

Scottish Government Consultation ‘Developing a Scottish Tax to Replace the UK Aggregates Levy’

ICAS response to Scottish Government

4 December 2022



About ICAS

1. The following submission has been prepared by the ICAS Tax Board.
2. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 23,000 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 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.

Background comments

4. ICAS is grateful for the opportunity to contribute its views on this Scottish Government consultation, entitled "Breaking New Ground? Developing a Scottish tax to replace the UK Aggregates Levy"

General comments

5. ICAS is generally supportive of the Scottish Government's overall aims to introduce a devolved tax on Aggregates Levy in accordance with the Programme for Government and the Scottish Approach to Taxation principles.
6. ICAS considers that canvassing opinion on the policy aspirations for the Aggregates Levy is a sensible way forward prior to legislating for the tax. It is also helpful to see how the Aggregates Levy will be placed in the context of other Scottish tax policies. Aggregates Levy is a "niche" tax and there is not a wide breadth of expertise on it generally – it is very sector specific – however we are able to comment on it due to having the benefit of expertise on our Devolved Taxes Committee as well as our existing experience of other taxes which are indirect and transaction-based.
7. Turning to the Adam Smith Canons of Taxation, we note that the concept of certainty is not something which one attributes to transaction-based taxes generally. Historically it is the definitions and exemptions within the aggregates sector which are scrutinised the most in the tribunals, and this should be borne in mind when considering the Scottish Government's position on creating a Scottish tax, noting that another similar tax, Scottish Landfill Tax, bears many similarities to its UK counterpart, Landfill Tax.
8. ICAS supports the requirement for a regularised legislative process as the number of devolved taxes grows which would facilitate a tidier way of updating and amending tax legislation as the taxes are implemented to cater for anomalies and emergent situations.

Specific responses to questions

Chapter 1 – The Context for a Devolved Aggregates Tax

9. A1 – *Are there any aspects of the aggregates sector in Scotland to which the Scottish Government should give particular consideration in developing proposals for a tax?*

10. It would be helpful to see more detail setting out the policy aims of this tax. Is the main driver environmental protection, for example? It is not particularly clear as to what the Aggregates Levy is primarily there to do and what behaviours it wishes to encourage/discourage, including ensuring the compliance of smaller scale operators.

11. A2 – Do you consider that a devolved tax has the potential to support Scotland’s overall circular economy ambitions? Please provide commentary for your views.

12. ICAS considers that in principle, an Aggregates Levy supports Scotland’s circular economy ambitions, and this first stage consultation is helpful. However, we believe that further clarity in regard to the policy aims of this tax are needed before the extent of that support can be determined (see our comments at paragraph 10 above).

13. A3 – What other considerations should Scottish Government take into account in terms of the rationale for a tax on the commercial exploitation of aggregates?

14. ICAS would wish to see further analysis at the next stage of this process which might set out what the policy aims are in terms of the drivers (see our response at paragraph 10 above). This analysis could include consideration of:

- Behavioural aspects – encouraging/discouraging imports and exports
- Supporting the circular economy as against a money raising exercise
- Encouraging greener behaviours
- Consideration of unintended consequences such as avoidance
- How a distinctive Scottish tax policy can support the above drivers

Chapter 2 – The Scope of the Tax

15. A4 – In keeping with our Framework for Tax and ambitions for a circular economy, what options should the Scottish Government consider in terms of defining “aggregate” for the purposes of a tax and on what basis? Do your views on this have a bearing on the Scottish Government’s consideration of reliefs and exemptions? If so, please provide further details.

16. The ‘broad’ definition of aggregate as set out in section 17 of Part 2 of the Finance Act 2001 could be adopted if the Scottish Government wishes to maintain a consistent approach. Whilst this would be unlikely to make the tax distinct from its UK counterpart, it might nevertheless be sensible to use it so that the parameters of the definition which have been tested in previous UK tax cases might be applied in the Scottish Tax Chamber.

17. This approach could also potentially be applied to reliefs and exemptions. Once the tax has been legislated for and is fully functional, a review could be taken as to whether the parameters of the definition are tight enough based on compliance levels and the outcomes of Scottish tax cases– and if necessary, they could be amended. However, key to the success of the tax is clarity for the taxpayer and ideally, this would not be necessary.

18. A5 – Do the UK levy definitions of “commercial exploitation” as set out above cover all relevant circumstances in which this could be deemed to occur in Scotland? Please provide commentary for your views, including to outline any alternative or additional examples of “commercial exploitation” which you think should be covered in a future tax.

A6 – For any examples of commercial exploitation, should there be any exceptions in a devolved tax? If so, on what basis would these be appropriate?

19. ICAS has no knowledge of any aggregate being exploited in Scotland which might fall outside of the UK definition. We understand the existing UK definition of commercial as explained in 2.11 covers the most common scenarios when a taxable activity might arise, such as the use of aggregate in the production of concrete.

20. A7 – *Subject to your views on the circumstances in which commercial exploitation occurs, are there any specific exemptions which should be legislated for, and on what basis?*

A8 – *How should the Scottish Government treat movements of aggregates between Scotland and the rest of the UK in situations where commercial exploitation would not currently be considered to have occurred?*

21. The answer to these two questions is largely centred around what the Scottish Government's policy is on which aggregates should be exploited and which should not – and whether the rates of tax would be different to the UK rates.

22. A definition needs to be placed on 'commercial exploitation' and when it is deemed to have occurred.

23. If one of the policy aims is to try to restrict the movement of aggregates to other parts of the UK when commercial exploitation has been deemed not to have occurred, the Scottish Government needs to set out its rationale for this and determine whether the drivers are correctly positioned in accordance with anti-avoidance and Scotland's Net Zero agenda.

24. A9 – *Do you agree that the Scottish Government should treat imports in the same way as currently applies for the UK levy, taking account of the Scotland Act 2016 provisions?*

25. ICAS agrees with this treatment.

26. A10 – *What measures might help to ensure that imports of aggregates are identified and taxed appropriately? Please provide supporting commentary.*

27. ICAS considers that some form of policing of imports should be maintained, possibly by a collaboration between Revenue Scotland, Local Authorities and SEPA – however this would be a matter for the Scottish Government to decide in terms of resourcing. We would expect that some form of administration and data collection would be necessary to understand the levels and nature of imports, and the worldwide environmental impact of the activity to dovetail with Scotland's Net Zero agenda.

Chapter 3 – Exemptions and Reliefs

28. A11 - *Do you agree that recycled aggregate should be exempted from a devolved tax? Please set out commentary on your views.*

29. ICAS believes that exemptions should be considered where these do not clash with Scotland's net zero ambitions and that any reliefs should probably otherwise be in line with current UK exemptions to ensure clarity and simplicity.

30. ICAS considers that exempting recycled aggregate would be a valuable aid to the effective functioning of a circular economy business model. There would otherwise be little or no incentive for a business to invest in the necessary plant and machinery required to recycle aggregate, if there was no difference on sale of recycled aggregate compared to quarried aggregate. By the same token, customers would be unlikely to see the attractiveness of purchasing recycled aggregate if it was the same price as that which is newly quarried.

31. A12 – *Which exemptions do you consider would be required, and in keeping with the proposed scope of the Scottish replacement tax, and on what basis?*

A13 – *Are any exceptions to these exemptions required, and on what basis?*

A14 – *Aside from reducing the number of exemptions currently available in the UK levy, are there opportunities for the Scottish Government to simplify arrangements for exemptions in a devolved tax? Please set out commentary for your answer.*

A15 – *What reliefs do you consider would be required under a Scottish tax, and on what basis? Would the reliefs in place for the UK levy be appropriate? If so, why?*

A16 – *In what circumstances should the Scottish Government consider a relief rather than an exemption from the tax?*

A17 – How should the Scottish Government approach the taxation of exports from Scotland in a future tax?

A18 – Are there alternatives to an exemption which could be considered, but which may require accompanying amendments to current UK levy provisions?

32. In respect of questions A12 to A 18, ICAS has no specific comment to make.

Chapter 4 – Tax Rates

33. A19 – Which factors should be taken into consideration when setting any rate for the tax, including through the annual Scottish Budget process?

34. As we have stated in other areas of this paper, the answer to this depends on what the main policy drivers are. Consideration needs to be given to revenue yield, driving behaviours, and environmental considerations and these need to be balanced with the resources the Scottish Government wishes to invest in to police the system and effective enforcement.

35. A20 – Would it be appropriate for the Scottish Government to include powers in a Bill to legislate for more than one rate of tax? If so, on what basis?

36. The Scottish Government could choose to legislate for more than one rate of tax – however it should be borne in mind that this would add to complexity and may inadvertently encourage avoidance behaviours and non-compliance. That said, over time, it may be possible to consider a percentage rather than a flat rate tax which might encourage compliance.

Chapter 5 – A Sustainability Fund?

37. A21 – Do you support the introduction of a sustainability fund? Please explain your answer.

A22 – What do you think the objectives of such a fund could be?

A23 – If it were to be introduced, what model could be used to deliver such a fund?

38. ICAS does not support the introduction of a sustainability fund – we are not generally in favour of hypothecation.

Chapter 6 – Registration

39. B1 – What factors should we take into consideration when making regulations regarding registration for a devolved tax?

B2 – What scope is there to simplify, modernise and streamline both site and tax administration, perhaps using modern technologies?

B3 – What registration requirements should be in put in place for persons which only commercially exploit exempt aggregates, and on what basis?

B4 – Where registration is required, what information could be provided to aid Revenue Scotland in understanding the attributes of an individual site and the wider commercial landscape?

B5 – What opportunities do you think there may be to improve the collection, processing and use of that information?

B6 – Are there other registration processes currently undertaken where the information provided could either overlap or help inform the tax registration process?

40. ICAS does not wish to offer commentary in response to questions B1 to B6 as it is something we consider to be beyond our area of expertise.

41. B7 – What factors should we take into consideration to ensure convenient and efficient tax administration of cross border movements of aggregate?

42. The notion of consistency is likely to be a key consideration for businesses in the aggregates sector so that they are burdened minimally in terms of administration, tax returns and record-keeping. Most businesses that are required to register actually do – the key thing which will ensure compliance

is to embed sufficient resource into Revenue Scotland's compliance activity to meaningfully police the Aggregates Levy regime.

Chapter 7 – Tax returns and payment

43. B8 – Do you agree with our proposal for a standard quarterly tax return cycle for the devolved tax? If you answered no, please explain your answer.

B9 – What information could you provide on a Scottish tax return to aid the efficient and effective compliance of the tax?

B10 – Do you have any comments on the Scottish Government proposals regarding submitting a return and paying the tax, or the supporting information to be kept by taxpayers? B11 – Do you foresee any difficulties in making claims for reliefs as part of the quarterly return process?

44. ICAS agrees with the proposal for a standard quarterly return cycle.

45. Broadly speaking ICAS agrees that the proposals around submission of returns, payment of the tax and record keeping requirements are sensible. LBTT is different to Scottish Landfill Tax (SLfT) for example, because it is a non-recurring, transaction-based tax. Ideally speaking Aggregates Levy should be based on the same principles as SLfT so that there is consistency of approach in the Scottish taxes system. As such, transitional arrangements would be introduced to bring businesses in line with the newly legislated-for standardised quarterly deadlines.

Chapter 8 – Tax Compliance

46. B12 – Do you agree that, in relation to the devolved tax, the tax authority should have the investigatory and enforcement powers set out above? If you answered no, please explain your answer.

B13 – Are there any other safeguards that might need to apply to these or any other powers you think may be needed?

B14 – Are there specific aspects of the industry that may require a different approach, and is there scope to make use of additional data and technical resources?

47. ICAS considers that the proposals are sensible, subject to sufficient resource devoted to compliance and enforcement are included in the process and that the Aggregates levy will not be wholly reliant on self-assessment, as we have set out at paragraph 53 below. Any sanctions need to be sufficiently robust to act as a deterrent – which we understand is not currently the case due to the low levels at which penalties are set.

Chapter 9 – Tax Avoidance and Evasion

48. B15 – Are there any areas where artificial tax avoidance might be a concern for a devolved tax? If so, what measures could be taken to reduce potential avoidance?

49. ICAS considers that clarity of policy and legislative provisions is necessary to drive compliance, and taxpayers (especially those who operate across borders) will need to be able to understand the interactions between the UK and Scottish taxes on aggregates.

50. Definitions must be clear and unambiguous.

51. As stated earlier in this paper at paragraphs 10, 14, 21, 23 and 34 we consider that the drivers must be clear and the policy aims and rates of tax should not unintentionally create unwanted avoidance or evasion behaviours.

52. B16 – Do you agree that the existing arrangements in place regarding tax evasion will be sufficient for the new devolved tax? If no, please provide commentary to explain your views.

53. ICAS considers that the existing arrangements to counter evasion are sufficient subject to the Scottish Government committing time and resource to compliance activity. The aggregates sector has

gained some notoriety in terms of non-compliance by some operators which is creating a two-tier system between those who comply and those who do not, and it cannot therefore be wholly reliant on self-assessment.

Chapter 10 – Penalties

54. *B17 – Do you agree the list of civil penalties set out above should apply in relation to a devolved tax on aggregates? If you answered no, please explain your answer.*

55. ICAS agrees that the penalties are structurally sound and sufficient for the intended purpose (see also paragraph 57 below).

56. *B18 – Are there any other civil penalties that should be considered?*

57. We are not aware of any other civil penalties which should apply. The RSTPA penalty regime should be capable of catering sufficiently well - otherwise there is a risk of over-complicating matters. As stated above at paragraph 47 above however, penalties should be sufficiently robust to present a viable deterrent.

Chapter 11 – Dispute Resolution

58. *B19 – Do you agree with our proposals for dispute resolution in relation to a Scottish replacement tax for the UK Aggregates Levy? If you answered no, please explain your answer.*

B20 – What, if any, other decisions not on the proposed list of appealable decisions do you think should be included and why?

59. ICAS agrees that the proposals as set out for dispute resolution are sufficient for the intended purpose and any further complication would make it unwieldy and inefficient.

Chapter 12 – Impact Assessments

60. *C1 – Do you have any information which could inform any final BRIA relating to the Bill?*

C2 – Are you aware of any examples of particular current or future impacts, positive or negative on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

C3 – Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

C4 – Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on these with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

C5 – Are you aware of any examples of potential impacts, either positive or negative that you consider any of the proposals in this consultation may have on groups or areas at socio-economic disadvantage (such as income, low wealth or area deprivation)?

C6 – Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

61. In relation to the above questions C1 to C6, ICAS has no comment.

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