

**A Consultation on Tax Management - Scottish Government Consultation  
Response from the Low Incomes Tax Reform Group ('LITRG')**

**1 Executive Summary**

- 1.1 LITRG welcomes the opportunity to respond to the Scottish Government's consultation document 'A Consultation on Tax Management'.
- 1.2 Proposals for an overarching tax administration framework are laudable, as is the aim of ensuring devolved taxes are operated efficiently, fairly and in the public interest.
- 1.3 We welcome the Scottish Government taking an approach to tax that is based on four governing principles – proportionate to ability to pay; certainty; convenience; and efficiency.
- 1.4 We note that a 'Digital First' approach is to be adopted, which means that priority will be given to online systems; we would emphasise the importance of understanding the needs of the digitally excluded (both those who are permanently and temporarily excluded), and providing them with appropriate support. In our view, although digital may be the preferred channel, it should not be the default or only channel.
- 1.5 Revenue Scotland must rethink the proposals in relation to time limits for amendments to returns. The current proposals are inequitable and will create confusion.
- 1.6 We call on Revenue Scotland to draw up a taxpayer's charter that is enshrined in legislation. This should set out the rights and obligations of taxpayers and Revenue Scotland.

## 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 & 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 Revenue Scotland

- 3.1 ***Q. 1: What are your views on the proposed function and duties of Revenue Scotland?***
- 3.1.1 It is proposed that the principal function of Revenue Scotland should be to ensure efficient and effective care and management of devolved taxes.
- 3.1.2 We comment below on some of the proposed core duties; on the others we have no comment to make.
- 3.1.2.1. To provide information and guidance – we would stress the importance of making information and guidance available via various channels (such as print), including ones accessible to the digitally excluded<sup>1</sup> and those with disabilities. Given the capacity for confusion, e.g. with HMRC, both in terms of identifying who the taxpayer is dealing with and in terms of the obligations and processes involved, it is important that information and guidance is very clear, accessible and well-

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publicised; careful consideration should therefore be given to the branding of Revenue Scotland.

3.1.2.2. To provide information and advice about administration of tax. We refer to our comments at paragraph 3.1.2.1 above, as they are also relevant here.

3.1.2.3. To collect the 'highest net revenue practicable'. We welcome the implied recognition that Revenue Scotland will not necessarily seek the full amount of revenue due where the cost of doing so would outweigh the benefit, such as in cases of financial hardship. The question has been raised as to whether the core duty should in fact be to collect the 'right' amount of tax according to the law, no doubt arising from a concern that the word 'highest' suggests the duty to collect the most tax that could conceivably be due. But a duty to collect the 'right' amount of tax according to the law may not give sufficient discretion to collect less in cases of financial hardship. We would suggest that the duty should be to assess the correct amount of tax according to the law, and then to collect the highest net revenue practicable, taking into account hardship. This would allow discretion and flexibility over the amount collected, so that regard can be given to hardship and/or efficiency.

3.1.3 There should perhaps be an additional core duty to consult on new tax law, unless this falls within the rules set out in the Scottish Public Finance Manual (SPFM)/Equalities law.

3.2 ***Q. 2: What are your views on the proposal to establish Revenue Scotland as a Non-Ministerial Department, part of the Scottish Administration and accountable to the Scottish Parliament?***

3.2.1 We think the proposed set-up is appropriate, as it is vital that Revenue Scotland are accountable to the Scottish people via the Scottish Parliament, and also that it has operational independence. The proposed set-up should result in both. We agree that staffing by civil servants offers flexibility, which is important given the small size of the department. We would emphasise the importance of adequate and appropriate training for staff, to ensure that they are able to fulfil their roles.

3.3 ***Q. 3: What are your views on the governance options for Revenue Scotland, and on how people should be selected for appointment to the Board and to the post of Chief Executive?***

3.3.1 Our preference would be for the board to be made up of both non-executive and executive directors. The board should include people who have experience of tax administration and the wider tax profession. It is important for the board and Chief Executive to take responsibility, as well as for there to be transparency.

3.4 ***Q. 4: When, how and on what subjects should Revenue Scotland engage with taxpayers, their agents and tax professionals?***

3.4.1 It is important that there is frequent and open engagement.

- 3.4.2 Ideally, we suggest that there should be meaningful consultation on tax policy, the drafting of law and the drafting of tax guidance, with standard three month consultation periods. As in the case of this consultation, longer periods may be appropriate for some consultations.
- 3.4.3 The use of electronic/pdf consultation documents is reasonable, provided that there are arrangements that make it possible for those that are digitally excluded to access a printed copy of the document and make a response. It is also useful to arrange discussion meetings and seminars about consultations, particularly where the issues involved are significant, for example this consultation on tax management.
- 3.4.4 There should be consultations or surveys on the performance of Revenue Scotland. There should also be a channel available for taxpayers to make suggestions or bring issues to the attention of Revenue Scotland.
- 3.4.5 Other means of engagement with agents and tax professionals could include surveys through member organisations, e.g. CIOT / ATT / ICAS / ICAEW / STEP, etc., as well as other organisations with an interest in tax, such as LITRG, Tax Help and TaxAid. Revenue Scotland could engage with all groups by attendance at and presenting to conferences. Promotion of changes to the wider public could take place through the media, the education system, advice centres and workplaces.
- 3.4.6 Non-consultation on new legislation should be the exception and perhaps only in prescribed circumstances.

3.5 ***Q. 5: How and in what form should Revenue Scotland provide information to, and communicate with, taxpayers and their agents?***

- 3.5.1 We welcome the intention for Revenue Scotland to consult about tax guidance too.
- 3.5.2 It is important that Revenue Scotland guidance is clear and accessible to all, including the digitally excluded and those with disabilities. We agree with the adoption of the Digital First approach in terms of efficiency, provided that those who cannot get online are not forgotten or served poorly. The view should be that while digital channels may be preferred, there must be provision of alternative channels for those that require them. We think that Revenue Scotland should especially be aware of the issue of digital exclusion<sup>1</sup>, given that there are many communities in Scotland without reliable, or with only very slow, digital and mobile networks.

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- 3.5.3 The use of alternative formats to digital is essential. These should include (but not be restricted to) Braille and audio, large-print, and paper (even if only by request). It would be appropriate for some information to be available in languages other than English, in particular Gaelic.
- 3.5.4 Text messaging and social media may be appropriate for some information, e.g. more general and promotional work, but there are security risks and identification of taxpayer risks involved. So, work would need to be done to eliminate those risks before more confidential information could be communicated via these methods.
- 3.5.5 Telephone helplines need to be properly resourced, both so taxpayers can easily access a member of staff and also so that the member of staff is properly trained and able to assist taxpayers. There should also be Textphone and Text Relay services available. In certain situations it may be appropriate to provide an interpretation service.
- 3.5.6 Revenue Scotland should make provision for home visits to those taxpayers who require enhanced support.
- 3.5.7 In addition to communicating with taxpayers and their agents, Revenue Scotland should recognise in its provision the assistance to many taxpayers offered by the voluntary sector, in particular, by charities like Tax Help and TaxAid.
- 3.5.8 It is important to ensure that guidance, in whatever format or by whatever channel, is structured coherently and usefully. Online guidance should be supported by a good search facility; paper and pdf documents need to be well-indexed.
- 3.5.9 It is sensible to try to segment the audience, and to provide taxpayers and agents (including those in the voluntary sector) with different sets of information. Any 'simplification' for taxpayers of technical material must retain its legal accuracy.

#### **4 Powers and Obligations**

- 4.1 ***Q. 6: What are your views on the proposed framework for tax collection powers? We would be especially interested to know whether you see merit in the creation of a "Taxpayer's Charter".***
- 4.1.1 Overall, we think that the framework and principles are sensible.
- 4.1.2 We believe that a taxpayer's charter is essential and that it should have legislative backing. A charter should contain both rights and responsibilities for Revenue Scotland and taxpayers, giving equal recognition to taxpayers' rights and obligations and setting them out clearly and with precision. A taxpayer's charter can be a useful tool – it is not only a safeguard for the taxpayer, but it is a simple means of communicating the obligations of taxpayers and Revenue Scotland. It can be short, easy to read, available on Revenue Scotland's website and elsewhere in other formats.

- 4.1.3 In general, the idea of one overarching framework is to be welcomed, in terms of the potential for simplicity, clarity and efficiency it offers. With the current two devolved taxes, we would think that one framework is a realistic goal. It may not prove possible to have one framework for all taxes in the long term, as some taxes differ greatly in nature, for example direct and indirect taxes, and there may be some differences between how Revenue Scotland should approach individuals in a personal capacity and businesses.
- 4.1.4 It is important that powers for dealing with non-compliance are effective, as tackling non-compliance effectively makes the tax system fairer for those who are or who try to be compliant. Care will need to be taken in distinguishing the genuinely non-compliant from those who wish to comply but make mistakes because they do not receive the support they need to be fully compliant. The methods of tackling non-compliance will need to be appropriate to the situation and there needs to be flexibility and variety in the methods available to Revenue Scotland.
- 4.1.5 It is essential that there are rules and limits for intrusive powers, with proper channels for approval and clear accountability in the use of such powers. This is an important safeguard for taxpayers.
- 4.2 ***Q. 7: What are your views on the proposed obligations on taxpayers? Are there any other obligations on taxpayers which should be included?***
- 4.2.1 We welcome the acknowledgement by Revenue Scotland of the need to balance taxpayers' rights and obligations, and the need for clarity.
- 4.2.2 In terms of Land and Buildings Transaction Tax and Scottish Landfill Tax, self assessment may be appropriate as an obligation. In terms of the Scottish rate of income tax and possible future devolved taxes, the obligation to self assess should not necessarily apply. For example, if income tax as a whole was eventually devolved, we do not believe that it would be sensible to enforce self assessment for all taxpayers. For UK income tax, the vast majority of taxpayers do not self assess. If Revenue Scotland wished to impose self assessment for income tax they would need to provide appropriate support, education and guidance to the whole population, including those who are digitally excluded and those with disabilities.
- 4.2.3 We note that Revenue Scotland have only listed taxpayer obligations. This should be balanced by a list of suggested taxpayer rights. In addition, Revenue Scotland should be considering their 'reciprocal' obligations (and rights). A good place to start might be HMRC's 'Your Charter'<sup>1</sup> for both rights and obligations.
- 4.2.4 One of the taxpayer obligations is to pay all tax on time, even if the taxpayer contests the assessment. If the taxpayer is successful, Revenue Scotland will reimburse and also pay interest. Repayment interest alone may not be enough to compensate the taxpayer for the loss of the use of the money at the time, if it has caused them to incur overdraft charges or if

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/91888/charter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/91888/charter.pdf)

it has caused their business to fail. It should be possible to apply for postponement of tax in dispute when making an appeal; if the postponed tax is found to be due, interest would be payable on it. This would also encourage Revenue Scotland to ensure any disputes are resolved in good time; if the taxpayer has to pay contested tax, the dispute drags on, and the tax is found not to be payable, the taxpayer would probably expect a stronger remedy (and justifiably so) than merely the payment of interest by Revenue Scotland.

4.2.5 As noted at paragraph 4.2.3, this section does not actually mention any taxpayer rights. We would suggest the following taxpayer rights as a minimum – to be treated with respect; to be treated as honest; to be treated fairly; for Revenue Scotland to act professionally and with integrity; taxpayer information should be protected; to be represented; to receive help and support to get things right; to be told in full about taxpayer rights and safeguards, and limitations on Revenue Scotland powers, granted or imposed by law.

4.2.6 It is essential that Revenue Scotland publicise the respective rights and obligations of taxpayers and Revenue Scotland sufficiently widely to be easily accessible to all Scottish taxpayers, wherever in the world they are based.

4.3 ***Q. 8: What are your views on the specific powers proposed for requesting information, for inspecting and sampling and for investigating? Are there any safeguards that might need to apply to them or any other powers you think Revenue Scotland may need?***

4.3.1 We agree that it is important for Revenue Scotland to have reasonable powers that they apply proportionately.

4.3.2 We would suggest that as a minimum, there should be limitations on Revenue Scotland's powers that are equivalent to those contained in Finance Act 2008, Schedule 36, Part 4.

4.3.3 Although the test of 'reasonable' belief (that the required information is relevant to the taxpayer's tax position) would ultimately be determined by a tribunal on appeal, we hope that Revenue Scotland interprets the term 'reasonable' in an equitable manner from the outset.

4.3.4 We agree that requests to third parties should have to be set out in writing and meet minimum standards. We think there are difficulties in terms of taxpayer confidentiality and the UK Data Protection Act with the proposal for written requests to include an explanation of why Revenue Scotland are asking the third party and not the taxpayer.

4.3.5 We suggest that there should be privilege for all professional advice not just that which is provided by lawyers, given that much tax advice is provided by other qualified professionals.

4.3.6 We note that Revenue Scotland are considering powers to ask a third party to reveal the identity of an individual based on information they hold, and to seek information from businesses about clients who meet certain criteria. We think these are acceptable, but that safeguards are necessary, such as a public protocol as to who can approve a request and how it should be made. There are issues of confidentiality, and where criminal behavior is

suspected, the safeguards in Article 6 of the European Convention on Human Rights should be observed. The taxpayer may turn out to have a reasonable and legal explanation.

- 4.3.7 We welcome the statement that the power to inspect is not a power of search, and that the power does not extend to domestic premises even where it is necessary to enter them in order to reach the business premises. Taxpayers must be made aware of these safeguards.
- 4.3.8 We think that if there is a power to inspect without advance notice, there must be prior internal Revenue Scotland authorisation at a high level. There should also be a public protocol, setting out the conditions to be met. A high burden of proof must be required, or confirmed refusal as opposed to non-response from the taxpayer (which may indicate incorrect contact data or a personal problem of the taxpayer).
- 4.3.9 There must be proportionate use of powers by individuals appropriately trained, whether delegated or in-house. If the powers are delegated, there needs to be extremely good data to ensure the correct people are pursued. There must be good information and communication links between Revenue Scotland and the delegated organisation. For example, if the taxpayer concerned is vulnerable for some reason, there needs to be some delicacy of approach. There may be a case for setting up a separate monitoring body to ensure powers are used proportionately and protocols are observed.
- 4.4 ***Q. 9: What are your views on the proposals set out for the amendment of tax returns by Revenue Scotland or taxpayers? Please comment on the terminology, the time limits proposed and anything else you consider relevant to the amendment of tax returns.***
- 4.4.1 We think the proposed terms 'Revenue Scotland assessments' and 'amended returns' seem sensible. Distinctive branding will be necessary to avoid confusion between HMRC and Revenue Scotland communications.
- 4.4.2 Our initial comment on the time limit proposals is that the first impression is of imbalance. We would ask the following question: in cases where there is no fraud, is it really appropriate (and does it fit with Revenue Scotland's previously stated principles) for Revenue Scotland to have longer to amend returns than an honest taxpayer? We strongly advocate that there should be equal time limits for taxpayers and Revenue Scotland where no fraud is involved.
- 4.4.3 The proposed time limit for Revenue Scotland means that uncertainty will persist over an honest taxpayer's return for a long time – it could effectively be five years after the end of the tax year before the taxpayer has certainty. For all taxpayers, but particularly those who are vulnerable, this could cause a lot of unnecessary anxiety.
- 4.4.4 The time limit for taxpayers should refer to the later of the due date and the actual date of submission, in case the return is issued (and therefore submitted) late.
- 4.4.5 The proposed time limits mean that individual taxpayers will require education, to ensure that they retain records for long enough. In the UK, personal tax records currently only have to be retained for two years.



- 4.4.6 We also suggest that there should be an obligation on Revenue Scotland to be able to provide comfort to a taxpayer that they have acted within one year of having sufficient information to amend a return.
- 4.4.7 The difference in limits for taxpayers and Revenue Scotland creates unnecessary complexity. There are three limits (if we include the 20 year fraud limit) instead of two. Confusion will arise when Revenue Scotland amends a return after one year but within the four years, because many taxpayers will assume this is not possible, because their limit has passed.
- 4.5 ***Q. 10: Are there any powers that Revenue Scotland should not delegate and, if so, what are they and why?***
- 4.5.1 Whatever tasks or powers are delegated to other bodies, ultimate responsibility for the devolved taxes remains with Revenue Scotland. Revenue Scotland are accountable to the Scottish Parliament for the administration and collection of devolved taxes. It will be up to Revenue Scotland to ensure that Registers of Scotland and SEPA exercise compliance and operational duties effectively. We suggest that there should be a process of performance review, and that these organisations be subject to the same safeguards and quality control as Revenue Scotland.
- 4.5.2 We have concern over the delegation of debt collection duties – HMRC have started to use debt collection agencies, and there have been reports that they have not acted appropriately. We would be wary of Revenue Scotland delegating debt collection responsibilities to private organisations. There should only be delegation to public sector authorities with proper safeguards in place. There also needs to be appropriate and adequate training of staff.

## 5 Ensuring Compliance

- 5.1 ***Q. 11: What else might be done to make it as easy as possible for taxpayers to comply with their obligations, and to ensure that those who wish to comply are supported to do so?***
- 5.1.1 Use of online guidance – it is important that it is well-structured, and that the connected search facility works well. Alternative formats and channels must be available for those who are digitally excluded and those with disabilities.<sup>1</sup>

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- 5.1.2 Telephone helplines – telephones must be answered promptly and staff must be properly trained so that they can assist the taxpayer or agent effectively, whether by answering the query or directing them to appropriate further guidance. It would also be useful to clarify the status of guidance or advice provided by staff over the telephone, for example, whether the taxpayer can rely on it when completing a return. Serious consideration should be given to making telephone helpline numbers free or only the same cost as local calls; premium numbers are not appropriate for a helpline. People on low incomes are particularly ill-served by such numbers as they may only have a pay as you go mobile to telephone from.
- 5.1.3 Paper and telephone filing/payment facilities may be required for some taxpayers. People with disabilities need to be considered, so various formats, such as Braille, large print, textphone, text relay should be available. We suggest that interpretation (and translation) services are made available for those whose first language is not English. Various groups are digitally excluded (see paragraph 5.1.1). For those who have no access to a private, secure computer, it is not appropriate to ask businesses or individuals to submit tax returns using public computers in libraries and internet cafes. For some people who are digitally excluded, improving the broadband infrastructure will enable them to get online. So, the Scottish Government may wish to prioritise broadband roll-out to all people in Scotland.
- 5.1.4 Face-to-face help, whether through home visits or meeting rooms in town centres, should be offered to those that require enhanced support.
- 5.1.5 Warnings of deadlines and reminders of filing and payment obligations should be given to all taxpayers, in a format and via a channel that suits them.
- 5.1.6 Revenue Scotland should ensure that published guidance (in whatever format) is up-to-date and reflects law (statute and case) fairly and accurately.
- 5.1.7 We think that Revenue Scotland should not penalise people who almost comply (and wish to comply) in the same manner or to the same extent as people who fail to comply by a long margin. Penalties need to be proportionate to the failure, tax at stake, and non-compliance involved. Where there was no intention to reduce tax, Revenue Scotland should have the flexibility not to penalise.
- 5.2 ***Q. 12: What particular features should Revenue Scotland's systems include to help agents to operate most effectively on taxpayers' behalf?***
- 5.2.1 It is essential that there is an agent authorisation process; ideally this would be unified with that for UK taxes. In addition, there should be a means of giving direct access to tax systems to those within the voluntary sector acting on behalf of taxpayers, such as Tax Help and TaxAid.
- 5.2.2 Revenue Scotland should send information to both taxpayer and agent automatically. Online and email communications could be used with agents. Dedicated agent channels could be available, for example dedicated telephone helplines.

**5.3     *Q. 13: What are your views on the list of non-compliant behaviours at Paragraph 4.10 – for example, are there other situations in which civil penalties should be available?***

- 5.3.1     LITRG notes the use of the term ‘reasonably’ with reference to information required. Revenue Scotland may think an action reasonable but the taxpayer may disagree; it is therefore vital that the taxpayer has a right of appeal and this right is publicised effectively.
- 5.3.2     We suggest there should be distinctions (as in the UK) drawn between (a) mistakes made despite taking care, (b) careless mistakes and (c) deliberate mis-statements, or concealment. There should be recognition that some mistakes may occur despite the taxpayer being honest and taking care over their return. There are times, therefore, when non-compliant behaviour occurs despite the honesty and good intentions of the taxpayer, and in these cases assistance, rather than penalties, is appropriate.
- 5.3.3     In cases of late payment, we suggest that hardship and the financial position of the taxpayer are taken into account. There should be training for staff to enable them to deal with people in a considerate manner. Staff should receive training to enable them to take into account factors such as the taxpayer’s mental health, e.g. the previously compliant taxpayer who has not attended to his return for the last few years because he now suffers from dementia, or the taxpayer with a mental health condition that may lead him to do things that land him in debt, etc.

**5.4     *Q. 14: What are your views on the proposal that Revenue Scotland should have discretion, subject to maximum penalties set in legislation and subject also to published guidance, to determine the level of sanctions? What factors might be taken into account by Revenue Scotland in deciding what level of sanction to apply?***

- 5.4.1     As the consultation document acknowledges, it is imperative that the use of sanctions is fair, proportionate, even-handed, predictable and transparent. It is important to bear this in mind when considering the concept of discretion, and whether the use of discretion runs counter to those principles. Issues may arise if the discretion results in one taxpayer feeling that they have been more harshly treated than another, simply as a result of the officer that has dealt with them. There would need to be not only a framework for penalties, but also a strong framework or guidelines (perhaps with legislative backing) for how and why Revenue Scotland should apply discretion or reduce penalties.
- 5.4.2     Care should be taken when considering the use of absolute amounts for penalties, rather than percentages of the tax due or maximum amounts that may be mitigated, as absolute amounts can be disproportionate.
- 5.4.3     Factors to take into account when determining the level of sanction could include the nature of the non-compliance, i.e. first time or repeated; the length of the period of non-compliance; the behaviour involved – care taken, careless, deliberate, fraud; the amount of tax involved; the taxpayer’s ability to pay; the taxpayer’s willingness to learn and improve their compliance record; and/or whether or not the taxpayer was acting in good faith.

- 5.4.4 Reductions could be available for voluntary or prompted (lesser reduction) disclosure of an error or omission, providing information to Revenue Scotland and assisting in determining the correct tax liability. Suspension may be an option to encourage future compliance in general. Suspension should not be available if non-compliance is deliberate, or worse, behaviour. It should be there to assist taxpayers who are trying to comply.
- 5.5 ***Q. 15: What are your views on the types of sanction and their possible uses described in the text box at the end of chapter 4?***
- 5.5.1 Warning letter – suitable for minor non-compliance, first-time non-compliance and educational use. Revenue Scotland should consider whether other formats or channels could also be used, e.g. if filing online, an online or email alert. This should be considered an opportunity to provide genuine education and assistance. Clarity and timing of the warning will be of the utmost importance, so Revenue Scotland must consider the use of language, content, format, and the date of issue. The warning must reach the taxpayer.
- 5.5.2 Flat-rate penalty – this must be used carefully as it can easily be disproportionate, e.g. late filing of a return when no tax at stake. The flat-rate penalty could not be the same for all tax returns – some returns are annual or ‘one-off’, others are far more frequent.
- 5.5.3 Daily penalty – the same points made in respect of flat-rate penalties (paragraph 5.5.2) apply. It could be limited in relation to a proportion of tax at stake.
- 5.5.4 Percentage-based penalty – there must be differentiation between levels of non-compliance (see 5.3.2 and 5.4.3 above). It is important that these penalties are applied consistently. This means published guidelines with legislative backing are required.
- 5.5.5 Criminal prosecution – the conditions for using this sanction against agents need to be strict, as otherwise agents may be put off assisting some clients, to the detriment of the public interest. LITRG would welcome the opportunity to comment on further proposals on this issue, as there should be a high burden of proof required.
- 5.6 ***Q. 16: What are your views on the proposed arrangements for collecting unpaid tax set out above?***
- 5.6.1 It is important that Revenue Scotland has the ability to make ‘Time to Pay’ arrangements in appropriate circumstances. This facility should be publicised properly. Revenue Scotland should apply their collection rules fairly, with consistency, and taking notice of hardship.
- 5.6.2 ‘Time to Pay’ arrangements should allow for some flexibility and offer reasonable deadlines.
- 5.6.3 It is important not to enforce collection in circumstances when allowing a business to continue would result in a better (if slower) tax take for Revenue Scotland. In addition, Revenue Scotland should take into account the welfare of the people concerned, including their mental well-being, as being in debt can be extremely stressful. Revenue Scotland should consider the wider environment, for example, how many jobs may enforced collection put in jeopardy?

- 5.6.4 We note that some people are willing to pay tax in principle, but because they are unable to pay their liability all at once, they bury their head in the sand and do not seek time to pay. This is why it is not only essential to publicise 'Time to Pay' effectively, but in some cases offer 'Time to Pay' to the taxpayer after the grant of a warrant, if it becomes clear this is an option and the taxpayer was vulnerable.

## 6 Tackling Tax Avoidance

6.1 ***Q. 17: What are your views on the measures proposed for tackling tax avoidance? What other methods might be employed?***

- 6.1.1 As noted in the consultation, one of the best ways of tackling avoidance is to remove the opportunity and motivation for it, by ensuring that the tax system is as simple and fair as possible. In addition, the intention of the legislation should be set out within the tax law, rather than as guidance.

- 6.1.2 We support the comments made by CIOT and ATT in their submission.

- 6.1.3 Our concern is whether Revenue Scotland will have the requisite skills and resources to enable them to be successful in tackling tax avoidance.

6.2 ***Q. 18: If obligatory notification arrangements were included in the proposed Tax Management Bill, what do you think should be the main features? Are there any features of other similar schemes that you think should be avoided?***

- 6.2.1 We support the CIOT and ATT submission.

6.3 ***Q. 19: Of the two broad approaches – a GAAR targeted at highly-artificial and contrived abuse of tax legislation, or a more widely-drawn provision – which do you believe is likely to be more effective, and why?***

- 6.3.1 We support the CIOT and ATT submission.

6.4 ***Q. 20: What advantages might a prior clearance rule offer? How might it be designed to provide maximum certainty at least cost?***

- 6.4.1 We support the CIOT and ATT submission.

6.5 ***Q. 21: How can the intentions of those drafting and passing the relevant legislation best be set out in a way that is useful to taxpayers, Revenue Scotland, and those adjudicating on disputes and appeals?***

- 6.5.1 If the intention can be set out as part of the legislation, this might enable courts to take notice of it. The intention should also be included in explanatory material and guidance.

- 6.5.2 The aim should be for legislation to be clear and simple.

6.6 ***Q. 22: What tests do you think should be used to decide whether an arrangement is wholly or mainly intended to achieve a reduction in tax due?***

6.6.1 We support the CIOT and ATT submission.

6.7 ***Q. 23: Do you see a role for external expertise in assessing tax arrangements to see whether they are “caught” by a GAAR, and if so what might that role be? What arrangements do you think should be put into place for appeals?***

6.7.1 We support the CIOT and ATT submission.

## **7 Resolving Tax Disputes**

7.1 ***Q. 24: What are your views on the proposals for avoiding disputes? What else could Revenue Scotland do to avoid disputes arising in the first place?***

7.1.1 We agree that processes must be efficient, effective and clear. Communication channels must be accessible and provide speedy communication; so letters, telephone calls, etc. must be answered properly and within a prompt timeframe. Revenue Scotland need Key Performance Indicators (KPIs) and should publish their performance against these, e.g. percentage of telephone calls answered and how quickly.

7.1.2 A simple tax system will assist this, as it will minimise scope for misunderstandings. There should be transparency about how decisions are reached and how liabilities are calculated.

7.1.3 Revenue Scotland should publish information clearly, for example, deadlines, responsibilities of the taxpayer, how to submit returns and pay tax. Where taxpayers are registered, Revenue Scotland should ensure that they send information to the correct taxpayer and address. Warnings and alerts should be sent to registered taxpayers.

7.1.4 A taxpayer’s charter that is accessible and properly publicised, setting out both the rights and responsibilities of taxpayers and Revenue Scotland, could assist in preventing disputes arising. It may also help in creating mutual respect and trust between Revenue Scotland and the taxpayer.

7.1.5 Training and support for Revenue Scotland staff must be adequate to enable them to make correct decisions, or seek appropriate help when needed. There should also be a quality review of Revenue Scotland’s performance.

7.2 ***Q. 25: What are your views on the proposed arrangements for reviews and/or the appropriate duration for the period within which the review must be concluded?***

7.2.1 Early resolution may be possible if officials are willing to listen and try to comprehend the perspective of the taxpayer and their level of understanding of the tax system. Officials should not assume a taxpayer has the same level of knowledge as a tax official or a tax adviser. This is particularly important when dealing with unrepresented taxpayers.

- 7.2.2 We would suggest that it may be appropriate for some elements of the rules to be enshrined in law rather than guidance.
- 7.2.3 We support the use of internal reviews as a first step, although there may be a resource issue for such a small organisation. There may not always be a suitable member of staff available to carry out such a review, i.e. someone who meets the criteria of having no previous involvement in the case and who also has the requisite skill-set to enable them to carry out the review. An alternative might be to set up a quasi-judicial team outside Revenue Scotland – a precedent might be the Internal Review Service the DWP previously had in place to review decisions in relation to the social fund.
- 7.2.4 Many taxpayers will have the perception that the internal review is not objective and fair, because it is not independent. It will therefore be important to make the process transparent and provide the taxpayer with a detailed explanation of the outcome of the review, rather than just a formulaic letter. Revenue Scotland will need to consider the inter-relationship of internal reviews and mediation.
- 7.2.5 Internal reviews must happen within a reasonable timescale to provide certainty for the taxpayer. This is particularly important for unrepresented taxpayers, who do not have an agent to guide them through the process and provide reassurance. Equally, we recognise some cases will be complex and may take much longer to determine. Nevertheless, this process should be prioritised, and therefore a 45 day limit may be reasonable. If the review is going to take longer than this, the reviewer must inform the taxpayer within, say, 35 days of the start of the review. Another possibility might be to have no fixed time limit, or a longer limit, but to give the taxpayer the option to move to the next stage at any point in the process, if dissatisfied with lack of progress.
- 7.2.6 It is a good idea to publish anonymised information about disputes and statistics.
- 7.3 ***Q. 26: What are your views on the proposal to encourage the voluntary use of mediation? Should we be considering any other approaches to dispute resolution?***
- 7.3.1 It is appropriate that mediation is available, but as a voluntary step, not compulsory.
- 7.3.2 It should be made clear to both parties (and in promoting mediation) that this process does not have to come to an ‘all or nothing’ or clear ‘black and white’ ‘winner and loser’ outcome.
- 7.3.3 The consultation indicates that the process would be facilitated by a third party. Paid mediators can be quite expensive. Nevertheless, an ‘in-house’ mediator might again (as with internal review) lead to concerns about independence.
- 7.3.4 It is a good idea to publish anonymised information and statistics.
- 7.4 ***Q. 27: What do you think would be the best option for dealing with appeals to a tribunal until a tax jurisdiction is established in the Scottish Tribunal System?***
- 7.4.1 It would make most sense for appeals to be dealt with by the UK Chambers of the UK Tribunal (i.e. First Tier and Upper Tier). This would benefit cases as the existing expertise

could be used. There is only a small pool of judges in Scotland, and if the tribunals had to use only Scottish judges for devolved tax appeals, then there would be a significant loss of expertise. There could also be issues of capacity, meaning a delay in cases being heard. An option would be a core team of Scottish judges supplemented by existing tribunal judges and members. The clerk of any tribunal etc system would need to be Scottish law trained.

**7.5 Q. 28: How should the costs of mediation or tribunal appeals be met or shared?**

7.5.1 Consideration should be given to reimbursement of out-of-pocket expenses for tribunals. Otherwise, there is a risk that low income taxpayers do not have access to a legal remedy – it is excluded by cost. That is not equitable.

7.5.2 In considering the question of costs, regard has to be had to low income taxpayers. Consideration should be given to allowing Legal Aid in all cases, not just those where article 6 of the European Convention on Human Rights is engaged, to ensure that all taxpayers have access to the same legal remedies. A system of the loser paying could deter many lower income taxpayers from appealing; in addition, paying one's own costs may discriminate against the taxpayer, as Revenue Scotland are likely to have greater resources.

7.5.3 If the Tax Tribunal system is used, as we suggest, the Tribunal's costs rules should be followed. This means there are no adverse awards of costs at the First Tier. To make the appeal system more accessible to low-income appellants, we recommend the Tribunal recruit a volunteer panel of tax advisers willing to provide *pro bono* advice and assistance, even representation in appropriate cases, to appellants who would otherwise be unable to afford professional help.

7.5.4 In some cases the decision, whether via mediation or the courts, will not be a clear win or loss for either party – elements of the case may be 'won' by one party, but other elements 'won' by the opposing party. It would not be possible to easily rationalise a split of costs in such cases. It may therefore be sensible in all cases for each party to bear their own costs, but for standing costs to be paid by Revenue Scotland.

7.5.5 Particularly in the case of mediation, Revenue Scotland should advise the taxpayer of expected costs and keep them apprised during process.

**7.6 Q. 29: What are your views on how Revenue Scotland could best demonstrate that it is learning from the resolution of disputes?**

7.6.1 Publishing an annual summary of key statistics and main points of learning and intended action would be helpful. It would be sensible to create targets from the intended actions, and to report back in future summaries on the success of those intended actions.

**7.7 Q. 30: What are your views on the proposed approach to the handling of complaints?**

7.7.1 Part of the strategy to avoid complaints should be to draw up and publish a taxpayer's charter setting out the rights and obligations of Revenue Scotland and taxpayers. This would give Revenue Scotland a guide to their required standards, as well as clarifying to the



taxpayer the standards they have a right to expect. The charter and complaint handling process should be governed by the overarching principle of mutual respect.

- 7.7.2 We agree the complaint should be raised with the body concerned. To some extent Revenue Scotland have to be responsible for the actions of those bodies to which they delegate operations. There should not only be a public contract between the bodies, but there should also be some sort of reporting or quality control mechanism, so that Revenue Scotland can check that Registers of Scotland, SEPA (and other bodies) are acting in line with Revenue Scotland expectations.
- 7.7.3 Revenue Scotland should publish a similar annual summary report to that for disputes. It would require the creation of goals from the intended actions, and future reports should demonstrate the performance against those goals. This means the current proposals should be taken a step further, to demonstrate learning has been taken on board and is affecting future actions and behaviour. Revenue Scotland should also be able to show how the new goals are connected to the learning. This performance could be discussed at a forum.

## **8 Treatment of Taxpayer Information**

- 8.1 ***Q. 31: What are your views on the proposed statutory provision forbidding disclosure of information held by Revenue Scotland? Should there be criminal sanctions if information is disclosed?***
- 8.1.1 We believe that taxpayer confidentiality and non-disclosure of information are key principles that should be provided for in statute.
- 8.1.2 Criminal sanctions would be appropriate for unauthorised disclosure of taxpayers' confidential information.
- 8.2 ***Q. 32: Do you agree that Revenue Scotland should be empowered to share information with other public bodies and other tax authorities internationally for the purposes outlined above? Do you think there are other purposes for which information should be shared?***
- 8.2.1 Revenue Scotland should be empowered to share information with other public bodies and other tax authorities internationally in appropriate circumstances; the other body must be obliged to keep the information confidential.
- 8.3 ***Q. 33: Do you agree that the existing framework for public interest disclosure, described at 7.16, is sufficient for Revenue Scotland?***
- 8.3.1 Yes. Changes to the existing framework should be monitored to ensure that this remains the case.
- 8.4 ***Q. 34: Do you agree that certain information held by Revenue Scotland and bodies to which it has delegated powers should be exempt from Freedom of Information legislation***

***in order to prevent disclosure of information that would identify or could be used to identify a taxpayer?***

8.4.1 Yes.

## **9 Accelerated Tax Changes**

9.1 ***Q. 35: What are your views on the proposals for an accelerated tax changes regime?***

9.1.1 We support the comments made in the CIOT and ATT submission.

## **10 Draft Partial Equalities Impact Assessment**

10.1 ***Q. 36: Do you have any comments on the Draft Partial Equalities Impact Assessment?***

10.1.1 Carrying out an Impact Assessment should not be viewed as purely fulfilling a public sector equality duty. Rather, the Impact Assessment should be viewed as an opportunity to consider how the tax management framework could be used to eliminate discrimination and provide equality of opportunity.

10.1.2 In terms of age, it is stated that there is no information to suggest there may be a differential impact on older or younger people. We would refer you to our Digital Exclusion report.<sup>1</sup> Any system that puts digital channels first could have a differential impact on older people. As the report shows, older people are one of several groups that are more likely to be digitally excluded. This could affect the compliance of older people.

10.1.3 A similar point could be made about digital exclusion and people with certain disabilities, or people on low incomes who cannot afford the expense of going online.

10.1.4 It is important therefore that there are other channels available apart from digital. In addition, for those with disabilities, the availability of various facilities will be necessary, such as Braille, large-print, Textphone, Text Relay. It is important that materials are disability tested, for example, colour blindness testing and use of minimum 12 point font. LITRG would be pleased to assist in the development of suitable materials.

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<sup>1</sup> We refer you to our report on digital exclusion, in particular pp. 16-24 on understanding digital exclusion: <http://www.litrg.org.uk/reports/2012/dig-excl> and [http://www.litrg.org.uk/Resources/LITRG/Documents/2012/05/digital\\_exclusion\\_-\\_litrg\\_report.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2012/05/digital_exclusion_-_litrg_report.pdf)

**11 Draft Partial Business and Regulatory Impact Assessment****11.1 *Q. 37: Do you have any comments on the Draft Partial Business and Regulatory Impact Assessment?***

- 11.1.1 It is not clear whether the Impact Assessment includes an estimate of costs of training staff of Revenue Scotland, Registers of Scotland or SEPA; these costs should not be ignored.
- 11.1.2 A single framework for Scottish taxes should in theory lead to a more coherent system, and hopefully efficiencies. There is perhaps a question mark over whether it is possible to have a single framework when there are various taxes of differing natures. The first two devolved taxes are both event-based. Others may be more continuous in nature. There are then differences between indirect and direct taxes to consider.
- 11.1.3 Design of forms – LITRG has considerable experience of contributing to HMRC form design and commenting on draft wordings. LITRG would be interested in being involved in the design of forms and communication channels with taxpayers.

**12 Overall****12.1 *Q. 38: Do you have any other comment you wish to make on the arrangements for tax management?***

- 12.1.1 No comment.

LITRG  
12 April 2013