



**Scottish Parliament
Finance and Constitution Committee**

Budget Process Review Group – Interim Report

4 May 2017

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About ICAS

1. The following submission has been prepared by the ICAS Tax Board. 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. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS is grateful for the opportunity to contribute to the Budget Process Review Group (BPRG), as requested in the Interim Report issued on 10 March 2017.
3. We have not answered all the questions in the BPRG interim report but rather have focused on tax matters, which is where the expertise of the Tax Board and the Scottish Taxes Committee rests. We have considered the question 'how effective is the existing budget process' regarding opportunities to address tax concerns and to scrutinise any tax proposals. Much of the interim report is expenditure focused.
4. With approximately half our members based in Scotland, we have had extensive dealings with the new devolved tax powers. ICAS has contributed the experience of its members and their technical expertise in the development and implementation of the two existing devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), in the development of the proposed Air Departure Tax, and the establishment of the tax authority Revenue Scotland. ICAS has also contributed to the development of both Scottish Rate of Income Tax and the Scotland Act 2016 income tax rates and bands.
5. 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 into the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.
6. In our evidence to the 'Scottish Approach to Taxation' inquiry, we called for a process that allows for regular maintenance of the taxes, and we believe this should be considered as part of the budget process, including formalising a regular timetable and process for stakeholders to give input on any operational and policy concerns with the tax legislation.

How effective is the existing budget process?

7. Over the past few years we have come across several tax issues that we have wanted to raise with policy makers in the Scottish Government and with the Scottish Parliament's Finance and Constitution Committee but there has been no obvious process or timetable in which to do so. This has been understandable because, to date, the budget process has been expenditure focused. At present, tax matters need to be raised on an adhoc basis.
8. In the UK, the time for raising such points is a part of the annual budget cycle. For instance, based on the current UK budget timetable, a significant element of our work on tax law includes:
 - a) making autumn statement representations in which we identify areas of tax policy and associated law where we believe changes would be beneficial (generally from an operational perspective).
 - b) commenting on the draft legislation that is published in the Finance Bill (in the winter), with a view to whether the proposed legislation is as good as it can be in meeting its stated objectives and will be efficient to operate; and

- c) contributing to the formulation of policy by responding to consultative documents issued by HMRC and HMT about potential tax changes (summer).
- 9. There is no such cycle in Scotland in relation to the tax powers or tax legislation. With the devolution and implementation of the tax powers in the Scotland Act 2012, and then in the Scotland Act 2016, we believe it is important to now consider the tax side of the budget process.
- 10. It should be noted that from a tax perspective an annual budget is needed in the UK because income tax is an annual tax – it must be enacted every year. In Scotland, there needs to be an annual vote on the income tax rates and bands. However, beyond this an annual tax process is not essential but it may be desirable and this is discussed further in paragraphs 13-16 below.
- 11. The type of tax matters that should be catered for in the new budgetary process are as follows:
 - a. Politicians may wish to review tax rates and thresholds across the devolved taxes and this may be beyond simply inflationary measures. There is already a process for implementing rate changes to LBTT and SLFT; however, there is no regular timing mechanism attached to this. (RSTPA 2014, section 108, ties in with LBTT(A) 2013, s 68 and LfT(S)A 2014 s 41 and the latter two sections provide for rates to be introduced by statutory instrument using a provisional affirmative procedure, so that new rates can be implemented straight away. The s108 allows for repayment if the statutory instrument is not adopted. This covers rates and bands or, say, definitions in landfill but it does not cover whole new parts of a tax such as the LBTT Additional Dwelling Supplement).
 - b. There is a need for 'care and maintenance' measures in the existing tax law so that if stakeholders such as Revenue Scotland find parts of the legislation do not work as intended, or the legislation does not work as taxpayers may wish from a commercial perspective, there is an opportunity to revisit the law. For example, taxpayers have questioned the LBTT legislation for in specie transfers for pensions, or LBTT and group restructuring. Such questions arise because there are differences in the law and its interpretation between the Scottish and rest of UK jurisdictions, which may be intended but nevertheless it may also be helpful for policy makers to reconsider whether this is still the desired outcome. A process is needed in which to address such matters.
 - c. If new taxes are being considered, such as the LBTT Additional Dwelling Supplement, there should be an established process within which to operate that allows for proper consultation and scrutiny. Such a process should also tie in with an agreed approach to taxation (as being considered by the Finance and Constitution Committee at present). The scrutiny should also consider whether new proposed measures tie into the overall tax proposals over a longer-term plan. As we noted in our evidence to the Scottish Approach to Taxation, ICAS recommends that there should be a longer-term plan, perhaps a five-year plan, and an indication of the basis on which stakeholders are expected to participate in the Scottish approach to taxation.
- 12. Consideration needs to be given to whether the above tax matters should be addressed in an annual process or whether a different process or timescale would be more helpful.
- 13. On the one hand, an annual finance bill sits well with an annual budget process, for rates and bands and general improvements to legislation. On the other, one might question whether an annual process is excessive in relation to the devolved taxes and may lend itself to unnecessary tinkering and change. So, it's about what is necessary.
- 14. Without some form of annual process, it may make it harder to get problems fixed with tax issues constantly pushed to the bottom of the agenda or off the agenda entirely. A regular, formal process is needed. At present, there is no proper process in the Scottish Parliamentary timetable in which to seek legislative amendments to tax law other than on an adhoc basis. Furthermore, there is a tendency to use secondary legislation instead of

primary legislation and ICAS does not believe that this is an appropriate way to exercise tax powers.

15. However, there is the question of whether an annual process would lend itself to offering an annual opportunity to new ideas, the need to use the opportunity etc, and may result in bringing forward unnecessary proposals. There should not be a need to change much in the existing devolved tax law, ie LBTT, SLfT and ADT, as these are permanent taxes; they are not annual taxes like income tax. With income tax, the Scottish Parliament is only setting rates and bands so there should not be a need to for legislative changes.
16. In summary, a regular process is needed but without inviting regular change. It may be that devolved tax 'care and maintenance' measures should be addressed once every two years, and this could be tied into a post implementation review of the relevant act, or maybe there should be one or two opportunities built into a 5-year tax plan.

Strategic approach to financial planning

17. ICAS recommends that there should be a clear, brief statement of the principles and objectives, and a longer-term plan, perhaps a five-year plan, around the approach to Scottish taxation. The budget cycle should support this.

Interaction with UK budget timetable

18. The process to amend devolved tax legislation may or may not need to tie into the UK budget cycle, depending on whether Scotland is generally going to look to the rest of the UK in its measures, thinking of, say, Additional Dwelling Supplement.
19. The income tax rates and bands need to be set annually before the fiscal year commences; the setting of these also needs to tie in to the UK budget timetable because UK income tax plans may affect the rates and bands that could be set, for example, if there is a significant change to personal allowances or new reliefs are introduced. One of the issues here is how much the Treasury are willing to let the Scottish Government in on their budget proposals – with a partially devolved tax the UK and Scottish aspects are intertwined.

How does the new UK Autumn budget process affect the timing of the Draft Budget?

20. The moving of the UK budget back by 4 – 6 months to the previous autumn should be helpful. Tax matters proposed for the UK that interact with Scottish taxes should be known by the Scottish Government prior to issuing Scottish tax proposals. There are two elements to this: taxes that are wholly devolved may be indirectly affected if there are rest of UK measures that may have a competitive or behavioural impact; taxes that are partially devolved cannot be set in isolation and this needs to be factored into the Scottish budgetary process.

In what ways can the level of transparency of the draft budget and other budget documents be improved?

21. This is dependent on public understanding of the process.