



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### FINANCE COMMITTEE

Wednesday 2 April 2014

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**FINANCE COMMITTEE**  
**11<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Gavin Brown (Lothian) (Con)

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

\*Michael McMahon (Uddingston and Bellshill) (Lab)

\*Jean Urquhart (Highlands and Islands) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Eleanor Emberson (Scottish Government)

John Kenny (Scottish Environment Protection Agency)

John King (Registers of Scotland)

John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 5



## Scottish Parliament

### Finance Committee

*Wednesday 2 April 2014*

[The Convener *opened the meeting at 09:30*]

### Decision on Taking Business in Private

**The Convener (Kenneth Gibson):** Good morning and welcome to the 11th meeting in 2014 of the Finance Committee. I remind everybody to turn off mobile phones and other electronic devices.

Agenda item 1 is a decision on whether to take items 3 to 6 in private. Are members agreed?

**Members** *indicated agreement.*

## Revenue Scotland and Tax Powers Bill: Stage 1

09:30

**The Convener:** Agenda item 2 is the continuation of our stage 1 consideration of the Revenue Scotland and Tax Powers Bill, as part of which we will also consider the most recent update on the implementation of the Scotland Act 2012. I welcome to the meeting Eleanor Emberson from the Scottish Government, John Kenny from the Scottish Environment Protection Agency and John King from Registers of Scotland.

As I understand there will be no opening statement from the panel, we will go straight to questions. I am sure that all of you know how things are on the committee. I will start off with some questions, after which I will open it out to colleagues around the table.

First, where are we on the cost estimates for the administration of the devolved taxes? We understand that the initial estimate was about 25 per cent lower than the cost from HM Revenue and Customs, which would have meant a saving of around £5 million. However, there have been subsequent estimates of £3.51 million for new activity. Moreover, the joint six-monthly progress update of 4 October stated that revenue Scotland was in the process of

“defining the resources that will require to be in place and trained in time for the collection of taxes to start from April 2015 ... We expect this review ... to be completed by December.”

However, the most recent update states:

“We are currently finalising the expected staffing structure”.

Can you talk us through the costs and where we are in relation to the staffing structure?

**Eleanor Emberson (Scottish Government):** Certainly. On the costs, the important thing is the figures that are being compared. The original HMRC estimate was for collecting two taxes for Scotland that were exact equivalents of the United Kingdom stamp duty land tax and the UK landfill tax. That was all that HMRC could have estimated at the time, which was before we had proposals on how the devolved taxes might operate and how they might be different. Some of the cost changes involve estimates for things that would never have been included in HMRC’s estimate, because they are nothing to do with what HMRC was estimating for.

There is an estimate of £1.5 million for expenditure on information technology. We made it clear in the previous financial memorandum that we had not originally made any provision for a

central IT system for revenue Scotland. The fact is that we do not strictly need it; we could proceed as envisaged under the original financial memorandum, with revenue Scotland relying on the IT systems at Registers of Scotland and SEPA. That is absolutely all that we would need for collection.

However, we have all worked together on the design, and we have come to the view that it would be more efficient and effective for revenue Scotland to make additional investment in IT in the expectation that it would allow us to give a better service and, in particular, to do better on compliance and the analysis of data. We would hold all the data and would be able to analyse it in whatever way we wished. That would probably pay for itself over time, because we would expect to recover more tax.

There are two issues here, the first of which is about additional investment. There are other elements in the remaining £2 million that have nothing to do with what HMRC was estimating for. Our view is that the £16.7 million that we quoted as the basic cost of set-up and operation stands; in other words, we could do it all for £16.7 million. However, we would argue that it would be worth while to invest some more money in improving our compliance effort both at revenue Scotland and, as you will have seen from the figures, at SEPA. That investment should more than pay for itself in the extra tax receipts that we would get.

One other element is the cost of the tax tribunal. HMRC would not have quoted for that anyway, because it does not pay the cost of tax tribunals. It was never part of the HMRC estimate.

**The Convener:** I realise that, even with those additional activities, your costs would still be just over £2 million lower and you would have more robust collection and so on.

Will you answer the second part of my question?

**Eleanor Emberson:** Of course. We have a much more robust view of how the staffing structures should be, and that is reflected in the revised figures that we have given you. You will have noticed that not only have the figures changed for revenue Scotland and, indeed, for SEPA—I will let John Kenny talk about that in a moment—but we have structured the costs differently, because we have taken a different view on how exactly the teams would be structured and what we would need.

I was merely trying to indicate in my letter to the committee that, as you might expect, with a year to go the staffing structures are not absolutely and completely final. There is still some way to go, but I would not expect the costs to change in any significant way.

**The Convener:** Okay.

I have to say that your figures of £1 million set-up cost and £100,000 a year running cost for IT sound a bit ballpark to me. If you had said that the set-up cost would be £922,000 and the running costs £87,000 a year, I would take the view that you had drilled down into the figures and had looked at exactly what you need. The £1 million set-up cost and £100,000 running cost figures almost feel like a guesstimate to me. How close are you to giving us more accurate figures for IT? The figures have been relatively unchanged for a number of months now, and I would have thought that as time progressed you would have been able to refine them a wee bit more.

**Eleanor Emberson:** The figure has been there since December. In putting it together, we took expert advice from IT colleagues in the Scottish Government. You are right that it is, of course, an estimate. Until we have concluded a contract for delivering the system, I will not be able to give you the absolutely precise figure. I expect to have concluded that contract within a few weeks, and we can update the committee on the precise figure in the usual way later on.

**The Convener:** I would appreciate that.

In your update paper, you talk about the need for

“a stronger approach to combating tax avoidance”

and, as you point out, the committee is certainly supportive of that. You then go on to talk about the tax gap and say that for land and buildings transaction tax, you

“plan to make a modest additional investment”

of £230,000, which you hope will cut the tax gap from a potential £9 million to about £4.5 million. Is it right to say, then, that you will be effectively bringing in a minimum of £4.5 million?

**Eleanor Emberson:** No. I am sorry if we have not explained it properly, but I am afraid that that is not the intention. We were trying to estimate what the tax gap might be for land and buildings transaction tax by looking at the estimate for a Scottish share of the tax gap for stamp duty land tax, which we think is of the order of £9 million. It is difficult to estimate what the tax gap might be for a brand new tax, because, as the committee knows from passing the Land and Buildings Transaction Tax (Scotland) Bill—

**The Convener:** You hope that there will be less avoidance.

**Eleanor Emberson:** Exactly—an amount of the avoidance will have been designed out. We took 50 per cent as a very round estimate of how much might have been designed out and said that we think—cautiously—that a £4.5 million tax gap

might be left. What we are saying is that we would spend £230,000 to try to make some inroads into that £4.5 million.

**The Convener:** Okay. I see that you say in your submission:

“we make a conservative estimate that the tax gap for LBTT could be around £4.5m a year—£22.5m over the period”—

and that you now plan to reduce “the expected tax gap”. You are not seeking to clear the entire £4.5 million, but you are hoping to make significant progress in that direction, although obviously I understand that you cannot estimate the exact size of that progress and how far you might go.

In the financial memorandum, you talk about investing a reasonably similar amount—about £210,000—in reducing the potential Scottish landfill tax liability, which if it was charged would be more than £20 million. I might be missing something, but I do not see from the figures what additional revenue you hope to be able to bring in to reduce that liability.

**John Kenny (Scottish Environment Protection Agency):** There are two potential streams. First, there is the increase from those already in the system who might be misclassifying waste and paying the lower instead of the higher rate. The more significant amount will come from illegal waste sites, which are currently outwith the UK landfill tax regime; if someone does not have a licence, they do not pay the tax. That £210,000 is specifically geared to tackling illegal waste sites. There is a whole stream of people who currently pay no tax, and the new legislation gives us a very powerful tool to bring those people into compliance and to tax them.

**The Convener:** I am aware of that, but how much do you expect to bring in from it?

**John Kenny:** It is very difficult to say, but I can give you an idea of the potential scale. We are dealing with individual sites that might each have a seven-figure liability. It is very difficult to quantify, and it has not been quantified before because there has been no liability. However, we believe that we are talking about a multimillion-pound figure.

**The Convener:** I will now open the session to colleagues round the table.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** I have a few questions arising from the evidence that we have taken from outside bodies. First, concern has been expressed by the Institute of Chartered Accountants of Scotland and the Chartered Institute of Taxation—but less so, it has to be said, by the Law Society of Scotland and the Faculty of Advocates—about the additional privilege afforded to the legal profession, but not

other professionals. What is your perspective on the matter?

**Eleanor Emberson:** My understanding is that there is a difficulty with bringing tax advisers under the terms of privilege and confidential communication because of the legal definition of tax adviser. A legal definition that already exists in UK law allows people who are not members of professional bodies to be somehow swept up as tax advisers, and we do not want to get into the situation in which someone's friend, who had happened to talk to them about tax, can somehow claim privilege as a tax adviser. There is a legal difficulty, but as I am not an expert on that, you might want to probe that legal point elsewhere.

**Jamie Hepburn:** That reflects some of the evidence that we have received.

Concern has also been expressed about revenue Scotland's charter and the fact that, under the bill, revenue Scotland has only to aspire to meet the charter's terms while taxpayers have to meet them. To be fair, I know that the bill team is looking at the issue, but do you accept that there should be equivalence? Can you assure us that revenue Scotland will look to meet the terms of the charter and not just aspire to them?

**Eleanor Emberson:** Yes, I accept that completely. There should be equivalence.

**Jamie Hepburn:** Another issue that has been raised is revenue Scotland's ability to delegate—people who are not directly employed by the organisation—to exercise some of its functions. How can we ensure that those people do not exceed their remit? Should they have to adhere to the charter? Another issue that we have previously explored relates to people who have been brought in to work for HMRC and who then leave and use their expertise to help other people devise avoidance schemes. Are such issues being considered?

**Eleanor Emberson:** As far as delegation is concerned, we have given undertakings to the committee that, before we go into live operation, it will see the schemes of delegation that we intend to have with Registers of Scotland and SEPA. Regardless of the detail of such schemes, revenue Scotland will ultimately remain liable, which means that, if anyone were to exceed their authority, it would still be revenue Scotland whom you would ultimately hold to account. We will be able to manage all that through the arrangements that we will have with Registers of Scotland and SEPA.

I am therefore comfortable with the way in which the bill is drafted. It gives us room to set down, outwith the legislation, a formal scheme of delegation that we can share both with the committee and publicly to ensure that people know its terms.

As for the point about people leaving and then providing advice to taxpayers on avoidance, the fact is that people who train with HMRC sometimes leave and become private sector tax advisers. I do not think that the situation will be fundamentally different. I do not envisage colleagues from ROS, SEPA or revenue Scotland rushing to leave and give people advice on avoidance, but the fact is that people sometimes leave public bodies.

09:45

**Jamie Hepburn:** From what you say, it sounds as if those issues are being worked through and the scheme will come back to the committee to give us some assurance that the matter has been looked at and something laid out.

**Eleanor Emberson:** Surely.

**Jamie Hepburn:** Finally, an issue has been raised about the structure of revenue Scotland, the board of which will not include executives. Some have suggested that they should be included, while others have not taken a particular view. Do you have a view on that?

**Eleanor Emberson:** I think that it can be made to work either way. I was previously the chief executive of a non-ministerial department and was a member of the board of that organisation, but I have also seen models work well in which the board holds the chief executive to account. The important thing is that we understand the structure and what it means, so that we know whom the committee would want to invite if you needed to hold revenue Scotland to account.

**Jamie Hepburn:** So you do not think that it is a big issue.

**Eleanor Emberson:** Personally, I do not think so—it could work either way.

**Gavin Brown (Lothian) (Con):** Thank you for submitting the joint update note, which is helpful. I will go through some of it. Under the heading “Policy Development and Secondary Legislation”, you say:

“The current timetables for the RSTP Bill and the secondary legislation should see everything in place in time by 1 April 2015.”

Why did you say “should” rather than “will”?

**Eleanor Emberson:** The comment relates to the current timetables. I was simply recognising that the committee, as much as anyone else, will dictate the timetable for the secondary legislation. I was just being a little cautious.

**Gavin Brown:** That is fine—maybe I am reading too much into the comment. Is there anything to suggest that things might not happen by that date?

**Eleanor Emberson:** No. I am comfortable with the timetable as it stands.

**Gavin Brown:** Okay. Under the heading “Tax Administration Programme”, the update says that there was a gateway review, which ended in February, and that

“The overall assessment of delivery confidence was Amber.”

Will you expand on what that means? I presume that the options are red, amber and green. What are the possibilities and why was the programme described as amber?

**Eleanor Emberson:** There is a five-point scale that goes from red to red-amber, amber, green-amber and green. The description that goes with amber is:

“significant issues ... exist requiring management attention. These appear resolvable at this stage and if addressed promptly, should not present a cost/schedule overrun.”

In the update, I outlined what we are doing as a response to the gateway review recommendations.

**Gavin Brown:** What was the previous gateway review grading?

**Eleanor Emberson:** It was also amber.

**Gavin Brown:** You are in the middle of a five-point scale, at three. How do you get to green? I presume that the project needs to be green when we go live, or does that not really matter?

**Eleanor Emberson:** It will be green when we go live. I have run a number of large change projects and programmes and I cannot think of any that was green at this point, given the complexity of what we do. It would be unusual for a gateway review of such a complex change programme to have a green assessment. The gateway reviewers would be saying that there were absolutely no issues and that everything was perfect, which would be unusual at this point. All the previous programmes that I have run were perfectly successful. The critical thing is that we attend to the recommendations that the team has made, which we are doing.

**Gavin Brown:** So the fact that the project is amber just now is normal or is not a worry in any case.

**Eleanor Emberson:** It would be a worry if we were ignoring the recommendations, but I assure you that we are not.

**Gavin Brown:** Under the heading “IT Implementation”, on the third page of your update, you give larger set-up costs for revenue Scotland and identify why those costs are higher than the



initial figures. Is there any prospect that the figure of £1.23 million will end up significantly higher?

**Eleanor Emberson:** I have no reason to suppose that it will. As I said, we took expert advice on what we can expect the development costs to be. The project management cost of £230,000 is pretty firm. We took advice on the £1 million development cost. Until the contract is signed, we will not know that cost for sure, but I have no reason to suppose that it will be higher.

**Gavin Brown:** A similar question goes to Registers of Scotland. The cost description is "Build Cost of new LBTT System" and the set-up cost is given as being £75,000. Is there any prospect that that figure will rise, or is it set in concrete?

**John King (Registers of Scotland):** In the light of the explanation in the update about the slightly changed approach to IT implementation, we expect the £75,000 to be a maximum. We expect that it will come down and that there might be some reallocation of what would have been our costs to revenue Scotland.

**Gavin Brown:** A similar question goes to SEPA. The set-up costs that are given for the "Information Systems" cost description are £350,000. Is there any prospect that they could rise, or is that a maximum?

**John Kenny:** My answer is similar to that of my colleague John King. The costs are expected to reduce, if anything. That figure is a maximum.

**Gavin Brown:** The final page of the six-monthly update gives us a colourful chart that sets the main areas on which you are focusing against a timeline. On that chart, green shading means that the piece of work is complete and blue shading means that the piece of work is on track. The top line is IT. If I read the chart right, information and communication technology system requirements should be pretty much complete by now. Are they ready to go green?

**Eleanor Emberson:** They are now green.

**Gavin Brown:** That is good. The third line concerns staffing, roles and responsibilities. The first element in that line is to

"Agree roles and responsibilities with RoS and SEPA".

Is that complete or just about complete?

**Eleanor Emberson:** It is close to being complete. Colleagues at ROS and SEPA are considering proposals, which the organisations need to sign off formally.

**Gavin Brown:** The next line concerns process mapping. I am no expert on the subject, but it looks as if that should be pretty much complete by now. Is it?

**Eleanor Emberson:** Yes.

**Gavin Brown:** It is complete.

**Eleanor Emberson:** I have not seen the process mapping, but I understand that it is nearly done.

**Gavin Brown:** In the line that concerns transition arrangements, one element is "Agreement with HMRC". It looks as if that should be pretty much complete. Is it?

**Eleanor Emberson:** I do not think that I have a formal note of agreement from HMRC yet, but all the work has been done. I think that we are close to completion.

**John Mason (Glasgow Shettleston) (SNP):** We have the £16.7 million in costs that the convener referred to, which HMRC quoted for, and the £3.5 million in additional costs for new activity. If we had gone with HMRC, is it the case that we would still have had the extra £3.5 million?

**Eleanor Emberson:** I do not know what the HMRC costs would have been by now, because we would have been asking it for an estimate for collecting the two taxes as they are now legislated for. It is difficult to speculate on what HMRC would have charged. It is hard to imagine that the estimated cost would have gone down; I assume that it would have gone up, but I do not know by precisely how much.

**John Mason:** Yes—that is right. I assume that, if the HMRC estimate for the base work was higher than that of revenue Scotland, its charges for any extra work are likely to have been higher as well.

**Eleanor Emberson:** Yes. HMRC would not have our advantage of being able to look to colleagues in SEPA to do the compliance work on landfill tax—it would not have the same arrangement as we intend to have—and we would still have faced the tribunal costs. It is hard to speculate, but I do not see that the cost would have gone down.

**John Mason:** That is fair enough. If somebody disagrees, appeals or has a dispute at the moment, I presume that they go through a system—maybe I should know about that—so will you explain why there is an extra cost for tribunals?

**Eleanor Emberson:** The extra cost is for setting up the tribunal in Scotland. It is not a revenue Scotland cost. The position is complicated by the fact that the tribunal system is going through changes, but to a different timetable from the one that we have to run to for taxes. I am sorry—I forget the precise deadline for changing to the new Scottish tribunals system, but it is probably 2016. We have to operate sooner than that, so an

interim cost is associated with setting up a Scottish tax tribunal ahead of other set-up arrangements that will be made for separating the Scottish tribunals from the UK tribunals.

**John Mason:** So if somebody goes through the system at the moment, they go to the UK tribunal and that cost is covered by the UK.

**Eleanor Emberson:** There is a budget for HM Courts and Tribunals Service, which is an England and Wales body in relation to courts but a UK body in relation to tribunals. The Scottish tribunals are being merged under the overall leadership of the Lord President of the Court of Session, so the administrative arrangements will also be separated out and managed in Scotland.

**John Mason:** I assume that the UK system will make savings if it no longer has to operate tribunals in Scotland. Does that fit into the picture somewhere?

**Eleanor Emberson:** I am not really—

**John Mason:** I might be asking the wrong person about that.

**Eleanor Emberson:** I am not party to exactly how the conversations have gone on. Some tribunals are already devolved, but the tax tribunal is not one of them. The extra cost is associated with setting up a tax tribunal in Scotland from the start rather than running for a year with a UK arrangement and then having to change that.

**John Mason:** I can maybe ask somebody else about that.

Another area that I am interested in is the extra cost for SEPA. If I understand it correctly, there are two bits to that. One is the work that SEPA will take over from the current system, but I believe that the other bit involves extra work for SEPA. Will you clarify that? Am I right in saying that the two parts of the cost are covered in tables 10 and 13 of the financial memorandum?

**John Kenny:** Yes. The £320,000 cost is to do with the general compliance that we talked about on the sites that are in the system. That is the like-for-like activity that relates to what HMRC does at the moment.

**John Mason:** Will you clarify that? Table 13 shows a cost of £210,000.

**John Kenny:** That is the extra cost from the new powers that relate to illegal waste sites in the Landfill Tax (Scotland) Act 2014.

**John Mason:** That is the extra cost. Table 10 shows a cost of £230,000 and you are referring to £320,000. Is that a different figure?

**John Kenny:** The estimated running cost of £230,000 that you refer to is the total additional

compliance cost for revenue Scotland and SEPA. Then there is the £210,000.

**John Mason:** Where is the £320,000? Is it in a different table?

**John Kenny:** The £320,000 is SEPA's running costs.

**Eleanor Emberson:** It is the total in table 9.

**John Mason:** I see that now. We have the £210,000 and the £230,000. The £230,000 appears in table 1, but the £210,000 does not. Is that correct?

10:00

**John Kenny:** The £1.05 million that is shown under "Estimates for New Activity" in table 1 is the £210,000 over five years.

**John Mason:** I am with you there. Thank you for clarifying that.

On the basics, you are already out there finding illegal sites. Why is there an extra cost?

**John Kenny:** We are out there looking for sites where there has been environmental pollution or an environmental offence. Under the new powers, we will have to identify and assess the amount of waste that has been deposited in order to calculate the liability. Under the legislation, SEPA will have to do the assessment; we would not expect illegal operators to do an assessment, because they are outwith the system. Significant new work will be involved in making assessments, identifying how much waste has been deposited and what the tax liability is, liaising with revenue Scotland and subsequently with—

**John Mason:** If you found illegal waste at the moment, I take it that you would not weigh it or whatever.

**John Kenny:** We would find out whether it caused pollution or an environmental offence, but we would not work out the tax liability.

**John Mason:** At the moment, does illegal waste have to be moved somewhere else?

**John Kenny:** That happens if we can find the relevant person to do that and go through the—

**John Mason:** If you cannot find the relevant person, does the waste not still have to be moved to a legal site?

**John Kenny:** Ideally, yes, but it can take a long time to go through the process and identify the relevant person. It might be better to excavate and make the waste safe on site, by putting other barriers in place, rather than move it.

**John Mason:** Does SEPA pay for that?

**John Kenny:** SEPA does not; it tries to identify the responsible person to undertake that work.

**John Mason:** That person would have to transfer the waste to a legal site, and it would be measured and paid for at that stage.

**John Kenny:** That is right. The landfill tax liability could be paid at either point.

**John Mason:** So there are two bits of extra work. One is measuring and taxing, and I understand that bit. Extra work will also be involved in going out to look for more sites.

**John Kenny:** That is correct. Environmental crime is a priority for SEPA at the moment, and we put a lot of time and effort into identifying sites. As Eleanor Emberson said, we think that the extra money will pay for itself. We shall go out proactively and use our intelligence and systems to identify sites that might be liable for landfill tax. We think that putting more effort into that will pay for itself over time.

**John Mason:** Are a lot of sites appearing that you were not aware of?

**John Kenny:** I do not know whether there are a lot. We have intelligence from partners, from the public and from our systems, but we still come across sites. The money will allow us to put more effort into proactively looking for them, rather than just relying on intelligence from other people.

**Jean Urquhart (Highlands and Islands) (Ind):** I want to ask John Kenny about Scotland's zero waste policy. Is that something that you take into account when you are planning the financial running costs?

**John Kenny:** The landfill tax supports the zero waste agenda, because it diverts material from landfill sites by making them more expensive. It has been successful in achieving that aim, so it goes hand in hand with our approach. The new legislation allows us to tackle illegal waste sites, creating a more level playing field for legitimate business and encouraging the technologies that are required to achieve zero waste.

**Jean Urquhart:** Historically, have we generally been reducing landfill?

**John Kenny:** Yes.

**Jean Urquhart:** Do you see that as being on time for the 2020 target?

**John Kenny:** The targets get harder as we move forward, and landfill will keep decreasing towards the target of zero biodegradable waste going to landfill in 2020. That is what we are moving towards.

**Jean Urquhart:** Will the threat of more penalties for people who abuse the system have an effect?

**John Kenny:** There is a risk that being more on top of the illegal aspect or having increased costs will drive people underground, but we need to tackle the illegal operators and drive towards zero waste and the solution is to have a toolkit such as the one that the legislation gives us, so that there is an effective deterrent for those who do not want to do things properly.

**Jean Urquhart:** I think I recall that, in the early days of this discussion, the Office for Budget Responsibility's figures were very far out, but that has been corrected. Looking forward to 2020, what impact will there be on the staff, the IT systems and so on that are in place now? Will they automatically be used for other taxes should Scotland be raising more taxes of our own?

**Eleanor Emberson:** Is the question directed to me at revenue Scotland?

**Jean Urquhart:** Yes.

**Eleanor Emberson:** On the costs for SEPA, we are looking ahead on the assumption that, in five years' time, it will still have to do broadly what it currently does in relation to collecting Scottish landfill tax, because it will still be licensing, regulating and collecting tax from broadly the same number of sites and continuing to clamp down on illegal waste.

On revenue Scotland's capacity, if we wind up with no landfill tax—I doubt whether we will be at zero tax by 2020—we will cut down our staffing or divert staff to other things.

**Michael McMahon (Uddingston and Bellshill) (Lab):** When we looked at the LBTT bill, we noted that Registers of Scotland appeared to be quite well advanced in relation to providing help and support but we raised a concern that there might be a requirement for revenue Scotland to get a helpline in place. In response to those observations, the Government pointed out that the three organisations that are giving evidence this morning were

"working together to assess likely demand and plan for the provision of suitable and coordinated support to taxpayers, including via effective helplines."

It also said that we would be updated on that. Can you update us on progress?

**Eleanor Emberson:** Surely. Our written update contains a brief summary of the arrangements that we intend to put in place. As you will see from that, we intend to provide helpline support. There will be a single number and calls will be passed around as they need to be among the organisations to ensure that people can get an answer to their question without being told to go away and speak to someone else.

**Michael McMahon:** I suppose my question is about how advanced that is. Are you discovering any problems or is progress being made towards having the service in place by the time it is required?

**Eleanor Emberson:** We are well on track to have it in place. We do not have the single telephone number yet, but the arrangements are well developed among the organisations and we expect to have everything in place in advance of 1 April.

**Michael McMahon:** That is fine.

**The Convener:** That concludes questions from committee members. I will ask a further question as I realise that Mr King is feeling somewhat neglected, given that no questions have been directed to him. I cannot let you just sit there, Mr King; you have to earn your crust this morning. I will ask you a wee question based on Ms Emberson's submission. It states:

"Although RoS's role in IT build and maintenance will now reduce, it will be represented on the joint IT Implementation Project Board and Team. This will support the development of a one-stop-shop for the taxpayer for registration of property transactions and the collection of any associated tax."

Will you expand on that a wee bit?

**John King:** Yes. At the time of our original appearance before the committee, ROS was looking to develop and build the LBTT collection system. However, the new IT solution has moved the situation on and it avoids ROS building the system and revenue Scotland duplicating it. We are looking for a more streamlined build, into which our ROS systems will integrate.

Taxpayers should see no difference. There will still be an online facility for submitting a tax return and payment of tax, and there will be various ways into that. It is envisaged that one of them will be through the current Registers of Scotland e-portal, which will link up with some of the other activities that taxpayers or their representatives might want to carry out in relation to the registration of the property transaction in question. The process will still be seamless for the taxpayer and it will be more efficient behind the scenes, particularly for revenue Scotland but also for Registers of Scotland.

**The Convener:** Thank you for that clarification.

As our witnesses have no further points to make to the committee, I thank them for their attendance this morning and for responding to our questions.

We will have a five-minute suspension to allow for the changeover of witnesses.

10:10

*Meeting suspended.*

10:18

*On resuming—*

**The Convener:** We continue to take evidence on the Revenue Scotland and Tax Powers Bill. I welcome the Cabinet Secretary for Finance, Employment and Sustainable Growth, who is accompanied by Eleanor Emberson and Colin Miller, from the Scottish Government. I thank the cabinet secretary for coming early for this part of the meeting and invite him to make opening remarks.

**The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):** Thank you, convener. The bill is the third Scottish tax bill that the committee has considered since November 2012; the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 are now on the statute book and are the first pieces of tax legislation that the Scottish Parliament has agreed in more than 300 years.

The Revenue Scotland and Tax Powers Bill has three main purposes. First, it establishes revenue Scotland as the tax authority that will be responsible for the collection and management of the first two devolved taxes. Secondly, it sets out in one place the statutory framework in which revenue Scotland will operate, including the constitution of revenue Scotland, the relationship between the taxpayer and the tax authority, revenue Scotland's investigatory and enforcement powers, and a new, distinctively Scottish approach to tax avoidance. Thirdly, it provides a clear and robust tax management framework, which could readily be adapted in the event of the Scottish Parliament taking on more responsibility for taxes.

It is therefore important that we get the bill right. The committee's evidence sessions over the past few months have made an important contribution in that regard, as have the comments of experts such as Professor Sir James Mirrlees and John Whiting, and witnesses from the legal and tax professions.

The task of preparing the bill was not easy. We benefited from a great deal of input from a wide range of stakeholders, whose contribution was much valued. Most of the witnesses who have given evidence have supported our general approach and I am confident that we have got the fundamentals of the bill correct. However, in an area as complex as this there will certainly be scope for improvement at stage 2. The committee has received positive suggestions for improvements from witnesses; we will reflect

carefully on those points. I look forward to the committee's stage 1 report and recommendations.

The committee has looked closely at how to combat tax avoidance. I have made it clear that we intend to take the toughest possible line on tax avoidance—I mean “avoidance” and not just the most extreme cases of abuse.

With that in mind, the bill provides, in a general anti-avoidance rule, power for revenue Scotland to take robust action against artificial tax avoidance schemes. We chose to provide two definitions of artificiality to ensure that our approach is as comprehensive as possible. Revenue Scotland will be able to take counteraction where the tax avoidance arrangement

“is not a reasonable course of action ... having regard to”

the principles and policy objectives on which the relevant tax legislation is based, and where

“the arrangement lacks commercial substance.”

The bill sets out a number of indicators that might suggest that an approach lacks commercial substance.

The approach that we have adopted is based on straightforward, commonsense tests, which ordinary taxpayers would endorse. I was pleased that Michael Clancy, when he gave evidence to the Economy, Energy and Tourism Committee on behalf of the Law Society of Scotland, said, in relation to the anti-abuse rules in the UK Finance Act 2013:

“the Scottish GAAR provisions are much better ... less complex and should prove to be more effective.”—[*Official Report, Economy, Energy and Tourism Committee*, 19 March 2014; c 4205.]

Of course, the bill does more than combat tax avoidance. It provides what we think is a fair, efficient and transparent approach to the administration of taxes and it seeks to balance the public interest in collecting taxes with the reasonable expectations of individual taxpayers, for example by making provision for reviews, mediation and appeals in relation to decisions that revenue Scotland takes.

I know that all members of the committee share our objective in relation to the bill, which is to ensure that it provides the best possible framework for the collection and management of the first two devolved taxes when they come into force on 1 April 2015 and a firm foundation on which we can build in the event of this Parliament becoming responsible for a wider range of taxes. I look forward to discussing the issues with the committee.

**The Convener:** Thank you, cabinet secretary. You said that you will take “the toughest possible line” on tax avoidance, which is very positive. You

mentioned principles. Can you confirm that the Scottish Government's approach to the GAAR is a principled one rather than a rules-based one?

**John Swinney:** It is a principles-based approach—that is perhaps the best way to sum it up. The policy intention is clear: we are taking all steps, through the bill and the approaches that revenue Scotland will take, to proactively send the message that tax avoidance is unacceptable. In its focus, approach and operational activities, revenue Scotland will act in the spirit of that principles-based approach on that question.

It is clear that there are choices to be made in such areas of policy. It is possible to be very specific and prescriptive about what is in and what is out, but the danger of such an approach is that it creates the incentive to find ways of operating at the margins. The principles-based approach that is enshrined in the bill is designed to signal very clearly that that type of practice will be unacceptable.

**The Convener:** Some witnesses have talked about the difference between the general anti-abuse rule in the UK and the general anti-avoidance rule in Scotland. It is interesting that the many witnesses who favour having certainty did not point out that some 300 targeted anti-abuse rules have had to be introduced south of the border to pin it down because a principles-based approach was not taken. What would you say to organisations such as ICAS and the CIOT that have urged that there be certainty in the legislation rather than the approach that you have taken?

**John Swinney:** There is a clear assurance of certainty in the legislation: do not get involved in tax avoidance. I do not know how more certain it needs to be.

**The Convener:** Thank you.

Witnesses have suggested to us that an anomaly in the bill is that some penalties are on the face of the bill and some are not. Why is that the case?

**John Swinney:** As I said in my opening remarks, we have been looking carefully at the evidence that the committee has been hearing, including the points that have been expressed about penalties. We have come to the conclusion that the provisions in the bill on penalties are not as clear and consistent as they could be. We will look further at that question in the light of the committee's report. We will have an opportunity in the stage 1 debate to reflect on some of our responses to the points that have been raised before we get to stage 2. I imagine that I will lodge amendments at stage 2 to try to put a great deal more consistency into the penalty arrangement regarding what is on the face of the bill and what is in secondary legislation, with a greater emphasis

on what will be in the bill in the light of the evidence that the committee has heard.

**The Convener:** I have one further question before I open it up to committee members. Eleanor Emberson answered a question in the earlier evidence session on the structure of revenue Scotland. What is your view of the structure? A number of witnesses have said that the job of the revenue Scotland board is to hold the executives, including the chief executive, to account. Their view is that members of the executive team being members of the board will muddy the waters.

**John Swinney:** There is a variety of choices to be made here—well, I suppose that there are probably two choices: either members of the executive team are on the board, or they are not. I do not suppose that it is any more complicated than that. Either model can work, although one has to be careful because members of the executive being part of the board might create difficulties just through proximity and board members feeling that they are very much part of the same team as the chief executive, which might mean that the element of challenge that is required is eroded.

We have public bodies in which the chief executive is a member of the board and we have public bodies in which they are not a board member. In general, I think that the proposed arrangements retain the critical element of challenge, which is what the topic that you have raised turns on. I do not think that the factor of executives being on the board is definitive one way or the other. However, we would want to ensure that arrangements are in place to ensure that board members are able to properly and fully exercise their responsibility to challenge executive recommendation and practice, and to take the appropriate decisions at board level about the operation of revenue Scotland.

**The Convener:** Thank you for that. The first committee colleague to ask questions will be Malcolm Chisholm, to be followed by Jamie Hepburn.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I want to go on to the issue of the GAAR, but I will deal first with the minister's last point. Isobel d'Inverno—I cannot remember what body she represents, but somebody will look it up for the *Official Report*—said:

"There are so many technical issues that revenue Scotland would have to be involved in – in relation to the administration and collection of taxes, policy and so on – that it makes a lot more sense for the chief executive, who has the greatest knowledge of those things, to be on the board."

In the arrangement that you propose, will the chief executive still attend board meetings and be able to give such information? One of the fundamental objections seems to be about that.

10:30

**John Swinney:** The chief executive would have to be at board meetings, but the issue turns on whether the chief executive is a full, defined member of the board. To get down to the sharpest point, the issue at its crudest is that if the chief executive is a board member, it is difficult for the board to have a conversation that does not involve them. It is difficult to ask the chief executive to leave the room if they are a board member.

If we decided that the chief executive was not to be a board member, they would still have to attend board meetings to provide the specialist advice and information that are required. I do not see how the system could work effectively without that. However, that model gives the board the ability, without any discomfort, to have discussions that do not involve the chief executive.

**Malcolm Chisholm:** You said in your introduction that we would have a new and distinctively Scottish approach to tax avoidance, on which we have heard a lot of different views. We have been pulled in opposite directions by the Chartered Institute of Taxation and ICAS on the one hand and by the Scottish Trades Union Congress on the other. It would be interesting to get a concrete sense of how the approach will differ.

One concern of ICAS and the chartered institute is that the bill should say that tax avoidance is the main purpose rather than

"one of the main purposes".

John Whiting gave an interesting concrete example in relation to that. I am sorry that I will quote again; I will try not to quote too much. He said:

"I used the example of incorporation. If I advise someone on incorporation, one of the purposes of the advice is to enable them to take into account tax considerations. I would not be doing my job if I did not explain that aspect to them. Giving someone advice on incorporation is, therefore, immediately within the ambit of the provision, whereas nobody would say that the sole or main purpose of advice on incorporation is tax avoidance."—[*Official Report, Finance Committee*, 5 March 2014; c 3741-2.]

Is it an implication of your proposal that incorporation would automatically be regarded as tax avoidance in Scotland, whereas that is not the case in the UK? A lot of people use incorporation to reduce the amount of tax that they pay.

**John Swinney:** Sustaining that point would not be reasonable. We have put in two essential factors to specify the approach on the general

anti-avoidance rule. One is artificiality, which is not very relevant to the example that John Whiting cited. The other is commercial substance, which will be closely connected to incorporation as a consideration. Mr Chisholm asked whether the very act of considering incorporation issues would fall foul of the bill. I do not think that it would, because of the commercial substance of the advice that the adviser offered the organisation involved.

I have listened carefully to the debates that Parliament has led on the subject and considered elements of the debate that have arisen in our consideration of the two previous tax bills and in questioning opportunities in Parliament. Given the temperature of the debate in Scotland, I have taken what I describe as a maximalist position on tackling tax avoidance, which we have translated into the two tests on artificiality and commercial substance to define the scope of how advisers should act.

**Malcolm Chisholm:** We heard quite a lot of interesting comments about the double reasonableness test in the UK, but we will not go there. Perhaps a concrete manifestation of that is the recent creation of a UK advisory panel to provide quasi-objectivity—I do not know whether that is the right term. It provides an external view in addition to the view of HM Revenue and Customs. Have you considered setting up such a panel in Scotland?

**John Swinney:** Much of this goes back to the point that the convener raised with me at the outset about where the principles lie. Unless I have misinterpreted where it is on these questions, I think that Parliament has a maximalist position on tackling tax avoidance. That is how it feels to me in answering questions from members of the Parliament on the subject.

If we are discussing solutions such as having an independent review panel, it feels as if we are trying to devise a mechanism to undermine the principle that we are all trying to develop, which is to attack tax avoidance—we are almost trying to approve of, condone or find a way of accepting tax avoidance initiatives. If we are going to be principled about it, why are we bothering to do that? Why are we not telling people, “This is how we do it here—just pay your taxes”? Let us not go through all sorts of elaborate activities to find ways of not paying tax.

**Malcolm Chisholm:** You are probably right, in that a lot of people come from that position but, moving on to my last topic, I think that it would still be right—

**John Swinney:** I am sorry but, if you will forgive me, I should add that there are other steps that a taxpayer could take to challenge the decisions of

revenue Scotland. If revenue Scotland takes a decision and a taxpayer does not like it, there are mechanisms of challenge that they can pursue, which give a statutory force to the right of individuals to say that they think that the wrong conclusion has been reached.

**Malcolm Chisholm:** That is what my question was going to be about. Some points have been raised about the appeal system. A couple of them were about the fact that—as I understand it—there will be some restriction on the right of appeal, although I am not entirely clear about the details. That point was made by the Faculty of Advocates and possibly the Law Society of Scotland, too. Another point relating to appeals was made by the Law Society, which was concerned that the upper tribunal could have a single member judging the appeal at its second hearing, which is different from the current arrangement. The general impression that we got from those two legal bodies was that there were some significant changes to the appeal system. Given that you are moving to a more vigorous approach to tackling tax avoidance, it could be argued that it is even more important that we have a transparently fair appeal system.

**John Swinney:** On that point, I would be open to considering whether the arrangements that we have in place pass the test that Mr Chisholm has just raised, which is a fair one. The basis of appeal would have to be on a point of law, which I do not think is a particularly new requirement for accessing the appeal system. That is commonplace in mainstream court arrangements.

On the second point that Mr Chisholm raised, about whether or not the tribunal had sufficient breadth of overview and whether more members were required, that is a point of detail that I am happy to consider in the light of the evidence that the committee has heard. Whatever the committee’s judgment is on that point, I will consider the matter carefully.

On the principled point that Mr Chisholm is making that, if we are not having an independent body essentially to second-guess revenue Scotland, we will use the formal system, I accept unreservedly that the appeal mechanism must be fair and must be seen to be fair, in the interests of taxpayers as well as revenue Scotland.

**Jamie Hepburn:** This follows on from the questions from the convener and Mr Chisholm. I hope that it is helpful to bear in mind that only a few witnesses raised the matter of the structure of revenue Scotland and whether the executives are on the board. Most witnesses have not particularly taken a view—they are pretty relaxed about what is proposed. I hope that the committee and the Government will bear that in mind.

My areas of questioning are pretty straightforward. At a previous meeting, Mr Miller gave an undertaking to look again at a couple of issues, so I wonder whether we could have an update on those. First, the bill team was going to consider whether it is possible to more tightly define the privilege that is given to the legal profession. Secondly, I think that there was an acceptance that the drafting in relation to revenue Scotland's charter is not particularly brilliant, so could we have an update on that?

**John Swinney:** Legal advisers generally think that their professional privilege will be properly protected under the bill. I think that it is tax advisers in the accountancy and advisory sector who are perhaps slightly less comfortable. The issue is not easy, because we might have difficulty defining precisely who would be acceptable to give tax advice. In the unlikely event of my offering Mr Hepburn tax advice, I suppose that I could loosely be described as a tax adviser.

**Jamie Hepburn:** It would be straightforward.

**John Swinney:** I am sure that, given Mr Hepburn's complex financial arrangements, he would need my advice.

That highlights some of the difficulties of terminology in providing a comparable arrangement between the legal profession and the tax and accountancy profession. If we extended the privilege to tax advisers, we would probably include individuals who have no professional qualifications and who do not belong to a professional body, although some tax advisers have professional qualifications and belong to a professional body. However, we will consider whether there is a way of making progress on that question, although I fear that it might be administratively demanding. We have tried to strike a fair balance by recognising legal professional privilege, which is a well-established principle, but I think that it would go too far to extend privilege to anyone who presents themselves as a tax adviser. We will look further at the issue and, obviously, we will listen carefully to what the committee says on it.

There appear to be a couple of issues on the charter. The first is whether revenue Scotland should be required to consult externally in preparing or updating the charter of standards and values. We probably should put a duty on revenue Scotland to do that, so we will lodge amendments at stage 2 to substantiate that. The second issue is that the bill is a bit out of balance in that it says that revenue Scotland will aspire to live up to the charter, but that we expect people to aspire to it. That is an uneven playing field, which we will rectify at stage 2.

**Jamie Hepburn:** That is helpful, and I think that it will be welcomed across the board.

I totally accept your point about privilege, but the issue is more about whether it is possible to tightly define the circumstances in which privilege extends to the legal profession. My understanding is that it is not a blanket provision. Mr Miller suggested that that could be looked at, but I do not know whether that is possible.

**John Swinney:** We will explore the issue further to satisfy ourselves that we have the balance right, but the dangers and difficulties that I highlighted in my earlier answer are very real considerations that we have to reflect on.

**Jamie Hepburn:** Malcolm Chisholm raised the issue of appeals, which brings me on to an issue that was raised by the Faculty of Advocates. The faculty suggested that the tribunals that are set up should have distinctive names so that they will not be confused with UK ones. That seemed kind of trivial at first but, in evidence to the committee, Philip Simpson pointed out that it is not a trivial matter, because litigants could be confused about which tribunal they should appeal to. The amount of tax involved could be quite small for the taxation fraud people but, to the litigant, who might be a low-income taxpayer, it could be quite a lot. To help our colleagues in the official report, I note that that evidence was given on 12 March. Could that issue be looked at?

10:45

**John Swinney:** We will consider that point carefully. Our objective is to avoid any confusion about which is the relevant body, so we will make sure that the terminology that is used is precise. If there is a need to lodge amendments at stage 2, we will do so.

**Jamie Hepburn:** The Faculty of Advocates has helpfully made some suggestions, but I cannot remember what they are just now.

The Faculty of Advocates also pointed out that the bill refers to other acts of Parliament by year. The faculty makes the point that, if we have greater competence and if there are other tax acts in the future, that could become quite confusing. Should the references include an acronym as well? Again, that seems a trivial point, but for the future interpretation of legislation the issue could be more important than it seems at first glance.

**John Swinney:** Again, we are happy to look at the operational impact of such a provision.

**John Mason:** As Mr Hepburn has raised the issue of the professions, let us go there again. I should declare that I am a member of ICAS. I see from *The Herald* this week that there are 14 MSPs with a background in the legal profession.



However, I may be the only one with an accountancy background, so I am in a minority here.

Your first point was that it would be difficult to pin down what constitutes tax advisers. We have a variety of professions. The Law Society of Scotland largely regulates lawyers and solicitors, and ICAS, the Chartered Institute of Taxation and other groups regulate their members. To create an even playing field, would it be possible to specify the institutes? We have received evidence that lawyers in Scotland are not using their privilege to market themselves, whereas in London there is evidence that lawyers go out to the public and say, "Come to us and you'll get more confidentiality than if you go to an accountant or some other adviser."

**John Swinney:** As I said, I will reflect on the point. We might be able to design an approach that properly addresses the issue that I am concerned about, which is that we must be absolutely clear about the quality and nature of the advice that is being offered to individuals by accountancy and tax practitioners. We can be very clear about that in the legal profession, as the members who are covered by professional privilege are regulated by the Law Society of Scotland and it is pretty clearly defined in that context. I will see whether it is possible for us to arrive at a comparable definition in the tax and accountancy sector. However, we must be mindful of the fact that there would have to be a very disciplined test of regulation for us to come to a conclusion on that point.

**John Mason:** I echo what Jamie Hepburn said. My preference—and probably the preference of other committee members—would be to restrict privilege rather than extend it. That might be an easier answer. I would personally find it acceptable if the legal profession's privilege was restricted tightly to legal matters that other advisers would not get involved in. If a matter was clearly in the tax realm, there would then not be privilege for anybody.

**John Swinney:** If the committee would care to reflect on those issues, as I have indicated already—and as I undertook to do with regard to the Land and Buildings Transaction Tax (Scotland) Bill and the Landfill Tax (Scotland) Bill—I will await the outcome of the committee's deliberations before forming a view on what steps the Government needs to take to address those points.

**John Mason:** That is great. Thanks very much.

We have already touched on anti-avoidance measures, uncertainty and other issues of that nature. A lot of people to whom we have spoken have asked for certainty. You have already

commented that that can provide a loophole or a means by which people can get around the requirements. I do not know whether you agree with me, but my feeling is that certainty is good for good taxpayers but not good when it comes to bad taxpayers, by which I mean those who try to avoid paying tax. How can we get the balance right? We need to have a fair degree of certainty so that people do not get trapped by the process.

**John Swinney:** The message that I am trying to convey to the committee, which I have tried to convey throughout the bill process, is that I see the bill as a set of legislative provisions that we have to get precisely right as we take them forward, but it is also about signalling a change of culture. There is a culture that says that it is quite all right to deploy an endless amount of creativity to find a way of avoiding paying tax. It is no secret that the minute that the Chancellor of the Exchequer sits down after his budget speech, various people run off to find a way of undermining whatever tightening of tax provisions the Chancellor has just announced. That is just a practice that is in common currency. What I am saying is that, as we embark on the first process of exercising tax management and collection responsibilities in Scotland in 300 years, we should start off on the right footing. The right footing is that we expect people to pay their taxes and not to invest heavily in trying to find ways of avoiding doing so. To enable us to do that, we are giving that cultural expectation a legislative form with the general anti-avoidance rule, and we are trying to set the bar as high as we possibly can.

When I have been discussing the formulation of the provisions in the bill with my officials and with the tax consultation forum, that is what has been in my thinking. I have approached those discussions with a firm idea of where I judge Parliament to be in relation to these questions. I am certainly regularly questioned in Parliament about ensuring that individuals and organisations pay the taxes that they are due to pay.

In this legislation, we will signal a difference of culture, and we will reinforce that with the measures on the general anti-avoidance rule. I do not think that there is much cause for concern on the part of good, faithful taxpayers that they will inadvertently find themselves in a difficult position, because good, faithful taxpayers will be paying their tax anyway. For people who seek to find creative ways of avoiding paying what is due to be paid, the signal is that that is not the way that we are doing things here.

**John Mason:** One of the professional advisers said that most taxpayers want to pay the correct amount of tax. I have to say that I was not completely convinced of that—I was slightly more sceptical. Do you have a view on that?

**John Swinney:** The Church of Scotland report, “Imagining Scotland’s Future: Our Vision”, which came out following the church’s imagining Scotland’s future exercise, spoke about the “joy” of paying tax. With no disrespect to the Church of Scotland, I thought that that was slightly on the optimistic side. However, I know the point that it is making, which is that we should confidently and comfortably pay tax because it is for a good purpose and contributes to a system of wider policy objectives that are broadly supported by our civic community. However, I am not sure that people take a sense of joy from paying tax. With regard to the question of whether people will minimise their tax obligation if there is a way in which they can do so, I think that I share Mr Mason’s scepticism. Therefore, I think that we should set out a clear agenda with regard to how these issues will be taken forward.

**John Mason:** One of your arguments, which I have to say I agree with, is that we should move to a more principles-based approach, rather than the letter of the law, which would be a slight move away from Westminster. We have had evidence that other countries are even more radical in some aspects and, for example, publish all the tax returns for everybody. Some countries even give prizes, awards and incentives to the top 10 taxpayers. We seem to be staying quite close to the tradition of confidentiality and privacy. Will you comment on that?

**John Swinney:** If we were to go to open publication of tax information, given the tax responsibilities that we currently have, I do not think that it would give a particularly informative picture. I am not sure that publication arrangements are necessary or whether they would inform the debate sufficiently to enable best practice in tax paying to emerge. What I have set out to the committee and what is in the bill is designed to create the best practice of tax paying within Scotland. I am pretty confident that that approach and that structure will create good practice within the tax-paying population.

**John Mason:** Mr Chisholm said that he was not going to discuss the reasonableness test, but I quite like it, so let us have a wee go at it. Mr Whiting gave evidence on it. One of the contrasts that was made by some professional groups is that we use the word “reasonable” only once, but in the UK there is a double reasonableness test. However, it struck me that you could use the word “reasonable” three times in one sentence, and Mr Whiting suggested that you could use it four times. I suppose that it is a question of degree, but did you have a particular reason for using the word “reasonable” just once, as compared to the UK legislation, where it is used twice?

**John Swinney:** Using the word “reasonable” once is consistent with the style and standard of the legislation that we are proposing. It is to signal that the degree of flexibility and interpretation that surrounds the payment of taxes will be kept at a minimal level within the tax system in Scotland. We inevitably dilute the principle the first time we use the word “reasonable”; we dilute it further the second time; we dilute it even more the third time; and if we use it a fourth time, I suspect that we have nothing left to dilute.

**John Mason:** That is helpful.

Earlier, we took evidence on the financial memorandum and, in particular, on the point that, on the basic costs, which I accept were set out some time ago, HMRC’s quote was somewhat higher than revenue Scotland’s. Since then, things have developed and we are doing what I understand to be extra work, which Ms Emberson reported on, so there is an extra cost of £3.5 million. Is it your view that HMRC would not have done any of that work if it had been doing the overall package? Do you think that its costs for doing that extra work would have been higher or lower?

**John Swinney:** It is important to remember the basis of the original cost estimates that we published. They were made on a like-for-like basis of HMRC essentially continuing with the current provisions on landfill tax and stamp duty land tax. We did not ask for a quote on deviating from the stamp duty land tax proposals—the status quo from the United Kingdom provisions—to the progressive land and buildings transaction tax. If we had asked for that quote, the HMRC number would have been higher, because accommodating that would have involved significantly more system redesign. To begin with, the cost estimates were on the basis of our undertaking the reforms that we wished to take forward and the HMRC provision of the status quo.

11:00

Some of the other costs that have been identified are for entirely new areas of activity, which are a product of the discussions that we have had about our own aspirations in the bill. For example, we want to tackle the illegal depositing of waste. That is not tackled at the moment, so I have to accept that a new cost arises out of that, which has emerged out of our handling of the bill. We are monitoring the cost issues closely to ensure that the core costs that have been explained to Parliament are fulfilled, that we properly account for any additional functions that we take on and that we financially control all of those elements into the bargain.

**John Mason:** So, if we had used HMRC, the costs would probably have been at least the same or potentially even higher.

**John Swinney:** The original HMRC cost was higher than the cost estimate for undertaking the system that we are implementing under revenue Scotland. If we had asked HMRC to carry out additional functions, we would have had to pay for them. There would have been a further additional cost beyond the £22.3 million of costs that were estimated by HMRC.

**John Mason:** One of the extra costs is for the introduction of tribunals. Presumably there will be a saving to somebody if the present tribunal system is no longer being used by Scotland. If there is a saving to the UK system, might that affect the block grant adjustment?

**John Swinney:** I will have a shot at that. We will see how we get on, but I suspect that the cost difference if Scottish cases come out of the UK tribunals system will be very close to de minimis, given the volume of the case load involved.

**The Convener:** Gavin Brown has the next question. I apologise to Gavin for implying that this evidence session would start later than it did, which is why he missed the first two or three minutes of the cabinet secretary's opening statement.

**Gavin Brown:** Cabinet secretary, I was encouraged by your comments on penalties, with which I agree.

Just for clarity, did you say that you are definitely going to lodge stage 2 amendments, or is it the case that you will review the evidence in our report and may lodge amendments at stage 2?

**John Swinney:** I will definitely lodge some amendments. The question is, when I look at the committee's report, how extensive those amendments will be. However, there will certainly be some amendments to change the balance between the emphasis on penalties in primary and secondary legislation.

**Gavin Brown:** I am encouraged by that. It makes half of my questions redundant.

**John Swinney:** I am glad to have obliged.

**Gavin Brown:** We have had some discussion about whether the chief executive of revenue Scotland should be a member of its board. Schedule 1 talks about revenue Scotland having between five and nine members. Does the Government have a view at this stage on how many members there will be for the initial set-up of revenue Scotland?

**John Swinney:** It is likely to be at the lower end of the spectrum. Obviously, I have to be mindful about the longevity of board members to enable

proper retention of corporate expertise over the passage of time. It may edge up beyond that to give us members from which we can generate turnover and new faces coming in to build the corporate knowledge of the organisation.

**Gavin Brown:** Section 8, "Ministerial guidance", provides for guidance that ministers will give to revenue Scotland. In the main, such guidance will be published, but there is a get-out clause in that regard. Some people who gave evidence said that there should be a blanket rule that guidance must always be published. As the bill stands, it will not always have to be published, although I suspect that the intention is that it will be. Can you give examples of circumstances in which you think that guidance should not be published? Is the Government listening to the evidence and considering whether all guidance should be published?

**John Swinney:** My presumption is that I will place greater emphasis on section 8(3), which provides:

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

Subsection (4) is required in that, given that we are engaging in an area of activity that involves penalties and significant decision making about what is and is not acceptable, we have to reserve the right to some private space in the context of guidance from ministers, particularly in relation to operational matters and, specifically, avoidance measures. However, I assure the committee that my approach will be more heavily vested in subsection (3).

**Gavin Brown:** We have had a good discussion about the GAAR and you have given your view on an independent panel of experts. Given that the GAAR goes wider than anti-avoidance rules elsewhere, a number of witnesses suggested that there should be a pre-clearance procedure with revenue Scotland, which might be formal and binding or informal and informative. Does the Government have a view on that suggestion?

**John Swinney:** I am not sympathetic to the suggestion of a pre-clearance arrangement, for reasons that are similar to those that I discussed in response to Mr Mason's questions. Such an approach runs the risk of undermining the cultural approach to implementation of the bill, which I am anxious to take forward as a consequence of the acquisition of powers and responsibilities in relation to tax. A pre-clearance procedure would potentially undermine our approach.

**Gavin Brown:** A witness who spoke on behalf of taxpayers who are on low salaries and do not have accountants, lawyers and tax advisers suggested a number of things, including the two suggestions that I have put to you. How will you

ensure that unrepresented taxpayers, if we can so describe them, do not inadvertently fall into the GAAR?

**John Swinney:** I struggle to see where that would be a cause of great concern and where the issue could not be addressed by the support that the Government more widely makes available to financial advisory services in our communities. The relevant ground is likely to be covered by the wider financial advice that is available through a range of organisations that the Government and our local authority partners support.

**Gavin Brown:** Guidance will be read and understood by tax professionals. I was struck by the evidence that that witness gave and I wonder whether the Government will reflect on the issue.

**John Swinney:** I will look at the point in the light of what has been said. The purpose of the bill is not to entrap individuals who are in the situation that you describe. I will consider the evidence that you mentioned and, if the committee expresses a view on the issue, I will carefully consider what it says.

**Gavin Brown:** Thank you.

**The Convener:** Paragraph 66 of the policy memorandum says:

"The UK Government operates a Disclosure of Tax Avoidance Schemes (DOTAS) regime which applies to SDLT (although not to LFT). The Scottish Government does not think that a DOTAS arrangement is necessary in relation to SLFT due to the nature of the tax (tax evasion is the main issue rather than tax avoidance). Further consideration is being given to a DOTAS-type regime in relation to LBTT. Work is continuing to explore this further. It may be decided to bring forward such a scheme by way of amendments to the Bill at Stage 2."

What is your current thinking on the issue?

**John Swinney:** There is a finely balanced judgment to be made in that regard, for the reasons that I gave to Mr Brown. This all fits into my general argument that I do not want to put in place mechanisms that undermine what is in the bill; such mechanisms are often the downfall of tax legislation.

There is a specific issue in relation to the land and buildings transaction tax, in the context of which we have considered a prior-clearance approach because of the complexity of the issues that are involved and in response to aspirations for more flexibility in that area of policy. All that is balanced against my desire not to open the floodgates. We are looking at the issue carefully to determine how we can strike the balance.

**The Convener:** Does that mean that you have not yet decided whether to lodge amendments on the issue at stage 2?

**John Swinney:** We have not decided that at this stage.

**The Convener:** That is the clarification that I was seeking. Do you want to say anything else before I wind up this part of the meeting?

**John Swinney:** I will just say that I am grateful for the opportunity to discuss the bill.

**The Convener:** Thank you for responding to our questions, cabinet secretary. I thank members for their questions, too.

At the start of the meeting, the committee agreed to take the next item in private.

11:12

*Meeting continued in private until 11:59.*

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