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.