



Devolved Taxes Legislation Working Group Interim Report

ICAS Response to Consultation

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Introduction

1. The ICAS Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 board and committee members.
2. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 22,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
3. ICAS has contributed the experience of its members and their technical expertise in the development and implementation of the two devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), in the development of the proposed Air Passenger Duty, and in the establishment of the tax authority Revenue Scotland.
4. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

General comments

5. ICAS welcomes the opportunity to respond to the Interim Report issued by the Devolved Taxes Legislative Working Group in February 2020; we were also pleased to have the opportunity to participate in the work of the Group, through our representative. ICAS has also contributed to the earlier consultation 'Devolved Taxes: a policy framework' issued by the Scottish Government in March 2019. The establishment of a more strategic and structured approach to wholly devolved taxes is a positive move which we welcome.
6. At present, Scotland has two fully devolved taxes and this is an appropriate time to ensure that all future devolved taxes are created, developed, administered and collected in a way which is sustainable for the long term and delivers the expected returns with minimal disruption and appropriate burden levels for individuals and business.

Specific responses to questions

Section 3 – questions 1 - 4

Question 1. Is there a case for adopting an alternative legislative process for the devolved taxes which can adequately address the tensions summarised in this report?

7. Yes, we believe there is a case for adopting an alternative legislative process for the devolved taxes. It may be that not all tensions summarised in the report will be fully addressed but it is important that an alternative process is sought which addresses them as far as possible. The adoption of an alternative legislative process is something which would facilitate flexibility in the system and which would enable the Scottish Government to react quickly, for example when unintended consequences arise out of existing or future provisions, and where a speedy response is required to a particular event or social change, for example, where anti-forestalling measures need to be implemented.
8. A second but no less important characteristic of a robust taxation system is that it should be properly consulted on and scrutinised by Parliament prior to its introduction. Having an alternative legislative process should also support this requirement.

Question 2. If so, what is distinct about tax legislation that would require an alternative approach?

9. Tax legislation should reflect social and business trends, which are subject to constant change, but it should also stand apart from other legislation because its main focus is to collect the revenues necessary to drive essential public revenue streams. Tax is different from many other legislative areas: tax is a policy area that raises money from taxpayers, i.e. requires citizens to give something to the state. It is therefore necessary to obtain buy-in from citizens for tax and is a much more sensitive area; because of this there is a need to have robust and open scrutiny. More broadly, it should be noted that changes to tax legislation are required on a frequent basis; taxes acts should not be seen as standalone complete instruments - they will always be in need of fine tuning and amendment.

Question 3. Why do you think the current legislative processes are inadequate for dealing with devolved taxes?

10. The current legislative processes are inadequate because the approach used is not consistent, nor is it regular. This leads to opacity and confusion. Standardizing process will manage the expectations of taxpayers, tax advisers and stakeholders alike and reduce confusion.
11. The interim report at page 16 identifies an excellent example of the impact of inadequate lead in time for legislating on tax matters. This particular example centres on LBTT group relief and share pledges, but there are a number of other examples in the LBTT arena, including Additional Dwelling Supplement changes, as well as the changes made to LBTT rates as a result of the 2018 Scottish Budget on an unexpected date that neither related to the calendar year nor to the fiscal year, which resulted in confusion and uncertainty.

Question 4. How do we ensure there is sufficient opportunity for robust parliamentary scrutiny and engagement with stakeholders and the wider public in any alternative approach?

12. The Scottish Government's Tax Directorate has recently embarked on a communications programme with the public and stakeholders to fulfil its ambition to ensure there is a good level of public engagement with devolved taxes. They could take responsibility for engaging with the public on consultations. The Scottish Parliament needs to quantify the time available to debate taxation matters and assess whether more Parliamentary time is required for giving a reasonable level of scrutiny to its tax issues. It is more likely to be able to do this in a regular, say annual, legislative process, which would also assist in raising its profile, thus improving engagement from parliamentarians, stakeholders and the general public.

Section 4 – questions 5 – 10

Question 5. Would a Finance Bill sufficiently address the tensions set out in this report?

13. A Finance Bill would be a very good place to start. The process is likely to evolve and this can be achieved efficiently with the reflective and proactive work undertaken by the Working Group.

Question 6. What should be the scope of the Finance Bill (i.e. should it just cover tax issues or also the items currently included in the Budget Bill)?

14. The Finance Bill could cover numerous issues which concern taxation. If the existing UK Finance Bill process is to be mirrored in any Scottish Finance Bill, the Scottish Finance Bill would serve to give legal effect to Scottish Budget resolutions.

Question 7. Should the Finance Bill be subject to the normal legislative procedures for Public Bills or is there a need for bespoke procedures for such a Bill which would require changes to the Parliament's standing orders?

15. Ideally, the same procedure which exists for other Public Bills should be exercised for a Scottish Finance Bill, to ensure transparency and robust scrutiny.

Question 8. How often and when should the Finance Bill be introduced?

16. A Finance Bill would be best delivered annually.

Question 9. How would such a Finance Bill interact with the budget process and the Budget Bill?

17. If a Finance Bill is to be used to make tax changes (policy, technical and rates) this should be alongside the Scottish Budget so that tax and spend are considered together. This could be by way of two separate Bills (Finance and Budget) or spending and revenue raising powers could be brought together in a single Bill.
18. The conclusions drawn from the [2019 consultation](#) on a devolved taxes policy framework should serve to inform this process and ideally, any matter going into a Finance Bill would already have been subject to consultation. This may assist a Finance Bill where the time available for full scrutiny may be limited.

Question 10. How do we ensure there is sufficient opportunity for robust parliamentary scrutiny and engagement with stakeholders and the wider public?

19. Please see our response to question 9 above (paras 17 and 18).

Section 5 – questions 11- 17

Question 11. Would a Tax Bill sufficiently address the tensions set out in this report?

20. A Tax Bill would be likely to address the tensions as set out. It is important that the public is offered sufficient information on what each of the tensions is so that they can understand how each of them is to be resolved. However, it may create other tensions if there is an attempt to separate 'technical' tax changes from other types of changes such as tax rates, or tax policy – there are no clear dividing lines between these categories.

Question 12. What should be the scope of this Bill?

21. A Tax Bill might take account of changes to existing legislative provisions.
22. This would remove the need for ad-hoc provisions in statutory instruments during the tax year which leads to opacity and confusion in the taxpaying population.
23. ICAS considers that good examples of items which could be included are as follows:
- Matters relating to or affected by EU Exit;
 - Setting out definitions, and revisions and clarifications to definitions;
 - Enabling retrospection on some changes which affect transactions where the spirit of the law originally intended this to happen, such as with LBTT group relief and share pledges;
 - Changes to Additional Dwelling Supplement parameters;
 - Ensuring the legislation is fit for purpose over time;
 - Removing anomalies in terms of interactions with UK legislation;
 - Ensuring a good fit with changing taxpayer behaviours.

Question 13. Do you agree that it could be challenging to distinguish between purely technical changes or "care and maintenance" changes and policy changes?

- 24. Yes. Additionally, whilst technical changes might be more likely to appear in a Tax Bill whereas both care and maintenance and policy changes might appear in a Finance Bill, the public would not be likely to draw a distinction between the two in the same way as tax advisers might. It may therefore be unnecessary to distinguish between them.
- 25. In our view, it is hard to separate 'technical changes' from other changes. Many changes to tax may initially appear to be 'corrections' or 'technical' (or perhaps simply complicated and not well understood) but they nevertheless each involve policy decisions – as to who should be taxed, on what transactions, and whether there is a relief/exemption etc, or if a penalty should be levied. Furthermore, one person's technical change may be another person's policy change (for example, in the recent change to daily penalties).

Question 14. Should the Bill be subject to the normal legislative procedures for Public Bills or is there a need for bespoke procedures for such a Bill which would require changes to the Parliament's standing orders?

- 26. Ideally, the same procedure which exists for other Public Bills should be exercised for the Scottish Tax Bill, to ensure transparency and robust scrutiny.

Question 15. How often and when should the Bill be introduced?

- 27. The Bill should be annual regardless of whether it contains many or few provisions.

Question 16. How would such a Bill interact with the budget process and the Budget Bill?

- 28. Ideally speaking, and taking into consideration the current Budgetary timetable in the UK and in Scotland, which is an annual Autumn event, sufficient time needs to be available to Parliamentarians prior to the commencement of every new tax year in April to scrutinise and debate the measures being proposed.
- 29. To optimise the remaining time available in the current tax year, a Scottish Tax Bill would be introduced at the same time as the Draft Scottish Budget provisions. If necessary, a short consultation period similar to that undertaken by the Scottish Government prior to the changing of rates and bands in Scotland in 2018 could be opened up, to offer the public a chance to contribute to the debate.
- 30. It might also be possible to introduce the Bill at a different time of year to allow for scrutiny to take place outside of the time currently devoted to the Budget Bill, both by Parliamentarians and by consultation process with the general public. However, this may result in a time lag which may mean that the Budget and the Tax Bill are not as cohesive as they could be. Keeping the two Bills separate may cause more problems than it resolves. If the Tax Bill was presented later than the Budget Bill, it would probably need to be underpinned by something similar to the UK's Provisional Collection of Taxes Act which would allow for immediate implementation followed by primary legislation thereafter or await the following year for implementation. Either option could be messy, however.

Question 17. How do we ensure there is sufficient opportunity for robust parliamentary scrutiny and engagement with stakeholders and the wider public in any alternative approach?

- 31. Please see our response to questions 4 and 9 above (paras 12 and 18).

Section 6 - questions 18 – 22

Question 18. Is the current use of Secondary Powers appropriate for making changes to the devolved tax legislation?

32. Tax is a creature of statute that introduces obligations on citizens to pay taxes. And in some cases, there are obligations to pay penalties and or interest. In our view, it is a general principle that any exercise of power which imposes obligations should be in primary legislation and laid before the full scrutiny process before being enacted. Preferably all changes would be made using primary legislation. Secondary legislative changes are messy, can lead to opacity and do not require the same degree of scrutiny as primary legislative changes. They cannot be used to amend retrospectively and cannot be partially amended – they are either approved or rejected, which can waste time.

Question 19. If not, what do you think are the limitations with the current use of secondary powers?

33. Please refer to our response to question 18 above (para 32).

Question 20. Is there sufficient opportunity for effective parliamentary, stakeholder and wider public scrutiny if changes to tax legislation are made by secondary legislation?

34. Please see our response to question 18 above (para 32).

Question 21. What are your views on the balance between using primary and secondary legislation for tax legislation?

35. ICAS considers that secondary legislation should only be utilised in relation to administrative matters within the primary legislation relating to taxation.

Question 22. What additional use of Secondary Powers would you suggest for devolved tax legislation?

36. Please see our response to question 21 above (para 35).