Scotland update – consultation on a policy framework for devolved taxes; call for evidence on the Financial Memorandum to the Non-Domestic Rates (Scotland) Bill

General Features

01 August 2019

CIOT made a written submission to the Finance and Constitution Committee of the Scottish Parliament in response to its call for evidence on the Financial Memorandum to the Non-Domestic Rates (Scotland) Bill. CIOT and LITRG made a joint submission in response to the Scottish government consultation on a policy framework for devolved taxes, to which ATT submitted a separate response.

Call for evidence on the Financial Memorandum to the Non-Domestic Rates (Scotland) Bill

The CIOT recently submitted written evidence to the Local Government and Communities Committee on The Non-Domestic Rates (Scotland) Bill (the Bill) – as reported in July's Technical Newsdesk. We followed this up with a submission to the Finance and Constitution Committee in response to their call for evidence, which focused on the Financial Memorandum to the Bill.

The Committee sought views on whether the Financial Memorandum accurately reflected the financial assumptions made and whether it reasonably captures the costs associated with the Bill.

We noted that our responses back in 2016 and 2018 to the Barclay Review Group and the Scottish Government respectively on the reform of non-domestic rates concentrated on principles. We did not consider the financial assumptions directly, but we did indicate that in respect of reliefs, changing them from application-based to automatic would make it more difficult to track their value or cost.

We raised a concern about the lack of independent forecasts associated with the Bill. This is because the Scottish Fiscal Commission has chosen not to produce the forecast, as it did not have enough information to do so, because many of the specifics are to be set out in secondary legislation. The Scottish Government therefore produced internal forecasts to accompany the Bill.

We also pointed out that it is possible that some of the assumptions on which the Financial Memorandum is based may be open to question. For example, assessors currently have criminal powers where ratepayers fail to provide information. Following enactment of the Bill, they will also have civil powers to act where ratepayers fail to do so, as will local authorities. An assumption is made, when assessing the financial effects, that because use of the criminal powers is low, assessors and local authorities will only serve a civil penalty in 50% of cases. Given the burden of proof is lower for civil penalties, it does not seem reasonable to estimate the use of civil penalties based on the use of criminal penalties. In addition, while we believe assessors and local authorities should exercise discretion, and cancel or reduce penalties where appropriate, an approach whereby assessors and local authorities assume at the outset that they will not issue penalties in all cases will not encourage compliance from ratepayers and is likely to result in the perception that treatment is inconsistent and unfair.

The full CIOT submission can be found on the CIOT website.

Consultation on a policy framework for the devolved taxes

The CIOT and LITRG submitted a joint response to the Scottish Government consultation on a policy framework for the devolved taxes. The ATT submitted a separate response.

The consultation arose out of the Scottish Government’s Programme for Government 2018-19, in which it made a commitment to establishing a more strategic and structured process to engagement, legislation and delivery around the fully devolved taxes. This recognises the fact that there are not only two fully operational devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill Tax), but that there are two more on the horizon, in the form of Air Departure Tax (the introduction of which has been deferred) and Aggregates Levy. The framework will not affect the shared tax, Scottish income tax, or the assigned tax, VAT. Alongside the consultation on the policy framework, the Scottish Government, together with the Scottish Parliament, has established a working group to consider possible changes to the legislative framework and processes for the fully devolved taxes.

In order to inform the responses, CIOT undertook a survey of members of CIOT, ATT and the Institute of Chartered Accountants of Scotland (ICAS). This was aimed at members based in Scotland or those with an interest in Scottish devolved taxes. There were 130 responses in total. We made the survey data available to the Scottish Government, as well as the written submission.

The Scottish Government proposes to re-introduce the Devolved Tax Collaborative (DTC) as an annual tax forum at which it can set out future tax policy priorities and receive feedback on emerging tax proposals from a wide range of stakeholders. We broadly welcomed this proposed use of the DTC, while noting that in order not to exclude stakeholders it might be necessary to consider moving the DTC around the country, providing different means of accessing it and providing assistance to third sector organisations for example, who might provide valuable insights, but struggle to attend due to lack of resource.

The consultation set out a proposed four phase legislative and policy cycle, the first three phases of which would take two years – from the start of high level consultation at the DTC through to the enactment of legislation. The fourth phase would be a post-implementation review, some three years following the enactment of the legislation.

We indicated that overall this proposed cycle appears sensible, and pleasingly seems to incorporate some of the 10 steps towards making tax policy better, as set out in Better Budgets, the joint CIOT/IFS/IfG report published in January 2017. We noted the importance of having a regular, certain cycle, to assist in ensuring that the tax regime is fair, simple and certain and avoids unintended consequences. However, we thought the Scottish Government should have flexibility in certain circumstances, to enable it to deal with urgent issues that arise outside the normal cycle. Ideally, there would be a commitment not to make inappropriate use of such flexibility, and there should be a means of holding the Scottish Government to account if they do not follow the normal cycle.

The ATT response endorsed the comments in the CIOT/LITRG response in addition to making some comments of our own.

We support the return of the DTC but think it will need a clear agenda to clearly identify the gaps this new forum is intended to cover. We suggested that it could be a place to pick up on any post-implementation reviews or discuss Revenue Scotland’s Charter of Standards and Values.

We broadly welcomed the introduction of a Scottish Finance Bill although at this stage, with only two devolved taxes, it should not need to be a substantial document. However, a regular cycle for ‘care and maintenance’ measures will become increasingly necessary with further devolution of taxes to Scotland. Our main concern regarding the proposed budget cycle is that some public feedback phases will occur in December and January, when it is very hard for many tax practitioners to find the time to provide comments and feedback.

The full CIOT-LITRG submission can be found on the CIOT website.

The full ATT submission can be found on the ATT website.