

By 9 February 2024

Call for Views on the Aggregates Tax
and Devolved Taxes Administration
(Scotland) Bill

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Scottish Parliament call for views: Aggregates Tax and Devolved Administration (Scotland) Bill: ICAS response

ICAS response to Scottish Parliament consultation:

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its six technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

General comments

3. ICAS welcomes the opportunity to feed into the Scottish Parliament's work in respect of the call for views on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill. We generally welcome the proposals to introduce the Scottish Aggregates Tax as a fully devolved tax as set out in Part 1 of the Bill. We have some specific points to raise in terms of Part 2 of the Bill.
4. If guidance is to be produced in respect of the revised legislative provisions, we, as a trusted stakeholder of the Scottish Government would welcome sight of the draft guidance and be given the opportunity to comment on it before it is finalised and released. ICAS has been invited to participate in the "Aggregates Tax and Devolved Taxes Admin Bill advisory group" and we welcome the opportunity to feed into those discussions.
5. We consider it essential to ensure that any guidance is well publicised to the public and in the sector to ensure a wider understanding of the legislation's existence and its provisions to promote compliance. Historically we have found that generally speaking, awareness of Scottish taxes is not high in Scotland¹ and there is a need for improvement of communications by the Scottish Government to ensure this improves, in line with the Scottish Government's own Framework for Tax principles.
6. ICAS, along with other professional bodies and stakeholders, continues to call for care and maintenance provisions in the form of a regular fiscal Bill which allows for a point in time at which all amendments to legislation are carried out, rather than undertaking piecemeal changes to tax legislation, which the public, as well as tax and legal professionals, find difficult to follow and locate. It is much easier to refer to a Finance Act or equivalent when researching legislative updates than it is to have to search through different provisions and SSIs to ensure one has a correct understanding and application of the current law.

¹ [ICAS joins forces with CIOT to call for review of the Scottish tax system | ICAS](#)

There have been various examples of ad-hoc changes being made to LBTT in the years since it was introduced, but the best example is the Scottish Aggregates Tax and Devolved Administration (Scotland) Bill, which contains two parts – part one dealing with Aggregates Tax and part two dealing with amendments to Revenue Scotland powers and LBTT-related amendments – i.e. a different tax to Aggregates. If all the changes made in 2023/24 were wrapped up in one Finance Bill, there would be no need to search elsewhere for them, which is more transparent. The more devolved taxes which are introduced, the greater the need for fiscal transparency.

Specific Responses to Questions

1. Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates?

No comment.

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.

ICAS considers that the approach taken in formulating the Bill has been in line with the method set out in the Framework for Tax 2021. The Scottish Government officials responsible for the work have endeavoured to engage with relevant stakeholders and sector experts to understand which elements were most needed and what the likely outcomes might be. It is vital that Revenue Scotland polices compliance with the tax effectively, hopefully by liaising extensively with SEPA and ensuring that SEPA has the powers and resources it needs to regulate the aggregates sector and ensuring that appropriate sanctions are in place for non-compliant behaviours which affect fair competition within the sector.

We notice that whilst Landfill is currently listed as one of SEPA's sector plans, Mining and Quarrying is listed as a sector under development. Will SEPA align the introduction of their sector plan to coincide with the introduction of SAT in 2026 to ensure it is effective?

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?

ICAS welcomes the use of consistent definitions with the existing UK legislation – this ensures greater understanding through transparency and promotes greater engagement and compliance. Where a business entity is trading across borders, consistency of definitions is of particular importance.

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?

ICAS notes and welcomes that most definitions and exemptions are aligned with the UK legislation. The definition of commercial exploitation within Section 7 para 9 of the bill covers movement of aggregate to Scotland from the rest of the UK (rUK) – however, the equivalent UK legislation Part 2 section 19 of Finance Act 2001 does appear to have a provision covering movement of aggregate from Scotland to rUK (even taking account of FA 2023 changes). In the absence of equivalent UK legislation, how will rUK know they are liable to register for SAT?

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?

ICAS considers the main challenge in relation to the tax treatment of cross border aggregates to be compliance with Section 18 of the bill (Duty to register for tax), especially where aggregate is moved to Scotland from rUK. There is a potential loss of revenue where there is insufficient policing and deterrents to non-compliance, whether deliberately or inadvertently avoiding the levy.

6. Are the arrangements for penalties and appeals as set out in the Bill appropriate?

ICAS does not consider the penalties and appeals arrangements to be inappropriate. Proportionality is an important consideration of any penalty regime, and no penalty should exist purely to raise revenue, but should instead act as a deterrent to non-compliance. Guidance on the penalty regime applying to Scottish Aggregates Tax should be widely communicated to ensure transparency.

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?

ICAS is disappointed that Part 2 of the Bill was not consulted on with stakeholders prior to being laid before Parliament. Other items which also need to be addressed could have been included in the Bill, had the Bill been given a different title – we point out an example of this at 8. below. Appropriate safeguards also appear to be missing from part 2 of the Bill.

ICAS understands that the set-off provisions as set out in Part 2 Section 56 of the Bill are based on the provisions as set down in s.130 FA2008. At present, it appears somewhat heavy-handed for Revenue Scotland to have, and use, a power to offset credits and debts across the taxes which is has responsibility for administering. In addition, we and other stakeholders are not conscious of the measure at s.130 FA 2008 having been used extensively in the UK to date, or as an initial response to recovering debt – we are currently seeking clarification from HMRC in this regard. So, whilst HMRC may have a power to offset, it may not use it to the extent that one might think from reading the legislative provisions and guidance.

We understand that the offsetting provision is only to apply to sums due to and from Revenue Scotland in relation to fully devolved taxes, but not in connection with any reserved taxes administered by the UK government. It can apply across the devolved taxes and within the taxes (such as with LBTT and ADS for example).

As such, the offsetting mechanism could only apply to LBTT, Scottish Landfill Tax (SLfT) and when they are fully functional, Scottish Aggregates Tax (SAT) and Scottish Building Safety Levy (SBSL), which we understand is also to be administered by Revenue Scotland and not local authorities as it is in England.

This basket of taxes does not appear to be particularly predisposed to being interchangeable – in other words, the likelihood of say, LBTT and SAT being paid by the same taxpayer seems extremely small, as does the likelihood of an SLfT taxpayer being asked to, and agreeing to, offset liabilities against LBTT or SBSL. Whilst we appreciate that LBTT is prevalent across all areas of business, the taxes in question are relatively small in scale in terms of revenue value.

A likely outcome of/reaction to the attempt by Revenue Scotland to offset debts against credits is that appeals might be submitted by taxpayers to prevent the offsetting process from proceeding due to a dispute, which would lead to unnecessary administration for Revenue Scotland and potentially, the Tax Tribunal.

Taking the above considerations into account, the measure seems unnecessary and is possibly premature at this stage of the devolution process, unless Revenue Scotland can bring robust evidence to bear that this would be a worthwhile exercise at this stage, and that the measure has been fully costed as there will undoubtedly be a cost to the offsetting process. We have stated above that there is an increasing need for a fiscal event to cater for exactly this kind of proposal. ICAS believes that it would be advisable to wait until the policy on this has been developed further and there are more devolved taxes to work with, before implementing this measure, ideally through a fiscal Bill.

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?

Ideally, this Bill would have included provision for the following matter:

- ICAS understood that the Scottish Government intends to give retrospective effect to the amendments to group relief provisions as introduced by the LBTT (Group Relief Modification) (Scotland) Order 2018. That Order only provided relief on transactions which took place on or after 30 June 2018 and did not address the matter of retrospection. This Bill could potentially include the relevant changes which need to be made to the LBTT (Scotland) Act 2013 Schedule 10 which would result in the activation of retrospective relief availability.

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?

No comment.

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?

The approach is not an unusual one and it remains to be seen whether the stated policy objectives will result in the desired outcomes. It is important to make this policy intention clear in public and sector specific communications. A specific timeframe would be difficult to conceive of given the current continuing need for new and recycled aggregate in construction projects, which over time may be superseded by Modern Methods of Construction.



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