

(b) the enquiry has not been completed.

(2B) This subsection applies where—

(a) the appellant has given notice of appeal in relation to the same matter in question, or

(b) the tribunal has determined the matter in question under section 209.

(2C) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 211(3).
(3) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

200 Notice of review

(1) Notice of review under section 199 must be given—

(b) within 30 days after the specified date,

(c) to Revenue Scotland.

(2) In subsection (1) “specified date” means—

(a) the date on which the appellant was notified of the appealable decision,

(b) in a case to which section 199(2A) applies—

(i) the date the appellant was given notice that the enquiry was completed, or

(ii) no such notice having been given, the date the enquiry is completed by virtue of section 84(1)(b), or

(c) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.

(3) The notice of review must specify the grounds of review.

201 Late notice of review

(1) This section applies in a case where—

(a) notice of review may be given to Revenue Scotland under this Part, but

(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

(a) Revenue Scotland agrees, or

(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested that Revenue Scotland does so and Revenue Scotland is satisfied—

(a) that there was reasonable excuse for not giving the notice before the relevant time limit, and

(b) that the request has been made without unreasonable delay.

(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(5) In this section “relevant time limit”, in relation to notice of review, means the time before which the notice is to be given (but for this section).

202 Duty of Revenue Scotland to carry out review

(1) If the appellant gives Revenue Scotland notice of review, Revenue Scotland must—

(a) notify the appellant of Revenue Scotland's view of the matter in question within the relevant period, and
Part 11—Reviews and appeals

Chapter 2—Reviews

(2) Subsection (1) does not apply if—

(a) the appellant has already given notice of review under section 200 in relation to the same matter in question, or

(b) Revenue Scotland has concluded a review of the matter in question.

(3) In this section “relevant period” means—

(a) the period of 30 days beginning with the day on which Revenue Scotland receives the notice of review, or

(b) such longer period as is reasonable.

203 Nature of review etc.

(1) This section applies if Revenue Scotland is required by section 202 to review the matter in question.

(2) The nature and extent of the review are to be such as appear appropriate to Revenue Scotland in the circumstances.

(3) For the purpose of subsection (2), Revenue Scotland must, in particular, have regard to steps taken before the beginning of the review—

(a) by Revenue Scotland in deciding the matter in question, and

(b) by any person in seeking to resolve disagreement about the matter in question.

(4) The review must take account of any representations made by the appellant at a stage which gives Revenue Scotland a reasonable opportunity to consider them.

(5) The review may conclude that Revenue Scotland's view of the matter in question is to be—

(a) upheld,

(b) varied, or

(c) cancelled.

204 Notification of conclusions of review

(1) Revenue Scotland must notify the appellant of the conclusions of the review and its reasoning within—

(a) the period of 45 days beginning with the relevant day, or

(b) such other period as may be agreed.

(2) In subsection (1) “relevant day” means the day when Revenue Scotland notified the appellant of Revenue Scotland's view of the matter in question.

(3) Where Revenue Scotland is required to undertake a review but does not give notice of the conclusions within the period specified in subsection (1), the review is treated as having concluded that Revenue Scotland's view of the matter in question (see section 202(1)) is upheld.

(4) If subsection (3) applies, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.
**Effect of conclusions of review**

(1) If Revenue Scotland gives notice of the conclusions of a review (see section 204)—
   (a) the conclusions are to be treated as if they were contained in a settlement agreement (see section 211(2)), but
   (b) section 211(3) (withdrawal from agreement) does not apply in relation to that notional agreement.

(2) Subsection (1) does not apply to the matter in question if, or to the extent that—
   (a) the appellant and Revenue Scotland enter into mediation and conclude that mediation by entering into a settlement agreement, or
   (b) the appellant gives notice of appeal under section 207.

**CHAPTER 3**

**Appeals**

**Right of appeal**

(1) An appellant may appeal to the tribunal against an appealable decision.

(2) An appellant may not give notice of appeal under section 207 if subsection (3), (4) or (5) applies.

(3) This subsection applies where—
   (a) the decision which the appellant seeks to appeal is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and
   (b) the enquiry has not been completed.

(4) This subsection applies where—
   (a) the appellant has given notice of review in relation to the same matter in question, and
   (b) the review has not been concluded or treated as concluded.

(5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 211(3).

(6) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

**Notice of appeal**

(1) Notice of appeal must be given—
   (b) within 30 days of the specified date,
   (c) to the tribunal.

(2) In subsection (1) “specified date” means—
   (a) in a case to which section 206(3) applies—
      (i) the date the appellant was given notice that the enquiry was completed, or
(ii) no such notice having been given, the date the enquiry is completed by virtue of section 84(1)(b),

(b) where the appellant does not request a review under section 199, the date on which the appellant was notified of the appealable decision,

(c) where the appellant requests such a review, the date on which the conclusions of review are notified to the appellant under section 204,

(d) where, following a review under section 202, the appellant and Revenue Scotland entered into mediation, the date either Revenue Scotland or the appellant gave notice of withdrawal from mediation,

(e) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.

(3) The notice of appeal must specify the grounds of appeal.

208 Late notice of appeal

(1) This section applies in a case where—

(a) notice of appeal may be given to the tribunal under this Part, but

(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

(a) Revenue Scotland agrees, or

(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested that Revenue Scotland does so and Revenue Scotland is satisfied—

(a) that there was reasonable excuse for not giving the notice before the relevant time limit, and

(b) that the request has been made without unreasonable delay.

(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(4A) A decision of the tribunal under subsection (2)(b) is final.

(5) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

209 Disposal of appeal

(1) This section applies if notice of appeal is given under section 207.

(2) The tribunal is to determine the matter in question and may conclude that Revenue Scotland's view of the matter in question is to be—

(a) upheld,

(b) varied, or

(c) cancelled.
CHAPTER 4
SUPPLEMENTARY

210 Reviews and appeals not to postpone recovery of tax

(1) Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal.

(2) The Scottish Ministers may by regulations make provision for the postponement of any such tax, penalty or interest pending reviews or appeals, including provision—
(a) for applications by appellants to Revenue Scotland for postponement of amounts of tax, penalty and interest,
(b) for the effect of any determination by Revenue Scotland on such applications,
(c) for agreements between appellants and Revenue Scotland as to postponement of amounts of tax, penalty and interest,
(d) for applications to the tribunal for such postponement,
(e) for appeals in relation to such determinations by Revenue Scotland and decisions by the tribunal on such applications.

(3) Regulations under subsection (2) may modify any enactment (including this Act).

(4) Subsection (1) is subject to sections 71C(1) and 176(1) and to paragraph 5C(1) of schedule 3.

211 Settling matters in question by agreement

(1) In relation to a review, mediation or an appeal under this Part, “settlement agreement” means an agreement between the taxpayer and Revenue Scotland that is—
(a) entered into—
(i) before the review is concluded,
(ii) as the conclusion of the mediation, or
(iii) before the appeal is determined, and
(b) to the effect that the decision reviewed, taken to mediation or appealed should be upheld without variation, varied in a particular manner or cancelled.

(2) Where a settlement agreement is entered into in relation to a review, mediation or an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was entered into, the tribunal had determined an appeal in relation to the matter in question and had upheld the decision without variation, varied it in that manner or cancelled it, as the case may be.

(2A) But a settlement agreement is not to be treated as a decision of the tribunal for the purposes of section 31 or 33.

(3) Subsection (2) does not apply if, within 30 days from the date when the settlement agreement was entered into, the appellant gives notice to Revenue Scotland that the appellant wishes to withdraw from the agreement.

(4) Where a settlement agreement is not in writing—
(a) subsection (2) does not apply unless the fact that an agreement was entered into, and the terms agreed, are confirmed by notice in writing given by Revenue Scotland to the appellant or by the appellant to Revenue Scotland, and

(b) the references in subsections (2) and (3) to the time when the agreement was entered into are to be read as references to the time when the notice of confirmation was given.

(5) References in this section to an agreement being entered into with an appellant, and to the giving of notice by or to the appellant, include references to an agreement being entered into, or notice being given by or to, a person acting on behalf of the appellant in relation to the review, mediation or appeal.

212 Application of this Part to joint buyers

(1) This section applies where, in relation to land and buildings transaction tax, there are two or more buyers who are or will be jointly entitled to the interest acquired by the land transaction.

(2) In a case where some (but not all) of the buyers give notice of review under section 200—

(a) notification of the review must be given by Revenue Scotland to each of the other buyers whose identity is known to it,

(b) any of the other buyers may be a party to the review if they notify Revenue Scotland,

(c) the agreement of all the buyers is required if the review is to be settled by agreement,

(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the other buyers whose identity is known to Revenue Scotland, and

(e) section 205 (effect of conclusions of review) applies in relation to all of the buyers.

(3) In a case where the buyers and Revenue Scotland agree to enter into mediation—

(a) notification of the agreement must be given by Revenue Scotland to each of the buyers whose identity is known to it,

(b) any of the buyers may be a party to the mediation if they notify Revenue Scotland, and

(c) the agreement of all the buyers is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—

(a) the appeal may be brought by any of the buyers,

(b) notice of the appeal must be given by the buyers bringing the appeal to each of the other buyers,

(c) the agreement of all the buyers is required if the appeal is to be settled by agreement,
(d) if the appeal is not settled, any of the buyers are entitled to be parties to the appeal, and
(e) the tribunal's decision on the appeal binds all of the buyers.

(5) This section has effect subject to—

(a) the provisions of schedule 17 to the LBTT(S) Act 2013 (relating to partnerships), and
(b) the provisions of schedule 18 to that Act (relating to trustees).

213 Application of this Part to trustees

(1) This section applies where, in relation to land and buildings transaction tax, the buyers in the land transaction are a trust.

(2) In a case where some (but not all) of the trustees give notice of review under section 200—

(a) notification of the review must be given by Revenue Scotland to each of the other relevant trustees whose identity is known to it,
(b) any of the other relevant trustees may be a party to the review if they notify Revenue Scotland,
(c) the agreement of all the relevant trustees is required if the review is to be settled by agreement,
(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the relevant trustees whose identity is known to Revenue Scotland, and
(e) section 205 (effect of conclusions of review) applies in relation to all of the relevant trustees.

(3) In a case where the trust and Revenue Scotland agree to enter into mediation—

(a) notification of the agreement must be given by Revenue Scotland to each of the relevant trustees whose identity is known to it,
(b) any of the relevant trustees may be a party to the mediation if they notify Revenue Scotland,
(c) the agreement of all the relevant trustees is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—

(a) the appeal may be brought by any of the relevant trustees,
(b) notice of the appeal must be given by the trustee or trustees bringing the appeal to each of the other relevant trustees,
(c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,
(d) if the appeal is not settled, any of the relevant trustees are entitled to be parties to the appeal, and
(e) the tribunal's decision on the appeal binds all of the relevant trustees.
(5) In this section “relevant trustees” has the meaning given by paragraph 16 of schedule 18 to the LBTT(S) Act 2013.

(6) This section has effect subject to the provisions of schedule 18 to the LBTT(S) Act 2013 (relating to trustees).

214 References to the “tribunal”

In this Part “the tribunal” means—
(a) the First-tier Tribunal,
(b) where determined by or under tribunal rules, the Upper Tribunal.

215 Interpretation

(1) In this Part “matter in question” means the matter to which a review, mediation or appeal relates.

(2) In this Part, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—
(a) notification of Revenue Scotland’s view under section 202(1), and
(b) notification of the conclusions of a review under section 204.

(3) But if a notification falling within paragraph (a) or (b) of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

PART 12

FINAL PROVISIONS

Communications from taxpayers to Revenue Scotland

215A Communications from taxpayers to Revenue Scotland

(1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to Revenue Scotland must comply with the requirements set out in subsection (2).

(2) The requirements are that the thing—
(a) must be in the form specified by Revenue Scotland,
(b) must contain the information specified by Revenue Scotland, and
(c) must be given in the manner specified by Revenue Scotland.

(3) Subsections (1) and (2) are subject to any different provision made in or under this Act.

Interpretation

216 General interpretation

In this Act—

“the LBTT(S) Act 2013” means the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11),

“the LT(S) Act 2014” means the Landfill Tax (Scotland) Act 2014 (asp 2),
“designated officer” means a member of staff of Revenue Scotland or other person who is, or a category of members of staff or other persons who are, designated by Revenue Scotland for the purposes of this Act.

“information notice” has the meaning given by section 123(1),

“notice of appeal” means a notice under section 207,

“notice of review” means a notice under section 200,

“Revenue Scotland determination” means a determination under section 86,

“tribunal” has the meaning given by section 214.

217 Index of defined expressions

Schedule 5 contains an index of expressions defined or otherwise explained in this Act.

Subordinate legislation

218 Subordinate legislation

(1) Orders and regulations under this Act are subject to the negative procedure.

(2) Subsection (1) does not apply to—

(a) orders and regulations for which provision is made in subsection (3) or (4),

(b) orders under section 224(2).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

(a) section 30(1),

(aa) section 30A,

(b) section 45(1),

(ba) section 45A(1),

(bb) section 71D(1),

(c) section 72(2),

(da) section 102(1),

(db) section 144A,

(fa) section 159A(1),

(ia) section 166A(1),

(ja) section 180A(1),

(ka) section 181G(1),

(l) section 185(1),

(la) section 194A,

(n) section 198(6),

(o) section 210(2),

(p) paragraph 5D(1) of schedule 3.
(4) Orders under section 219(1) which contain provision which adds to, replaces or omits any part of the text of an Act are also subject to the affirmative procedure.

(5) Orders and regulations under this Act may—

(a) make different provision for different purposes (including for different devolved taxes),

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(6) Subsection (5)(b) does not apply to orders under section 219(1).

Ancillary provision

Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

Modification of enactments

Minor and consequential modifications of enactments

Schedule 4 makes minor and consequential amendments and repeals of enactments.

Crown application

Crown application: criminal offences

(1) No contravention by the Crown of any provision of or made under this Act makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), this Act applies to persons in the public service of the Crown as it applies to other persons.

Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land only with the consent of the appropriate authority.

(2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<table>
<thead>
<tr>
<th>Crown land</th>
<th>Appropriate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of the Crown and forms part of the Crown estate</td>
<td>The Crown Estate Commissioners</td>
</tr>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government</td>
</tr>
</tbody>
</table>
### Crown land

| Land an interest in which belongs to an office-holder in the Scottish Administration | The relevant office-holder in the Scottish Administration |
| Land an interest in which belongs to a Government department | The relevant Government department |
| Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration | The relevant office-holder in the Scottish Administration |
| Land an interest in which is held in trust for Her Majesty for the purposes of a Government department | The relevant Government department |

(3) “Government department” means a department of the Government of the United Kingdom.”

#### 223 Crown application: Her Majesty

Nothing in this Act affects Her Majesty in Her private capacity.

### Commencement and short title

#### 224 Commencement

(1) This section, sections 218, 219, 221, 222, 223 and 225 and paragraphs 7(5) and 8(5) of schedule 4 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

#### 225 Short title

The short title of this Act is the Revenue Scotland and Tax Powers Act 2014.
SCHEDULE 1
(introduced by section 2(3))

REVENUE SCOTLAND

Membership

1  (1) Revenue Scotland is to consist of no fewer than 5 and no more than 9 members appointed by the Scottish Ministers.

(2) Ministers are to appoint one of the members to chair Revenue Scotland (“the Chair”).

(3) Ministers may by order amend sub-paragraph (1) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.

10  (4) Membership of Revenue Scotland is for such period and on such terms as Ministers may determine.

(5) A member may resign by giving notice in writing to Ministers.

(6) A person who is (or who has been) a member may be reappointed.

Disqualification

15  (2) A person may not be appointed as a member of Revenue Scotland (and may not continue as a member) if that person—

(a) is (or becomes)—

(i) a member of the Scottish Parliament,

(ii) a member of the House of Commons,

(iii) a member of the National Assembly for Wales,

(iv) a member of the Northern Ireland Assembly,

(v) a member of the European Parliament,

(vi) a member of the Scottish Government,

(vii) a Minister of the Crown,

(viii) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,

(ix) an office-holder in the Scottish Administration,

(b) is (or has been) insolvent,

(c) is (or has been) disqualified as a company director under the Company Directors Disqualification Act 1986 (c.46) (or any analogous disqualification provision, anywhere in the world), or

(d) is (or has been) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (or any analogous disqualification provision, anywhere in the world).

(2) For the purposes of sub-paragraph (1)(b) a person is (or has been) insolvent if—

(a) the person’s estate is or has been sequestrated,
(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,

(c) the person is (or has been) the subject of any other kind of arrangement analogous to those described in paragraphs (a) and (b), anywhere in the world.

5 **Removal of members**

3 The Scottish Ministers may, by giving notice in writing, remove a member if—

(a) any of sub-paragraphs (1)(a) to (d) of paragraph 2 apply to the member,

(b) the member has been absent from meetings of Revenue Scotland for a period longer than 6 months without permission from Revenue Scotland, or

(c) Ministers consider that the member is otherwise unfit to be a member or is unable to carry out the member’s functions.

4 **Remuneration and expenses**

1 (1) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such remuneration as it may, with the approval of the Scottish Ministers, determine.

(2) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such sums as it may, with the approval of Ministers, determine by way of reimbursement of expenses incurred by them in carrying out their functions.

5 **Committees**

1 (1) Revenue Scotland may establish committees for any purpose relating to its functions.

(2) Revenue Scotland may determine the composition of its committees.

(3) Revenue Scotland may appoint persons who are not members of Revenue Scotland to be members of a committee, but those persons are not entitled to vote at meetings of the committee.

6 **Procedure**

1 (1) Revenue Scotland may regulate its own procedure (including quorum) and that of any committee.

(2) The validity of any proceedings or acts of Revenue Scotland (or of any committee) is not affected by—

(a) any vacancy in its membership,

(b) any defect in the appointment of a member, or

(c) disqualification of a person as a member after appointment.
**Revenue Scotland and Tax Powers Bill**

**Schedule 2—The Scottish Tax Tribunals**

**Part 1—Appointment of members**

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**Internal delegation by Revenue Scotland**

7 (1) Revenue Scotland may authorise—
   
   (a) a member,  
   (b) a committee, or  
   (c) the chief executive or any other member of staff,  

to exercise such of its functions (and to such extent) as it may determine.

(2) Sub-paragraph (1) does not affect Revenue Scotland’s responsibility for the exercise of its functions.

**Chief executive and other staff**

8 (1) Revenue Scotland is to employ a chief executive.

(2) The person employed as chief executive may not be a member of Revenue Scotland.

(3) The first person employed as chief executive is to be appointed by the Scottish Ministers on such terms as they may determine.

(4) Before appointing the first chief executive, Ministers must consult the Chair (if a person holds that position).

(5) Each subsequent chief executive is to be appointed by Revenue Scotland on such terms as it may, with the approval of Ministers, determine.

(6) Revenue Scotland may appoint other members of staff on such terms as it may, with the approval of Ministers, determine.

**Powers**

9 In addition to any other powers it has, Revenue Scotland may do anything which it considers—

   (a) necessary or expedient in connection with the exercise of its functions,  
   (b) incidental or conducive to the exercise of those functions.

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**SCHEDULE 2**

(introduced by section 24(4))

**THE SCOTTISH TAX TRIBUNALS**

**PART 1**

**APPOINTMENT OF MEMBERS**

**President of the Tax Tribunals: eligibility for appointment**

1 (1) A person is eligible for appointment as President of the Tax Tribunals only if the person—

   (a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and  
   (b) meets the criteria in either sub-paragraph (2) or (3).
(2) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.

(3) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers by regulations.

First-tier Tribunal: ordinary members

2 (1) The Scottish Ministers must appoint persons as ordinary members of the First-tier Tribunal.

(1A) Before appointing a person as an ordinary member, the Scottish Ministers must consult the Lord President.

(2) A person is eligible for appointment only if the person meets the criteria as to qualifications, experience and training that the Scottish Ministers prescribe by regulations.

First-tier Tribunal: legal members

3 (1) The Scottish Ministers must appoint persons as legal members of the First-tier Tribunal.

(1A) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 4.

4 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 5 years, as a solicitor or advocate in Scotland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

Upper Tribunal: legal members

5 (1) The Scottish Ministers must appoint persons as legal members of the Upper Tribunal.

(1A) Before appointing a person as a legal member, the Scottish Ministers must consult the Lord President.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 6.

6 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as a solicitor or advocate in Scotland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.
Disqualification from office

7  A person is disqualified from appointment, and from holding a position, as President of the Tax Tribunals or as a member of the Tax Tribunals if the person is or becomes—

(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(ba) a member of the National Assembly for Wales,
(bb) a member of the Northern Ireland Assembly,
(c) a member of the European Parliament,
(d) a Minister of the Crown,
(e) a member of the Scottish Government,
(f) a civil servant.

Eligibility under regulations

8  (1) Regulations under paragraph 4(2) may describe a person by reference to the matters mentioned in sub-paragraph (2A), (3) or (6).

(2) Regulations under paragraph 1(3) or 6(2) may describe a person by reference to the matters mentioned in sub-paragraph (3A), (4) or (6).

(2A) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (1)) is—

(a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
(b) engagement in practice as such for a period of not less than 5 years.

(3) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (1)) are—

(a) previous practice for a period of not less than 5 years as—

(i) a solicitor or advocate in Scotland, or
(ii) a solicitor or barrister in England, Wales or Northern Ireland, and
(b) subsequent engagement in any of the activities listed in sub-paragraph (5).

(3A) The matter mentioned in this sub-paragraph (referred to in sub-paragraph (2)) is—

(a) current practice as a solicitor or barrister in England and Wales or Northern Ireland, and
(b) engagement in practice as such for a period of not less than 10 years.

(4) The matters mentioned in this sub-paragraph (also referred to in sub-paragraph (2)) are—

(a) previous practice for a period of not less than 10 years as—

(i) a solicitor or advocate in Scotland, or
(ii) a solicitor or barrister in England, Wales or Northern Ireland, and
(b) subsequent engagement in any of the activities listed in sub-paragraph (5).

(5) The activities referred to in sub-paragraph (3)(b) and (4)(b) are—
(a) exercising judicial functions in any court or tribunal,
(b) practice or employment as a lawyer of any kind,
(c) whether or not in the course of practice or employment as a lawyer—
   (i) advising on the application of the law,
   (ii) drafting documents intended to affect rights or obligations under the law,
   (iii) assisting persons involved in a legal or other process for the resolution of disputes as to the law,
   (iv) acting as a mediator or arbitrator for the purpose of resolving disputes that are (or could be) the matter of legal proceedings,
(d) teaching or researching law at or for an educational institution.

(6) The matters mentioned in this sub-paragraph (also referred to in sub-paragraphs (1) and (2)) are suitability attributable to experience in law through current or previous engagement in—
(a) any of the activities listed in sub-paragraph (5), or
(b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.

9 (1) The Scottish Ministers may by regulations make provision—
(a) as regards the calculation of the 5-year period mentioned in paragraph 4(1) or 8(2A) or (3)(a) (for example, by reference to recent or continuous time),
(b) as regards the calculation of the 10-year period mentioned in paragraph 1(2), 6(1) or 8(3A) or (4)(a) (for example, by reference to recent or continuous time),
(c) to which paragraph 8(3)(a) or 8(4)(a) is subject (for example, by reference to debarment from practice),
(d) for the purpose of paragraph 8(6), about—
   (i) the criteria for suitability (for example, by reference to equivalence to past or present practice as a solicitor),
   (ii) the nature of experience required (for example, by reference to engagement for a particular period of time (within the United Kingdom or elsewhere)).

(3) The Scottish Ministers may by regulations modify the list in paragraph 8(5).

PART 2

CONDITIONS OF MEMBERSHIP ETC.

Application of this Part

10 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) The following paragraphs of this Part also apply in relation to the position of President of the Tax Tribunals—
Revenue Scotland and Tax Powers Bill
Schedule 2—The Scottish Tax Tribunals
Part 2—Conditions of membership etc.

(a) paragraph 15 (with the modification that the reference in paragraph 15(c) to the President of the Tax Tribunals is to be read as a reference to the Scottish Ministers), and
(b) paragraph 16.

Initial period of office

A person who is appointed to a position as a member of the Tax Tribunals holds the position for the period of 5 years beginning with the date of the appointment.

Reappointment

12 (1) Unless sub-paragraph (3) applies, a member of the Tax Tribunals is to be reappointed as such at the end of each period for which the position is held.

(2) Reappointment under sub-paragraph (1) is to the position for the period of 5 years beginning with the date of the reappointment.

(3) This sub-paragraph applies if—
   (a) the member has declined to be reappointed,
   (b) the member is ineligible for reappointment,
   (c) the President of the Tax Tribunals has recommended to the Scottish Ministers that the member should not be reappointed.

(4) In sub-paragraph (1) the reference to the period for which a position is held is to—
   (a) the period for which the position is held in accordance with paragraph 11, or
   (b) any further period for which the position is held by virtue of reappointment in accordance with sub-paragraphs (1) and (2).

13 For the purpose of paragraph 12(3)(b), a member is ineligible for reappointment only if the member would not be eligible for appointment to the position in accordance with the relevant provisions of Part 1 of this schedule were the member being appointed to the position for the first time.

14 For the purpose of paragraph 12(3)(c), the President of the Tax Tribunals may recommend to the Scottish Ministers that a member should not be reappointed only if satisfied that—
   (a) the member has failed to comply with—
       (i) any of the relevant terms and conditions of membership, or
       (ii) any other requirement imposed on the member by or under this Act, or
   (b) the tribunal concerned no longer requires—
       (i) a member with the qualifications, experience and training of that member, or
       (ii) the same number of members for the efficient disposal of its business.
Appointment to position of President

14A(1) Sub-paragraph (2) applies where a legal member of the First-tier Tribunal or of the Upper Tribunal becomes by appointment President of the Tax Tribunals.

(2) The appointment mentioned in sub-paragraph (1) supersedes the earlier appointment as a legal member.

Termination of appointment

15 A member of the Tax Tribunals ceases to hold the position to which the member was appointed if the member—

(a) becomes disqualified from holding the position (see paragraph 7),

(b) is removed from the position under paragraph 40, or

(c) resigns the position by giving notice in writing to the President of the Tax Tribunals.

Pensions etc.

16 (1) The Scottish Ministers may make arrangements as to—

(a) the payment of pensions, allowances and gratuities to or in respect of members of the Tax Tribunals or former members,

(b) contributions or other payment towards provision for such pensions, allowances and gratuities.

(3) Under sub-paragraph (1), such arrangements may (in particular)—

(a) include provision relating to payment of compensation for loss of office,

(b) make different provision for different types of member or other different purposes.

Oaths

17 (1) Each of the members of the Tax Tribunals must take the required oaths in the presence of the President of the Tax Tribunals.

(2) In this paragraph, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868 (c.72).

Other conditions

18 (1) Other than as provided for elsewhere in this Act or under it, the Scottish Ministers may determine the terms and conditions on which the members of the Tax Tribunals hold their positions.

(2) Under sub-paragraph (1), a determination may (in particular)—

(a) include provision for sums to be payable by way of remuneration, allowances and expenses,

(b) make different provision for different types of member or other different purposes.
PART 3

CONDUCT AND DISCIPLINE

Application of this Part

19 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) Paragraphs 20 to 22 also apply to the position of the President of the Tax Tribunals.

Conduct Rules

20 The Scottish Ministers are responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 21(1) may make provision.

21 (1) The Scottish Ministers may make rules for the purposes of or in connection with—

(a) the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals,

(b) the review of any such determination.

(2) Rules under sub-paragraph (1) may include provision about (in particular)—

(a) the circumstances in which an investigation must or may be undertaken,

(b) the making of a complaint by any person,

(c) the steps that are to be taken by a person making a complaint before it is to be investigated,

(d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),

(e) the time limits for taking steps and procedures for extending such time limits,

(f) the person by whom an investigation (or part of an investigation) is to be carried out,

(g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the President of the Tax Tribunals or any other person,

(h) the making of recommendations by the person carrying out an investigation (or part of one),

(i) the obtaining of information relating to a complaint,

(j) the keeping of a record of an investigation,

(k) the confidentiality of communications or proceedings,

(l) the publication of information or its supply to any person.

22 Rules under paragraph 21(1)—

(a) may make different provision for different purposes,

(b) are to be published in such manner as the Scottish Ministers may determine.
Reprimand etc.

23 (1) Where the condition in sub-paragraph (2) is met in relation to a member of the Tax Tribunals, the President of the Tax Tribunals may, for disciplinary purposes, give the member—

(a) formal advice,

(b) a formal warning, or

(c) a reprimand.

(2) The condition is that—

(a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 21(1), and

(b) the person carrying out the investigation has recommended that the President exercise the power conferred by sub-paragraph (1).

24 Paragraph 23 does not limit what the President of the Tax Tribunals may do—

(a) informally,

(b) for other purposes, or

(c) where no advice or warning is given in a particular case.

Suspension of membership

25 (1) If the President of the Tax Tribunals considers that it is necessary for the purpose of maintaining public confidence in the Tax Tribunals, the President may suspend a member of the tribunals.

(2) Suspension under sub-paragraph (1)—

(a) is for such period as the President may specify when suspending the member,

(b) may be revoked or extended subsequently by the President.

26 Suspension under paragraph 25(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

Judicial Complaints Reviewer

27 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).

(2) The functions are—

(a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 21(1) to consider whether the investigation has been carried out in accordance with the rules,

(b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Scottish Ministers,

(c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules, and
Revenue Scotland and Tax Powers Bill
Schedule 2—The Scottish Tax Tribunals
Part 4—Fitness and removal

(d) to make written representations to the Scottish Ministers about procedures for handling the investigation of matters concerning the conduct of members of the Tax Tribunals.

(3) The Scottish Ministers are to have regard to any written representations made under sub-paragraph (2)(d).

(4) In sub-paragraph (2)(a), “relevant person” means—

(a) the person whose complaint led to the carrying out of the investigation, or

(b) the member of the Tax Tribunals with respect to whom the investigation has been carried out.

28 (1) Sub-paragraph (2) applies where a case is referred to the Scottish Ministers by the Judicial Complaints Reviewer under paragraph 27(2)(b).

(2) The Scottish Ministers may—

(a) vary or revoke wholly or partly the determination made in the case to which the investigation relates,

(b) cause a fresh investigation to be carried out,

(c) confirm the determination in the case, or

(d) deal with the referral in such other way as the Scottish Ministers consider appropriate.

PART 4
FITNESS AND REMOVAL

Application of this Part

29 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) This Part also applies to the position of the President of the Tax Tribunals subject to the modifications mentioned in paragraph 41.

Constitution and procedure

30 (1) The Scottish Ministers must constitute a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals.

(2) The Scottish Ministers may constitute a fitness assessment tribunal—

(a) in such other circumstances as they think fit, and

(b) following consultation with the President.

(3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

31 (1) The Scottish Ministers may make rules as to the procedure to be followed in proceedings at a fitness assessment tribunal.

(2) Rules under sub-paragraph (1) are to be published in such manner as the Scottish Ministers may determine.
Composition and remuneration

32 (1) A fitness assessment tribunal is to consist of—

(a) one person who is, or has been—

(i) a judge of the Court of Session (except a temporary judge), or

(ii) a sheriff (except a part-time sheriff),

(b) one person who is—

(i) where the member under investigation is an ordinary member, another ordinary member,

(ii) where the member under investigation is a legal member, another legal member, and

(c) one person who does not fall (and has never fallen) within a category of person referred to in paragraph (a) or (b).

(2) The selection of persons to be members of the fitness assessment tribunal is to be made by the Scottish Ministers with the agreement of the Lord President.

33 (1) The Scottish Ministers—

(a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,

(b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.

(2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

Proceedings before fitness assessment tribunal

34 (1) A fitness assessment tribunal may require any person—

(a) to attend its proceedings for the purpose of giving evidence,

(b) to produce documents in the person’s custody or under the person’s control.

(2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.

35 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 34(1)—

(a) refuses or fails, without reasonable excuse—

(i) to comply with the requirement,

(ii) while attending the tribunal proceedings to give evidence, to answer any question,

(b) deliberately alters, conceals or destroys any document which the person is required to produce.

(2) The Court of Session may, on an application made to it by the tribunal—
Revenue Scotland and Tax Powers Bill
Schedule 2—The Scottish Tax Tribunals
Part 4—Fitness and removal

(a) make such order for enforcing compliance or otherwise as it thinks fit, or
(b) deal with the matter as if it were a contempt of the Court.

Suspension during investigation

36 (1) Sub-paragraph (2) applies if the President of the Tax Tribunals requests the Scottish Ministers to constitute a fitness assessment tribunal to investigate whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

(2) The President may suspend the member from the position at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
(a) the President revokes it, or
(b) the report is laid as required by paragraph 39(3).

37 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—
(a) recommends that a member of the Tax Tribunals who is subject to its investigation should be suspended from the position as member of the tribunals,
(b) does so in writing at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(2) The Scottish Ministers may suspend the member from the position at any time before laying the report as required by paragraph 39(3).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—
(a) the Scottish Ministers revoke it, or
(b) the report is laid as required by paragraph 39(3).

38 Suspension under paragraph 36(2) or 37(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

Report and removal

39 (1) A report by a fitness assessment tribunal must—
(a) be in writing, and
(b) contain reasons for its conclusions.

(2) As soon as reasonably practicable after it is completed, such a report must be submitted by the fitness assessment tribunal to—
(a) the Scottish Ministers, and
(b) the President of the Tax Tribunals.

(3) The Scottish Ministers must lay before the Scottish Parliament each report submitted under sub-paragraph (2).

40 (1) If the relevant condition is met, the Scottish Ministers may remove a member of the Tax Tribunals from the position of member of the tribunals.
(2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 39(2) concluding that the member is unfit to hold the position of member of the Tax Tribunals.

**Application of this Part to the President of the Tax Tribunals**

41 (1) This Part of this schedule applies in relation to the President of the Tax Tribunals with the following modifications.

(2) In paragraph 30, sub-paragraphs (1) and (2)(b) do not apply.

(3) Paragraph 32 is to apply in relation to a fitness assessment tribunal constituted to investigate and report on whether the President is unfit to hold that position as it applies to a legal member of the Tax Tribunals.

(4) In paragraph 36—

(a) sub-paragraph (1) does not apply,

(b) the references in sub-paragraphs (2) and (3)(a) to the President are to be read as references to the Scottish Ministers.

(5) Paragraph 39(2)(b) does not apply.

**Interpretation**

42 In this Part of this schedule, the references to unfitness to hold the position of member of the Tax Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.

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**SCHEDULE 3**

*(introduced by section 105)*

CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

**Introduction**

1 This schedule applies to a claim under section 97, 98 or 99.

**Making of claims**

2 (1) A claim must be made in such form as Revenue Scotland may determine.

(2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.

(3) The form of claim may require—

(a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim,

(b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct,

(c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).
(4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

Duty to keep and preserve records

3 (1) A person who wishes to make a claim must—
   
   (a) keep such records as may be needed to enable the person to make a correct and complete claim, and
   
   (b) preserve those records in accordance with this paragraph.

(2) The records must be preserved until the latest of the following times—
   
   (a) the end of the period of 3 years beginning with the day on which the claim was made,
   
   (b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed,
   
   (c) where the claim is amended and there is no enquiry into the amendment, the time when Revenue Scotland no longer has power to enquire into the amendment.

(3) The Scottish Ministers may by regulations—
   
   (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
   
   (b) provide that those records include supporting documents so specified.

(4) Regulations under this paragraph may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(5) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

Preservation of information etc.

4 The duty under paragraph 3 to preserve records may be satisfied—

   (a) by preserving them in any form and by any means, or
   
   (b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified by Revenue Scotland.

Penalty for failure to keep and preserve records

5 (1) A person (“P”) who fails to comply with paragraph 3 in relation to a claim that the person makes is liable to a penalty not exceeding £3,000, subject to the following exception.

(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to it.
Reasonable excuse for failure to keep and preserve records

5A(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with paragraph 3, liability to a penalty under paragraph 5 does not arise in relation to that failure.

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties under paragraph 5

5B(1) Where a person becomes liable for a penalty under paragraph 5, Revenue Scotland must—

(a) assess the penalty, and

(b) notify the person.

(2) An assessment of a penalty under paragraph 5 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

Enforcement of penalties under paragraph 5

5C(1) A penalty under paragraph 5 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 5B was issued,

(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,

(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or

(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under paragraph 5 is to be treated for enforcement purposes as an assessment to tax.

Power to change penalty provisions in paragraphs 5 to 5C

5D(1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under paragraphs 5 to 5C.

(2) Regulations under sub-paragraph (1) may include provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) about the procedure for issuing penalties,
(d) about appealing penalties,
(e) about enforcing penalties.

(3) Regulations under sub-paragraph (1) may not create criminal offences.
(4) Regulations under sub-paragraph (1) may modify any enactment (including this Act).
(5) Regulations under sub-paragraph (1) do not apply to a failure which began before the date on which the regulations come into force.

**Amendment of claim by claimant**

6 (1) The claimant may amend the claim by notice to Revenue Scotland.
(2) No such amendment may be made—
   (a) more than 12 months after the day on which the claim was made, or
   (b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the period—
       (i) beginning with the day on which notice is given, and
       (ii) ending with the day on which the enquiry under that paragraph is completed.

**Correction of claim by Revenue Scotland**

7 (1) Revenue Scotland may by notice to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).
(2) No such correction may be made—
   (a) more than 9 months after the day on which the claim was made, or
   (b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the period—
       (i) beginning with the day on which notice is given, and
       (ii) ending with the day on which the enquiry under that paragraph is completed.
(3) A correction under this paragraph is of no effect if, within 3 months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.
(4) Notice under sub-paragraph (3) must be given to Revenue Scotland.

**Giving effect to claims and amendments**

8 (1) As soon as practicable after a claim is made, amended or corrected under paragraph 6 or 7, Revenue Scotland must give effect to the claim or amendment by discharge or repayment of tax.
(2) Where Revenue Scotland enquires into a claim or amendment—
   (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 10 (completion of enquiry), and then it applies subject to paragraph 12 (giving effect to amendments under paragraph 10), but
(b) Revenue Scotland may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as it thinks fit.

**Notice of enquiry**

9 (1) Revenue Scotland may enquire into a person’s claim or amendment of a claim if it gives the claimant notice of its intention to do so (“notice of enquiry”) before the end of the period of 3 years after the day on which the claim was made.

(2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

**Completion of enquiry**

10 (1) An enquiry under paragraph 9 is completed—

(a) when Revenue Scotland by notice (a “closure notice”) informs the claimant that it has completed its enquiries and states its conclusions, or

(b) no closure notice having been given, 3 years after the date on which the claim was made.

(2) A closure notice must be given no later than 3 years after the date on which the claim was made.

(3) A closure notice must either—

(a) state that in the opinion of Revenue Scotland no amendment of the claim is required, or

(b) if in Revenue Scotland’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

(4) In the case of an enquiry into an amendment of a claim, sub-paragraph (3)(b) applies only so far as the deficiency or excess is attributable to the amendment.

(5) A closure notice takes effect when it is issued.

**Direction to complete enquiry**

11 (1) The claimant may apply to the tribunal for a direction that Revenue Scotland gives a closure notice within a specified period.

(2) Any such application is to be subject to the relevant provisions of tribunal rules.

(3) The tribunal must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within a specified period.

**Giving effect to amendments under paragraph 10**

12 (1) Within 30 days after the date of issue of a notice under paragraph 10(3)(b) (closure notice that amends claim), Revenue Scotland must give effect to the amendment by making such adjustment as may be necessary, whether—

(a) by way of assessment on the claimant, or

(b) by discharge or repayment of tax.
(2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

Appeals against amendments under paragraph 10

13 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.

(2) Notice of the appeal must be given—
   (b) within 30 days after the date on which the closure notice was issued,
   (c) to the tribunal.

(3) The notice of appeal must specify the grounds of appeal.

(4) Part 11 (reviews and appeals) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under that Part.

(5) On an appeal against an amendment made by a closure notice, the tribunal may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.

(6) Where any such amendment is varied, whether by the tribunal or by the order of a court, paragraph 12 (giving effect to amendments under paragraph 10) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

SCHEDULE 4
(introduced by section 220)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Debtors (Scotland) Act 1987

ZA1(1) The Debtors (Scotland) Act 1987 (c.18) is amended as follows.

(2) In section 1 (time to pay directions)—

   (a) in subsection (5), after paragraph (d) insert—

   “(da) in an action by or on behalf of Revenue Scotland for payment of any sum recoverable under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,”,

   (b) after subsection (8A) insert—

   “(8B) In paragraph (da) of subsection (5)—

   “contract settlement” means any agreement made in connection with any person’s liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax,

   “devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

   “settlement agreement” has the meaning given by section 211(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.
(3) In section 5 (time to pay orders)—

(a) in subsection (4), after paragraph (d) insert—

“(da) in relation to a debt including any sum recoverable by or on behalf of Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,”;

(b) after subsection (8A) insert—

“(8B) In paragraph (da) of subsection (4)—

“contract settlement” means any agreement made in connection with any person’s liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 00) or any other enactment in respect of a devolved tax,

“devolved tax” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

“settlement agreement” has the meaning given by section 211(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(4) In section 106 (interpretation), in the definition of “summary warrant”, after paragraph (e) insert—

“(f) section 190 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

Environment Act 1995

A1(1) The Environment Act 1995 (c.25) is amended as follows.

(2) In section 51 (provision of information)—

(a) after subsection (1) insert—

“(1A) Nothing in this section authorises the disclosure by SEPA of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”;

(b) after subsection (5) insert—

“(6) In subsection (1A), “protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(3) In section 113 (disclosure of information)—

(a) after subsection (1) insert—

“(1A) Nothing in this section authorises the disclosure by SEPA to any person of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”;

(b) in subsection (5), after the definition of “local enforcing authority” insert—

““protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 00),”.
Public Finance and Accountability (Scotland) Act 2000

1. In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (Keeper of the Registers of Scotland: financial arrangements), after “Sums” insert “(other than payments of or in connection with land and buildings transaction tax)”.

Ethical Standards in Public Life etc. (Scotland) Act 2000

2. In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies), at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

Freedom of Information (Scotland) Act 2002

3. In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 2 of schedule 1 (Scottish public authorities), at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4. In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies” at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

Public Services Reform (Scotland) Act 2010

5. In the Public Services Reform (Scotland) Act 2010 (asp 8), in schedule 8 (listed public bodies), at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

Public Records (Scotland) Act 2011

6. In the Public Records (Scotland) Act 2011 (asp 12), in the schedule, under the heading “Scottish Administration” at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

Land and Buildings Transaction Tax (Scotland) Act 2013

7. (1) The LBTT(S) Act 2013 is amended as follows.
   (1A) In section 10 (substantial performance without completion), after subsection (5) insert—
   “(5A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.
   (1B) In section 11 (contract providing for conveyance to third party), after subsection (6) insert—
   “(6A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.
(1C) In section 27 (reliefs), after subsection (2) insert—

“(2A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(1D) In section 32 (contingency ceases or consideration ascertained: less tax payable)—

(a) in subsection (2)(b), after “Authority” insert “under section 98 of the Revenue Scotland and Tax Powers Act 2014 (asp 00)”, and

(b) after subsection (2) insert—

“(2A) For the period allowed for amendment of returns, see section 74 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(2) In section 35 (form and content of returns), in subsection (1)—

(a) the word “and” after paragraph (a) is repealed,

(b) after paragraph (b) insert “, and

(c) be made in such manner as specified by the Tax Authority.”.

(2A) Section 37 (amendment of returns) is repealed.

(2B) After section 37 insert—

“37A Communications from taxpayers to the Tax Authority

(1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to the Tax Authority must comply with the requirements set out in subsection (2).

(2) The requirements are that the thing—

(a) must be in the form specified by the Tax Authority,

(b) must contain the information specified by the Tax Authority, and

(c) must be given in the manner specified by the Tax Authority.

(3) Subsections (1) and (2) are subject to any different provision made in or under this Act.”.

(2C) In section 41(2) (application to defer payment in case of contingent or uncertain consideration), subsection (2) is repealed.

(3) In section 48 (joint buyers), after subsection (3) insert—

“(3A) See also section 212 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc. where joint buyers).”.

(4) In section 50 (trusts), after subsection (2) insert—

“(3) See also section 213 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc.: trustees).”.

(5) In section 54 (the Tax Authority)—

(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,

(b) subsection (2) is repealed.

(6) Section 55 (delegation of functions to Keeper) is repealed.

(7) Section 56 (review and appeal) is repealed.
(7A) In section 63(2)(a) (meaning of “effective date” of transaction), for “settlement” substitute “completion”.

(8) In section 68 (subordinate legislation)—
(a) in subsection (2), paragraph (h) is repealed,
(b) in subsection (3), paragraph (c) is repealed,
(c) after subsection (6) insert—
“(6A) Subsection (4)(b) is without prejudice to—
(a) anything previously done by reference to an order mentioned in subsection (5), or
(b) the making of a new order.”.

(9) In section 70(1) (commencement), “55,” is repealed.

(10) In schedule 2 (chargeable consideration), in paragraph 16(1)(a)(ii), for “1982” substitute “1992”.

(11) In schedule 5 (multiple dwellings relief), in paragraph 18(b), for “effect” substitute “effective”.

(11A) In schedule 10 (group relief)—
(a) in paragraph 1(2), after “withdrawn” insert—
“Part 3A provides for recovery of tax where relief is withdrawn,”,
(b) after paragraph 42 insert—

“PART 3A
RECOVERY OF RELIEF

Recovery of relief

42A This Part applies where—
(a) relief under this schedule is withdrawn or partially withdrawn and tax is chargeable,
(b) the amount so chargeable has been finally determined, and
(c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.

42B The following persons may, by notice under paragraph 42E, be required to pay the unpaid tax—
(a) the seller,
(b) any company that at any relevant time was a member of the same group as the buyer and was above it in the group structure,
(c) any person who at any relevant time was a controlling director of the buyer or a company having control of the buyer.

42C For the purposes of paragraph 42B(b)—
(a) a “relevant time” means any time between the effective date of the transaction which was exempt from charge by virtue of this schedule and the buyer ceasing to be a member of the same group as the seller, and
(b) a company ("company A") is "above" another company ("company B") in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.

42D In paragraph 42B(c)—

5 “director”, in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c.1) (read with subsection (2) of that section) and includes a person falling within section 452(1) of the Corporation Tax Act 2010 (c.4), “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4)).

Recovery of relief: supplementary

42E The Tax Authority may give notice to a person within paragraph 42B requiring that person within 30 days of receipt of the notice to pay the amount that remains unpaid.

42F Any such notice must be given before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 42A(b).

42G The notice must state the amount required to be paid by the person to whom the notice is given.

42H The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and

(b) for the purpose of appeals,

as if it were a notice of a Revenue Scotland assessment and that amount were an amount of tax due from that person.

42I A person who has paid an amount in pursuance of a notice under paragraph 42E may recover that amount from the buyer.

42J A payment in pursuance of a notice under paragraph 42E is not allowed as a deduction in computing any income, profits or losses for any tax purpose.

42K In paragraph 42H, “Revenue Scotland assessment” has the same meaning as in section 91 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(11B) In schedule 11 (reconstruction relief and acquisition relief)—

(a) in paragraph 1(2), after “withdrawn” insert—

“Part 4A provides for recovery of tax where relief is withdrawn,”,

(b) in paragraph 5, for “(c) and (d)” substitute “(b) and (c)”,

(c) in paragraph 9(a), for second “person” substitute “persons”,

(d) after paragraph 35 insert—

“PART 4A

RECOVERY OF RELIEF
Recovery of relief

35A This Part applies where—

(a) relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,

(b) the amount of tax chargeable has been finally determined, and

(c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.

35B The following persons may, by notice under paragraph 35E, be required to pay the unpaid tax—

(a) any company that at any relevant time was a member of the same group as the acquiring company and was above it in the group structure,

(b) any person who at any relevant time was a controlling director of the acquiring company or a company having control of the acquiring company.

35C For the purposes of paragraph 35B—

(a) “relevant time” means any time between the effective date of the relevant transaction and the change of control by virtue of which tax is chargeable, and

(b) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.

35D In paragraph 35B(b)—

“director”, in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c.1) (read with subsection (2) of that section) and includes a person falling within section 452(1) of the Corporation Tax Act 2010 (c.4),

“controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4)).

Recovery of relief: supplementary

35E The Tax Authority may give notice to a person within paragraph 35B requiring that person within 30 days of receipt of the notice to pay the amount that remains unpaid.

35F Any such notice must be given before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 35A(b).

35G The notice must state the amount required to be paid by the person to whom the notice is given.

35H The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and

(b) for the purpose of appeals,
as if it were a notice of a Revenue Scotland assessment and that amount were
an amount of tax due from that person.
35I A person who has paid an amount in pursuance of a notice under paragraph
35E may recover that amount from the acquiring company.
5
35J A payment in pursuance of a notice under paragraph 35E is not allowed as a
deduction in computing any income, profits or losses for any tax purpose.
35K In paragraph 35H, “Revenue Scotland assessment” has the same meaning as in
section 91 of the Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(12) In schedule 17 (partnerships)—
10 (a) in paragraph 35 (election by property-investment partnership)—

(i) in sub-paragraph (1), for “paragraph” substitute “Part”,

(ii) after sub-paragraph (3) insert—

“(3A) For the period allowed for amendment of returns, see section 74 of the
Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

(b) in paragraph 38 (application of group relief to certain partnership transactions), in
sub-paragraph (4), for “42” substitute “42K”.

(13) In schedule 19 (leases), in paragraph 25 (agreement for lease substantially performed
equivalent), after sub-paragraph (7) insert—

“(7A) For the period allowed for amendment of returns, see section 74 of the
Revenue Scotland and Tax Powers Act 2014 (asp 00).”.

Landfill Tax (Scotland) Act 2014

8 (1) The LT(S) Act 2014 is amended as follows.

(1A) In section 15 (weight of materials disposed of)—

(a) in subsection (2)(c), for “an authorised person” substitute “a designated officer”,

(b) in subsection (4), for “an authorised person” substitute “a designated officer”, and

(c) after subsection (6) insert—

“(7) The regulations may include provision for penalties where a person fails to
comply with a requirement imposed by or under the regulations.”.

(1B) In section 18 (credit: general), after subsection (6) insert—

“(6A) The regulations may provide for section 98 of the Revenue Scotland and Tax
Powers Act 2014 (asp 00) to apply (with or without modifications) to a claim
under this section by a person who has ceased to be registrable as it applies to a
claim under that section.”.

(1C) In section 22 (registration), in subsection (9), paragraph (b) is repealed.

(1D) In section 23 (information required to keep register up to date), in subsection (2),
paragraph (b) is repealed.

(2) In section 25 (accounting for tax and time for payment), for paragraph (b) substitute—

“(b) make returns in relation to such accounting periods,”.

(3) After section 25 insert—
“25A Form and content of returns

(1) A return under this Act must—

(a) be in the form specified by the Tax Authority,
(b) contain such information specified by the Tax Authority, and
(c) be made in such manner as specified by the Tax Authority.

(2) The Tax Authority may specify different forms and information for different kinds of return.

(3) A return is treated as containing any information provided by the person making it for the purpose of completing the return.

25B Communications from taxpayers to the Tax Authority

(1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to the Tax Authority must comply with the requirements set out in subsection (2).

(2) The requirements are that the thing—

(a) must be in the form specified by the Tax Authority,
(b) must contain the information specified by the Tax Authority, and
(c) must be given in the manner specified by the Tax Authority.

(3) Subsections (1) and (2) are subject to any different provision made in or under this Act.”.

(3ZA) Section 26 (time of disposal where invoice issued) is repealed.

(3A) Section 28 (evidence about tax status) is repealed.

(4) Section 29 (recovery of overpaid tax) is repealed.

(4ZA) In section 30(3)(a) (information: material at landfill sites), for “an authorised person” substitute “a designated officer”.

(4ZB) In section 31(1) (information: site restoration)—

(a) in paragraph (a), “in writing” is repealed, and
(b) in paragraph (b), “written” is repealed.

(4A) Sections 32 and 33 (record keeping) are repealed.

(5) In section 34 (the Tax Authority)—

(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,
(b) subsection (2) is repealed.

(6) Section 35 (delegation of functions to SEPA) is repealed.

(7) Section 36 (review and appeal) is repealed.

(7A) In section 39 (interpretation), for the definition of “authorised person” substitute—

“‘designated officer’ has the meaning given by section 216 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (general interpretation).”.

(8) In section 41 (subordinate legislation)—
(a) in subsection (2)—
   (i) after paragraph (b) insert—
   “(ba) regulations under section 15 which make provision of the type mentioned in section 15(7),”,
   (ii) paragraph (d) is repealed,
(b) in subsection (7), paragraph (c) is repealed (but not the word “and” immediately following it).

(9) In section 43 (commencement), “35,” is repealed.

Tribunals (Scotland) Act 2014

10 In the Tribunals (Scotland) Act 2014 (asp 10) is amended as follows.

(2) In schedule 1 (listed tribunals), in Part 1, after paragraph 10 (the entry for “A Police Appeals Tribunal”) insert—
   “10A The First-tier Tax Tribunal for Scotland
   10B The Upper Tax Tribunal for Scotland”.

(3) In Part 2 of that schedule, after paragraph 13(10) insert—
   “(10A) The entries in paragraphs 10A and 10B relate to the functions exercisable by the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland by virtue of the Revenue Scotland and Tax Powers Act 2014 or any other enactment.”.

Procurement Reform (Scotland) Act 2014

10 In the Procurement Reform (Scotland) Act 2014 (asp 12), in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13 (the entry for the Scottish Housing Regulator) insert—
   “13A Revenue Scotland”.

SCHEDULE 5
(introduced by section 217)

INDEX OF DEFINED EXPRESSIONS

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>LBTT(S) Act 2013</td>
<td>section 216</td>
</tr>
<tr>
<td>LT(S) Act 2014</td>
<td>section 216</td>
</tr>
<tr>
<td>appealable decision</td>
<td>section 198</td>
</tr>
<tr>
<td>appellant</td>
<td>section 199(1)</td>
</tr>
<tr>
<td>business assets</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>business documents</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>business premises</td>
<td>section 133(4)</td>
</tr>
<tr>
<td>carrying on a business</td>
<td>section 113</td>
</tr>
<tr>
<td>closure notice</td>
<td>section 84(1) (for the purposes of Part 6) and paragraph 10(1) of schedule 3 (for the purposes of that schedule)</td>
</tr>
<tr>
<td>contact details</td>
<td>section 192(4)</td>
</tr>
<tr>
<td>contract settlement</td>
<td>section 109(8)</td>
</tr>
<tr>
<td>designated officer</td>
<td>section 216</td>
</tr>
<tr>
<td>devolved tax</td>
<td>section 3(3)</td>
</tr>
<tr>
<td>filing date</td>
<td>section 73</td>
</tr>
<tr>
<td>First-tier Tribunal</td>
<td>section 19(5)(a)</td>
</tr>
<tr>
<td>general anti-avoidance rule</td>
<td>section 57(2)</td>
</tr>
<tr>
<td>information notice</td>
<td>section 123(1)</td>
</tr>
<tr>
<td>judicial member</td>
<td>section 56</td>
</tr>
<tr>
<td>Keeper</td>
<td>section 4(1)(a)</td>
</tr>
<tr>
<td>legal member</td>
<td>section 56</td>
</tr>
<tr>
<td>Lord President</td>
<td>section 56</td>
</tr>
<tr>
<td>matter in question</td>
<td>section 215(1)(a)</td>
</tr>
<tr>
<td>notice of appeal</td>
<td>section 216</td>
</tr>
<tr>
<td>notice of enquiry</td>
<td>section 76(5) (for the purposes of Part 6) and paragraph 9(1) of schedule 3 (for the purposes of that schedule)</td>
</tr>
<tr>
<td>notice of review</td>
<td>section 216</td>
</tr>
<tr>
<td>ordinary member</td>
<td>section 56</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>protected taxpayer information</td>
<td>section 14(1)</td>
</tr>
<tr>
<td>Revenue Scotland assessment</td>
<td>section 91</td>
</tr>
<tr>
<td>Revenue Scotland determination</td>
<td>section 216</td>
</tr>
<tr>
<td>SEPA</td>
<td>section 4(1)(b)</td>
</tr>
<tr>
<td>settlement agreement</td>
<td>section 211(1)</td>
</tr>
<tr>
<td>statutory records</td>
<td>section 114</td>
</tr>
<tr>
<td>tax position</td>
<td>section 112</td>
</tr>
<tr>
<td>Tax Tribunals</td>
<td>section 19(5)(c)</td>
</tr>
<tr>
<td>taxpayer notice</td>
<td>section 115(3)</td>
</tr>
<tr>
<td>third party</td>
<td>section 192(1)(c)</td>
</tr>
<tr>
<td>third party notice</td>
<td>section 116(4)</td>
</tr>
<tr>
<td>tribunal</td>
<td>section 216</td>
</tr>
<tr>
<td>tribunal rules</td>
<td>section 46(2)</td>
</tr>
<tr>
<td>Upper Tribunal</td>
<td>section 19(5)(b)</td>
</tr>
</tbody>
</table>
Revenue Scotland and Tax Powers Bill
[AS PASSED]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

Introduced by: John Swinney
On: 12 December 2013
Bill type: Government Bill