



**ICAS Submission to the
Scottish Affairs Committee Inquiry on
Sustainable Employment in Scotland**

4 December 2017

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. 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. ICAS is also a public interest body.
2. This paper has been prepared by the ICAS Scottish Taxes Committee, which has a remit:
 - To be a focus for ICAS' contribution, on tax technical issues, in relation to all taxes and tax issues that arise in Scotland.
 - From the perspective of the independence/further devolution debate, consider areas where ICAS could meet its education role and public interest duty by contributions on tax and tax related matters.
 - To co-ordinate with the ICAS Tax Board and its other Committees, the preparation of submissions on devolved tax issues and proposals.
3. Whilst this submission includes an element of discussion around the gig economy, it focuses more closely on income tax as it relates to the Scottish economic forecast. Clearly, there is a requirement to generate and grow sustainable employment in Scotland which will lead to vital sources of revenue generation to maintain current levels of public spending. This paper also discusses how changes to taxation of income in Scotland might affect the 2.5 million taxpayers in Scotland and why it is so important that income tax (and taxation as a whole) must be considered as an integral part of this inquiry.
4. Employment sustainability is a multi-faceted subject and is far from simple to resolve. A wide range of issues, some of which we have attempted to cover briefly at point 9 below and in the discussion section of this paper, feed in to sustainability and are all in turn affected by the sustainability question. Is tax an enabler or a barrier to sustainability?
5. For information, ICAS has adopted the following policy positions in relation to the gig economy:
 - Government policy should be consistent across employment law and taxation.
 - Taxation of employed and self-employed workers should be more closely aligned.
 - Responsibility for tax compliance should be aligned with those most able, and resourced, to do so.
 - Boundaries between employment and self-employment should be accurately defined.
 - Workers supplying their services in the same way should be taxed in the same way, while permitting flexibility of business vehicle.
6. ICAS has had extensive dealings with the new devolved tax powers. Some of the unintended consequences emanating from this may not have had the full consideration that they warrant. The intricacies of policies that contain both reserved and devolved elements need to be given detailed consideration as they impact on the revenue raised. The Scottish Parliament is responsible for the rates and the bands of income tax, allowing it to exert limited control over levels of devolved revenues.
7. ICAS believes that a stronger public awareness of policies that are devolved is required. By way of example, it would seem to make little sense to have a UK-wide policy for raising an apprenticeship levy when the spending side has been devolved.

Executive Summary

Background

8. With the recently issued discussion paper on Scottish Income Tax produced by the Scottish Government,¹ the latest UK and forthcoming Scottish Budgets, and the Taylor Report², now is a good time to be discussing the notion of sustainable employment in Scotland.
9. There are several issues which have together affected the sustainability of employment, as follows (not exhaustive):
 - UK and European employment legislation
 - The prevalence of bad or illegal working practices/cultures by some employers
 - Access to justice for employees and workers across Scotland
 - The emergence of new working practices (IR35, gig economy, zero-hours contracts etc)
 - The balance of rights between 'workers' and 'employees'
 - The prevailing economic conditions in Scotland, the UK, Europe and globally
 - Scotland's aspirations for its future due to devolution
 - The size of the public sector workforce in Scotland
 - The incentives offered to and contribution made by entrepreneurs in Scotland to the private sector
 - Access to work for a diverse range of people (disabled, ethnic minority, sexual orientation, etc)
 - The relationship between education, free university tuition and the proportion of those people who obtain low paid jobs – 25% of Scottish taxpayers are in low paid jobs³
 - Whether it is possible to convert any of the 2 million non-taxpayers in Scotland into taxpayers or increase the number of taxpayers in Scotland beyond the existing 2.5 million
 - The relationship between income tax (the largest source of revenue in Scotland⁴) and Scottish public spending
 - The implications of the Brexit vote.
10. Clearly, there are issues listed above that fall outside of employment legislation, but that impact upon employment sustainability. Of these, ICAS considers that taxation is of equal importance to employment legislation.
11. This paper does not discuss the employment law points covered at 9 above but concentrates on the strategic financial and taxation aspects. ICAS therefore wishes to compliment the discussions already held in Stirling on 6 November⁵, which concentrated more on the employment law and fair work aspects.
12. ICAS notes that the Work and Pensions Committee and the BEIS Committee jointly produced a draft Bill and response⁶ to the Taylor Review of Modern Working Practices of July 2017 which also directly impacts on taxation policy.

Discussion

13. ICAS considers that the two concepts of employment law and taxation should be considered in tandem.
14. The Taylor report introduced a classification of employment status by suggesting that a new term "dependent contractor" be substituted for the term "worker", a worker being defined in the Employment Rights Act 1996 as "(except in the phrases "shop worker" and "betting worker") ... an individual who has entered into or works under (or, where the employment has ceased, worked under) - a) A contract of employment, or b) Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual. Currently in tax law, a person can only

¹ <http://www.gov.scot/Resource/0052/00527052.pdf>

² <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

³ <http://www.gov.scot/Resource/0052/00527052.pdf>

⁴ <http://www.gov.scot/Topics/Statistics/Browse/Economy/GERS/GERS2017.xls>

⁵ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/inquiries/parliament-2017/sustainable-employment-scotland-17-19/>

⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/352/35202.htm>

be classified as employed or self-employed. Having a third category introduced in which a worker was working under a contract of employment but with reduced employment rights and paying PAYE and NICs seemed to be something of a halfway house which was neither fair nor understandable for many; and also presented an opportunity for unscrupulous employers to offer work with fewer risks and obligations to job seekers.

15. Recent decisions by the courts in cases such as Uber⁷ and the Central Arbitration Committee decision about Deliveroo⁸ have shown that the decision-making process in employment status cases is extremely complex and needs to be simplified. However, the decision in the Uber case, which is still capable of being appealed and is therefore not final, has determined that the drivers should be 'workers' and not employees. Although this has the same implications for taxation as classifying them as employees (PAYE/NICs deductions, employer NICs and possible VAT costs), it clearly does not offer the drivers the same protections as employees.
16. The latest Scottish labour market outlook⁹ produced jointly by the Fraser of Allander Institute and the Scottish Centre for Employment Research shows that Scotland has a higher employment rate than anywhere else outside London and the south east at 75.2% and a lower than average unemployment rate at 4%. However, whilst this looks extremely positive at first glance, on closer inspection, the biggest growth in employment has in fact been due to self-employment growth – which could also be due to a growth in the gig economy. Clearly the main concern for the UK government in terms of the gig economy is twofold – job uncertainty/sustainability and the erosion of the tax base due to misalignment of employed and self-employed NICs receipts.
17. To understand whether sustainability of employment in Scotland can be achieved it is necessary to examine the age profile of workers and what sectors they are working in, as well as productivity figures. The labour market outlook report shows that the biggest growth in employment since 2008 has been in those over 50 and even higher amongst the over 65s. Youth employment is growing year on year and youth unemployment at an all-time low; but it seems more young females than males are in employment. Productivity figures look good but are skewed by the UK overall figures and the reality is that Scotland has created fewer jobs proportionately to the rest of the UK¹⁰.
18. Another crucial factor in sustainability is earnings – Scotland needs people to be earning more, producing more and having sustainable employment prospects in the long term to generate the revenues needed to pay for the current level of public services. The labour market outlook report shows that in the past year, real earnings have declined for all but the lowest paid 10% - and even with wage growth, the bottom 10% has just crept above inflation. For everyone else, there is a definite gap between wage growth and inflation, which is worrying in terms of long-term sustainability. If earnings are falling below inflation, it does not make Scotland an attractive place to work - if other countries are paying in line with inflation and closing the gap. Brexit is unlikely to stabilise this until the UK emerges from the other side, when the picture may become clearer.
19. Scotland must decide what it wants to be – a country of competitive taxation policies which are attractive to investors and entrepreneurs, a country which relies heavily on employment from its public sector bodies or perhaps an international player which attracts talent and diverse investment by its unique offerings. In the past, for example, scotch whisky, salmon and financial services have played their part as well as the strong tourist industry which Scotland excels in portraying its uniqueness to the world markets. There has been a fall of the Oil & Gas sector in recent years.
20. At present, it is known that new businesses start-ups in Scotland is high, yet 66% of these are not trading within 10 years, and whilst entrepreneurship and expectation is high amongst start-ups, amongst established businesses it is lower than the rest of the UK¹¹. There is a lot of assistance available to start-ups in Scotland, yet the sustainability of these businesses, and therefore their capacity for employment creation, seems relatively disappointing.

⁷https://assets.publishing.service.gov.uk/media/5a046b06e5274a0ee5a1f171/Uber_B.V._and_Others_v_Mr_Y_Aslam_and_Others_UKEAT_0056_17_DA.pdf

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/659481/Acceptance_Decision.pdf

⁹ <https://www.sbs.strath.ac.uk/economics/fraser/20171121/Labour-Market-Trends-Vol2No1.pdf>

¹⁰ <https://www.sbs.strath.ac.uk/economics/fraser/20171121/Labour-Market-Trends-Vol2No1.pdf>

¹¹ Fraser of Allander presentation, 5 May 2017

21. Currently, access to work for disabled people, as evidenced by Layla Theiner at the evidence session held in Stirling on 6 November, is fraught with unnecessary difficulty and disabled people who want to work are experiencing barriers into work such as discrimination and lack of support. If this can be overcome these people represent potential additional taxpayers and people who can contribute to GDP and productivity ratios, as well as gaining the obvious other benefits of self-esteem, mental wellness and combatting loneliness and isolation, all of which are likely to eventually impact on the NHS.
22. A decision by the Scottish Government to provide free undergraduate university tuition to students resident in Scotland should also be examined in the context of reports that 25% of Scottish taxpayers are in low paid work. Is the Scottish taxpayer obtaining value for money from delivering free university education? The relationship between primary and secondary education, free university tuition and low paid work should be the subject of a review. Ideally, a high proportion of university leavers can be converted into above average earners and contribute to GDP and the taxation system. In addition, worrying statistics have been produced by the Department for Education¹² which show that the number of apprenticeships has fallen by 59% since the introduction of the Apprenticeship Levy in April 2017. This will undoubtedly impact on employment sustainability in the medium to long term and should be reviewed as a matter of urgency to address skills gaps shortages.
23. An important question is whether it is possible to convert any of the non-taxpaying public in Scotland into taxpayers, or attract new taxpayers to Scotland to increase revenues. At present, 2m of the 4.5m Scottish working age residents are non-taxpayers¹³. Looking at the demographic, Scotland's population (5.4m, 2016) is projected to increase by 3.2% between 2016 and 2026¹⁴ but the number of people aged 75 and over is projected to increase by 27% over the next ten years and by 79% over the next 25 years¹⁵.
24. The relationship between Scottish Income Tax, the Barnett Formula and Scottish public spending is also an important factor in the employment sustainability question. The NAO has just released its annual report on the administration of Scottish Income Tax¹⁶ and whilst the Comptroller compliments HMRC on the improvements it has made, there is still a requirement for maintaining better quality data with which to forecast income tax receipts for Scotland. With a forecasted growth in population, it is perennially important to ensure all Scottish taxpayers are identified. According to Fraser of Allander¹⁷, the Scottish Government needs the Scottish economy to grow substantially to maintain current public service levels. Yet Scotland currently only has minimal influence over Scottish Income Tax (this being over rates and bands) which form the biggest part of devolved revenue – yet the Barnett block grant and formula has been proportionately reduced to take account of this devolution. Therefore, it is necessary for the Scottish economy to perform better than ever to meet or exceed the revenue gap created by the devolved taxes.
25. The implications of the Brexit vote on 23 June 2016 could have a major impact on Scottish employment sustainability. However, this is as yet an unknown and we do not propose to discuss it in any detail within this paper.

Conclusion

26. Clearly, sustainable employment is derived from sustainable trade & industry and provision of public services, which in turn creates jobs and provides more taxpayers who then increase the size of the public purse. It is necessary for the Scottish Affairs Committee to consider these and many other issues to create a pathway to sustainable employment in Scotland. Sustainable employment is inextricably linked to many other areas of policy, each of which needs to be considered as part of the equation, and taxation is a vital part of this.
27. With approximately half our members based in Scotland, we have had extensive dealings with the new devolved tax powers. There are consequences yet to flow from this, some of which may not have had

¹² <https://www.gov.uk/government/statistical-data-sets/fe-data-library-apprenticeships>

¹³ <http://www.gov.scot/Publications/2016/12/6669/5>

¹⁴ <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationprojections/bulletins/nationalpopulationprojections/2016basedstatisticalbulletin>

¹⁵ <https://www.nrscotland.gov.uk/files//statistics/nrs-visual/prog-pop-16/pop-proj-2016-scot-nat-pop-pro-info.pdf>

¹⁶ <https://www.nao.org.uk/wp-content/uploads/2017/11/The-administration-of-the-Scottish-rate-of-Income-Tax-2016-17-1.pdf>

¹⁷ <https://www.sbs.strath.ac.uk/economics/fraser/20170926/Scotlands-Budget-2017.pdf>

the full consideration that they warrant. Scottish experience illustrates some of the key topics around the devolution of tax powers, although this affects the decentralising of powers to all parts of the UK including Wales, Northern Ireland and, last but not least, the powers that are retained in England.

28. ICAS considers that a clear understanding, and full consideration, of the intricacies of policies that contain both reserved and devolved elements is needed in the UK Government and in the Treasury to protect the overall tax base. There are joint responsibilities with income tax - the UK Parliament is responsible for the tax base, i.e. what is considered to be income, how it is measured, and the decision to provide reliefs from the tax. All these elements can impact on the amount of income tax raised. At the same time, the Scottish Parliament is responsible for the rates and the bands of income tax, allowing it to exert some control over how much is assessed for collection and from which taxpayers (e.g. basic or higher rate taxpayers) and it will receive all income tax on the non-savings, non-dividend income of Scottish taxpayers. However, the totality of the tax base needs to be protected, and should not be eroded inadvertently due to a lack of understanding or consideration of the different levers that can be exercised by the two Parliaments.
29. There also needs to be a stronger awareness of policies that are devolved: for instance, it makes little sense to have a UK wide policy for raising an apprenticeship levy when the spending side has been devolved. The presentational elements may change as income tax becomes hypothecated to Scottish Parliament spending responsibilities whilst national insurance may become more closely associated with UK policy.