Local Government, Housing and Planning Committee

27th Meeting, 2023 (Session 6)

Tuesday, 14 November 2023

SSI cover note for: Non-Domestic Rating Contributions (Scotland) Amendment Regulations 2023

SSI 2023/ 288

Title of Instrument: Non-Domestic Rating Contributions (Scotland) Amendment Regulations 2023

Type of Instrument: Negative

Laid Date: 23 October 2023

Circulated to Members: 26 October 2023

Meeting Date: 17 November 2023

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 27 November 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

2. An electronic copy of the instrument is available at: https://www.legislation.gov.uk/ssi/2023/288/contents/made

3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A.**

Purpose

4. The Explanatory Note states that—

> "Schedule 1 of the Non-Domestic Rating Contributions (Scotland) Regulations 1996 ("the 1996 Regulations") sets out rules for the calculation of non-domestic rating contributions payable by local authorities in Scotland to the Scottish Ministers. Paragraph 8B of that schedule provides that such non-domestic rating contributions are to be adjusted by taking account of the Tax Incremental Financing Administration Pilot Scheme set out on 5 November 2010.
>
> These Regulations amend the definition of "TIF project" in paragraph 8B of the 1996 Regulations, to refer to the updated Pilot Scheme which is to take effect from 1 April 2024."

5. The Policy Note explains that the purpose of the instrument is "to allow local authorities to invest in enabling public infrastructure that would otherwise not be delivered through private or public sector funding."

6. The Policy Note further states that "As the pilot scheme has progressed, and economic and policy conditions have changed, it has become apparent that greater flexibility is needed to ensure that the mechanics of TIF reflect the needs of the projects and the conditions they have faced. This change to the Tax Incremental Financing legislation is intended to provide the greater flexibility required."

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 31 October 2023[1] the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

8. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or

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[1] Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 31 October 2023 (parliament.scot)

officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Clerks,
Local Government, Housing and Planning Committee

Annexe A

Scottish Government Explanatory Note

Schedule 1 of the Non-Domestic Rating Contributions (Scotland) Regulations 1996 ("the 1996 Regulations") sets out rules for the calculation of non-domestic rating contributions payable by local authorities in Scotland to the Scottish Ministers. Paragraph 8B of that schedule provides that such non-domestic rating contributions are to be adjusted by taking account of the Tax Incremental Financing Administration Pilot Scheme set out on 5 November 2010.

These Regulations amend the definition of "TIF project" in paragraph 8B of the 1996 Regulations, to refer to the updated Pilot Scheme which is to take effect from 1 April 2024.

POLICY NOTE

THE NON-DOMESTIC RATING CONTRIBUTIONS (SCOTLAND) AMENDMENT REGULATIONS 2023

SSI 2023/288

The above instrument was made in exercise of the powers conferred by paragraphs 10 and 11(5) of schedule 12 of the Local Government Finance Act 1992. The instrument is subject to *negative procedure*.

Summary Box

Tax Incremental Finance (TIF) is a funding model that allows local authorities (LAs) to invest in enabling public infrastructure that would otherwise not be delivered through private or public sector funding. The new infrastructure will enable additional local economic activity, with a view to meeting the financing costs using the anticipated uplift in future Non-Domestic Rates (NDR) resulting from the investment. Each TIF project is based on a legal agreement between the Scottish Government and the relevant LA. The Scottish Government is required to agree that the LA can retain additional NDR income generated within a defined physical zone linked to the TIF investment.

The original TIF legislation was agreed in 2010. The Scottish Government has supported six pilot projects: Argyll and Bute, Falkirk, Fife (two schemes), Glasgow and North Ayrshire. As the pilot scheme has progressed, and economic and policy conditions have changed, it has become apparent that greater flexibility is needed to ensure that the mechanics of TIF reflect the needs of the projects and the conditions they have faced. This change to the Tax Incremental Financing legislation is intended to provide the greater flexibility required.

Policy Objectives

Currently, Tax Incremental Financing (TIF) legislation references a publication on gov.scot which outlines how TIF agreements operate. This SSI (Scottish Statutory Instruments) will refer to a revised administration document which redefines what a TIF project is.

There are four main changes to the original TIF administration document:

a. The “TIF Pilot Scheme” section acknowledges that greater flexibility in TIF agreements is needed to ensure that the scheme remains fit for purpose.
b. The “TIF Pilot Scheme” section now includes a paragraph outlining that LAs can submit a revised business case, and it identifies areas of the original business case that they can request changes to.
c. Where the document refers to TIF projects, it now explicitly says “new or revised” to cover revised business cases.
d. LAs will also be able to include analysis of wider zones of influence to assess the economic impact of the TIF project.

The updated TIF administration document can be found at **Annex A**

The revised TIF administration document allows Local Authorities (LAs) to submit a revised business case for Scottish Ministers to consider. LAs will be able to request changes to: The length of their TIF agreement;

a. The timescale for the TIF investment period and when the investment is expected to be completed by;
b. The cost and benefits of the TIF enabling infrastructure;
c. The proposed TIF assets and;
d. The defined TIF area.

The revised guidance has sufficient flexibility to capture other requests LAs may have for their TIF agreements.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Local Authorities involved in the five active TIF pilot schemes have been consulted and support changes to TIF legislation to provide greater flexibility in their proposals.

Impact Assessments

The change to TIF legislation provides greater flexibility for Local Authorities and should not impact wider than the Local Authorities who are actively progressing with TIF pilots. We do not believe Impact Assessments are required on that basis.

Financial Effects

The Deputy First Minister confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Budget and Public Spending Directorate

October 2023

ANNEX A – PROPOSED REVISED TIF ADMINISTRATION DOCUMENT

THE TAX INCREMENTAL FINANCING ADMINISTRATION PILOT SCHEME

TIF Pilot Scheme

Tax Incremental Financing ("TIF") allows Local Authorities to capture locally generated, incremental non-domestic rate revenue from regeneration development that has arisen as a direct result of their investment in "unlocking" infrastructure. The captured revenue is then used to repay debt raised to finance the infrastructure investment.

The TIF Pilot scheme was developed by Scottish Ministers in 2010 to enable up to six local authority projects to use the incremental non-domestic rate revenue to finance borrowing associated with the enabling infrastructure investment projects. The TIF scheme allows Local Authorities to capture incremental non-domestic rates revenue arising from development in a defined TIF project area, in return for which the local authority takes responsibility for meeting the debt repayments associated with the finance raised to deliver infrastructure required to unlock the development.

The local authority undertakes the borrowing and is therefore liable for the repayments. The local authority takes any risk associated with the additional NDR revenue generated by the project not materialising in the way that is forecast in the Business Case and the local authority keeps nothing if receipts are below the amount required to generate an amount for it to retain.

The use of TIF is predicated on a "But-For" test, meaning that the identified enabling infrastructure required to unlock development in the area can only be delivered through the creation of the TIF mechanism. It would not otherwise be deliverable by finance from the private sector and / or alternative public sector funding. TIF should be used in parallel with existing public and private sector funding streams.

Linked to the operation of the TIF Pilot scheme, and the approved TIF projects, consideration has been given to how the projects have progressed in the context of the original regulations and legislation. This consideration has highlighted that whilst projects have progressed, greater flexibility is needed to ensure that the mechanics of TIF reflect the needs of the projects themselves, the conditions they have faced and how long term strategic TIF plans need to be reviewed, revisited, and in certain cases revised. Each of the active five TIF pilot schemes has expressed a desire to change elements of their TIF project and agreement as a result of changing circumstances. These are being advanced, and allied to this it is recognised that an update to the underpinning legislation would be required to ensure the mechanics of the TIF Pilot scheme would be 'fit for purpose'.

Any proposal for a TIF project (whether through a new or revised Business Case) should demonstrate to Scottish Ministers that:

- The enabling infrastructure will unlock regeneration and sustainable economic growth;
- It will generate additional (or incremental) activity and public sector revenues (net of a displacement effect); and
- It is capable of repaying, over an agreed timescale, the financing requirements of the enabling infrastructure from the incremental revenues.

For the purposes of TIF, regeneration and economic growth is classed as being about place making and the sustainable transformation of places for the better. Such transformation should deliver additional economic, physical, social, and environmental aspects, which could be evidenced through a series of outcomes such as, but not limited to:

- Improved business confidence;
- Increased economic activity and employment / lower unemployment;
- Higher income and less reliance on benefits;
- More effective public services;
- Improved educational outcomes and higher skills base;
- Higher land and housing values;
- Improved community confidence;
- An improved and better designed built environment;
- Reduced emissions and / or the creation of green infrastructure that supports a just transition; and
- An enhanced natural environment, including access to quality green space.

All new TIF proposals will need to be supported through the development of a supporting Business Case, whilst revisions to existing TIF projects may be achieved through a revised Business Case, where material change(s) or an addendum to the original Business Case, where the key changes are more limited in nature. Any Business Case should detail the justification for utilising TIF to deliver investment within the proposed area, the basis for the selection of the chosen enabling infrastructure and why it is believed this infrastructure will deliver the growth and additionality envisaged. It should also consider the counterfactual to the proposed TIF project i.e., what would happen without the TIF project. The TIF Business Case should also consider:

- The overall viability of the project, from both an economic and financial perspective;
- Contribution towards key policy objectives – local, regional, and national;
- Additionality at the city/region level, and national benefit;
- Implementation structures;
- The Net Zero position of the project (including environmental performance and emissions of any proposal); and
- Risk allocation and management and demonstrate deliverability along with a clear consideration of the key risks associated with the TIF, including the allocation of financial and delivery risks to consistently incentivise the key parties.

The development of each supporting Business Case will be supported and assessed by the Scottish Futures Trust and must present to Scottish Ministers a clear value for money proposal for any project to receive approval to proceed. If a proposal, whether as a new or revised Business Case, does not clearly meet these conditions then it will not receive approval to form part of the TIF Pilot Scheme.

As highlighted above, a local authority may submit a revised Business Case for consideration by Scottish Ministers. This could include detail as regards, but not limited to, the following elements:

- A revied timescale for the proposed period of investment in TIF infrastructure, and when this is expected to be completed;

- A revision in the likely cost and benefits of the TIF enabling infrastructure; and
- Changes to the proposed TIF assets envisaged under the original Business Case.

Other factors which may change in any Business Case are also considered below: this includes revisions to the defined TIF area, displacement, the lifetime of a TIF project and the basis of the first major investment which would trigger the TIF project. Any revised Business Case may also identify other elements for which Scottish Minister approval is requested. The details of revisions in this note are not considered to be exhaustive.

Governance

A robust project governance and reporting structure will need to be established and continue during the lifetime of the TIF project to ensure quality assurance, transparency, clear decision making and oversight for the project. As part of this governance structure a TIF Executive will have to be established, which comprises the Local Authority, Scottish Government and Scottish Futures Trust. The key functions of the TIF Executive include;

- Developing and coordinating the TIF infrastructure programme and the associated planning and approval processes;
- Ensuring the development programme reflects the objectives of the key stakeholders;
- Design development, tender evaluation, and award;
- Project management and delivery;
- Ensuring finance is available;
- Monitoring business development/economic impact (as illustrated in the TIF Pilot Scheme section); and
- Considering and supporting the development of revisions to the original TIF Business Case

Any proposed material change to an agreed TIF project will require a revised Business Case. The materiality of any potential change should be discussed with the TIF Executive. This revised submission will need Ministerial approval following an assessment of the new proposals.

Period of Individual Projects

A local authority TIF project will propose a fixed term for the TIF project, which must be approved in advance by the Scottish Ministers. It is expected that a TIF project will operate for a period of around 25 to 30 years, although longer terms may be agreed with Scottish Ministers, following the first major infrastructure investment, the First TIF Investment. In order to manage risk a TIF project will require to be structured in a way that any prudential borrowing debt should be repaid before the expiry of the agreed TIF period and the overarching TIF agreement.

Regulations

In accordance with sections 113 and 116(1) of, and paragraphs 10 and 11(5)(a) of Schedule 12 to, the Local Government Finance Act 1992, the Scottish Ministers have made the Non- Domestic Rating Contributions (Scotland) Regulations 1996 (SI 1996/2070) as amended to create the TIF scheme in 2010 and now further amended. These provide for the retention of revenue by local authorities which are operating TIF projects in Scotland and originally came into force on 31st December 2010.

Area of individual Projects

A local authority TIF project (whether new or revised) will operate within a clearly defined and agreed boundary from which the incremental non-domestic rate revenue will be raised. This area will have to be defined in a way that will differentiate between properties inside, and outside the line and provide a clear determination of whether any new development is within or outwith the TIF area.

Projects may wish to establish wider boundaries - zones of influence - within which development will be enabled as an indirect consequence of the TIF. It may be appropriate to analyse the economic impact of the TIF project at this wider level - guidance should be sought from SFT (Scottish Futures Trust) as to the applicability of establishing a wider boundary that is broader than the TIF area. In the event that a wider zone of influence boundary is used in assessing the economic impact of the TIF project, the TIF area (as defined in the Area of Individual Projects section) will constitute the boundary within which the collection of additional non-domestic rate revenue will apply.

Regardless of the approach, the TIF project will require a detailed plan showing the boundary(ies). Each project will in practice have a unique area; a TIF area cannot be part of two TIF projects.

Incremental Revenues

It is anticipated that the incremental revenues captured as part of the TIF project will principally comprise non-domestic rates arising from development unlocked by the infrastructure investment. Local authorities may propose capture of other incremental revenues, for example car parking charges, as part of the funding mechanism for any TIF project.

Incremental revenue in respect of non-domestic rates is measured in relation to a collectable baseline in the area prior to the TIF project, and net of an allowance for displacement of economic activity from outside the TIF area.

Collectable Baseline

The collectable baseline amount is defined in the Regulations (new paragraph 8B(3)(a) of Schedule 1 to the 1996 Regulations) and will be determined by the Non Domestic Rate Income payable in the TIF area prior to the commencement of the project from all the properties in the defined area at that point uprated to include the effects of the annual change in the non-domestic poundage rate. Consideration to the basis of the collectable baseline amount may be considered by any revised TIF Business Case.

The collectable baseline is therefore:
The baseline target for business rate income within the TIF area. It will take into account all the standard deductions, including mandatory and discretionary reliefs and any additions resulting from appeals and late additions to the roll used in calculating business rate income. The calculation will be determined by the income generated in the TIF area for the year preceding the commencement of the TIF (or its revision) and will be revised on an ongoing basis to take into account any material change - a

change event would occur as and when required (as a minimum it will be reviewed annually) and would be dependent on a material change in circumstances that are relevant to the TIF (e.g. change in the poundage, impact of the quinquennial revaluation review). A full description of how the collectable baseline will be calculated under the Regulations is provided in the 'Calculation of the collectable baseline' section.

The collectable baseline calculation will be based on the 'mid-year' Non-Domestic Rate return from Councils preceding the start of the financial year in which the new or revised TIF commences. The TIF "collectable" baseline target amount is therefore based on estimates from local authority returns of the amount that it will collect. Once the collectable baseline calculation for the year ahead has been set it will be updated on an ongoing basis to take into account annual changes in business rates poundage and may also be reviewed to take into account other material changes (e.g., changes in relief schemes or the impact of revaluations).

Displacement

The level of displacement of NDR generating occupancy from outside to inside the boundary of the defined red-line area is one of the key risks associated with any new or revised TIF project. If not accompanied by backfill of other occupancy into vacated properties outside the redline, the net additional NDR take at a national level is reduced by the level of this displacement, and so any project, should be able to demonstrate significant additionality. That said, alternative uses for vacated properties outwith the defined red-line area may provide an opportunity to deliver alternative uses and needs for places and communities, and as such, this position should be considered as part of any Business Case.

The rules in the 1996 Regulations for retention of NDR through TIF exclude an amount to represent displacement, being the extent to which the nondomestic rates paid result from relocation and are payments that would have been made to the authority or an authority in another local authority area had the TIF project not been in operation. The TIF capture mechanism will therefore specifically exclude an amount agreed with the Council to represent displacement:

a) A single percentage figure for displacement will be adopted from the new or revised Business Case and should be the best available single percentage figure pre-estimate of the 'most likely' displacement based on economic evaluation of the anticipated development mix catalysed by the TIF investment.

b) The level of displacement will be analysed at the national Scottish level and will be based on standard project appraisal techniques – the approach should be agreed with SFT and will meet the requirements of the HM Treasury Green Book.

c) The percentage figure agreed through the new or revised TIF agreement will then apply across all property types.

d) The risk around the accuracy of this pre-estimate for the TIF projects is taken by the Government which does not have any direct ability to manage the risk. It will therefore be a requirement that actual levels of displacement be monitored by the Council over the life of the TIF project, along with the subsequent history of properties vacated as a result of such displacement, and the results reported annually to the Scottish Government, which will retain the power to vary the displacement figure if monitoring shows that the estimate is inaccurate. This will consider how any vacated properties may have been utilised for alternatives uses and how these new uses could impact upon wider outcomes, balancing these against the displacement levels of the TIF project.

Collected Amount

The "collected" amount is defined in paragraph 8B of the 1996 Regulations and will be the actual income collected for the year in the red line area net of deductions (including the deduction for the agreed level of displacement, reliefs, and prior year adjustments). The collected amount does not therefore include any under-collection of rates due, that is a risk carried by the council. The final amount to be retained (Collected amount less the Collectable amount within the defined TIF area) will be subject to confirmation following submission of an audited return and can therefore be adjusted up or down.

Displacement Levels

Should the Council materially amend district plans, zoning, outline planning consents or similar, or otherwise encourage or facilitate development of a nature that could be expected materially to adversely affect the level of displacement from occupiers of properties developed within the red-line area from that mix anticipated in the Business Case, the Scottish Government may use this evidence to reassess the level of Business Rate income that the council can retain for the purposes of servicing the TIF project infrastructure borrowing costs.

Borrowing and the Repayment of Debt

Approval of a new or revised TIF scheme by Scottish Ministers is an approval to retain business rates and not an approval for a local authority to borrow.

A local authority may only borrow to fund the capital expenditure of the local authority. Capital expenditure is defined in accordance with proper accounting practices.

Where a new or revised TIF scheme funds third party capital expenditure, either directly or through the provision of grants or loans to third parties, the local authority must apply to the Scottish Ministers for a statutory 'Consent to Borrow'. This should accompany the Business Case. A statutory borrowing consent will not be available to fund revenue expenditure of either the local authority or third parties.

All borrowing for a TIF scheme shall comply with the requirements of paragraph 14 of Schedule 3 of the Local Government (Scotland) Act 1975. This requires any borrowing for the TIF to be carried to the Loans Fund. An advance from the Loans Fund will then be made in each year for the capital expenditure which is incurred for the TIF scheme. The advances from the Loans Fund must be clearly identified as the TIF scheme. The fixed period for the statutory repayment of the TIF advance is equal to the TIF scheme period.

One hundred percent (100%) of the "collected" amount must be used to finance the annual statutory charge for the repayment of the TIF loans fund advance, plus the interest on that advance (debt costs). Following the full repayment of the Loans Fund advance the local authority will retain 50% of any “collected” amount during the remaining TIF scheme period. The other 50% will be treated as being due to the Pool.

The local authority is required to maintain records showing the debt costs of the TIF and the “collected” amounts for each year. A cumulative value shall be recorded to be able to clearly identify when the Loans Fund advance has been fully repaid, after which the local authority may only retain 50% of the “collected amount”. This information will be collected by the Scottish Government on the NDR returns.

Monitoring and Evaluation

Effective ongoing monitoring needs to be undertaken by the TIF Executive to allow for an audited calculation of Collected and Collectable amounts of monies gathered within the TIF area by the Scottish Government.

Further monitoring and evaluation of business development, displacement, economic impact, and other identified benefits, by the TIF Executive is necessary as part of justifying each additional stage of investment in the enabling infrastructure stages. This information is also needed to enable the Scottish Government to assess the relative success of the TIF Pilot Scheme.

Calculation of the collectable baseline

As described in the ‘Collectable Baseline’ section and reflecting any revisions the baseline target for business rate income within the TIF area will take into account all the standard deductions, and additions used in calculating the annual Scottish business rate income. The difference being that the calculation will be restricted to the income generated in the TIF area for the year preceding the commencement of the TIF (whether through a new or revised Business Case). This baseline figure will be revised on an ongoing basis to take account of the change in the annual poundage and may also be reviewed to take into account other material changes (e.g., changes in relief schemes and revaluations) into account any material change including the change in the poundage.

Both the calculation of the collectable baseline and the annual collected amounts (including as adjusted for a revised Business Case and First TIF investment) will require separate but similar returns to the standard non domestic rate returns currently used in the administration of the non-domestic rate pool but covering the TIF area only.

A summary of the basis of the calculation of the collectable baseline target will be as follows:

Non-Domestic Rates Return for the TIF Area
Mid-Year return for the year prior to the commencement of the TIF (year 0)

	Gross amount of non domestic rates payable for year 0
less	all Mandatory Reliefs for businesses within the TIF area
less	all Discretionary reliefs awarded to businesses within the TIF area

less	other deductions including rates written off and refunds of overpayments
less	any prior year adjustments for bad debts or losses to appeals
plus	bad debts recovered or additional income from lost appeals
plus	any other deductions or additions not included elsewhere
	Total net collectable non domestic rates payable for year 0
plus	additional income to be generated from increased rate poundage for year 1
equals the total collectable baseline for the TIF area.	