Finance and Public Administration Committee

11th Meeting 2024, (Session 6), Tuesday 19 March 2024

Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

Purpose

1. The Committee is invited to take evidence on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill from the Minister for Community Wealth and Public Finance and the following Scottish Government officials—

    - Jonathan Waite, Aggregates Tax Bill Team Leader,
    - Robert Souter, Senior Tax Policy Adviser, and
    - Ninian Christie, Lawyer, Scottish Government Legal Directorate.

2. This paper provides background information on the Bill and a summary of the evidence received so far. SPICe has produced a separate briefing on the Bill.

Background

3. The Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance on 14 November 2023 and makes provision for a Scottish Aggregates Tax ("SAT"), a tax on the commercial exploitation of primary aggregates, to be administered by Revenue Scotland. The Bill also makes a number of amendments to the Revenue Scotland and Tax Powers Act 2014 (RSTPA) in relation to the administration of devolved taxes.

4. As explained in the policy memorandum, the Bill was introduced primarily as a consequence of measures enacted in the Scotland Act 2016, which enabled the Scottish Parliament to legislate for a tax to replace the UK Aggregates Levy (UKAL) in Scotland. The Bill proposes that the SAT will be collected and managed by Revenue Scotland, as the tax authority responsible for the administration of devolved taxes in Scotland.

Outline of Bill provisions

5. Part 1 of the Bill establishes the new SAT and contains the following provisions:

    Chapter 1 – The tax: defines the tax and gives responsibility to Revenue Scotland to administer and collect the tax;

Chapter 2 – Key concepts: defines the fundamental concepts underlying the tax, including—

a) which aggregate is taxable,
b) which aggregate is exempt from the tax,
c) what is commercial exploitation, and
d) who is liable to pay the tax;

Chapter 3 – Calculation of tax: sets out how the amount of tax is to be calculated and gives a power to the Scottish Ministers to set the rate of tax;

Chapter 4 – Administration: contains various provisions on tax administration, including regarding registration, tax returns, and special cases;

Chapter 5 – Penalties: imposes penalties in relation to the tax, for instance for failure to make a return, failure to pay tax, and failure to register for tax;

Chapter 6 – Reviews and appeals: makes provisions about reviews and appeals of decisions by Revenue Scotland in relation to the tax; and

Chapter 7 – Interpretation: defines the key terms used in Part 1.

6. Part 2 of the Bill contains six substantive provisions, and one minor correction, making separate amendments to the RSTPA 2014, as follows:

- a power for Revenue Scotland to refuse a repayment claim for tax where the claimant has failed to pay other devolved tax due;
- a provision clarifying the penalty in the 2014 Act for failure to pay LBTT;
- a provision clarifying the legal continuity of acts by different designated officers of Revenue Scotland, and clarifying how summary warrants for the recovery of unpaid amounts of tax are to be executed;
- a power for the Scottish Ministers to make regulations on the use of communications from Revenue Scotland to taxpayers, including provision about the use of electronic communications;
- a power for the Scottish Ministers to make regulations on the use of automation by Revenue Scotland;
- a power for Revenue Scotland to off-set a taxpayer debit against a credit;
- a minor amendment to section 94, substituting the word “section” for “paragraph”.

7. The policy memorandum explains that the amendments in Part 2 will relate to Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLT) in addition to SAT and are intended “to support the efficient and effective collection of all devolved taxes by Revenue Scotland”.

8. The memorandum further notes that the setting of the SAT rate, as well as detailed provisions for the administration of the tax, including the claiming of tax credits, are to be set out in subordinate legislation.

Policy aims

9. Commercial exploitation of primary aggregates[1] (mainly crushed rock, gravel and sand) has been subject to UKAL since its introduction in April 2002. Currently, commercial exploitation is triggered when the aggregate is removed from its originating site, part of a supply agreement, used for construction purposes or mixed with another substance other than water. The definitions of commercial exploitation used in the Bill for the SAT align with those provided for in the UKAL.

10. The policy memorandum states that the proposed SAT retains the fundamental structure of UKAL, which, "offers a degree of continuity for taxpayers […] while also ensuring that the devolved tax can evolve over time to support Scottish Government circular economy objectives". It highlights general support for the continuity of the existing definitions of aggregate, taxable aggregate, commercial exploitation and exempt aggregate, given:

    - "the definitions had developed over a long period of time with extensive engagement between the UK Government and stakeholders,
    - they are widely understood by the industry, and
    - they had been considered and validated through litigation, including by the European courts".

11. The Bill provides that SAT can be charged on taxable aggregate at any point of commercial exploitation, while aggregate imported to Scotland from outside the UK will be taxable at the first point of commercial exploitation to occur after the aggregate arrives in Scotland, an approach consistent with current arrangements for the UKAL.

12. In relation to cross-border movement of aggregates within the UK, "the UK Government have stated that movements of aggregate from Scotland would become subject to UKAL on the same basis as imports", while "the Scottish Government intends that aggregate moved to Scotland from the rest of the UK should be subject to SAT". The policy memorandum explains that "commercial exploitation of aggregate moved to Scotland from the rest of the UK will be taken to occur in Scotland. As a result, some aggregate producers based in the rest of the UK may have to register for SAT, but only where they are responsible for commercially exploiting aggregate moving to Scotland".

13. According to the policy memorandum, aggregates are extracted and sourced across Scotland, with operating quarries found in nearly all 32 local authority areas. The memorandum states that the design and delivery of the SAT is built on the foundation of the Scottish Government's Framework for Tax 2021 and its

[1] The Policy Memorandum explains that primary aggregates, otherwise known as virgin aggregates, are produced from naturally occurring mineral deposits used for the first time. Secondary aggregates refer to the by-products of quarrying and mining operations or material arising as an unavoidable consequence of construction works, as well as manufactured aggregates obtained as a by-product of other industrial processes. Recycled aggregates are those arising from the processing of inorganic material previously used in construction.

introduction will support the Scottish Government's ambitions for a circular economy, through—

- encouraging the minimum necessary exploitation of primary aggregates
- maximising the use of secondary and recycled aggregates, and
- incentivising innovation and development of alternative materials.

Scottish Government consultation

14. The Scottish Government announced its intention to introduce a Scottish Aggregates Tax in 2021. Devolution of the tax had previously been delayed due to a court case against UKAL on state aid grounds which resulted in the European Commission finding the UKAL was lawful, apart for one exemption for shale (which was subsequently removed in 2015). The UK Government then reviewed the levy. Prior to the commencement of the UKAL review, the Scottish Government commissioned its own research into potential options for a SAT, with conclusions published in August 2020.

15. A public consultation on proposals for the SAT was held from 26 September to 5 December 2022 and received 24 responses. The consultation covered the context for a devolved Aggregates Tax, the scope of the tax, exemptions and reliefs, tax rates, a sustainability fund, and several tax administration and compliance questions. The policy memorandum notes that this was accompanied by a programme of stakeholder engagement, including meetings with aggregates industry representatives, COSLA and the Scottish Environment Protection Agency and quarry site visits.

16. An analysis report on the responses to the public consultation was published by the Scottish Government on 15 November 2023. According to that report, respondents, particularly those representing industry interests, expressed strong support for the tax to align closely with UKAL and retain current definitions, exemptions and reliefs. Some respondents, however, argued that the Scottish Government should introduce a distinctive tax with a broader scope, or could express the same scope more clearly in legislation. While the report notes broad agreement on the circular economy goals associated with the introduction of the SAT, the consultation responses highlight "complexities associated with creating two tax jurisdictions where there was previously one, including the treatment of cross-border movements of aggregate and the importance of avoiding double taxation".

17. Following the consultation, an expert advisory group was established in January 2023. The group has met on five occasions and discussed the aggregates sector in Scotland and the process to develop a SAT Bill, potential definitions of "aggregate" and "commercial exploitation", exemptions and reliefs, the tax treatments of imports and exports of aggregates, rate setting, the potential to establish a sustainability fund linked to SAT and administration of the tax by Revenue Scotland.

18. In relation to proposals set out in Part 2 of the Bill, the policy memorandum notes that these "reflect detailed discussions with Revenue Scotland", however, it further states that "no formal consultation with other tax stakeholders has been undertaken on these prior to their inclusion in the Bill". The Scottish Government commits to future consultation on the provisions relating to automation and communications from Revenue Scotland to taxpayers prior to bringing forward regulations.

19. According to the policy memorandum, the provisions in the Bill are "not expected [to] have any impact on equal opportunities or fairness", do not directly raise any relevant human rights concerns and are not expected to have an adverse impact on island communities. Full Equalities Impact Assessment, Fairer Scotland Duty Assessment, Island Communities Impact Assessment and Strategic Environmental Assessment were therefore not deemed necessary for this Bill.

20. A Business and Regulatory Impact Assessment (BRIA) for the Bill was published on 15 November. The BRIA considered three possible options in relation to establishing a replacement for the UKAL in Scotland:

    1. do not replace UKAL once it is disapplied in Scotland,
    2. introduce a replacement tax that retains the fundamental structure of UKAL while being tailored to Scotland's needs, or
    3. provide for a replacement tax that takes a fundamentally different approach to the existing UKAL, redefining key concepts and introducing a different system for the administration of SAT.

21. The BRIA recommended the adoption of option 2, "on the basis that it will reduce the uncertainty for current and future taxpayers and their customers and make the transition between taxes easier for the businesses affected". It further recommended the inclusion of the measures in Part 2 of the Bill due primarily to "the relative infrequency with which primary legislation on tax matters is brought forward for consideration by the Scottish Parliament" and "the views of Revenue Scotland on the benefits that the provisions could bring".

Financial implications of the Bill

22. The Financial Memorandum (FM) assesses the overall costs of the Bill relating to the set-up and operation of SAT as a whole, rather than individual provisions. Calculations are based on the assumption that the tax rate set for the SAT is the same as that under the UKAL, currently charged at £2.00 per tonne, although this rate is expected to increase to £2.03 per tonne from April 2024.

23. Costs are expected to be incurred primarily by Revenue Scotland and, to a lesser extent, by the Scottish Fiscal Commission (SFC) and the Scottish Courts and Tribunals Service (SCTS). A summary of these cost estimates is available on pages 13-14 of the FM, showing a total of £3,385,000 - £4,320,000 to be incurred by the Scottish Administration (including Revenue Scotland and SFC) during the first three years (2024-25 to 2026-27) and approximately £26,000 to be incurred by the SCTS over the same period. The FM also includes a commitment from the

Scottish Government that any additional costs incurred by Revenue Scotland to deliver the SAT will be met. No cost estimates are provided for provisions in Part 2 of the Bill, with the FM stating that "the measures would be broadly neutral in terms of Revenue Scotland's costs of operation, relative to the counterfactual where they are not introduced".

24. In relation to the impact of the SAT on the Scottish budget, the FM notes that a Scotland-specific breakdown of UKAL revenues is not currently available from HMRC. The SFC produced an illustrative forecast of Scotland's share of the UKAL in May 2023, set out in Table 1 of the FM (page 5). According to SFC's forecast, the estimated Scottish share of UKAL Revenue is expected to amount to £60 million in 2023-24, £60 million in 2024-25, raising to £61 million in 2025-26. The illustrative forecast, however, is based on limited data and a full forecast is expected in 2024.

25. Under the terms of the Fiscal Framework, the Scottish Government's budget will be reduced once the tax is introduced to reflect the fact that the Scottish Government will retain receipts from the SAT. The FM does not discuss the Block Grant Adjustment for the SAT, noting this is yet to be agreed by the Scottish and UK governments.

26. The FM notes that the Scottish Government will need to reimburse the UK Government for any net additional costs incurred in 'switching off' the UKAL in Scotland. HMRC has confirmed that it expects there will be some additional costs for switching off the UKAL and that it will seek reimbursement from the Scottish Government for these costs, however, an estimate of these costs is not yet available.

27. The Presiding Officer wrote to the Cabinet Secretary on 16 November confirming that a financial resolution is required in respect of the Bill.

Delegated Powers and Law Reform Committee Report

28. The Delegated Powers and Law Reform Committee (DPLRC) considered the Bill and reported on 12 March 2024.

29. As part of their consideration, DPLRC wrote to the Scottish Government to raise questions in relation to the following delegated powers:

- Section 4(4) – Power to add or remove items from a list of relevant substances for the purposes of excepted processes
- Section 12(3) - Power to specify the rate(s) of tax
- Section 20 - Power to make regulations requiring notification of production of exempt aggregate
- Section 37(2)(a) - Power to specify a relevant person to which Revenue Scotland may delegate any of its functions relating to SAT

- Section 54(2) - inserting new section 251A(1) in the 2014 Act - Communications from Revenue Scotland to taxpayers
- Section 55(2) - inserting new section 251B(1) in the 2014 Act - Use of automation by Revenue Scotland

30. The Scottish Government responded on 16 February 2024.

31. In their report to this Committee, DPLRC makes the following recommendations for amendments:

- Section 4(4) – Power to add or remove items from a list of relevant substances for the purposes of excepted processes - The Committee is content with the power in principle but recommends that it is amended so it is subject to the affirmative procedure.
- Section 12(3) - Power to specify the rate(s) of tax - The Committee is content with the power in principle but recommends that it is amended so that it is subject to the affirmative procedure on the first exercise of the power, and subject to the provisional affirmative procedure thereafter.
- Section 37(2)(a) - Power to specify a relevant person to which Revenue Scotland may delegate any of its functions relating to SAT - The Committee draws this power to the attention of the lead committee (FPAC) to consider its necessity and scope. If the lead committee considers it is necessary to delegate to ministers, then the that it considers how the power might be better limited, what level of parliamentary scrutiny would be appropriate and whether it should be subject to a consultation requirement.

32. In their report, DPLRC further recommends “that there should be a requirement to conduct a public consultation prior to the exercise of the powers in sections 54 and 55 (communications and automation). Otherwise, the Committee is content with the powers in principle and is content that they are subject to the affirmative procedure.”

33. More generally, the report highlights “that there is no formal consultation requirement provided for in the exercise of any of the delegated powers relating to the SAT, or the devolved taxes administration dealt with in the Bill. While the Scottish Government has stated that it is committed to consultation in the development of its tax policies, this does not bind any future governments. As such, the DPLRC asks the lead committee to give consideration to whether any such requirements should be introduced in the implementation of the Bill.”

Written submissions

34. The Committee issued a call for views on the Bill (Annexe A) which ran for nine weeks, from 11 December 2023 to 9 February 2024 and received nine responses, which have been published on Citizen Space.

35. The submissions received reflect broad agreement with Part 1 of the Bill and the general principle that a tax be levied on the commercial exploitation of primary

aggregates. Most respondents agree that the proposed SAT aligns with the Scottish Government's Framework for Tax 2021, and the principles and strategic objectives that underpin the Scottish Approach to Taxation.

36. The definitions and exemptions used in the Bill, as well as the penalties and appeals processes set out in relation to the SAT and, more generally, consistency with the UK treatment of the tax, are generally welcome. The Mineral Products Association (MPA) Scotland notes that with "many companies that operate in both tax jurisdictions, […] differences in definitions would introduce complexity and potentially perverse incentives and outcomes for no discernible benefit." Resource Management Association Scotland, however, raises an issue regarding the definition, arguing that the phrase "extracted for use as bulk fill" is not inclusive enough and potentially misses many aggregate products and uses. In terms of exemptions, COSLA calls for exemptions to the SAT where there is a clear public benefit. On a wider point regarding the aims of the tax, MPA Scotland notes that "the tax has no effect on either the availability of recycled materials, or any other logistical and technical considerations, and therefore cannot directly minimise the exploitation of virgin aggregates."

37. Several submissions raise concerns regarding the interaction of SAT and UKAL and cross-border transfers. As highlighted by the Chartered Institute of Taxation (CIOT), the need to ascertain the precise location of commercial exploitation in order to determine which tax applies may lead to confusion for site operators and businesses. CIOT notes that "the Scotland Act 2016 provides that the basis for SAT is situs[2] of commercial exploitation", therefore SAT cannot be based on the source of the aggregate within the current framework. It further explains that "by basing the charge in whichever country the aggregate is subject to commercial-exploitation, Scotland is losing out on the export revenue of their natural resources, but it is at least consistent with the UKAL's position with exports".

38. Should rates vary between Scotland and the rest of the UK, CIOT warns of the potential for adverse cross border behavioural impacts. The Scottish Environmental Services Association and Resource Management Association Scotland argue in favour of an increased rate of the tax to incentivise the wider adoption of recycled aggregates and ask for the two governments to work together to bring about a UK-wide increase in the Aggregates Tax (and Levy).

39. While provisions in Part 1 of the Bill are generally welcome, submissions received from CIOT, Institute of Chartered Accountants of Scotland (ICAS) and the Law Society of Scotland raise concerns regarding Part 2 of the Bill, covering the administration of devolved taxes by Revenue Scotland.

40. Both CIOT and ICAS express disappointment at the lack of public consultation regarding the provisions in Part 2 of the Bill. While CIOT considers the provisions to be reasonable and proportionate, it calls for clarification regarding the use of automation (section 55), the repayment refusal and offset provisions (sections 52 and 56), whether this can involve a mixture of devolved taxes and whether/to

[2] Location

what extent the set-off provisions apply when an overdue tax is subject to an appeal. In their submission, CIOT argues that the inclusion of these provisions in "an unrelated piece of legislation further demonstrates the case for Scotland to be able to pass its own annual Finance Bills for administrative changes". A similar case is made by ICAS in their submission to the Committee. The Law Society of Scotland also argues in favour of a process that allows for regular maintenance of the devolved taxes, suggesting that this could form part of the budget process

41. In relation to Revenue Scotland's power to offset credits and debts across the taxes it administers, ICAS argues that this "appears somewhat heavy-handed" and notes that similar powers may not be used extensively by HMRC, although they are currently seeking clarification in this regard. Based on the understanding that offsetting provision is only to apply to fully devolved taxes, ICAS considers the measure to be unnecessary and "possibly premature at this stage of the devolution process".

42. The Law Society of Scotland seeks similar clarifications to CIOT in relation to section 52 (repayment refusal) of the Bill and raises concerns regarding the "proportionality and necessity" of provisions in section 56 (set-off in relation to tax credits and debits). It highlights the apparent lack of safeguards for taxpayers in the legislation to address the situation should they disagree with a Revenue Scotland decision about whether an amount of tax is outstanding. The Law Society, similar to ICAS, notes that off-set provisions are rarely used by HMRC and that their introduction "is disproportionate in a tax system which only includes two devolved taxes (being LBTT and the Scottish Landfill Tax)."

43. The Law Society also proposes that the following technical legislative changes be included in the Bill— Land and Buildings Transaction Tax (LBTT) Group Relief and Scottish Share Pledges (clarifying the availability of LBTT group relief for transactions which took place before 2018 but where Scottish share pledges were in place), legislative changes in relation to the five year period for the purposes of sub-sale development relief (SSDR), in respect of the LBTT, and other issues relating to LBTT group relief and company demergers.

44. In advance of the evidence session on 12 March, Revenue Scotland (RS) also provided a written submission, which sets out its proposed approach to administration of the SAT and the provisions contained in Part 2 of the Bill. The submission highlights its involvement in the development of the SAT and sets out that its "primary interest is the arrangements for payment, collection and management of the tax". It further states RS has undertaken engagement with relevant bodies such as HMRC, SEPA and COSLA and have developed a stakeholder engagement approach with industry stakeholder groups "to gain input on key functions such as registration, the tax return and compliance". It notes that approximately 150 current UK taxpayers have been identified who are likely to be required to register for SAT and indicates that it plans "to include an onboarding process prior to the tax going live".

45. According to the submission from RS, provisions in Part 2 of the Bill can be separated into the following categories:

a) Communications and automation;
b) Set off; and
c) Clarifications and minor corrections.

46. In relation to the first power, communications, RS explains that this could be exercised in two potential areas "to improve efficiency and certainty. Firstly, to harness the efficiencies which would ensue from greater use of electronic communications, ensuring these are delivered in a fair, transparent manner and are accessible. Secondly, from an operational perspective, in relation to postal communications". It further explains that "to future proof our legislation, we seek the facility for electronic communications in general rather than specifying a particular type of electronic communication, such as email". The power of automation "could deliver efficiencies for the taxpayer and the public purse by enabling greater automation of certain routine tasks in a secure way", for example, penalties arising from a late return or payment. The submission provides further clarification regarding set-off provisions, explaining that "the provision would only apply to properly constituted tax credits and debits, meaning where there is no dispute over either amount. This is consistent with the efficient operation of self-assessed devolved taxes, where taxpayers have told us how much money they are due to pay, and how much money is due back to them."

47. At the Committee's request, the Scottish Environment Protection Agency (SEPA) also provided a written submission, attached at Annexe B. The submission expresses strong support for "the use of secondary, recycled aggregates in Scotland as part of our shift towards a more circular economy and the role of the aggregates levy." It points to a shift towards recycling of construction and demolition waste and highlights improvement in recycling technologies, including recent investments in wet processing (wash plants), which "has narrowed the gap in quality between virgin and recycled aggregates". The submission provides data on the production of aggregate, noting that "total aggregate production in Scotland is around 20-30 million tonnes per year with recycled aggregate production contributing around 10% of that", however, highlights that "while there is room for further growth, recycled aggregates are unlikely to ever meet total aggregate demand. […] Further, the quantity of C&D waste available for processing at recycling facilities is highly variable fluctuations of C&D waste can be as much as $\pm 30\%$."

48. One of the areas explored by the Committee during the evidence session on 5 March 2024 (see paragraph 50 below) was the use of Incinerator Bottom Ash Aggregate (IBAA). SEPA's submission clarifies that this is a "potential area of growth for recycled aggregates". While this is a relatively new material to Scotland, its use has been approved as an alternative to virgin aggregate in concrete products, and in the construction of roads, pavements, structural platforms and embankments, however, restrictions remain due to potential environmental risks. Commenting on the Bill more generally, SEPA considers that "there is room for further growth in recycled aggregate production, and the tax can support that growth, but recycled aggregates are very unlikely to displace virgin aggregate use altogether, regardless of the fiscal conditions."

Fact-finding visit

49. As part of its scrutiny of the Bill, the Committee visited the Brewster Brothers aggregates recycling facility in Livingston on Tuesday 27 February. A range of issues were discussed, including:

- the impact of the rate of the SAT on the recycled aggregates industry. It was suggested that possible ways of delivering the environmental aims of the Bill might include a higher rate of SAT, increasing the tax over a number of years, or the introduction of tax credits for the use of recycled aggregates;
- the impact of the tax on cross-border movement of aggregates and the pricing of aggregates including transport costs, which was suggested to amount to 40-60% of the delivered price;
- the availability of virgin and recycled aggregates and their geographical distribution across Scotland. Members heard that 50% of construction sites in Scotland are located within the Central Belt, where there are 14 recycling wash plants, such as the Brewster Brothers site in Livingston;
- the process for obtaining recycled aggregates from brownfield excavation waste and greenfield soil from new built sites; as well as
- the different uses and market share of recycled and virgin aggregates.

Previous evidence sessions

50. The Committee took oral evidence on the Bill at its meetings on 5 March 2024 and on 12 March 2024. At the session on 5 March, the Committee heard from COSLA, the Mineral Products Association (MPA) Scotland and the Scottish Environmental Services Association (SESA). Issues explored during this evidence session included:

- restrictions and limitations on the ability of certain materials to meet the criteria required for use in roads or construction. MPA argued “there is a limit to how much recycled or secondary aggregates can be used”, however, SESA noted that materials such as incinerator bottom ash can have wider uses than currently accepted by the Scottish Environment Protection Agency (SEPA), with examples being given from the Netherlands, where similar materials were used in infrastructure including roads and runways.
- a lack of research and data on the future availability of construction and demolition waste within Scotland. MPA noted that this is a significant unknown, not only in terms of the quantity, but also the quality of the material available. SESA highlighted fluctuation in the resource available, depending on the construction and demolition market.
- the impact of the tax and of demand on the recycled aggregates market. SESA stated that a higher rate of tax would act as a financial incentive to reduce exploitation of virgin aggregates and direct more material away from landfill. It further noted that the recycling equipment currently

available in Scotland has the ability to process more material, should there be enough demand for it.
- the impact of the tax on Councils, as substantial procurers of aggregate. COSLA noted that a higher rate of tax would impact on the ability of Councils to maintain necessary infrastructure and build new roads.
- cross-border shipments of aggregates. The Committee heard that the demand for cross-border transactions depends on the quality of the aggregate compared to the cost of transport.

51. On 12 March, the Committee took evidence from CIOT, ICAS and the Law Society of Scotland and, at a separate session, from Revenue Scotland. The following issues were discussed:

- Concerns regarding the lack of consultation on the second part of the Bill.
- Witnesses on the first panel raised questions regarding the set-off provision contained in part 2 of the Bill and whether this is necessary and proportionate. The Committee heard from CIOT that this power is already covered by common law in Scotland, however, RS explained that including this provision in the Bill provides clarity and certainty for taxpayers. Witnesses further questioned whether the power would actually be used, particularly in the context of high collection rates by Revenue Scotland. The Committee heard that ICAS is currently engaging with HMRC to ascertain how often similar powers are used at a UK level.
- The Law Society of Scotland highlighted that measures such as offsetting tend to be used as a last resort by HMRC and called for increased protection for taxpayers. While Revenue Scotland confirmed, both in written and oral evidence, that the power to offset balances would only be used where there is no dispute regarding the amount payable, this is not explicitly set out in the Bill as introduced.
- All witnesses highlighted current issues regarding compliance with the existing tax regime, which is inconsistent across Scotland, with anecdotal evidence pointing to significant exploitation of aggregates by unregistered quarries. Difficulties around charging the tax at the point of extraction, rather than commercial exploitation, as set out in the Bill, were discussed and the Committee heard that the introduction of the SAT provides a unique opportunity to ensure that quarries operating across Scotland are registered. Witnesses noted that Revenue Scotland and SEPA will need enhanced resources for enforcement and Revenue Scotland set out its plans for engagement with SEPA, local authorities and taxpayers and use of technology where possible in order to identify unregistered quarries and ensure compliance with the legislation.

Other areas explored during evidence included:

- the use of automation by Revenue Scotland and the need for further consultation and protections for taxpayers. Revenue Scotland explained that automation would be used “at the very straightforward end of our processes”, with the aim of freeing up staff to focus on more complex work;

- lack of public awareness of Scottish taxes more generally and plans by Revenue Scotland to engage with the industry prior to the introduction of the tax in April 2026;
- ongoing work by Revenue Scotland with HMRC to understand potential issues arising from the administration of cross-border transactions;
- associated costs for the Bill – Revenue Scotland expressed confidence in the figures presented in the FM and identified pay and staff costs as the highest element of risk for Revenue Scotland in the FM;
- the merits of a future, annual Finance Bill, which would allow the tax rate to be set out in primary legislation and would enable Parliament to maintain tax legislation with regular updates including provisions such as those contained in part 2 of this Bill.

Next steps

52. The Committee will consider a draft report on the Bill at Stage 1 at a future meeting.

Committee Clerking Team
March 2024

ANNEXE A

Call for Views

The Committee's call for views on the Bill included the following questions—

1. Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates?
2. Does the proposed Scottish Aggregates Tax (SAT) align with the Scottish Government's Framework for Tax 2021, which sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation? In particular, please set out the extent to which you consider that the proposed SAT reflects the principles of good tax policy making, included in the Framework for Tax, namely proportionality, certainty, convenience, engagement, effectiveness and efficiency.
3. In this Bill, the Scottish Government has chosen to use the same definition of aggregate for the SAT on the basis that "it is compatible with the intended objectives for the tax, is well understood by aggregate producers, and is supported by existing UK Aggregates Levy (UKAL) taxpayers". Do you agree with this approach of using the same definitions as UKAL for the Scottish Aggregates Tax?
4. Part 1, Chapter 2 of the Bill provides definitions of some terms such as aggregate. It also sets out exemptions to the SAT such as particular types of aggregate and excepted processes. Are these definitions and exemptions appropriate and will they deliver the strategic and policy objectives which the Scottish Government has set for the Bill?
5. Should the Bill be passed, aggregate moved to Scotland from the rest of the UK will be subject to SAT, while aggregate moved to the rest of the UK from Scotland is expected to be subject to UKAL on the same basis as imports. What are the main benefits and challenges that may arise in relation to the tax treatment of cross-border movement of aggregate? Do you foresee any cross-border issues, behavioural or revenue impacts arising from this proposed approach?
6. Are the arrangements for penalties and appeals as set out in the Bill appropriate?
7. Do you consider that the provisions set out in Part 2 of the Bill will support effective and efficient administration of devolved taxes by Revenue Scotland?
8. Are there other changes you would like to see included in Part 2 of the Bill to support the effective administration of devolved taxes in Scotland?
9. Do you consider that the estimated costs and savings set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?
10. One policy objective of the Bill is to minimise necessary exploitation of primary aggregates. Therefore, it appears that, similarly to the Scottish Landfill Tax, the policy objective of the Bill is to reduce revenues deriving from this tax power over time. Do you agree with this approach?

ANNEXE B

Written Submission from SEPA

SEPA strongly supports the use of secondary, recycled aggregates in Scotland as part of our shift towards a more circular economy and the role of the aggregates levy.

The aggregates recycling sector has grown steadily and Scotland now consistently recycles over 95% of our construction and demolition (C&D) waste (not including soils). This shift has been supported by the regulatory and tax frameworks, particularly the landfill tax and aggregates levy.

For close to 20 years, SEPA has had a clear 'end-of-waste' position for recycled aggregate based on the same quality standards applicable to virgin aggregates. It establishes the point at which inert C&D waste can become a new, recycled aggregate product, able to be marketed, sold and used in the same way as virgin aggregates – this is an important definition for the recycling sector.

Recycling technologies have improved significantly in that time. This improvement, in particular recent investments in wet processing (wash plants), has narrowed the gap in quality between virgin and recycled aggregates. SEPA welcomes this investment and the improvement in quality it has delivered. This improvement needs to be better promoted to material specifiers who often remain sceptical about recycled aggregates.

Total aggregate production in Scotland is around 20-30 million tonnes per year with recycled aggregate production contributing around 10% of that. While there is room for further growth, recycled aggregates are unlikely to ever meet total aggregate demand. A particular area for growth is around waste soils – 656,899 tonnes of waste soils were landfilled in 2022. These soils are a potential feedstock for the new generation of wash plants which can recover good quality sand and gravel from them. The Scottish Government's draft Circular Economy Route Map proposes to investigate how soils can be further diverted from landfill.

Further, the quantity of C&D waste available for processing at recycling facilities is highly variable. Our data shows year on year fluctuations of C&D waste can be as much as $\pm 30\%$. The availability of recycled aggregates can therefore vary according to the time of year or geography.

In the committee session (5th of March 2024), there was a discussion of Incinerator Bottom Ash Aggregate (IBAA). This is another potential area of growth for recycled aggregates. IBAA is a relatively new material to Scotland and SEPA has worked closely with the waste industry to understand its nature and composition. This work has highlighted that IBAA carries a greater environmental risk than virgin aggregate and it cannot be used in the same way. However, SEPA has approved several uses,

including as an alternative to virgin aggregate in concrete products, and in the construction of roads, pavements, structural platforms and embankments. Restrictions for the use of IBAA exist, for example, it may not be placed in contact with groundwater. These restrictions are to ensure the environment is protected from the specific properties of IBAA and are consistent with similar rules in England and Wales. There are three IBAA storage and treatment facilities in Scotland and IBAA is being used in a range of projects – see case studies[3].

The aggregates levy is an important mechanism for raising the profile and use of recycled aggregates. Coupled with the landfill tax, it supports the economics of landfill diversion and the investment in the high-quality recycling infrastructure we have in Scotland today. These levers support the existing recycling sector and will help it to thrive in the future. SEPA considers there is room for further growth in recycled aggregate production, and the tax can support that growth, but recycled aggregates are very unlikely to displace virgin aggregate use altogether, regardless of the fiscal conditions.

More broadly, SEPA have been engaging with Revenue Scotland on their preparation for Scottish Aggregates Tax (SAT). SEPA has not been preparing for a formal role with SAT, in comparison to the role SEPA has with Scottish Landfill Tax, with delegated powers to support Revenue Scotland in the collection of Scottish Landfill Tax. Further to that SEPA have not commented on the devolved tax powers as it is not appropriate for us to do so.

[3] Case studies | Rock Solid, from waste to value (rocksolidrecycling.co.uk)
Recycl8 Pours First Low Carbon Sustainable Concrete in Circular Economy Project | Recycl8 (r8iba.com)