

Financial Scrutiny Unit Briefing Revenue Scotland and Tax Powers Bill

13 February 2014

14/16

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The Revenue Scotland and Tax Powers Bill was introduced in the Scottish Parliament on 12 December 2013. This briefing provides background to the Bill and summarises some of the key proposals within it.



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EXECUTIVE SUMMARY

The Revenue Scotland and Tax Powers Bill is the third of three related Bills implementing powers devolved to the Scottish Parliament in the Scotland Act 2012. The Bill makes provision for a Scottish tax system that allows for the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT). It establishes Revenue Scotland as the tax authority responsible for the collection and management of devolved taxes.

Modern states could not exist without taxation. The UK currently collects around 35% of GDP in taxation. In Scotland, at present, only Council Tax and Non-domestic rates are fully devolved to the Scottish Parliament and account for 6.9% of tax revenues raised (including a geographic share of north sea revenue). With the addition of LBTT and SLfT, 7.5% of Scottish Tax revenues will be fully under the Scottish Parliament's jurisdiction.

The Bill is designed to reflect Adam Smith's four maxims with regard to taxation: certainty, convenience, efficiency and proportionate to the ability to pay. Although these appear uncontroversial, they can be difficult and controversial to apply in practice and often involve subjective social and political judgements.

The Bill comprises twelve parts and proposes a number of subordinate legislation provisions. Revenue Scotland is to be established as a non-ministerial department with its own legal status, and accountable to the Scottish Parliament. Much of the Bill is administrative in nature with proposals that are required in any tax system around responsibilities of the tax authority and taxpayers, use of taxpayer information, penalties for non-compliance and appeal procedures.

The proposed Scottish General Anti-Avoidance Rule (GAAR) is the only part of the Bill that relates to the interpretation of tax law, and as such is likely to generate most discussion. The Scottish General Anti-**Avoidance** Rule is designed to be broader in scope than the UK General Anti-**Abuse** Rule.

The Financial Memorandum published alongside the Bill contains some changes to the planned costs associated with the new devolved taxes as presented to Parliament in the LBTT and SLfT Bills. The FM also proposes some new areas of activity (compared with what was presented to Parliament in the earlier FMs) around compliance and investigation, IT, setting up Tax Tribunals and collecting tax from illegal disposals of waste.

INTRODUCTION

The Revenue Scotland and Tax Powers Bill (RSTP Bill) was introduced in the Scottish Parliament on 12 December 2013. The Bill is the third of three related Bills that result from measures enacted in the Scotland Act 2012, providing for new tax powers. The first of those was the Land and Buildings Transaction Tax (Scotland) Act which received Royal Assent on 31 July 2013; the second was the Landfill Tax (Scotland) Act which received Royal Assent on 21 January 2014. The proposed timetable for the Bills associated with the Scotland Act financial powers is presented in the figure below.

The RSTP Bill makes provision for a Scottish tax system to allow for the collection and management of Land and Building Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) which have been devolved to the Scottish Parliament under the Scotland Act 2012. The Scotland Act also includes a power to devolve further taxes, and the administrative framework and powers set out in the RSTP Bill are intended to be sufficiently broad in scope to handle the devolution of further taxes. For example, the Bill covers generic tax issues like dealing with avoidance, handling taxpayer information and dealing with issues relating to appeals, offences and penalties. If the Bill is passed, Revenue Scotland (RS) will be established on a statutory basis (as a non-ministerial department accountable to the Scottish Parliament) as the tax authority responsible for the collection and management of Scotland's two devolved taxes from 1 April 2015.

The Bill as introduced, and the accompanying documents (including Policy Memorandum (PM), Explanatory Notes and Delegation Powers Memorandum) can be accessed on the Scottish Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70929.aspx>

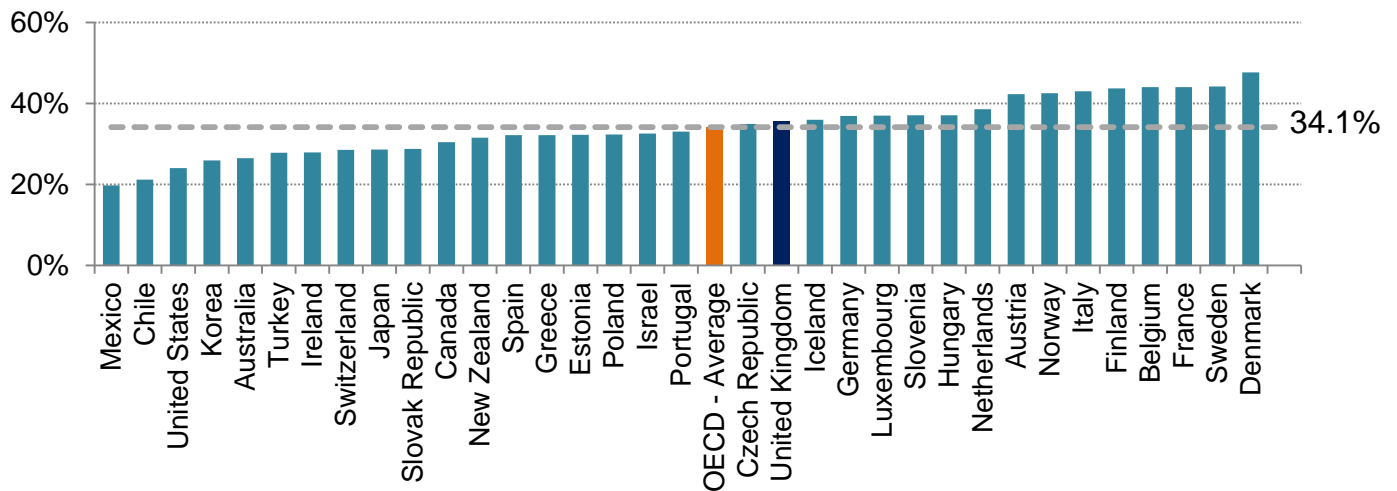
TIMETABLE FOR FINANCIAL PROVISIONS IN SCOTLAND ACT (2012)

		Land and buildings transactions tax	Landfill tax	Revenue Scotland and tax powers	Borrowing powers	Scottish Rate of Income Tax
	Mar	OBR publishes first Scottish tax forecasts – to be updated bi-annually				
	Apr					
	May	Scotland Act (2012) receives Royal Assent				
2012	Jun	Statement on the Scottish Government's approach to taxation				HMRC's programme board meets for first time
	Jul	Consultation				
	Aug					
	Sep					
	Oct			Head of RS appointed		
	Nov	Bill introduction	Consultation			HMRC appoint Accounting Officer for SRIT
	Dec					
	Jan					
	Feb			Consultation		
	Mar					
2013	Apr		Bill introduction			
	May					
	Jun					
	Jul	Enactment				
	Aug					
	Sep					
	Oct	Autumn 2013-Summer 2014: Consultation, Parliamentary scrutiny and approval of regulations				
	Nov					
	Dec		Enactment	Bill introduction		
	Jan					
2014	Feb					
	Mar					
	Apr					
	May					
	Jun					
	Jul			Summer 2014: Enactment		
	Aug					
	Sep					
	Oct					
	Nov				RS established in statute at arm's length from Ministers by 2015	
Dec						
2015	Jan					
	Feb					
	Mar					
	Apr	Introduction of new Scottish taxes, withdrawal of UK taxes, block grant reduction			Introduction of revenue and capital borrowing powers	
	May					
	Jun					
	Jul					
	Aug					
	Sep					
	Oct					
2016	Nov					
	Dec					
	Jan					
	Feb					
2016	Mar					
	Apr					Introduction of SRIT

POLICY CONTEXT

Before looking at the Bill, it is useful to consider some context to taxation in the UK and globally. Modern states could not exist without taxation, which raise the revenues required to pay for public goods and services. The OECD average for tax revenues as a percentage of gross domestic product (GDP) in a member nation state is around 34%. This ranges within the OECD from a low in 2011 of just under 20% of GDP in Mexico to a high of around 48% of GDP in Denmark.

Figure 1: Tax as a % of GDP data, 2011



Source: OECD [Accessed 12 February 2014]

Globalisation and the movement of goods, people and capital means that jurisdictions compete on taxation, as well as the economic infrastructure and skills of citizens. However, as the Mirrlees report (p15) points out

“despite some predictions to the contrary, countries are not being forced inexorably to tax less in an increasingly globalised and competitive world economy. Between 1975 and 2008, taxes rose as a proportion of national income in virtually every OECD country. On average, the tax take rose from 29.4% to 34.8% of national income. In no OECD country was there a significant fall in the tax take over this period. And the variation between countries is striking. Denmark, Sweden, the US and Japan are all rich countries. In Denmark and Sweden, taxes accounted for 48% and 46% of GDP respectively in 2008. In the US and Japan, they accounted for only 26% and 28%. There is no straightforward relationship between the total tax burden and economic performance.

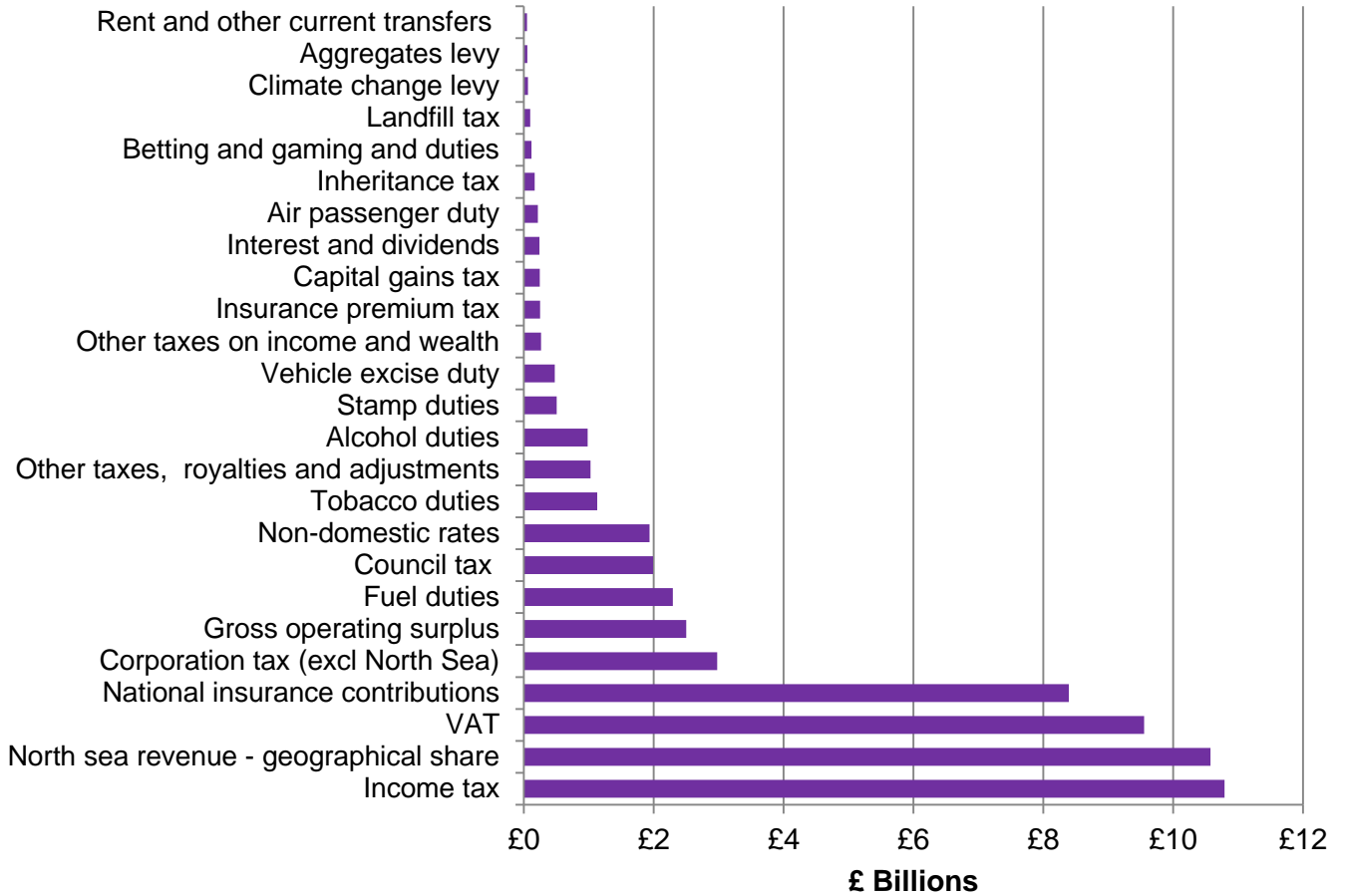
It clearly remains possible for a successful economy to raise 40% or more of national income in tax despite the pressures of globalisation.”

However, as the next sections of this briefing highlight, achieving an effective tax system involves a careful balancing act between economic efficiency and political reality. The Mirrlees Review of the UK Tax system emphasised the importance of economic efficiency and a “whole system” approach to taxation, but also recognised that politics can often get in the way of producing the most economically efficient system. It is politicians who make tax law, but also politicians who need to be elected. It can be damaging to a government to obviously or apparently make a group of people worse off and nearly all tax reforms make some people worse off. The Mirrlees review recognises this, stating in its preface that “those who lose from tax reforms tend to be vengeful while those who gain from them tend to be ungrateful” (Mirrlees preface).

TAXATION IN SCOTLAND

In Scotland, almost 70% of revenue, assuming a geographic share of North Sea revenues, comes from four taxes in Scotland: income tax, VAT, national insurance contributions and North Sea revenue, as shown in Figure 2 below:

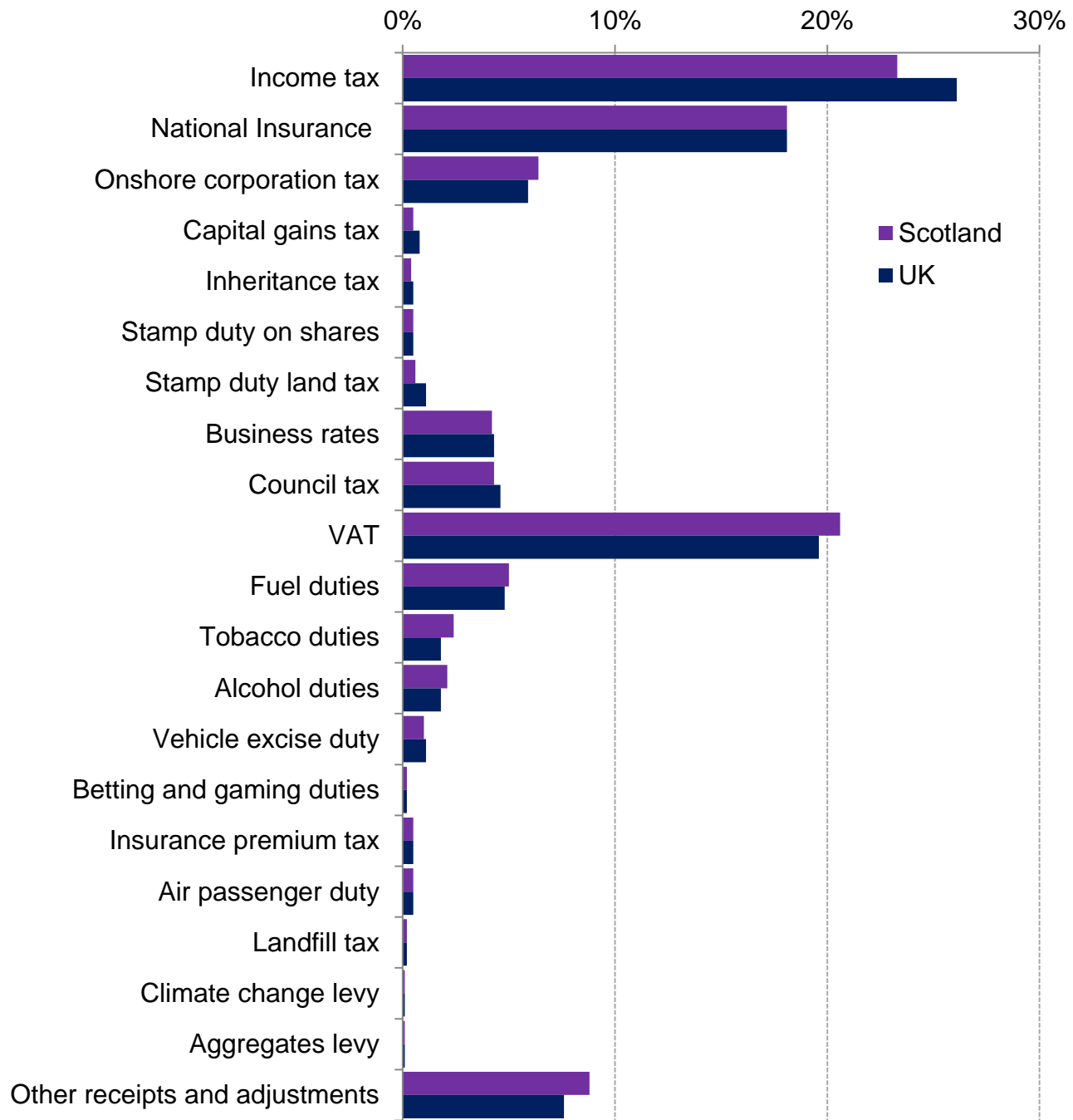
Figure 2: Scottish public sector revenues by source of taxation in 2011-12



Source: Scottish Government [2013a](#)

Figure 3 compares Scottish and UK onshore tax revenues (using onshore revenues allows for direct comparability). In Scotland, income tax raises a slightly lower share of taxes than is the case for the UK as whole, whilst corporate tax, VAT, fuel, tobacco and alcohol all raise a slightly higher share.

Figure 3: Scottish and UK taxes as a % of onshore revenues, 2011-12



Source: Adapted from Scottish Government 2013b

At present the only fully devolved taxes are council tax and non-domestic rates, accounting for 6.9% of total Scottish revenues, assuming a geographic share of North Sea revenues. If the newly devolved taxes (Stamp Duty land tax and Landfill tax) are added, this would rise to 7.5% of total revenues (adapted from GERS, Scottish Government 2013b).

Looking at the taxes that have been devolved since 1999 and are due to be devolved from 2015, shows that the Scottish Parliament has significant control of taxes on property. This is covered in the recent IFS report on *Taxing an independent Scotland* (IFS, 2013). The Scottish Parliament has made some different policy choices to other parts of the UK in relation to council tax and non-domestic rates. Specifically:

- There is some difference in the treatment of second homes in council tax and empty properties in both council tax and business rates

- When council tax benefit was abolished as a Britain-wide scheme in April 2013, Scotland (and Wales) opted to run a single scheme across the whole of Scotland, unlike England where local authorities were required to design their own local rebate scheme.
- Local authorities in Scotland have implemented a Council tax freeze over a sustained period which has meant that Scottish Council Tax bills are on average 20% lower in Scotland than England.
- Business rate reliefs in Scotland for low-value properties are more generous in Scotland than in England or Wales. There is also a “cliff-edge” system in Scotland (not in England) which, for example, results in the business rate bill on a property with an estimated annual market rental value of £18,001 being more than £2,000 higher than that on a property with an £18,000 valuation. This “slab” system is the opposite of what the Scottish Government has sought to introduce with the Land and Building Transaction Tax (LBTT) where the slab structure of Stamp Duty is to be abolished.¹
- The Scottish Business Rates Incentivisation Scheme allows local authorities to keep (for a period) half of any additional business rates revenue they collect by attracting more businesses into the area. This serves a similar purpose to England’s Business Rates Retention Scheme but works somewhat differently.

However, the IFS also point out that

“the Scottish parliament has eschewed more fundamental reform of these taxes. As in England (though not Wales), council tax is still based on 1991 property values, with the same ratio of liabilities for different bands that has been in place since council tax was introduced and the same 25% discount for sole occupants. And as in England and Wales, business rates are still levied on the basis of assessed market rental values of properties, and at the same percentage of value as in England (Wales’s is marginally different), with (albeit different) discounts for low-value properties. Indeed, following a consultation on business rates policy, the Scottish government recently reaffirmed its commitment to maintaining business rates on that basis in the future, continuing to match the rate set in England and (like both England and Wales) postponing the next revaluation from 2015 to 2017.”

Under the terms of the Scotland Act 2012, the third main tax levied specifically on property will be devolved to the Scottish Parliament. The Land and Buildings Transaction Tax (Scotland) Act received Royal Assent on 31 July 2013 and is expected to be operational from April 2015. The LBTT, like the Stamp Duty Land Tax it will replace is a tax levied on the value of property transactions. The IFS consider LBTT to be a significant improvement on Stamp Duty Land Tax due to its progressive nature, whereby each rate of LBTT applies only to the part of the sale price above the corresponding threshold. This contrasts with Stamp Duty Land Tax, whereby the relevant tax rate applies to the entire sale price, so that transactions either side of the threshold attract very different liabilities. This “slab” structure can mean that house prices £1 higher than a threshold can translate into a £40,000 higher tax bill.

Scottish Landfill Tax, like LBTT, is expected to be operational from April 2015 after the Landfill Tax (Scotland) Act received Royal Assent on 21 January 2014. This will create a tax regime that is essentially similar to the UK landfill tax, and the Scottish Government has said that it will set rates no lower than those in place for UK Landfill tax, currently £2.50 per tonne of inactive waste and £80 per tonne for active waste.

¹ In a speech to Parliament on his approach to taxation on 7 June 2012, Mr Swinney said the following with regard to LBTT: “our consultation signals our preference for a move from the UK’s slab tax approach to a progressive system of taxation where the amount paid is more closely related to the value of the property and therefore to the ability of the individual to pay.”

In addition, the Scotland Act 2012 will make income tax a “shared” tax from 1 April 2016, with the basic, higher and additional rates of UK income tax reduced by 10 percentage points (except on savings and dividend income) in Scotland. The devolved budget will be correspondingly reduced with the Scottish Government then able to decide whether to replace the lost revenue with a 10 percentage point Scottish Rate of Income Tax (SRIT), applying to all taxable income (except savings and dividends) at the basic, higher and additional rates, or whether to set a higher or lower SRIT than that. Revenue Scotland will not, however, be responsible for administering SRIT. Tax revenues from the SRIT will accrue to the Scottish Government but will continue to be collected by HMRC.

The latest OBR forecasts for Scottish taxes estimate that the SRIT at 10 percentage points will generate £4,918m in 2016-17 (OBR 2013). This makes it by value the most significant tax power to be devolved to the Scottish Parliament since devolution. However, the IFS have argued that the proposed SRIT lacks flexibility. They state:

“while the SRIT is a forceful instrument, it is not a flexible one. There is no power to change the definition of taxable income or the tax-free personal allowance, and the SRIT must apply equally to basic, higher and additional rates. So 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. This is in line with the recommendations of the Calman Commission on Scottish devolution, which argued that ‘redistribution of resources across society ... should remain a function of national government, because it is an aspect of the social Union to which Scotland belongs.’ 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” (Institute for Fiscal Studies, 2013).

ADAM SMITH’S CANONS OF TAXATION

The Policy Memorandum (para 7) to the RSTP Bill states that the Bill had been designed to reflect Adam Smith’s four maxims with regards to taxation: certainty, convenience, efficiency and proportionate to the ability to pay. In a speech to the Scottish Parliament on 7 June 2012, the Cabinet Secretary for Finance outlined the Scottish Government’s approach to taxation. He stated:

“As with the entire approach the Government takes and intends to take on taxation, these proposals are firmly founded on principles, Scottish principles, that have stood the test of time. Adam Smith in 1776 in his “Inquiry into the nature and causes of the Wealth of Nations”, set out four maxims with regard to taxes; the burden proportionate to the ability to pay, certainty, convenience and efficiency of collection.

Smith’s maxims allow us to build a system that will meet the needs of a modern, twenty-first century Scotland, grounded on solid foundations. To those four principles this government will add our core purpose of delivering sustainable economic growth for Scotland and meeting the distinctive needs of Scotland” (Scottish Government 2012a).

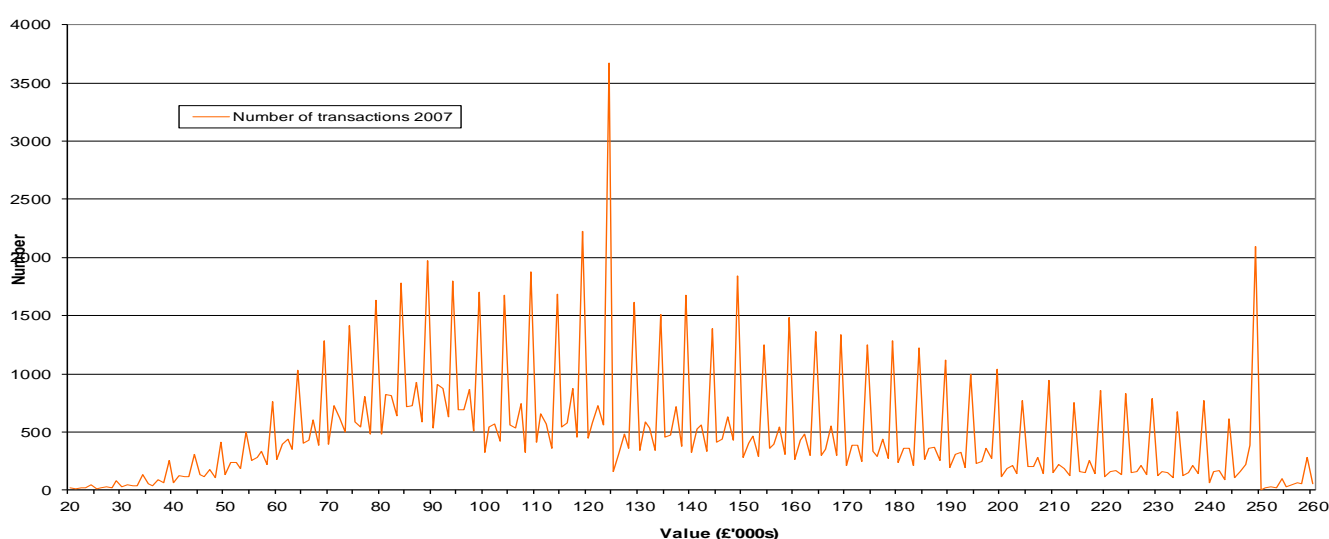
The adviser appointed by the Finance Committee to support scrutiny of the RSTP Bill in his initial paper to committee makes the point that these canons appear reasonable and uncontroversial on paper, but in their interpretation and application they can be more complex (McEwen 2014). One of the complexities is that the canons can conflict. For example, in an attempt to make VAT proportionate, certain items are charged at a zero or reduced rate, eg food and domestic fuel, but this introduces complexity and hence raises uncertainty and inefficiency.

The most difficult of these canons to apply is that taxation should be proportionate to the ability to pay. An example of this is assessing tax liability on an individual with substantial assets but little income versus another individual who may have substantial income but few assets. A judgement on what an individual should be liable to pay in tax can be dependent on political and social views. You see this in terms of Council Tax, which is a levy on property that takes no account of income. As such, it is often an unpopular tax with pensioners who may have less income than they would have had during their working lives, but whose property may be valuable. These kind of judgements are of less relevance to the RSTP bill which is more about tax administration, however, it will be a significant consideration when rates and threshold are being set for the devolved taxes – which will be done via the secondary legislation of the Land and Buildings Transaction Tax (Scotland) Act and Landfill Tax (Scotland) Act.

In terms of the other maxims of taxation, the provisions of the Bill will meet these criteria in the context of the devolved taxes if 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.

The adviser states in his paper to Committee that “a tax is inefficient if it changes taxpayer behaviour in unintended ways”² (McEwen 2014). Stamp Duty has been criticised in this regard as it has been claimed that it leads to bunching of sale prices just below the rate thresholds and makes it challenging for home builders to sell homes in the £125k to £135k and £250k and £270k price ranges because buyers feel they are paying too much for very little advantage which results in a skewed pricing structure. This is reflected in figure 4 below which shows the large spike in transactions taking place just under the rate increase threshold amounts. In his review of the UK taxation, Mirrlees described the slab structure for SDLT as “an absurd structure for any tax” (Mirrlees 2011). As such LBTT, with its proposed progressive banding system, should allow the market to operate with fewer distortions. However the slab system for Business rate liabilities in Scotland (mentioned above) could be said to contradict the LBTT approach.

Figure 4: House sales by value, Scotland 2007



Source: Scottish Government 2012b

Note: This figure is based on data from 2007 before the housing market downturn and better illustrates the implications of a slab rate system than the later housing market data.

² This is economic inefficiency. A tax can be inefficient in another sense if the cost of collection and compliance is disproportionate to the tax collected. CGT with its requirements for historic information and valuations but low yield is criticised on this ground.

BILL PROVISIONS

COVERAGE OF BILL

The Bill is divided into 12 parts which are as follows:

- Part 1 provides an overview of the Bill's structure
- 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 the composition and operational arrangements of the new two-tier Scottish Tax Tribunals
- Part 5 outlines the general anti-avoidance rule (GAAR)
- Part 6 sets out the powers and duties of taxpayers and RS, outlines the arrangements and time limits for taxpayer self-assessments and RS assessments and the arrangements for handling of double or overpayment of tax
- Part 7 outlines the investigatory powers of RS
- Part 8 sets out the process for issuing penalties in respect of non-compliant behaviour.
- Part 9 deals with interest on payments due to or by RS
- Part 10 contains the provisions for debt enforcement by RS
- 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.

The Bill also proposes a number of subordinate legislation provisions which are outlined in the Delegated Powers Memorandum. There has been some concern expressed in informal briefings with the Finance Committee on the Bill about the volume of secondary legislation proposed and that some fairly fundamental aspects of the new tax system might be rushed through without them being afforded due consideration. Until these areas are clarified and a fuller picture emerges, it is argued, there is uncertainty about whether the Adam Smith maxims of certainty, efficiency, convenience and proportionality will be met.

REVENUE SCOTLAND AS A NON-MINISTERIAL DEPARTMENT

RS is currently an administrative Division within the Scottish Government, but Section 2 (in Part 2) of the Bill establishes RS as a non-ministerial department with its own legal status, and accountable to the Scottish Parliament. Schedule 1 provides for five to nine members of RS appointed by Scottish Ministers, one of whom is to be appointed by Ministers as the Chair. Elected representatives, civil servants, those holding political office and those who are or have been insolvent are disqualified from being members of RS. 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 approved by Ministers.

RS's general function is the collection and management of the 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. Other particular functions for RS are:

- Providing information, advice and assistance to the Scottish Ministers relating to tax
- Providing information and assistance to other persons relating to the devolved taxes

- Efficiently resolving disputes relating to the devolved taxes
- Protecting the revenue against tax fraud and tax avoidance

RS will be required to produce a corporate plan (section 11), approved by Ministers and published and laid before the Scottish Parliament. It must also produce and lay an annual report (section 12) in Parliament.

RS will employ a Chief Executive who will not be a member of the Board of RS. The reasoning behind this is that in terms of proper lines of accountability, the Chief Executive is accountable to the Board, who are accountable to the Scottish Parliament. Also part of the Government thinking is that the Board may wish to consider the performance of the Chief Executive at a Board meeting, which would make the Chief Executive's presence on the Board inappropriate. However, against this view it was argued that Chief Executives usually sit on Boards and sub-committees of Boards can consider Chief Executive performance. Also, the Chief Executive would have the detailed knowledge of the day to day running of RS, so not having him/her on the Board might mean the Board is not sufficiently grounded in the detailed issues of the organisation.

RS is required by section 10 of the Bill to prepare, publish and keep up to date a Charter of Standards and Values. The Charter is required to set out the standards of behaviour and values that RS will aspire to when dealing with people in the exercise of its functions and also the standards and values which it expects people to aspire to when dealing with RS. The adviser notes in his paper (McEwen 2014) that Taxpayers Charters or Codes are increasingly common features of tax systems, but notes that there is no requirement in the Bill to consult with stakeholders in preparing or revising the 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" (McEwen 2014).

RS is also given a general power in section 12 to publish other reports and information it considers relevant to the exercise of its functions. The adviser highlights the benefits that have arisen since HMRC started publishing their internal manuals which guide their staff in interpreting and applying tax legislation. This has proved extremely helpful to taxpayers and advisers in avoiding unnecessary misunderstandings and inefficiencies. While section 12 empowers RS to publish internal guidance, there is no obligation to do so other than in the case of its delegations to the Keeper of the Registers of Scotland (RoS) 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" (McEwen 2014).

REVENUE SCOTLAND AND TAXPAYER INFORMATION

Part 3 provides for the use of information held by RS, but restricts the disclosure of protected taxpayer information. Protected taxpayer information is any information held by RS in connection with a function of RS by which any person may be identified. Section 13 allows for information (whether taxpayer information or other information) to be used within RS and its delegated organisation – namely the Keeper of the RoS and SEPA. However, information must not be disclosed unless legally permitted. The Bill defines the following circumstances where 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 RS or another person exercising the functions on behalf of RS
- If it is made to HMRC (reflecting that in certain circumstances HMRC may disclose taxpayer information to the Scottish Ministers).

Section 15 prohibits the disclosure of protected taxpayer information by an official of RS. The Bill does not prohibit disclosure by any other person. As such “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” (McEwen 2014).

THE SCOTTISH TAX TRIBUNALS

Where disputes occur in devolved tax cases, and where internal review and if appropriate mediation (see Part 11 on Review and Appeal covered below) fail to resolve a matter, then taxpayers will have a right of appeal to the Scottish Tax Tribunals. The Scottish Government has decided that 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 presently before Parliament. The Tribunals (Scotland) Bill makes provision for two unified Tribunals into which the existing devolved Tribunals will be transferred in due course. There is no mechanism for transferring reserved UK Tribunals or jurisdictions bestowed upon UK Tribunals into the new structure. It has, therefore, been decided by the Scottish Government to establish the Scottish Tax Tribunals as stand-alone devolved tribunals that will transfer into the proposed new tribunal arrangements when they come into force. The provisions within the RSTP Bill are essentially interim measures until the Scottish Tribunals structure is put in place via passage of the Tribunals (Scotland) Act. The expectation is that all devolved tribunals will merge into the new structure in 2016.

In terms of the scope of the Tax Tribunals, Professor McEwen states the following:

“If viewed as a standalone tribunal structure to handle LBTT and SDLT 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”

Part 4 and Schedule 2 of the RSTP Bill 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 (McEwen, 2014). The Tribunal (Scotland) Bill concluded stage 2 of its passage through Parliament on 4 February 2014.

THE SCOTTISH GENERAL ANTI-AVOIDANCE RULE (GAAR)

The adviser makes the point in his briefing that the GAAR is the only provision in the Bill that relates to the interpretation of tax law, and as such it is the element of the legislation that is likely to generate most comment from stakeholders. The traditional view of tax law in the UK was that the canon of “certainty” required a very strict, legalistic interpretation of statute, with the benefit of the doubt being given to the taxpayer. This gave scope in the system for tax avoidance, which could be achieved when the strict letter of the law could be escaped, even

though the spirit of the law might have been breached. Since the 1980s, however, legal interpretation has moved more in the direction of a purposive or substantive interpretation of tax law.

Part 5 of the Bill establishes the Scottish GAAR. The GAAR gives RS powers to counteract tax advantages in relation to the devolved taxes that arise from tax avoidance schemes that are artificial. This Part presents the criteria for determining whether a tax arrangement is artificial, and whether a tax advantage has been obtained.

The Policy Memorandum states that tax avoidance occurs where a taxpayer seeks to reduce, delay or avoid a tax liability by taking action which the taxpayer believes is legal, but which the tax authorities regard as not in keeping with the spirit or the intention behind the relevant tax legislation. The Policy Memorandum (paragraph 59) also provides the following reasons why tackling tax avoidance is important:

- 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.

These criteria could apply to any jurisdiction and it is important to note that “by international standards, the UK system has relatively few loopholes and opportunities for avoidance” (Mirrlees 2010, p7). However, given the global nature of tax competition, it is important not to be perceived as a “soft touch”.

The Scottish General Anti-**Avoidance** Rule is designed to be broad in scope. 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” (section 58(1)). RS does not, therefore, 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”. The Policy Memorandum argues that this a useful distinction, because some tax avoidance schemes have had apparently legitimate commercial or other purposes and taxpayers have tried to argue that the tax advantage obtained was secondary.

The Scottish GAAR defines a tax avoidance arrangement as being “artificial” (section 59) if it meets one or both of the following conditions:

- if the entering into or carrying out of the arrangement 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 of the tax provisions or with any principles on which the tax provisions are based (including implied principles).
- if the arrangement lacks commercial substance (examples in section 59(4))

Sections 61 to 65 outline the powers by which RS might counteract the tax advantages sought via tax avoidance. If RS 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, RS can charge the taxpayer an amount of tax as though the tax avoidance arrangement did not exist. Where RS determines an artificial arrangement exists, it must give written notice to the taxpayer outlining why the arrangement is considered artificial and what the tax advantage is, what counteraction is

proposed and what action the taxpayer can take to avoid counteraction. The notice to the taxpayer must also set out the period the taxpayer has in which to make a written representation to RS in response. RS must take any written notice into account. If RS decides to go ahead and seek to collect tax due, the taxpayer will be able to appeal that decision (see appeals below). Concern has been expressed in some informal submissions to Committee about the unchecked degree of control RS has over the process (i.e. no advisory panel proposed as in the UK) and that Scottish Courts “must” take account of non-statutory guidance in interpreting “reasonableness” and “lacks commercial substance” as well as the wider provisions of the GAAR.

The UK General Anti-**Abuse** Rule (GAAR), which was recently introduced via sections 206-215 of the Finance Act 2013, 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. Professor McEwen’s paper describes the “double reasonableness” test in the UK legislation: “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.” In the UK legislation, all applications of the GAAR must be referred to the GAAR advisory panel with the intention that over time the opinions of the Panel and guidance given by HMRC should reduce uncertainty in the application of the GAAR.

The Scottish Government’s consultation on the Bill had a clear majority (72%) in favour of a narrowly focused Scottish GAAR similar to the UK General Anti-Abuse rule as enacted in the Finance Act 2013. “There was no support expressed for a more widely drawn provision” (PM, para 70).

Adviser view on GAAR

In his briefing paper to the Finance Committee, the adviser states that “the initial difference between” the UK GAAR and Scottish GAAR “seems purely terminological in that the UK legislation refers to *tax arrangements* and section 58 of the RSTP Bill to *tax avoidance arrangements*.” Both GAARs apply where the main purpose or one of the main purposes of the arrangement is obtaining a tax advantage.

Professor McEwen argues that the main differences between the Scottish and UK GAARs relate to 1) the contrast in 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.

As covered above, the UK rule defines abusive in terms of the double reasonableness test: specifically that the arrangement cannot *reasonably* be regarded as a *reasonable* course of action. The test is whether a dispassionate observer would find it reasonable or not that particular actions were judged reasonable. The RSTP Bill (section 59) provides for the two alternative tests summarised above: “Condition A”, 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 second “Condition B” is whether the arrangement lacks commercial substance. Of these two conditions, Professor McEwen states:

“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.

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.

.....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 to ensure that Conditions A and B are judged in an unbiased way. ”

Disclosure of Tax Avoidance Schemes (DOTAS)

Another method for tackling tax avoidance is through use of prior notification schemes, whereby those offering tax planning schemes must submit the planned transaction to the revenue authority in advance and request confirmation that the GAAR will not be applied. The rationale for this is to enable the tax authority to quickly identify tax avoidance schemes and any potential loopholes in the tax system. The UK operates a Disclosure of Tax Avoidance Schemes (DOTAS) regime which applies to certain taxes (SDLT, but not Landfill tax). The Scottish Government has expressed its view that a DOTAS scheme is not necessary for Landfill tax (where tax evasion is the main issue rather than tax avoidance), but that it is considering introducing a DOTAS scheme for LBTT. However, this is not on the face of the Bill as introduced, but is being considered as a possible amendment for Stage 2, which has raised some concerns from stakeholders about the level of scrutiny that will be applied to the proposals.

POWERS AND DUTIES OF TAXPAYERS AND REVENUE SCOTLAND

Part 6 of the Bill makes provision regarding assessments of the devolved taxes, powers of enquiry by RS into taxpayer self-assessments, powers and duties for amendment and correction by taxpayers and RS and claims for relief from double assessment and for the repayment of tax.

The Bill proposes seven general duties in relation to the devolved taxes. These are a reasonably generic summary of what a taxpayer must do in an effective self-assessment tax regime (McEwen 2014). Taxpayers must:

- notify RS of taxable activity

- inform RS if tax is due
- make tax returns on time
- take reasonable care to ensure that the information made in tax returns is accurate and complete
- assess any tax due to RS
- pay any tax due when required to do so
- keep adequate records relating to tax

Taxpayers will have a duty to keep records relating to tax, and records must be kept for a period of five years from the date of the original or amended tax return (whichever is later).

Chapter 3 provides a definition of “filing date”, which is the date on which tax returns for the devolved taxes are due. 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 prescribe (different provisions may be made for different devolved taxes). RS may correct any error or omission in a return by notice to the taxpayer and the correction is to be treated as an amendment to the return (section 78). RS has three years from the filing of the return to make the correction.

Chapter 4 provides that RS may issue a notice of the intention to enquire into a tax return within 3 years of the filing date or when the tax return was made, whichever is later. On completion of an enquiry a closure notice must be issued which must make any required amendments or confirm no amendments are necessary. The taxpayer may apply to the Scottish Tax Tribunals to have a closure notice issued.

The adviser’s paper (McEwen 2014) provides more commentary on Part 6 of the Bill, which was broadly supported in the Scottish Government’s consultation. The adviser does make the following observation on the issue of time limits which is worth drawing attention to in this briefing:

“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.”

Chapter 5 provides for RS to issue a determination of tax chargeable where a person has not made a tax return and the filing date has passed. RS have 5 years from the filing date to issue a determination. Chapter 6 provides for RS to be able to issue a RS assessment if they believe a loss of tax or excessive repayment of tax have been brought about by either careless or deliberate behaviour. In the case of careless behaviour RS have 5 years from the filing date or when the return was made, whichever is later, to issue an assessment. In the case of deliberate behaviour RS have 20 years from the filing date or when the return was made, whichever is later, to issue an assessment.

INVESTIGATORY POWERS OF REVENUE SCOTLAND

Part 7 of the Bill provides for RS to have powers in certain circumstances to request, inspect and copy documents and digital records as well as to enter business premises and inspect assets and take samples, all for the purposes of determining tax liabilities. RS staff, or 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

The Bill also restricts the investigatory powers of RS, including protecting in some circumstances particular groups of people, like auditors and legal advisers and also preventing some types of documents (journalistic or health records) from being subject of an information notice. In a difference from the UK system, there is no protection in the Bill for information and documents relating to communication between a client and tax adviser in respect of giving or obtaining tax advice. This issue is discussed in the adviser paper (McEwen, para 81-82).

It is intended that regulations will prescribe the circumstances in which Scottish Ministers can use investigatory powers – 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 RS or the bodies to which powers have been delegated.

The Bill creates a criminal offence when 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 RS or a delegated body in relation to a devolved tax investigation.

Section 144 outlines the terms for reviewing and appealing against an information notice.

PENALTIES FOR NON-COMPLIANCE

Penalties are an important part of any tax system in promoting compliance and deterring non-compliance. Part 8 provides for penalties for a range of non-compliant behaviours (see the list below). Much of the detail of the penalty system will be specified in regulations, however the Bill shows that the intention of the Scottish Government 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” (McEwen 2014).

Examples of non-compliant behaviour 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.

The Bill proposes three types of financial penalties which will apply to the devolved taxes for some of the non-compliant behaviours listed above:

- 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.

Details of these penalties will be set out in regulations. The expectation in the Policy Memorandum is that different types of penalties will form a hierarchy, with the least serious being the fixed penalties and most serious penalties being based on a percentage of the tax calculated as being due.

Unlike the earlier chapters in Part 8, chapter 4 provides for amounts of penalties, their assessment and enforcement. For example, 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 after the initial penalty until the penalty is paid. Penalties are set at up to £3,000 for careless or deliberate inaccurate in documents. There is a provision for these penalties to be increased in line with inflation. However, it is not clear why some penalty amounts are specified on the face of the Bill and some are left to regulations.

INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

Part 9 of the Bill sets out the provisions dealing with interest on payments due to or by RS. Interest is not part of the penalty or sanction but is to compensate RS or the taxpayer for the loss of the use of money.

RS will be able to charge interest on late payment of tax or penalties with respect of the devolved taxes. The interest rate for late payment of penalties and the dates from which interest on penalties become payable will be outlined in regulations. Interest must also be paid to the taxpayer, whether involving the repayment of tax paid, repayment of a penalty or repayment of interest (whether on tax or penalty).

Different interest rates will be applied to different devolved taxes and for different penalties, and all will be determined via regulations. The key challenge in setting interest rates is making sure the interest rates take into consideration market rates of interest and do not incentivise unintended behaviours. For example, if the rate on late payments is too low, businesses and others might opt to use late payment of tax as a form of cheap finance. Likewise, if the rate on tax repayments is higher than the market rates, people might opt to deliberately overpay tax. As such, it is likely that the interest rates on late payments will be higher than those paid on repayments.

ENFORCEMENT OF PAYMENT OF TAX

Part 10 relates to the collection of unpaid taxes and allows RS, after seeking other means of gaining taxpayer compliance, to seek a summary warrant from the sheriff court and to pursue court action in the sheriff court (or the Court of Session for larger sums of tax or penalties due) to collect unpaid taxes and/or penalties owed.

This Part also 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 cannot be asked for contact details. If the third party fails to comply, a fixed penalty of £300 can be applied, and Ministers can increase the penalty in line with inflation.

REVIEWS AND APPEALS OF REVENUE SCOTLAND DECISIONS

Part 11 sets out the processes for situations where a taxpayer seeks a review or wishes to appeal a RS decision. After a decision, a taxpayer can request a review, which will be carried out by a member of RS staff who was not involved in the initial decision. If the review fails to resolve the dispute, RS may offer to enter into mediation with the taxpayer. The accompanying Policy Memorandum sets out that the mediator in these cases will be an independent third party but will be appointed by RS. The taxpayer can choose to take up an offer of mediation or not. If not, or if the mediation process fails to resolve the dispute, the taxpayer has a right of appeal to the Scottish Tax Tribunal.

Section 198 of the Bill lays out appealable decisions. The taxpayer must give notice of a review to RS within 30 days of the date the decision was notified to the taxpayer. The taxpayer notice must specify grounds for review. RS must notify the taxpayer of its view on the review within 30 days of its receipt of the review notice, and must notify the taxpayer of the outcome of the review within 45 days of notifying the taxpayers of its initial view of the matter.

Section 210 provides that where there is a review or appeal the tax, penalties and interest due remain payable although there is a power for Scottish Ministers to use regulations to allow for the postponement of payment of tax, penalties and interest while an appeal or review is heard.

FINAL PROVISIONS: SUBORDINATE LEGISLATION AND ANCILLARY POWERS

Section 218 outlines the terms of the subordinate legislation attached to the Bill and indicates whether negative or affirmative procedure applies.

FINANCE COMMITTEE CONSULTATION

The Finance Committee issued a call for evidence on the Revenue Scotland and Tax Powers Bill in December 2013, with a closing date of 19 February 2014 (Scottish Parliament Finance Committee, 2013). The submissions will be summarised in a paper to be produced by the adviser, Professor McEwen.

FINANCIAL MEMORANDUM

The Financial Memorandum (FM) accompanying the Bill sets out the anticipated costs relating to the introduction of the Scottish Landfill tax within three categories:

- Financial implications for the Scottish administration
- Costs on Local Authorities and other public bodies
- Costs on other bodies, individuals and businesses

COSTS TO THE SCOTTISH GOVERNMENT

The FM presents the latest estimates for collecting and managing the devolved taxes. This updates the estimates provided in June 2012 and in the earlier FMs for implementing the financial provisions of the Scotland Act 2012, and published alongside the LBTT (Scotland) Bill and Landfill Tax (Scotland) Bill.

Original estimates

In June 2012, the Government placed in SPICe (Scottish Government 2012d) a document containing the estimated costs of administering the two devolved taxes. The document sets out the estimated costs (to April 2020) for the administration of the devolved taxes by HMRC (“Option A”) as compared to the estimated costs for the establishment of RS and administration of the devolved taxes by it, RoS and SEPA over the same period (“Option B”). Whilst the document did not provide a detailed breakdown of the basis for these estimated costs, the estimate for option B was 25% lower than for option A (£16,706,000 as compared to £22,274,000).

The FMs for the LBTT and SLfT contained identical figures for the setting up and running of Revenue Scotland over a five-year period. When added to the estimated set-up and running costs for the collection of both taxes by RoS and SEPA, the overall total cost was £16,706,000.

Costs to the Scottish Government in RSTP Bill

The RSTP Bill’s FM states that “the initial estimates of the costs of establishing and running the devolved taxes have been reviewed and revised.” (para 10) It goes on to state in paragraphs 11 and 12 of the FM that:

“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.”

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.”

The FM provides a table summarising the estimated costs of the Bill, which is reproduced below.

Table 1: Summary of costs associated with establishing and running devolved taxes

Summary of costs Purpose	Total cost over period July 2013-March 2020 (£000)
Revenue Scotland staff set-up	1,810
Revenue Scotland non-staff set-up	455
Revenue Scotland staff running costs	6,550
Revenue Scotland non-staff running costs	3,700
RoS staff set-up	250
RoS non-staff set-up	85
RoS staff running costs	1,200
RoS non-staff running costs	425
SEPA set-up	625
SEPA running costs	1,600
Total for revisions of costs previously estimated for LBTT and SLfT	16,700
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

When asked in stage 1 evidence on the LBTT Bill whether he felt the FM's figures relating to the set-up and running costs of RS were robust, the Cabinet Secretary replied "I do, yes." He also explained that "there is a line for contingency throughout the figures...I think that position is reasonable." (Scottish Parliament Finance Committee 2013b)

In oral evidence on the SLfT Bill, RS stated:

"I emphasise that all the Revenue Scotland and SEPA figures in the memorandum represent our best estimates at the time the legislation was being put together...As we work through things in more detail, we will refine our estimates and understanding, but the breakdown on page 25 is the current planning assumption." (Scottish Parliament Finance Committee 2013c)

REVISED COSTS PREVIOUSLY ESTIMATED FOR LBTT AND SCOTTISH LANDFILL TAX BILLS

Revenue Scotland estimated set-up costs

The FM provides tables containing the total estimated set-up costs for RS after paragraph 19 (tables 2 and 3). It states that 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."

The total estimated set-up costs for Revenue Scotland in the RSTP Bill's FM are £610,000 higher than those in the LBTT and SLfT Bills' FMs as shown in the table below.

Table 2: Revenue Scotland staff set-up costs

£'000s	LBTT/SLfT	RSTP	Difference bw LBTT/SLfT & RSTP
Revenue Scotland staff set-up costs			
Senior Management	240	230	-10
Tax Administration Programme	210	200	-10
Revenue Scotland Development	425	645	220
Administrative Support	85	40	-45
Revenue Scotland Appeals, Disputes, Compliance and Corporate Support	240	405	165
IT Development	n/a	230	230
Band C Change Managers	n/a	60	60
Total	1200	1810	610

RS estimated non-staff set up costs remain the same as presented in the earlier LBTT and Scottish Landfill tax Bills, as shown in the table below

Table 3: Revenue Scotland estimated non-staff set-up costs

Revenue Scotland estimated non-staff set-up costs £'000s	LBTT/SLfT	RSTP	Difference bw LBTT/SLfT & RSTP
Systems	80	80	0
Communications and branding	75	75	0
Standard running costs for unit	200	200	0
IT Desktop and Telephony set-up costs	100	100	0
Total	455	455	0

Revenue Scotland estimated running costs

The FM provides tables (tables 4 and 5) estimating the annual running costs for RS (staff and non-staff). Changes to some of the budget line titles means that there is not always direct read across, but the total annual estimated running cost in the RSTP Bill's FM is £160,000 lower than stated in the LBTT/SLfT Bills' FMs. Non-staff annual running costs are unchanged from the earlier FMs.

Table 4: Revenue Scotland estimated annual staff and non-staff running costs

Revenue Scotland estimated staff running costs (£,000s)	LBTT/SLfT	RSTP	Difference bw LBTT/SLfT & RSTP
Period: annually from April 2015			
Senior Management	220	90	-130
Compliance and debt management	350	390	40
Disputes and Appeals	280	200	-80
Operational Policy		200	200
Corporate and Business Services		430	430
Communications and Complaints	240		-240
Planning and Development	125		-125
Administrative support	100		-100
Contingency	155		-155
Total	1470	1310	-160

Revenue Scotland estimated non staff running costs	LBTT/SLfT	RSTP	Difference bw LBTT/SLfT & RSTP
Period: annually from April 2015			
Shared services		230	230
Professional services		220	220
Administration		115	115
Communications and Branding		75	75
IT systems support	50	50	0
Website maintenance & production and updating of online guidance	50	50	0
Standard running costs	170		-170
Appeals against LBTT charges	120		-120
Legal outsourcing/debt recovery contracts	100		-100
Contingency	250		-250
Total	740	740	0

Registers of Scotland estimated set-up and running costs

Tables 6 and 7 in the FM provide the estimated costs to the Scottish Government of RoS collecting LBTT on behalf of RS. Reading across the FMs provided in the LBTT and SLfT Bills shows there are no changes in the latest plans.

Table 5: RoS estimated set-up and running costs

RoS estimated staff set-up costs	LBTT/SLfT	RSTP	Difference bw LBTT/SLfT & RSTP
Staff costs of planning, overseeing, and implementing changes prior to 2015	250	250	0
Total	250	250	0
RoS estimated non-staff set-up costs			
Familiarisation of solicitors with new systems	10	10	0
Build cost of new LBTT system	75	75	0
Total	85	85	0
RoS estimated staff running costs			
<i>Period: annually from April 2015</i>			
e-Services Helpdesk	130	130	0
Provision of complex enquiry helpdesk	60	60	0
Additional costs associated with system support and new chargeable transactions	20	20	0
Intake process cost	30	30	0
Total	240	240	0
RoS estimated non-staff running costs			
<i>Period: annually from April 2015</i>			
Additional IT maintenance & support costs	20	20	0
Annual cost of providing data to HMRC	15	15	0
Additional costs associated with new chargeable transactions	50	50	0
Total	85	85	0

SEPA estimated set-up and running costs

Tables containing the estimated costs to the Government of SEPA collecting SLfT on behalf of RS are provided after paragraph 27 of the FM. Again, changes to some of the budget line titles mean that there is not always direct read across, but the total estimated set-up cost is £85,000 higher in the RSTP Bill's FM than in the SLfT Bill's FM. SEPA's total annual estimated running costs are also £20,000 higher in RSTP Bill's FM than in the SLfT Bill's FM.

Table 6: SEPA estimated set-up and annual running costs

SEPA estimated set-up costs	LBTT/SLfT	RSTP	Difference bw LBTT/SLfT & RSTP
Bill Development, Business Development, Operational Guidance		55	55
SLfT Management Band B		40	40
SLfT Specialist		55	55
Project Management		90	90
Setting up IT systems/Information Systems	350	350	0
Staff Training/Training	25	15	-10
Corporate Legal Support		20	20
Develop guidance for staff	75		-75
Contribution to policy & legislative development in 2013-14	50		-50
Costs associated with promoting new Scottish Landfill Tax arrangements	15		-15
Training for landfill operators staff	25		-25
Total	540	625	85
SEPA estimated running costs			
Period: annually from April 2015			
Quarterly waste data SLfT tax return processing and initial sense check		30	30
Finance/Payment issues/reconciliation		0	0
General enquiries from taxpayers, helpdesk/Enquiries, Registration, Compliance checking	35	35	0
SLfT Specialists. Site audits, policy decisions/Rev Scot liaison/external liaison		85	85
Staff management. Managing liaison with Rev Scot and HMRC		30	30
Management and Liaison with Rev Scot/Management liaison with Rev Scot and HMRC at senior level	50	35	-15
Training and Development (team and SEPA)		20	20
Administrative Officer, Office support to entire team		25	25
IS costs ongoing licensing software development and hardware maintenance/upgrading		60	60
Additional registration work	10		-10
Additional declaration work	50		-50
Risk assessment, compliance activity, ensuring debt collection	75		-75
Appeals against tax charges	30		-30
Systems, travel	50		-50
Total	300	320	20

Despite the various changes outlined above, the total estimated set-up cost for Revenue Scotland, RoS and SEPA between July 2013 and March 2015, along with their total estimated running costs over the five years from April 2015 remains £16.7 million.

ESTIMATES FOR NEW ACTIVITY

Costs of new activities presented in the RSTP Bill total just over £3.5m and are summarised in table 7.

Table 7: Estimates for new activity

Costs (£'000)	Total cost over period April 2015-March 2020
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

Additional investment in compliance and investigation

The FMs for the LBTT and SLfT Bills stated that “further planning work is required to decide on the respective roles that RS and RoS/SEPA will have in relation to compliance activity.” The FMs included £350,000 in annual running costs for compliance activity within the estimated running costs for RS. These costs related to the collection of both LBTT and Scottish Landfill Tax. The SLfT Bill’s FM also included £75,000 in annual running costs for risk assessment, compliance activity and ensuring debt collection for SEPA. It also pointed out that SEPA would be able to draw on existing enforcement staff.

Whilst the RSTP Bill’s FM notes that the costs set out in the original estimate of £16.7million “include some investment in compliance and investigation activity” (para 30), it states that “modest additional investment in compliance activity...can generate significant increases in revenue” (para 38). Table 10 in the FM estimates the annual costs of the proposed additional compliance activity to be £230,000 (£150,000 for RS compliance staff and £80,000 for SEPA investigations staff). The FM states that “this investment would be made with a target for RS and SEPA of collecting tax due to at least offset the additional cost.” (para 39)

During stage 1 evidence on the LBTT Bill, the Bill Team stated that:

“the resource plans for Revenue Scotland are still at a fairly early stage, but we believe that we have made adequate allowance in those plans for what we have called compliance activity, rather than anti-avoidance activity, although the two are closely related” (Scottish Parliament Finance Committee 2013d).

During stage 1 evidence on the SLfT Bill, SEPA confirmed that the FM’s estimates would be “adequate to cover our estimate, which is based on our operational experience of inspecting and dealing with landfill sites” (Scottish Parliament Finance Committee, 2013c). However, it further stated that “if, after discussions with revenue Scotland, SEPA’s role expands to include

enforcement, we will have to discuss with the organisation the financial arrangements for taking on that role” (Scottish Parliament Finance Committee 2013c, col 2821).

The Committee’s stage 1 (Scottish Parliament Finance Committee 2013e) report on the SLfT Bill, contained the following question:

“The Committee asks the Government to clarify whether the resources which have been allocated to Revenue Scotland for compliance activity include additional resources for SEPA to identify and deal with illegal sites.” (para 68)

The Government’s response was as follows:

“Revenue Scotland’s resources will be used to pursue appropriate care and management of the two devolved taxes. This includes undertaking compliance activity. On Scottish Landfill Tax, SEPA’s expertise will be invaluable and Revenue Scotland expects to allocate some of the funding available for compliance activity to SEPA to support its work.

Provisions within the SLfT Bill would, if enacted, allow for the imposition of a tax charge based on liability arising from illegal landfill. 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” (Scottish Parliament Finance Committee 2013f).

Costs of IT investment in Revenue Scotland

Table 11 of the FM estimates total additional set-up costs of £1 million for RS IT development and annual maintenance costs of £100,000 between 2015 and 2020 giving total additional IT costs of £1.5 million for the five years from April 2015. Whilst the FM provides an explanation of the justification for this additional spend (as outlined below), it does not provide a breakdown of the basis for these estimates.

The FM states that “the original estimates assumed that IT development would be limited to basic functionality...with no proposals for any IT development in RS.” (para 42) The FMs for the LBTT and SLfT Bills stated:

“This cost includes the hardware set-up costs for the staff together with the costs of establishing the website but assumes a tax collection system design which does not require central database development at Revenue Scotland. A different design may be chosen and costs will only be known following detailed design and procurement.” (para 42 SLfT FM)

The RSTP Bill proposes that RS “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.” (para 42) Its FM states that this proposal “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 SLfT.” (para 43)

The FM further states that “the extent to which RS can tackle tax avoidance will depend on the analysis of robust information about complex transactions” (para 44). In order to do this, RS “will require (particularly for LBTT) capacity to carry out some complex analysis” of data “which will need to be kept secure at all times” and the Government is of the view that this “can most effectively and securely be done by developing a central IT system within RS itself.” (para 45)

The FM states that “investing in a case management system within RS will allow a seamless transmission of data across RS, SEPA and RoS” (para 48) which will improve the experience of people seeking technical or detailed advice via RS’s helpline. It also states that this investment will mean that a “long term record of data submitted by taxpayers using RoS or SEPA’s online systems can be held together in one secure location.” (para 48)

The Committee’s stage 1 report on the LBTT Bill (Scottish Parliament Finance Committee 2013g) contained the following recommendation:

“The Committee is concerned that while the FM makes provision for an e-Services Helpdesk and complex enquiry helpdesk within RoS there only appears to be provision for a “limited helpline” within Revenue Scotland. The Committee asks the SG to provide further details on the proposed Revenue Scotland helpline including its function, an estimate of costs, staffing levels and whether it will be staffed by adequately trained specialist personnel.” (para 75)

The Government’s response (Scottish Parliament Finance Committee 2013h) was as follows:

“The Scottish Government agrees that the issue of providing appropriate help and support to taxpayers is very important. RS, RoS and the Scottish Environment Protection Agency (SEPA) are working together to assess likely demand and plan for the provision of suitable and coordinated support to taxpayers, including via effective helplines. The respective organisations will draw on input from professional bodies and taxpayer representatives to ensure that their planning in this area is as well-informed as possible. RS, RoS and SEPA will be happy to describe these plans to the Committee once drawn up.

The RSTP Bill’s FM states that during the passage of the LBTT Bill, it became apparent “that there were some areas where the most appropriate approach involved some additional administrative effort to achieve a better outcome for the taxpayer.” (para 49) Giving the example of commercial leases, for which the tax liability will be reviewed every three years (a policy that had not been developed when the original costings were provided), the FM states that such additional administration and analysis will necessitate the development of further IT capacity within Revenue Scotland.

The FM states that it “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.” (para 51)

Members may recall that the Committee asked witnesses from RoS whether they were “absolutely sure” that the estimates in the LBTT Bill’s FM would be enough to design and build the new IT System, to which they replied “we certainly think that that is the case.” (Scottish Parliament 2013b, col 2298) However, this question and its response related specifically to IT costs for RoS which remain unchanged in the RSTP Bill’s FM.

Additional costs arising from policy development

The FM states that costs relating to the dealing with disputes arising from the devolved taxes by tribunals were not included in the original estimates as they were made on the basis of HMRC operating a “like-for-like” service.

Table 12 of the FM estimates that the set-up and running costs for the Scottish Tax Tribunals would amount to £730,000. The FM states that “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.” (FM, para 55)

The FM states that SEPA’s administration costs arising from the SLfT Bill’s proposal to impose taxes on illegally dumped waste had not been included in the original estimates as HMRC has no powers to impose such a tax under existing UK legislation. Table 13 in the FM states that the costs of collecting tax revenue from illegally dumped waste are estimated to amount to £210,000 per year.

Costs on local authorities and other public bodies

The FM does not expect any costs to arise for local authorities other than those associated with their roles as taxpayers. No additional administrative costs are expected.

Costs on other bodies, individuals and businesses

As with local authorities, the Bill is expected to impact on other bodies largely as a result of the costs of compliance with the newly devolved taxes and of any fees charged or penalties imposed as a result of non-compliance. No significant additional administrative costs are expected.

SOURCES

Burnside, R. (2013) *Landfill Tax (Scotland) Bill*. Edinburgh: Scottish Parliament Information Centre. Available at:

http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-32.pdf

Evans A. (2013) *Tribunals (Scotland) Bill*. Edinburgh: Scottish Parliament Information Centre. Available at:

http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-49.pdf

Hudson, N. (2013) *Land and Buildings Transaction (Scotland) Bill*. Edinburgh: Scottish Parliament Information Centre. Available at:

http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/SB_13-02.pdf

Institute for Fiscal Studies (2013). *Taxing an independent Scotland*. London: Institute for Fiscal Studies. Available at: <http://www.ifs.org.uk/bns/bn141.pdf>

McEwen, Gavin. (2014) *Briefing from the Adviser on Revenue Scotland and Tax Powers Bill*. Edinburgh Scottish Parliament Finance Committee. Available at:

http://www.scottish.parliament.uk/S4_FinanceCommittee/Adviser_Briefing.pdf

Mirrlees Review. (2011) *Tax by design: the Mirrlees Review*. London: Institute for Fiscal Studies. Available at: <http://www.ifs.org.uk/mirrleesReview/design>

OECD, Total Tax revenue as a percentage of GDP. Available at:

<http://stats.oecd.org/Index.aspx?DataSetCode=REV> [Accessed 12 February 2014]

Office for Budget Responsibility (2013). *Scottish Tax Forecasts*. Available at:

http://budgetresponsibility.org.uk/wordpress/docs/Scottish-tax-forecasts_Dec13_web.pdf

Scottish Government. (2012a) *Scottish Government's Approach to Taxation. Speech to the Scottish Parliament from John Swinney. 7 June 2012*. Edinburgh: Scottish Parliament. Available at: <http://www.scotland.gov.uk/News/Speeches/taxation07062012>

Scottish Government (2012b) *Taking forward a Scottish Land and Buildings Transaction Tax: Consultation*. Edinburgh: Scottish Government. Available at:

<http://www.scotland.gov.uk/Publications/2012/06/1301>

Scottish Government. (2012c) *A consultation on Tax Management*. Edinburgh: Scottish Government. Available at: <http://www.scotland.gov.uk/Resource/0041/00410156.pdf>

Scottish Government. (2012d) *Administration of the Replacement Taxes: Land and Buildings Transaction Tax and the replacement for Landfill Tax*. Edinburgh: Scottish Government.

Scottish Government (2013a) *Scottish Government State of the Economy December 2013*.

Available at: <http://www.scotland.gov.uk/Topics/Economy/state-economy/latestSofE> (accessed 21st Jan 2014)

Scottish Government (2013b) *Government Expenditure and Revenue Scotland 2011-12*. Edinburgh: Scottish Government. Available at:

<http://www.scotland.gov.uk/Publications/2013/03/1859>

Scottish Parliament Finance Committee. (2013a) *Call for evidence on the Revenue Scotland and Tax Powers Bill*. Edinburgh: Scottish Parliament. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Revenue_Scotland_and_Tax_Powers_Bill_call_for_evidence.pdf

Scottish Parliament Finance Committee. (2013b) *Official Report from meeting, 27 February 2013*. Edinburgh: Scottish Parliament Finance Committee. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8360&mode=pdf>

Scottish Parliament Finance Committee. (2013c) *Official Report from meeting, 19 June 2013*. Edinburgh: Scottish Parliament Finance Committee. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8313&mode=pdf>

Scottish Parliament Finance Committee. (2013d) *Official Report from meeting, 23 January 2013*. Edinburgh: Scottish Parliament Finance Committee. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8027&mode=pdf>

Scottish Parliament Finance Committee. (2013e) *6th Report 2013. Stage 1 Report on the Landfill (Scotland) Bill*. Edinburgh: Scottish Parliament Finance Committee. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/fiR-13-06w.pdf

Scottish Parliament Finance Committee. (2013f) *Scottish Government Response to 6th Report 2013, Stage 1 Report on the Landfill (Scotland) Bill*. Edinburgh: Scottish Parliament Finance Committee. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/SG_Response_LT_updated28Oct.pdf

Scottish Parliament Finance Committee. (2013g) *4th Report 2013. Stage 1 Report on the Land and Buildings Transaction Tax (Scotland) Bill*. Edinburgh: Scottish Parliament Finance Committee. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/fir-13-04w.pdf

Scottish Parliament Finance Committee. (2013h) *Scottish Government Response to 4th Report 2013. Stage 1 Report on the Land and Buildings Transaction Tax Bill*. Edinburgh: Scottish Parliament Finance Committee. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/LBTT_response.pdf

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