

**Devolution (Further Powers) Committee  
Implementing the Smith Agreement – The UK Government’s Scotland Bill  
Response by the Chartered Institute of Taxation and the Low Incomes Tax Reform Group**

**1 Introduction**

- 1.1 This is a joint response by the Chartered Institute of Taxation (CIOT) and the Low Incomes Tax Reform Group (LITRG) to the call for evidence issued by the Devolution (Further Powers) Committee of the Scottish Parliament: ‘Implementing the Smith Agreement – The UK Government’s Scotland Bill’.
- 1.2 The CIOT is an educational charity concerned with promoting the education and study of the administration and practice of taxation. For more details see the statement about us at section 7 below. The LITRG is an initiative of the CIOT, which aims to improve the tax system, including tax credits and benefits, for those on low incomes and the unrepresented taxpayer.
- 1.3 Our submission concentrates on those parts of the Scotland Bill 2015 that deal with tax, although we also make comment on other areas where we have an interest.
- 1.4 We think that the clauses in the Scotland Bill 2015 will broadly achieve the objectives of devolving certain powers. We think that the design of the fiscal framework and the decisions concerning block grant adjustments will be key to ensuring transparency and accountability.
- 1.5 We note that discussions concerning a fiscal framework are ongoing. We provided input into an inquiry by the Finance Committee of the Scottish Parliament in respect of this aspect of the Command Paper<sup>1</sup>, and would welcome the opportunity to participate in other initiatives to engage stakeholders on the issues of devolution of further tax powers to Scotland.

---

<sup>1</sup> The joint CIOT and LITRG response is available on the CIOT website: [http://www.tax.org.uk/tax-policy/public-submissions/2015/inquiry\\_scotlands\\_fiscal\\_framework](http://www.tax.org.uk/tax-policy/public-submissions/2015/inquiry_scotlands_fiscal_framework)

## **2 General Principles**

- 2.1 The Scottish Government has committed itself to a tax system that has regard to Adam Smith's four principles: certainty; the burden proportionate to the ability to pay; convenience; efficiency of collection.<sup>2</sup> We agree that these longstanding principles are important and relevant for the development of a sound tax system. In view of this, we think it is key that due regard should be given to Adam Smith's principles when devolving further tax powers.
- 2.2 We also think the following principles should be borne in mind:
- simplicity – it is not possible to achieve certainty unless taxes are capable of being understood and dealt with by those liable to pay;
  - stability – constant change adds to complexity; it can also undermine certainty;
  - fairness – taxes should be administered and collected fairly by the responsible tax authority; and
  - consultation – there is a need to consult, to ensure that there is understanding of the impact and the burden of what is being proposed.
- 2.3 In addition to basing the devolution of tax powers on sound principles, we believe it is necessary to take a holistic view of the tax and welfare systems. In devolving further tax and welfare powers to Scotland, it is essential to keep the taxpayer and claimant in mind. It should be straightforward for taxpayers and benefits claimants to deal with their affairs and negotiate the tax and benefits systems. These systems must be easy to understand; obligations on the taxpayer and claimant should be clear. It also needs to be clear which authority they need to deal with for a particular tax or benefit. In addition, the impact on businesses, especially employers, needs to be considered. It is important not to lose sight of the overall burden, as administration costs are almost guaranteed to increase as more taxes are devolved.
- 2.4 It is also necessary to consider the devolution of tax and welfare powers to Scotland within the context of the UK as a whole, as decisions taken elsewhere in the UK might affect Scotland and vice versa.
- 2.5 Both the CIOT and LITRG would like to assist in ensuring that the tax system in Scotland (and the rest of the UK) is effective and efficient. We think that the achievement of a tax system that works well for taxpayer and tax authority alike is more likely if the aforementioned principles are borne in mind.

## **3 Draft clauses: tax**

- 3.1 In devolving further tax powers to Scotland, it is essential to always keep the taxpayer in mind, whether individuals or organisations. Ideally, it should be straightforward for taxpayers to deal with their tax affairs and negotiate the tax system. This means the tax system should be easy to understand and it should be clear to the taxpayer what their obligations are and how they need to go about meeting them. It needs to be clear which tax authority (HM Revenue & Customs (HMRC) or Revenue Scotland) they are dealing with for a particular tax and it should be easy for them to contact the tax authority.

---

<sup>2</sup> The Scottish Government's Approach to Taxation, Finance Secretary John Swinney's statement to the Scottish Parliament, 7 June 2012: <http://www.gov.scot/News/Speeches/taxation07062012>

*Income Tax*

- 3.2 From 6 April 2016, there will be a Scottish Rate of Income Tax (SRIT), following the implementation of the Scotland Act 2012. The Scotland Bill 2015 proposals will give the Scottish Parliament more responsibility, with the ability to set rates and thresholds. They build on the SRIT, which seems sensible and should prove cost-effective. We think it would be sensible for the SRIT to be in place for a couple of tax years before the implementation of the increased income tax powers contained in the Scotland Bill 2015: waiting a couple of years, until say April 2018, would enable HMRC to ensure they have the necessary capacity and allow taxpayers, employers, pension providers and agents the chance to adapt to the changes. It would also mean that all stakeholders could learn from the implementation of the SRIT.
- 3.3 It is the responsibility of HMRC to identify and notify Scottish taxpayers for those within Pay As You Earn (PAYE). Individuals who pay tax under self assessment will have to determine their own Scottish taxpayer status. Scottish taxpayer status will apply for a complete tax year. We have a concern, however, that for some taxpayers, who move into or out of Scotland during a tax year, the only way of resolving their tax position will be via self assessment – since it will only be possible to determine their final Scottish taxpayer status in retrospect. It is likely therefore that many more individuals will be forced into self assessment as a result of the changes to income tax under the Scotland Act 2012 and following the Scotland Bill 2015. Not only will good communications from HMRC be essential; it is important that there is the infrastructure in place to cope with the likely increased demands on HMRC. In addition, we would hope that HMRC will relax penalties for taxpayers who find themselves having to register for self assessment as a result of these changes, but are perhaps late to do so.
- 3.4 Once the further income tax powers in Scotland Bill 2015 are devolved, Scottish taxpayers will face a more complex system than taxpayers in the rest of the UK, since their savings income will be subject to UK rates and their non-savings income will be subject to Scottish rates.<sup>3</sup> This could make it difficult for many Scottish taxpayers to fully understand their tax calculations and liabilities. This complexity will face not just those taxpayers able to afford to pay for a tax adviser, but many low income taxpayers too, including the low income unrepresented who may find it particularly difficult to cope with the changes.<sup>4</sup> It may also mean that more low income Scottish taxpayers are forced into self assessment.
- 3.5 Further complexity will be faced by Scottish taxpayers who realise a taxable chargeable gain, because of the interaction of income tax thresholds and capital gains tax (CGT) rates. Their rate of CGT will be calculated by reference to UK income tax rate limits, in order to ensure that the rates of CGT are consistent across the UK.<sup>5</sup> Again, this is something that could make it difficult for many taxpayers to fully understand their tax calculations and liabilities. This potential for complexity should therefore be borne in mind when considering what rates and thresholds to set.
- 3.6 Clear communications concerning SRIT and the further income tax powers will be essential to assist taxpayers in understanding their tax liabilities.
- 3.7 We welcome the fact that HMRC will continue to administer income tax (both at UK and

---

<sup>3</sup> Admittedly, perhaps slightly less complex than the position from April 2016 with the Scottish Rate of Income Tax – savings income subject to UK rates of income tax; non-savings income subject to both UK rates of income tax and the Scottish Rate of Income Tax.

<sup>4</sup> This may be less of an issue than originally anticipated, following the announcement in the UK Government's Budget 2015 – there will be a personal savings allowance and deposit takers will stop deducting tax at 20% from savings income with effect from April 2016:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414026/Savings\\_factographic\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414026/Savings_factographic_final.pdf)

<sup>5</sup> Section 14 of the Scotland Bill provides for this.

Scottish rates), as at least this means that individuals and employers will only have to deal with one tax authority in respect of their income tax affairs. Nevertheless, clear communications and messaging will be necessary to ensure that Scottish taxpayers do not become confused and attempt to deal with Revenue Scotland by mistake. It would be advisable for both HMRC and Revenue Scotland staff to have access to a well-defined route to relay calls appropriately, particularly when Revenue Scotland receive calls that should be going to HMRC.

- 3.8 We welcome the fact that the UK Government intends to work closely with stakeholders on the detailed implementation of income tax devolution.<sup>6</sup>
- 3.9 As a final point, it is difficult to obtain a clear understanding of the proposed draft clauses in relation to income tax – this is because one needs to consider the Scotland Act 1998, amended by the Scotland Act 2012, amended again by Finance Act 2014 and the Wales Act 2014, and finally amended by the Scotland Bill 2015. This is exacerbated by the length of time taken to update legislation and create a consolidated picture on the official website in respect of later amendments.<sup>7</sup> We recommend that a consolidated version of the legislation should be produced and maintained as soon as practicable.

#### VAT

- 3.10 Section 15 of the Scotland Bill 2015 relates to VAT. The provision allows for the assignment of a proportion of VAT revenues to Scotland.
- 3.11 We note that it is not necessarily a straightforward process to identify the VAT revenues that relate to Scotland. This will therefore be subject to an agreement between the rest of the UK and Scotland – this should be both equitable and transparent for Scotland and the rest of the UK. In order to identify a suitable approach, it will be necessary to undertake a significant amount of analysis and research, which could affect the time taken to reach an agreement and implement the measure.
- 3.12 VAT is intended to be a tax on consumption. In principle therefore we would suggest that the share of VAT revenues allocated to Scotland should as far as possible be allocated on the basis of deemed consumption in Scotland.<sup>8</sup> Apart from anything else, if achieved, it would provide greater transparency of just what tax revenues actually arise from VAT in Scotland.
- 3.13 The alternative is taxing according to the location of where goods and services are produced or on the basis of some other proxy, for example population, although the latter would be little different to the Barnett formula. We do not think that allocation on the basis of production would be accurate given that much consumption is of goods and services produced and supplied from outside Scotland, so as a measure it (allocation on the basis of production) is more likely to understate the VAT arising in Scotland.

---

<sup>6</sup> Areas of concern include the operation of pensions tax relief and Gift Aid as noted in the UK Government's Command Paper, 'Scotland in the United Kingdom: An enduring settlement' (paragraph 3.2.5)

(<https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>), but also the effect on non-savings income from income in possession trusts and deceased estates, income from property authorised investment funds, real estate investment trusts and certain annual payments.

<sup>7</sup> <http://www.legislation.gov.uk/>

<sup>8</sup> Within the EU, the place of supply rules determine the place where consumption is regarded to take place; they also determine which member state collects the VAT and the VAT rate charged. Although there will inevitably be exceptions, based on existing EU VAT rules, we can rely on the presumption that most consumer goods purchased within Scotland for use in Scotland, will be subject to tax in Scotland (s7, VAT Act 1994). For consumer services purchased for use within Scotland, these will be taxed in Scotland where the supplier providing those services has their main business establishment in Scotland (s7A, VAT Act 1994), subject to some exceptions which may need further consideration. Businesses with multiple UK establishments will need further consideration, as there is currently no requirement to report individually on VAT receipts from each UK business establishment unless separately VAT registered or divisionally registered for VAT.

- 3.14 The big difficulty with an allocation based on consumption is accurate measurement. VAT is collected on a UK-wide basis, so consumption would not be accurately measured by reference to the place where businesses are established.<sup>9</sup> Indeed substantial values of consumption will be accounted for by suppliers that are not within the UK at all, for example some digital services.

#### *Air Passenger Duty*

- 3.15 Section 16 of the Scotland Bill 2015 relates to Air Passenger Duty (APD). We recognise that this is a relatively simple tax to devolve, since it is a standalone tax, subject to notice being taken of industry challenges. The provision takes Scotland out of the charge to UK APD and gives the Scottish Parliament the power to charge a tax on the carriage of passengers by air.
- 3.16 The Scottish Government and Scottish Parliament will be able to use the experience gained in relation to the implementation of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) when developing policy, drafting legislation and implementing APD. A collaborative and consultative approach was adopted when developing policy and drafting legislation in respect of LBTT and SLfT. It is important that a similarly consultative approach is adopted for APD, particularly if the Scottish Government is considering developing a rather different APD to the UK tax.<sup>10</sup>

#### *Aggregates Levy*

- 3.17 Section 17 of the Scotland Bill 2015 relates to Aggregates Levy (AL). Similarly, this is a standalone tax. We recognise that the full devolution of this tax should be relatively simple, subject to satisfactory resolution of the legal challenges.<sup>11</sup> The provision takes Scotland out of the charge to UK AL and gives the Scottish Parliament the power to charge a tax on the commercial exploitation of aggregate.
- 3.18 As with APD, the Scottish Government and Scottish Parliament will be able to use the experience gained in relation to the implementation of LBTT and SLfT when developing policy, drafting legislation and implementing AL. We reiterate the importance of adopting a collaborative and consultative approach when developing policy and drafting legislation in respect of AL, particularly if the Scottish Government is considering developing a rather different AL to the UK tax.

#### *Local taxation*

- 3.19 Local taxation powers are already devolved, and as such Scotland Bill 2015 does not include provisions in respect of local taxation.<sup>12</sup> The Commission on Local Tax reform is currently exploring possible alternative forms of local taxation to Council Tax, including the possibility of a local income tax.<sup>13</sup> A change to the system of local taxation in Scotland could create significant interactions with income tax and the tax credits and benefits systems, which should be kept in mind.

---

<sup>9</sup> National and multi-national businesses trading in Scotland will submit a single UK VAT return, which will not separately identify trade in Scotland.

<sup>10</sup> In this regard, we welcome the formation of the Scottish Air Passenger Duty Stakeholder Forum:

<http://news.scotland.gov.uk/News/Air-Passenger-Duty-1bc7.aspx>.

<sup>11</sup> The European Commission investigated whether some of the exemptions within AL constituted state aid, prohibited by EU law. In the meantime, some of the exemptions were suspended. The investigation has now concluded, deciding that AL as a whole and the exemptions under investigation were lawful, with the exception of part of the shale exemption. The exemptions are being reinstated on 1 August 2015, but will have effect retrospectively on and after 1 April 2014. More information is available at: <https://www.gov.uk/government/publications/aggregates-levy-reinstatement-of-exemptions>

<sup>12</sup> Council Tax and non-domestic (business) rates.

<sup>13</sup> <http://localtaxcommission.scot/>

#### **4 Draft clauses: Welfare**

- 4.1 We recognise that there are advantages of devolution of welfare, for example, it can be easier to meet individual needs and circumstances at a local level. There are also some potential disadvantages, for example, confusion when people move from one area to another, and the difficulty for central government in understanding the impact of national changes on individuals at a local level.<sup>14</sup>
- 4.2 Another difficulty is that it is more difficult to analyse the impact of changes on individuals and households. This is already the case with council tax support schemes in England and Wales, for example.<sup>15</sup> This in turn means that it is extremely difficult to ensure transparency of the tax and welfare systems for individuals.
- 4.3 As a result, we think joint-working is essential, not only between the Scottish and UK Governments, but also between the Scottish Government and Scottish councils, if the Scottish Government decides to devolve powers to a more local level. This is to ensure transparency for the individual and household, but also to ensure that the government and others can assess accurately the interactions between welfare benefits and between taxes and welfare benefits.
- 4.4 It is important that the UK and Scottish Governments are aware that individuals' circumstances are not static. Transitional provisions must be able to cope not only with someone whose circumstances are the same before and after the transition, but also someone whose circumstances have changed in some way, for example, they have moved to another part of the country, they have had a child or they have moved into or out of employment.
- 4.5 We welcomed the establishment of a joint Ministerial Working Group on Welfare. We think this group should also liaise with the various groups concerned with tax issues, to ensure integration with tax changes.
- 4.6 We note that the Scottish Parliament may decide whether devolved and new Scottish benefits are to be delivered by the Department for Work and Pensions (DWP) or by establishing separate Scottish arrangements.<sup>16</sup> We observe that separate Scottish arrangements could create additional complexity for claimants. Many claimants will also be claiming reserved benefits and/or also be taxpayers. They will therefore be dealing with the DWP and HMRC already. They will also deal with their local council concerning Council Tax. All these benefits and taxes interact. A query concerning one benefit may lead to a query concerning another. From this point of view, the fewer organisations the individual has to deal with the better. Whatever decision is taken, we suggest that processes should be put in place so that there is a single port of call for queries, which can effectively deal with any interactions for the claimant / taxpayer behind the scenes, so that they are not put in the position of having to contact multiple governmental organisations.

---

<sup>14</sup> We refer to our response to the Social Security Advisory Committee's call for evidence on localisation: [http://www.litrg.org.uk/Resources/LITRG/Documents/2014/12/141212\\_LITRG%20response%20SSAC%20localisation%20condoc%20FINAL.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2014/12/141212_LITRG%20response%20SSAC%20localisation%20condoc%20FINAL.pdf)

<sup>15</sup> The impact of localised council tax support in London has been explored in a report published by Child Poverty Action Group and Zacchaeus 2000, 'Too Poor to Pay', (July 2015): <http://www.cpag.org.uk/too-poor-to-pay>

<sup>16</sup> Options could include: Revenue Scotland; a separate body comparable to Revenue Scotland; local councils.

- 4.7 One of the new powers the Scottish Parliament will have will enable it to create new benefits and to make discretionary payments. In exercising these powers, the Scottish Parliament should have regard to the risk of creating unnecessary and unhelpful complexity for individuals, such that the benefit is too hard to claim or that the complexity outweighs the benefit of claiming.
- 4.8 It is essential that both the Scottish and UK schemes work successfully and that they work together coherently *in the best interest of claimants*. We think it would also be helpful to look at tax, National Insurance and welfare holistically.

## 5 Draft clauses: Scottish Tribunals

- 5.1 It is our understanding that in due course the Scottish Tax Tribunals being established by the Revenue Scotland and Tax Powers Act 2014 will be rolled into the Scottish Tribunals system. In addition, the tribunals dealing with reserved tax matters will also be rolled into the Scottish Tribunals system at a later stage. We trust that these changes will effectively be behind the scenes, such that for the taxpayer the impact will be minimal.

## 6 Other comments

- 6.1 We think it is important to strengthen the ways in which the UK and Scottish Governments work together, particularly in the tax arena. In addition, the tax and welfare systems must integrate well and not work against one another. The joint-working should extend beyond the high-level Government working, to ensure that it is straightforward for staff from UK and Scottish tax authorities to liaise. Moreover, it is essential that these staff have the appropriate training and knowledge of both devolved and reserved taxes and benefits.
- 6.2 Taxpayers in Scotland may find themselves having to deal with two tax authorities (HMRC and Revenue Scotland), at least one local council, and possibly at least one welfare authority (the DWP) in order to manage their tax and welfare affairs. Ideally, there should be one port of call for queries, that is, a single point of entry, to ensure that taxpayers are not passed from pillar to post. This may require liaison between the authorities responsible for taxes and welfare benefits. There should be a protocol for staff to follow, to ensure that they know what to do and how to deal with queries that affect more than one tax or welfare benefit (whether devolved or reserved). It should also mean that if a taxpayer or claimant has told one arm of government something, they should be able to rely on that arm telling other arms as appropriate.<sup>17</sup> It is unreasonable to expect the unrepresented taxpayer or claimant to tell several different departments the same thing; equally, it is an unreasonable burden on businesses and small businesses in particular, if they have to provide the same information on multiple occasions and forms.
- 6.3 We note that the Scotland Bill 2015, together with the taxes devolved under the Scotland Act 2012, creates ample opportunities for confusion among taxpayers. Firstly, there is the issue of numerous implementation dates for tax powers in Scotland – LBTT and SLfT came into effect on 1 April 2015; the SRIT will apply from 6 April 2016; there will be at least one implementation date in the future for taxes encompassed by the Scotland Bill 2015.<sup>18</sup>

---

<sup>17</sup> A good model for this is the 'Tell Us Once' service offered by registrars to the bereaved.

<sup>18</sup> This does not take account of the taxes that have already been devolved to Scotland – Council Tax and business rates.

Secondly, there are the different types of devolution – assignment of revenues (VAT); partial devolution (income tax); and full devolution (LBTT, SLfT, AL, APD). In terms of practicalities, perhaps the most important concern in relation to this second issue, is that taxpayers may be confused as to who to contact to deal with a particular tax or as to whether the Scottish or the UK tax applies to them.

- 6.4 In terms of ensuring that the systems are as transparent as possible for the taxpayer, we have recommended to the UK Government that HMRC should continue with their Grant in Aid funding programmes. In addition, we think that this type of funding programme might be something that the Scottish Government could explore, whether through Revenue Scotland or another body. Some funding might usefully be directed towards tax charities with a view to assisting low income taxpayers to understand the changes.<sup>19</sup>
- 6.5 While revenues from Scottish taxes will form an ever greater part of funding for Scotland, the block grant will also remain important.<sup>20</sup> The adjustment to the block grant each year is determined by the Barnett formula. This provides the Scottish Government with a population-based share of changes in comparable spending by UK Government departments.<sup>21</sup> There is an issue of transparency with this element of funding, since very few people actually understand how the block grant and the Barnett formula work.

## **7 The Chartered Institute of Taxation**

- 7.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 7.2 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
- 7.3 The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation  
13 August 2015

---

<sup>19</sup> The tax charities include not only LITRG, which provides guidance via various websites and support to front-line charities, but the two main front-line tax charities, TaxAid (<http://taxaid.org.uk/>) and Tax Volunteers (Tax Help for Older People) (<http://www.taxvol.org.uk/>), which operate throughout the UK.

<sup>20</sup> The block grant is funding provided by the UK Government.

<sup>21</sup> Further details are provided in the Statement of Funding Policy:  
[http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/sr2010\\_fundingpolicy.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/sr2010_fundingpolicy.pdf)