

**Revenue Scotland and Tax Powers Act 2014
A Consultation on Proposed Subordinate Legislation
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Introduction

- 1.1 LITRG welcomes the opportunity to respond to the Scottish Government's consultation document 'Revenue Scotland and Tax Powers Act 2014: A Consultation on Proposed Subordinate Legislation'.
- 1.2 We commend the Scottish Government for consulting on the draft subordinate legislation and giving sufficient time for the consultation.
- 1.3 The response answers each consultation question in turn; as such, we have not included an Executive Summary.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue and Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not

designed with the low-income user in mind and this often makes life difficult for those we try to help.

- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 First Planning Period

- 3.1 ***Q. 1: Do you agree with the Scottish Government's proposed approach in relation to setting the planning period for Revenue Scotland's first corporate plan?***

- 3.1.1 We agree with the proposed approach.

4 The Scottish Tax Tribunals

- 4.1 ***Q. 2: Do you agree with the Scottish Government's proposed approach in relation to voting for decisions in the Scottish Tax Tribunals?***

- 4.1.1 We wonder whether Regulation 2(3) should contain an explicit reference to the fact that the Tribunal Rules will set out arrangements for choosing a member to chair the panel, since that power¹ is being exercised.

- 4.1.2 We note that in tribunals consisting of two members, it is proposed that the Chair will have the deciding vote. From the appellant's point of view, if differing views are held among panel members it is less unpalatable if a decision against the appellant is handed down by a clear majority than by means of a casting vote. The casting vote method of determining the outcome is also presumed to be demotivating for the 'junior' panel member; yet it is difficult to see how this situation might be avoided, short of avoiding panels comprised of two members altogether.

- 4.2 ***Q. 3: Do you agree with the Scottish Government's proposed approach in relation to time limit for seeking permission for an onward appeal?***

- 4.2.1 We think a 30-day time limit is acceptable. We note however that the proposal is for the time limit to commence from the date on which the decision was sent to the appellant or the date on which the statement of reasons was issued. We question how the appellant will know what date this was: at a minimum it needs to be stated clearly on the correspondence.

¹ Revenue Scotland and Tax Powers Act 2014, section 33.

- 4.2.2 It seems unbalanced that the time period runs from the date of sending or issue to the date when the application is received from the appellant. It would be more equitable if the 30-day period used the same basis for each party: date of receipt for both, or date of sending for both.
- 4.2.3 We think that a requirement for documents or applications to be received by a specified date places an impossible burden on the taxpayer if, for example, there is a postal strike, or things simply get lost in the post. We note that the Interpretation Act 1978, section 7 applies in Scotland, under which if something is sent by post, properly addressed and with postage pre-paid, it is deemed to be received “at the time at which the letter would be delivered in the ordinary course of post”.² This places a sufficient burden on anyone seeking to rely on it, as a person generally has to show that they did post the item at the time they say they did.³ The additional burden imposed by the imbalance in the draft Regulations (as noted at 4.2.2 above) is therefore unnecessary.

4.3 ***Q. 4: Do you agree with the Scottish Government’s proposed approach in relation to the creation of offences in relation to proceedings?***

- 4.3.1 The three offences seem to vary in terms of degree of severity. The first (a) and third (c) are undoubtedly serious and deserving of the potential punishment proposed. We think, however, that the second (b), failure to attend or give evidence, is more nuanced and arguably less serious. It may indeed have a reasonable explanation. We accept that the Tribunals need to have the backing that a penalty for non-attendance brings, but we think that the potential penalties are too severe in this instance. For example, failure to attend due to illness or transport problems should not result in a jail term. We assume that in practice the penalty would be subject to some sort of ‘reasonable excuse’ defence, but we would prefer this to be made explicit, perhaps by the inclusion of a phrase such as “without good cause” at Regulation 5(1)(b). We suggest that the list of offences should be re-ordered, so as to group the two more serious offences together. The regulation may need to be restructured.

5 Record Keeping

5.1 ***Q. 5: Do you agree with the Scottish Government’s proposed approach in relation to the duty to keep and preserve records?***

- 5.1.1 We think that the key is that the requirement must be over the records needed to produce or prove the return. It is important that Revenue Scotland do not impose their own judgement of what is needed – this could result in the taxpayer having to maintain records

² <http://www.legislation.gov.uk/ukpga/1978/30/section/7?view=extent>

³ Nowadays it would normally be sufficient to show proof of postage, but with more and more use being made of electronic delivery a copy of the sender’s ‘sent’ folder would be equally acceptable.

that go way beyond what is necessary. We think that the Scottish Government's approach adopts the right balance, as it does not result in too great a burden on the taxpayer.

5.2 *Q. 6: Do you agree with the Scottish Government's proposed approach in relation to record-keeping in respect of an LBTT transaction that is non-notifiable?*

5.2.1 We agree with the proposed approach.

6 Reimbursement Arrangements

6.1 *Q. 7: Do you agree with the Scottish Government's proposed approach in relation to prevention of unjustified enrichment?*

6.1.1 We agree with many aspects of the proposed approach and the principle of preventing unjustified enrichment.

6.1.2 We disagree with the provision that the claimant should not be able to make any deduction from the amount reimbursed in respect of reasonable costs.⁴ Unjustified enrichment can only arise in a case where the taxpayer has made an overpayment of tax or Revenue Scotland has made an excessive assessment. This may arise through an error by Revenue Scotland. In order to reimburse the consumers, the taxpayer may have to go back through detailed records and make appropriate payments, which could involve a significant amount of work. We think the regulations should make allowance for the fact that the claimant is likely to have incurred costs in making reimbursement arrangements, and they should be able to make a deduction in respect of reasonable costs.

6.1.3 Regulation 8(2)(e) states "the claimant will keep the records described in regulation 7 above". We think the reference should be to "the records described in regulation 6 above".

7 Privileged Communications

7.1 *Q. 8: Do you agree with the Scottish Government's proposed approach in relation to resolution of disputes relating to legal professional privilege?*

7.1.1 We agree with the proposed approach.

⁴ Regulation 4(b) and Regulation 8(2)(b).

8 Involved Third Party

8.1 *Q. 9: Do you agree with the Scottish Government's proposed approach in relation to the power to specify an "involved third party" in relation to inspections of business premises?*

8.1.1 We agree with the proposed approach.

9 Interest on Unpaid Tax and Interest Rates in General

9.1 *Q. 10: Do you agree with the Scottish Government's proposed approach to interest on unpaid tax?*

9.1.1 We agree with the proposed approach.

9.1.2 The table at regulation 4(1) contains an error: we think the reference at "1 All devolved taxes (c)" should be to section **84** of the Act, rather than section 75. We also think that the references at "1 All devolved taxes (e) and (f)" may need to be changed.

9.2 *Q. 11: Do you agree with the Scottish Government's proposed approach in relation to rates of interest?*

9.2.1 The spread of 3.5% (Bank of England rate + 2.5% to Bank of England rate – 1%) seems too great. The rates are weighted far too much in favour of Revenue Scotland. We think that the repayment rate should at least equal the Bank of England rate. It should be noted that interest is not a penalty: it is meant to take account of the time cost of money – both in terms of the tax authority and the taxpayer. While we can appreciate the need to have a higher late payment rate than repayment rate, in order to encourage payment of tax on time, the differential should not be punitive. It should also be noted that a taxpayer could be caused considerable damage through the loss of the use of the money at the time, for example it could cause them to incur significant overdraft charges or even cause a business to fail.

9.2.2 There appears to be an error in the draft regulations. The consultation document indicates that the proposed repayment rate would be the higher of 0.5% or the Bank of England rate minus 1%. Draft Regulation 7(1)(b) shows the formula "Bank of England rate + 1".

10 Fees for Payment

10.1 *Q. 12: Do you agree with the Scottish Government's proposed approach in relation to fees for payment?*

10.1.1 This seems reasonable. The level of the fee should be kept under review to ensure that it does not exceed the average cost incurred by Revenue Scotland.

- 10.1.2 We question whether there should be limitations on the power to charge a fee, for example, if a taxpayer is unable to pay using a fee-free method because of a disability. This is a point which ought to be considered as part of the Equality Impact Assessment.

11 Postponement of Tax Pending a Review or Appeal

11.1 *Q. 13: Do you agree with the Scottish Government's proposed approach in relation to postponement of tax, interest and penalties pending a review or appeal?*

- 11.1.1 We agree with the proposed approach and welcome the proposed inclusion of a facility to apply for postponement of tax, interest or penalties pending a review or appeal in relation to Land and Buildings Transaction Tax.

12 Powers which the Government does not intend to use prior to April 2015

12.1 *Q. 15: Do you agree with the Scottish Government's proposed approach in relation to the powers we do not intend to use prior to April 2015?*

- 12.1.1 We would like to understand the rationale for not exercising the power in respect of specifying the category of petitions for judicial review at section 40(4).

13 Equality Act 2010 and Proceeds of Crime Act 2002

13.1 *Q. 16: Do you agree with the Scottish Government's proposal that Revenue Scotland should be added to the list of bodies covered by the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and should be included within the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003?*

- 13.1.1 We agree with and welcome these proposals.