

**The Revenue Scotland and Tax Powers Bill – Call for Evidence  
Response from the Low Incomes Tax Reform Group ('LITRG')**

**1 Executive Summary**

- 1.1 The LITRG welcomes the opportunity to respond to the Scottish Finance Committee's call for evidence on the Revenue Scotland and Tax Powers Bill (RSTPB).
- 1.2 Overall, we think that the RSTPB has been drafted well, is worded clearly and reflects the consultative approach that the Scottish Government has adopted for the purpose of designing Revenue Scotland (RS) and the tax administration framework. In particular, it has been helpful to engage early and closely with the draftsmen of the legislation, and we hope that this pattern will continue.
- 1.3 We note that the Scottish Government's policy objectives include the intention for the RSTPB to reflect Adam Smith's four maxims with regard to taxes: certainty, convenience, efficiency and proportionate to the ability to pay. Our comments are made with the aim of ensuring that the RSTPB reflects the aforementioned maxims. In addition, we have considered how to best ensure that the tax system is appropriate to Scotland and its values.
- 1.4 We think that there are a few gaps in the RSTPB; in particular, there are some areas, such as penalties, where we think that powers should be contained in the primary legislation, where currently they are to be in secondary regulations. We would urge some consideration be given to this, particularly in respect of penalties, where safeguards are crucial.

**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 General points**

- 3.1 The LITRG is an initiative of the CIOT; we support the CIOT's separate submission. Our response focuses on points of concern for the low income taxpayer.
- 3.2 We note over eighty instances of the term 'reasonable' or similar. This is subjective and it will require time and experience for taxpayers to understand the meaning of the term in the Scottish context and the practice of RS. This means that there will be a degree of uncertainty for taxpayers (and their advisers). We suggest that it would be helpful if RS published guidance as to the approach that Scotland will adopt, for example, the extent to which the tribunals will treat UK case law as providing a precedent.
- 3.3 There are a number of areas, for example, penalties, where regulatory powers are granted by the RSTPB to RS. The Delegated Powers Memorandum is helpful in setting out the expected Parliamentary procedure to effect the regulations. We welcome the intention of the team responsible for the RSTPB to consult on the secondary legislation and suggest that there should be a public commitment to consult on secondary legislation.
- 3.4 Given the fact that the majority of taxpayers who will be liable to devolved taxes under the framework of the RSTPB are used to the current UK taxes and framework, we think that RS should be slow to depart from precedents set by the UK without very good reason. It would hinder cross-border mobility if minor matters like how long one should retain records for were to trip up otherwise compliant taxpayers. It would be sensible for RS to adopt the position that tax and administrative burdens should be no more onerous than those in the rest of the UK and that any divergences should be in favour of the taxpayer. In addition, any variances must be publicised well, in order to ensure that RS is fair to the taxpayer in general and to the unrepresented taxpayer in particular.
- 3.5 We are mainly concerned with unrepresented taxpayers; however, we are also aware that many taxpayers obtain voluntary, temporary and *ad hoc* assistance with their tax affairs ('informal' agents). We would have expected to see more provisions in the RSTPB relating to the rights and duties of tax advisers and agents and the relationship between RS, agent and taxpayer. We suggest that there is clear guidance for both formal and informal agents on procedures to follow to enable them to deal with RS on behalf of the taxpayer they are representing. See further our comments on the Charter at 4.3 below.

- 3.6 We suggest that references to legislation should not simply be ‘the 2013 Act’ as currently stated in s216. This terminology is obscure and could create complications in the future when more than one Act, to which reference is required, is passed in a year. An alternative might be to use acronyms, for example, ‘LBTTA 2013’ and ‘LTA 2014’ for the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014 respectively.

## **4 Revenue Scotland**

### **4.1 *Functions and delegation***

- 4.1.1 We welcome subsections (4) and (7) of s4. We suggest that the RSTPB make explicit the fact that a delegatee cannot exceed RS powers in carrying out delegated functions, for example, with regard to use of taxpayer information. We recognise that this is an accepted principle, but feel that an explicit provision would ensure taxpayers are aware of this vital safeguard. In addition, we suggest that the RSTPB contain a provision applying the Charter to delegatees.

### **4.2 *Independence***

- 4.2.1 In s8, we note that there is provision for exceptions allowing ministers not to publish their guidance to RS. We wonder what the exceptions are that this section envisages.

### **4.3 *Charter***

- 4.3.1 We welcome the provision for a Charter in the RSTPB. This is a particularly important document for all taxpayers but particularly to unrepresented taxpayers, as it should help them to understand how they can interact with RS. It therefore plays a particularly significant role in framing the relationship between RS and unrepresented taxpayers. In view of this, we are concerned that there is only a need for RS to aspire to the values and behaviours of the proposed Charter, especially given the emphasis on taxpayer duties throughout the RSTPB. We would prefer to see an expectation placed on both RS and taxpayers to uphold the values and behaviours of the Charter.
- 4.3.2 We suggest that the RSTPB include a duty for RS to consult and engage with interested parties in the development of the Charter. In addition, RS should be required to publish an annual report on the Charter and their performance against it. As a further safeguard for the taxpayer, we would like to see explicit provision in the RSTPB for the Scottish Public Services Ombudsman to exercise guardianship over the Charter.
- 4.3.3 We think that the requirement for RS to review the Charter ‘from time to time’ in s10 is too vague; the requirement should specify a time period, of not more than every three years.

### **4.4 *Investigatory powers***

- 4.4.1 In s111 it would appear that a ‘designated investigation officer’ could be a member of staff of an agency to which this task has been delegated. As a safeguard, we suggest that the RSTPB make explicit the fact that designated investigation officers cannot exceed RS powers in carrying out their functions. In addition, we suggest that the RSTPB contain a provision applying the Charter to designated investigation officers.

- 4.4.2 In s142, there is provision for a taxpayer to request a receipt or copy of a document that an officer removes. We suggest that there should be an explicit provision requiring the designated investigation officer to inform the taxpayer of these rights (or to ask the taxpayer if they would like a copy or receipt) prior to removal of the document. In the event of loss or damage of the document by RS, we think that subsection 6 should explicitly extend to compensation for consequential loss.
- 4.4.3 We wonder whether there is a drafting error at s147 ss2(b) and at s172 ss2(b) as these sections seem to suggest that a taxpayer does not commit an offence if they conceal or destroy documents following receipt of an information notice.

## **5 Scottish tax tribunals**

- 5.1 We believe that the judicial system should be open to all taxpayers, whether represented or unrepresented: our comments reflect this position. There is no legal aid system for most tax cases and yet tax is an area where individuals most need access to justice.
- 5.2 We are concerned that the RSTPB as drafted might not ensure the independence of the President of the Tribunals and their decisions. In particular, we are concerned by the provision for the President to be appointed by Scottish Ministers and the lack of explicit confirmation that the President has the security of the five-year initial term granted to members of the tribunals by paragraph 11 of schedule 2.
- 5.3 As it will take time for the Scottish tax tribunals to build up a body of their own case law, it might assist taxpayers, with regard to certainty, if RS were to publish guidance as to how far they will treat UK cases as persuasive or binding.
- 5.4 The LITRG have a concern that judicial review should be available to all people, including those on a low income, because there are likely to be problems with the administration of taxes that can be cured only by judicial review. There has been a UK Ministry of Justice consultation on this remedy recently to which LITRG responded.<sup>1</sup> We believe that rather than restricting judicial review, it should be extended. Although we are advised that there are protected expenses orders in Scotland, these do not assist low income taxpayers if they are unaware of them. It is important that representative bodies have the ability to bring judicial review cases – a point that the UK Ministry of Justice has now accepted. We also suggest that where appropriate lower courts and tribunals should have the ability to hear judicial review cases, as this will make judicial review less costly and burdensome. This process needs to be publicised widely and properly so that all taxpayers are aware of it. It would be helpful for example for s40 to explain when judicial review can apply – the draft provision is not helpful in explaining the remedy to the ordinary taxpayer.
- 5.5 We think that there should be a duty in s41 for the tax tribunal to ensure that the hearing venue is reasonably accessible to the taxpayer, in particular if they have a disability, subject to cost constraints.

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<sup>1</sup> The LITRG response can be found on our website at [http://www.litrg.org.uk/submissions/2013/131101\\_Judicial\\_Review\\_LITRG](http://www.litrg.org.uk/submissions/2013/131101_Judicial_Review_LITRG). The Ministry of Justice has now published its response to the consultation: [http://www.litrg.org.uk/News/2014/JR\\_mixed\\_reception](http://www.litrg.org.uk/News/2014/JR_mixed_reception)

## **6 General Anti-Avoidance Rule**

- 6.1 We recognise the need to include a General Anti-Avoidance Rule (GAAR) in the RSTPB. We agree that the tax system must be protected; equally, we are mindful of the need for certainty for taxpayers when arranging their tax affairs – this is especially important for unrepresented taxpayers under a self-assessment tax system. If legislation is clear and its effect is certain, then the system itself counters tax avoidance to a large extent. The suggestions below are made with a view to increasing the certainty of the GAAR, in line with one of Adam Smith’s four maxims.
- 6.2 We suggest that at s58 the phrase ‘sole or main purpose’ is used, rather than the wider and less certain ‘main purpose, or one of the main purposes’. At s64, we suggest that a notice of counteraction of tax advantage should also be required to set out any rights of appeal the taxpayer has. RS should publish guidance as to what is and is not caught by the GAAR; they should update the guidance as their experience grows (for example with anonymised cases), but it is essential that there is guidance available from April 2015. The RSTPB does not provide for a clearance procedure; if RS are able to offer a non-statutory clearance procedure, they must publicise this. Thought should also be given to providing for an Advisory Panel with commercial experience, similar to that for the UK GAAR.

## **7 Tax returns, enquiries and assessments**

- 7.1 The range of taxpayer duties set out in s68 is reasonable. We think that there should be an equivalent set of duties for RS. It would be helpful if the RSTPB contained a definition of ‘taxable activities’ as referred to in s68.
- 7.2 There is a duty for taxpayers to retain records in s69 for five years. As this is a different, and importantly a longer time period than for UK taxes, it is essential that RS publicise this information properly to affected taxpayers.
- 7.3 We note that the enquiry deadline set out in s76 relates to the ‘filing date’, that is, the due date for the submission of a return. This effectively encourages taxpayers to delay the submission of returns to the latest possible date (or deters them from filing returns early) and could lead to a concentration of submissions around particular dates. This could be difficult for RS to manage efficiently.
- 7.4 We would make the general point that deadlines should be publicised and notified to relevant taxpayers clearly and properly, for example, the deadline of two years in s99 for a claim for repayment of tax if an order changing the tax basis is not approved.

## **8 Penalties and interest**

- 8.1 We have a major concern that too many of the principles and powers of penalties are absent from the RSTPB. Our view is that the principles of penalties should be contained in the primary legislation. This includes the circumstances that can lead to a penalty, the amounts of penalties, when taxpayers can appeal and enforcement. Secondary legislation should be used only for administrative and procedural matters.
- 8.2 We welcome the provisions in s154 and s165 for reductions in penalties by RS and the provision in s155 and s161 for suspension of penalties. We think the RSTPB should contain

explicit provision for the amounts of reduction (in percentages) and conditions. This will help ensure consistency of treatment for taxpayers and therefore certainty. We also suggest that other factors should be taken into account in order to make the system fair, for example, whether a failure is deliberate or negligent, the amount involved, the reason for a delay and the length of a delay. We would expect the decision of RS concerning penalty reduction to be appealable by the taxpayer; currently the RSTPB does not include provision for this.

- 8.3 In s156, there is provision for special reduction of a penalty. We welcome the inclusion of this provision, but note that it is inequitable to simply deny special reduction in circumstances where the taxpayer is unable to pay. The RSTPB should expand this provision, to ensure that RS must take into consideration the reason why the taxpayer is unable to pay. Development of this provision may also be a more pragmatic and effective approach, since the reason for the inability to pay, for example, flooding, may in itself constitute a reasonable excuse or a basis for special reduction.
- 8.4 We welcome s157 relating to reasonable excuse and s160 applying penalties to deliberate or careless errors, as it is important that taxpayers are not penalised for innocent errors.

## **9 Enforcement**

- 9.1 We note that under s187 RS may charge a fee in connection with certain methods of payment. 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.

## **10 Reviews and appeals**

- 10.1 This is an area of particular importance for the unrepresented taxpayer, to ensure that they are treated fairly and have full access to justice. We think that the general powers in relation to appeal rights, mediation and RS review are appropriate.
- 10.2 We think that the RSTPB should make more explicit provision for mediation: to ensure taxpayers are fully aware of this option and RS have the authority to use it. It would also be sensible for the RSTPB to explicitly require RS to publish details of their approach and performance in relation to mediation.
- 10.3 We welcome the inclusion of a provision in s210 giving Ministers the power to make regulations allowing the postponement of tax collection when an appeal is made, as otherwise s210 ss1 is unfair to the taxpayer. In particular, it should be noted that interest may not be sufficient compensation in some cases for the loss of use of funds, if the taxpayer paid the tax and it turns out that the tax is not due. It is essential that such provisions are made and that they require RS to give proper regard to hardship when considering whether or not to accept an application to postpone collection of tax. The possibility of postponing tax should be publicised properly and the relief should not be unduly difficult to obtain. We would prefer such provisions to be in the RSTPB rather than secondary legislation.
- 10.4 We suggest that RS publish guidance on their approach to internal reviews. This will hopefully encourage taxpayers to use them, by showing that they are a worthwhile, low cost

and accessible means of resolving a dispute. In particular, it is likely that RS will need to demonstrate to taxpayers how they can guarantee independence.

## **11 Revenue Scotland guidance**

- 11.1 RS guidance will always be required in respect of all taxes and management of taxes. For the unrepresented taxpayer, RS guidance will explain the tax system and the approach of RS – they are unlikely to read the legislation behind the guidance. It is essential that RS guidance is written with the unrepresented taxpayer in mind as its audience. The guidance must be written in plain English; while it must be easy to understand, it must not simplify the law to such an extent that is misleading or incorrect. Taxpayers should be able to rely on RS guidance, provided they have acted in good faith.
- 11.2 Access to guidance is also of prime importance. Not all taxpayers will be able to access guidance on the RS website. It is essential that RS considers properly how to ensure that unrepresented taxpayers in particular can obtain RS guidance easily.

LITRG  
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