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16 February 2024

Dear Stuart,

Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

I am writing to you in relation to the Scottish Aggregates Tax and Devolved Tax Administration (Scotland) Bill and the Delegated Powers and Law Reform Committee's request for further explanation on certain sections of the Bill, sent to the Deputy First Minister and Cabinet Secretary for Finance on 1 February 2024.

The Scottish Government's responses to the Committee's questions are set out below.

Section 4(4) – Power to add or remove items from a list of relevant substances for the purposes of excepted processes.

The Committee asks for further detail on why the affirmative procedure is not considered appropriate as the power permits the modification of primary legislation.

The Scottish Government recognises that this power does permit the modification of primary legislation, but negative procedure was considered appropriate as it was anticipated that the impact of these modifications on the scope of the tax would be minimal. Generally, it was expected that the list of relevant substances would change infrequently, and any particular substance would be produced in relatively small quantities and any addition or removal would be expected to have a limited impact on the scope of the tax.

However, the Scottish Government would be content to support amending the Bill to provide for the addition or removal of any items from the list to be subject to affirmative procedure.

Section 12(3) - Power to specify the rate(s) of tax

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The Committee asks for an explanation as to why the Scottish Government does not consider the affirmative procedure to be more appropriate for the first exercise of the power when setting the initial tax rates to provide for appropriate parliamentary scrutiny before they come into force.

The Scottish Government recognises that using affirmative procedure for the first exercise of rate setting powers would be consistent with the approach taken for previous fully devolved taxes. As such, the Scottish Government would be content to support amending the Bill to take the same approach for Scottish Aggregates Tax.

Section 20 - Power to make regulations requiring notification of production of exempt aggregate

The Committee asks for further detail of why this power is necessary and how it is anticipated it would be exercised.

The provisions in the Bill provide for an initially broad tax scope which is then narrowed through a series of exemptions and credits. This is consistent with the approach taken for the UK Aggregates Levy.

Broadly, these exemptions and credits remove from the scope of the tax secondary or recycled aggregates, or rock, sand and gravel that would not generally be used as granular or particulate material in construction as concrete, mortar, roadstone, asphalt or drainage courses, or as construction aggregates.

However, the processes for producing certain types of exempt aggregate are like the production of taxable aggregate, which may potentially increase the tax compliance risk by creating an opportunity for the non- or under-declaration of tax. For example, the processes for extracting coal, lignite, slate, and clay are similar in process to the quarrying of taxable aggregate.

Requiring a notification of the production of exempt aggregate will help mitigate the risks of non-compliance by making the sites of such extraction visible to Revenue Scotland, allowing for appropriate compliance activities to be undertaken. A similar notification is currently required for UK Aggregates Levy.

The inclusion in the Bill of a regulation-making power to set out the details of the notification in secondary rather than primary legislation will allow the Scottish Government to further develop the notification requirements with Revenue Scotland and relevant industry stakeholders. This will also allow for any necessary future adjustments as Revenue Scotland gains operational experience of administering the tax and an increased understanding of the tax compliance risks.

Broadly though it is expected that those who produce only clay, lignite, coal, or slate will be required to make a one-off notification to Revenue Scotland when they intend to begin production of the material or when there are significant changes to the production detailed in a previous notification.

It is likely that the notification will require the producer to provide details of the business carrying out the extraction, location of the extraction site, type of material extracted, likely

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dates of extraction and an estimate of tonnage of material produced. Details of the notification will be subject to further consultation and engagement.

Section 37(2)(a) - Power to specify a relevant person to which Revenue Scotland may delegate any of its functions relating to SAT.

The Committee asks for an explanation as to whether there is a body at present that the Scottish Government considers may be able to carry out those functions and why a body or person is not able to be specified on the face of the Bill; and

for an explanation, in the event that the power is considered necessary, of what consideration the Scottish Government has given to whether the scope of the power is appropriate, or whether the Bill should limit the scope of the power by specifying criteria that should be met for a body to be suitable to have the functions of Revenue Scotland in relation to SAT delegated to it.

The Revenue Scotland and Tax Powers Act 2014 allows Revenue Scotland to delegate any of its functions in relation to Scottish Landfill Tax to the Scottish Environment Protection Agency (SEPA) and in relation to Land and Buildings Transactions Tax to Registers of Scotland.

The Bill enables Scottish Ministers to delegate particular functions in relation to Scottish Aggregate Tax to specified organisations.

Revenue Scotland has considered whether, at the date of implementation, it would be appropriate to delegate some of its functions to another body. No one body has complete regulatory oversight of the primary aggregate sector, although the Scottish Government understands that discussions have been held with SEPA with regards to delegating functions as they already undertake some compliance functions for Scottish Landfill Tax and have specific environmental duties which lead to regulatory interaction with quarry operators. Their expertise with regards to aggregate production is limited however and therefore Revenue Scotland has decided that it would not be appropriate to delegate any functions at this time.

The Scottish Government does however wish to maintain scope for future delegation of functions to a body. Although no delegated function is currently considered as appropriate, it could be a desired option for Revenue Scotland at a later stage when experience is gained in administering the Scottish Aggregates Tax.

The Revenue Scotland and Tax Powers Act 2014 requires that Revenue Scotland must publish information regarding any delegations made and any directions given to delegated bodies. Revenue Scotland is also required to lay before parliament copies of any information published.

Given the above, and given any order made using these powers would be subject to Parliamentary scrutiny, the Scottish Government is satisfied that the scope of this power is appropriate. I would however be happy to consider any further limiting criteria that Parliament suggests as appropriate.

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Section 54(2) inserted new section 251A(1) in the 2014 Act – Communications from Revenue Scotland to taxpayers

and

Section 55(2) inserting new section 251B(1) in the 2014 Act – Use of automation by Revenue Scotland

The Committee asks whether the Scottish Government considers there should be a requirement to consult with Revenue Scotland, any person who is delegated Revenue Scotland functions, or any other appropriate person before making regulations under these sections.

Our Framework for Tax highlights the Scottish Government’s commitment to consult with Revenue Scotland on tax policy issues related to delivery, administration and collection at the earliest opportunity.

As noted in the Policy Memorandum for the Bill, all Part 2 provisions are fully supported by Revenue Scotland and reflect detailed discussions with the tax authority.

Taking this into account, it is not considered that there is a need to include a formal requirement for the Scottish Government to consult with Revenue Scotland, or any other appropriate person, before making regulations under either section 54 (communications from Revenue Scotland to taxpayers) and section 55 (use of automation by Revenue Scotland). I note that no other subordinate legislation powers in the existing fully devolved tax legislation includes such a provision.

The Scottish Government can however confirm that any secondary legislation brought forward in future in relation to these sections will be informed by full public consultation and by partnership working with Revenue Scotland and any other relevant organisation.

Existing legislation already enables Revenue Scotland to communicate electronically with taxpayers where consent has been provided. The policy intent of any future regulations would be to support this through further detail. The overarching policy intent is that any further detail would provide additional certainty, thereby benefiting both taxpayers and Revenue Scotland.

As noted in the Bill’s policy memorandum, section 54 will also enable Scottish Ministers to make regulations in other areas of communication used by Revenue Scotland, including postal communications. At present, Revenue Scotland relies on provisions on the Interpretation and Legislative Reform (Scotland) Act 2010 when communicating with taxpayers by post. The policy intent of the relevant Bill provision is to enable Scottish Ministers to introduce specific legislation in this area, in particular regarding the use of ordinary, registered and recorded post.,

The policy intent of section 55, the use of automation by Revenue Scotland, is to support the efficient and effective administration of the devolved taxes. Future legislation would be intended to help ensure that the arrangements in the Revenue Scotland and Tax Powers Act 2014 Act are future-proofed and allow for consideration to be given to the impacts of developments in information technology on tax administration.

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The Committee asks what are the plans for consultation on the exercise of the powers in general, given that much of the detail of the Bill is to be implemented through regulations

Consistent with the Framework for Tax, the Scottish Government is committed to consulting on the exercise of any powers included in the Bill that will be implemented through regulations.

In relation to the Scottish Aggregates Tax, the Scottish Government intends to continue its close working with Revenue Scotland, the Expert Advisory Group and other stakeholders to develop the required regulations. Subject to successful passage of the Bill, these regulations will then be informed by a full public consultation. This is in line with the approach to administrative regulations taken prior to the introduction of the existing devolved taxes.

Any secondary legislation brought forward in future by Scottish Ministers in exercise of the regulation-making powers related to communications from Revenue Scotland to taxpayers and the use of automation by Revenue Scotland would also be informed by full public consultation.

The Committee asks what consideration has been given to adding any such requirements to the face of the Bill.

The Scottish Government did not include the requirement to consult on the face of the Bill as a commitment to consult and work with stakeholders is already a core feature of the strategic policy landscape that has shaped the legislation: the Scottish Government's Framework for Tax and New Deal for Business. This position is consistent with arrangements for both Land and Buildings Transaction Tax and Scottish Landfill Tax.

The Scottish Government is committed to ensuring that tax policy is developed collaboratively with stakeholders and in line with the Scottish Approach to Taxation, as set out in the Framework for Tax.

I hope these responses are helpful for the Committee in its scrutiny of the Bill.

Yours sincerely,

TOM ARTHUR

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