1. The Chartered Institute of Taxation responded to the Scottish Government's consultation entitled ‘A Landfill Tax for Scotland’ (http://www.tax.org.uk/tax-policy/public-submissions/2013/landfill_tax_Scot_public) and now welcome this opportunity to provide comment on the above Bill, which was laid before the Parliament on 17 April 2013.

2. Our evidence is set out in the attached annex. We would be happy to provide any further input to the Bill if requested. Please advise our technical assistant Helen Musi at technical@ciot.or.uk if you do have any further requests in this regard.

3. 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.

4. 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.

5. The CIOT’s 16,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
Introduction
6. The Chartered Institute of Taxation (CIOT) welcomes the opportunity to provide input to the proceedings on The Landfill Tax (Scotland) Bill.

7. In our comments on the Scottish Government’s consultation entitled ‘A Landfill Tax for Scotland’ ([http://www.tax.org.uk/tax-policy/public-submissions/2013/landfill_tax_Scot_public](http://www.tax.org.uk/tax-policy/public-submissions/2013/landfill_tax_Scot_public)), we took as our starting point that if landfill tax is to fulfil its role as a fiscal measure designed to encourage good behaviours and penalise poor behaviours, it needs to be levied on what is placed into the ground as waste and not merely material that enters a landfill site. We remain of that view. We examine the specific issues raised in the call for evidence, and provide comments on the basis that that is still the correct approach to the tax.

8. If it is proposed to create a Scottish equivalent of the Landfill Communities Fund, then consideration should be given to ensuring that it is used to fund activities that further development of waste reduction objectives.

Executive summary
9. We recognise the practical approach to introducing the tax along the same lines and using the same rates as those in the rest of the UK.

10. However, we consider that the existing legislation does not properly reflect the environmental intentions of the tax, especially in re-use and recycling of material, and encourage the early revision of proposed law to address these points.

11. The taxation of used or recycled materials merely because they are on a landfill site may be detrimental to the stated zero-waste policy.

12. The use of further rates of tax would be a more appropriate link to the environmental impact of certain waste categories but any definition of existing or future lower rates must provide sufficient clarity to avoid taxpayer uncertainty.

Consistency with principles of certainty, convenience, efficiency and proportionality (First bullet)
13. We believe that the tax meets the principles of certainty, convenience and efficiency but for the reasons set out elsewhere in this response we are not convinced that it wholly meets the principle of proportionality.
Decision not to introduce significant changes to the form or structure of the existing UK Landfill Tax

14. The Bill draws very heavily on the provisions of FA 1996, which introduced landfill tax in the UK. Adopting a system that aligns closely with that of the rest of the UK is a pragmatic approach that recognises that the waste and recycling industry operates across borders within the UK and would not welcome having to deal with two totally different systems.

15. Nevertheless, as our comments in response to the UK consultation entitled ‘Modernising Landfill Tax’ (http://www.tax.org.uk/tax-policy/public-submissions/2009/modernising-landfill-tax-ciot-comments) showed, we believe that there was a need to improve the tax to better achieve its environmental objectives.

16. Thus, while we accept the pragmatic reasons for adopting legislation that is substantially similar to that of the legislation in the rest of the UK, we do not think that the legislation or the manner in which it is implemented should be identical. In particular, there are features of the UK legislation that do not meet what we believe are the objectives of the tax such as Scotland’s Zero Waste Plan (http://www.scotland.gov.uk/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy).

17. We therefore welcome the fact that the Bill includes the provision that would allow more rates of tax. Under the current UK rates structure, there is a considerable difference between the rate that is applied to inert matter and other waste, despite the fact that some of the other waste taxed at the standard rate may create minimal environmental impact. While we do not comment on rates as such, it is appropriate to point out that this structure does not seem to fit with the objectives of the tax.

18. We also pointed out that the resource that is being protected is land and as suggested in the UK consultation it is the amount of land used for waste that needs to be protected. Accordingly it appears illogical to set taxes on the basis of weight although we accept that there may be practical problems to overcome in arriving at a fairer measure.

19. We note that the Bill would allow the Scottish Government to include materials in the definition of waste that are put to a use on site and that are not therefore in fact waste eg temporary cover for materials used in landfill. The origin of the UK provision is two UK cases dealing with landfill tax (Parkwood Landfill v Commissioners of Customs & Excise (2002] EWCA Civ 1707) and Waste Recycling Group Ltd v HMRC ([2007] EWHC 3014 (Ch)). HMRC then acted to have the effect of these decisions reversed, bringing many uses of materials back within the scope of the tax, including some arising from a necessary requirement of environmental law/permitting.

20. We do not believe that the Scottish Government should use the powers included in the Bill to apply similar rules to those applied under the current landfill tax legislation. We note in particular this passage from the Court of
Appeal's judgment in *Parkwood* that makes it clear that the provisions that HMRC subsequently asked the UK Government to enact were contrary to the principles of the tax –

‘The Commissioners accept that their argument leads to the result that companies such as Parkwood will be liable for tax if they use recycled material for site engineering or building purposes, whereas they would not be liable for tax if they used fresh materials. That cannot have been the intention of Parliament when they introduced the landfill tax. The purpose of the legislation was to tax waste material deposited at landfill sites and not to tax deposits at landfill sites of useful material produced from waste material.’

21. Taxing non-damaging material would appear to be contrary to the zero-waste policy.

**List of qualifying materials**
22. The explanatory notes to the Bill indicate that it is intended to adopt the same lists of materials qualifying for the lower rate or for exemption as the current UK Bill. It does however go on to say –

This means that in future Ministers could introduce a third tax band for stabilised materials at a tax rate that was between the two current rates.

23. As brought out in our submission, the current definition of qualifying materials has brought confusion and uncertainty of treatment in certain situations. Clarifications promised in July 2012 have still to be published, notably mixed load qualification criteria.

24. We accept the reasons why it might be convenient to start with the current UK provisions. However, we consider that the Scottish Government should not wait for the coming into force of the Bill to consult with those in the Industry on how best to use the flexibility in the Bill to use the rate structure as a disincentive for not rendering the most damaging waste stable.

**Illegal dumping of waste**
25. We did not comment on this issue in our original response but since the legislation has been included in the Bill we now comment as follows.

26. It would appear to us that the proceeds received by a person who carries out an illegal dumping activity for reward could be confiscated under The Proceeds of Crime Act 2002.

27. However, we accept that any proceeds that could be recovered may be less than the actual taxes that would have been due and that therefore simple recovery of the proceeds of a crime may not be sufficient to protect the tax base. Further, that legislation would not cover illegal dumping not carried out for reward.
28. We therefore accept the principle behind this provision.

Exemptions
29. We accept the reasons for starting with the same exemptions as in the current legislation and the need for a mechanism to remove exemptions when appropriate.

30. This is subject to the principles that exemptions should not be removed if they are necessary to the environmental objectives of the tax and that additional exemptions may be needed for the same principles (see comments at section 4).

Scottish Landfill Communities Fund
31. The details of how this fund will work are to be set out in subordinate legislation. We believe that there should be a full consultation on the management and use of the fund.

The role of Revenue Scotland and SEPA
32. We have noted concerns that have been expressed of a possible conflict of interest in having SEPA collect the tax. However, our view is that close working with SEPA on the tax is essential to ensure that the tax aligns with its environmental objectives.

The block grant
33. We did not comment on this in our response to the consultation and do not do so here.

Financial implications
34. We do not have the expertise to comment on the financial implications of the Bill.

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