

Devolved taxes: a policy framework

Analysis of Consultation Responses

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Contents

1. Executive Summary	3
2. Introduction	5
2.1 Background	5
2.2 Working Group on Devolved Taxes Legislation	6
3. Approach to Engagement and Consultation	8
3.1 Question 1: Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?	8
3.2 Question 2: Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?	9
3.3 Question 3: Do you support the Scottish Government's proposed approach to tax consultations, in particular consulting on issues collectively rather than on an individual basis?	10
3.4 Question 6: Do you consider the existing documents that are published, and the Scottish Government's approach to drafting them, as a sufficient means of clarifying the intention and impacts of a policy?	12
4. Policy and Legislative Cycle	15
4.1 Question 4: What are your views on the proposed policy and legislative cycle?	15
4.2 Question 5: What are your views on how frequent the cycle should occur - annually or every two years?	17
4.3 Question 7: Do you agree with the Scottish Government's approach to the circumstances set out in this section?	18
5. Other points raised	21
5.1 Human Rights Based Approach to Taxation	21
5.2 National Performance Framework.....	21
6. Next Steps	23
6.1 Approach to engagement and consultation	23
6.2 Policy and legislative cycle.....	24
6.3 Working with Revenue Scotland	24
7. Annex A	26
7.1 List of organisational responses.....	26

1. Executive Summary

The Scottish Government's 2018/19 Programme for Government included a commitment to establishing a more strategic and structured approach to the planning, management and implementation of devolved taxation.¹

On 14 March 2019 we launched the 'Devolved taxes: a policy framework' consultation, which set out proposals for a new process of engagement, development and delivery of the devolved taxes in Scotland.²

The consultation closed on 6 June 2019 and we received 25 responses. Eight of the responses were from individuals and 17 were from organisations. A list of respondent organisations and links to their responses is available in [Annex A](#).

The responses to the consultation will help to shape the future approach to devolved taxes. The proposals, as informed by the responses, are intended to bring greater certainty, transparency and efficiency to the tax policy making process.

Summary of responses

The consultation asked seven questions which can be broadly separated into two categories:

- The Scottish Government's proposed **approach to engagement and consultation** on devolved taxation; and
- An indicative **policy and legislative cycle** through which changes to the fully devolved taxes will follow.

There was broad support from respondents for the proposed methods of engagement, including an annual tax event, and a strong desire for more regular engagement on tax matters and for this engagement to take place through different channels, including the use of social media. There were mixed responses on the preferred type of formal consultation, however there was broad support for the provision of detailed information relating to the intention and impacts of policy in the documents that accompany legislation. The main theme running through these responses was the desire for openness and transparency, through regular and meaningful engagement throughout the policy and legislative cycle and the provision of full, detailed and accessible information.

¹ www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539973-pdf/00539973-pdf/govscot:document (p. 61)

² <https://www.gov.scot/publications/devolved-taxes-policy-framework/>

Respondents were also supportive of the proposed policy and legislative cycle for the devolved taxes, particularly the inclusion of a 'post-implementation review' phase and the certainty provided for by a regular cycle. There were mixed views on how frequently the cycle should occur with arguments set out for both an annual and biennial process. Finally, there was a general acceptance amongst respondents of the need for exceptions and flexibility in developing tax legislation, meaning that in some cases it may be necessary to make changes immediately or following a shorter timescale. The main themes running throughout these responses were the importance of a regular cycle ensuring clarity and certainty in the tax system and providing for opportunities to review and amend legislation at appropriate times.

Next Steps

The next steps the Scottish Government will take in relation to engagement and consultation will include planning a conference on taxation in 2020, holding a series of roundtable events on tax with business and trade associations, tax and legal professionals, and research institutes and making more use of social media to promote the awareness of devolved taxes.

In addition, the Devolved Taxes Legislation Working Group (the Group) has been convened to consider a number of legislative options for devolved tax legislation. The Groups recommendations on legislation will feed directly into the policy and legislative cycle which has been consulted upon. The timescales for both strands of work therefore have to align. The Group aims to publish an interim report in early 2020, and then to conclude by summer 2020. At this point the Scottish Government will publish the finalised Devolved Taxes Policy Framework incorporating the responses from this consultation and the conclusions of the Group.

2. Introduction

2.1 Background

The first fully devolved taxes of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) have been operational in Scotland for four years, as has Revenue Scotland, the independent tax authority responsible for the collection and management of Scotland's fully devolved taxes.³ In addition, the Scottish Parliament has the power to create new Scottish-specific taxes, and introduce taxes on the carriage of passengers by air and on the commercial exploitation of aggregate.

The fully devolved taxes operate in a dynamic landscape and there are a number of factors which drive the need to consider changes, including:

- new policy development to support industry, economic growth or behavioural change;
- new measures introduced at a UK level, sometimes at short notice; and
- the need for technical changes to aid the operation of the taxes.

As a result, in the first four years of operation a number of changes have been made to the legislation for both LBTT and SLfT. Currently, there is no formal process for such changes to be considered, analysed or implemented. As such, the Scottish Government considered this to be the appropriate time to consult on a Devolved Taxes Policy Framework.⁴ The Framework will be designed not only to help us better manage our existing taxes, but to lay important foundations for a clearer approach to tax policy-making that can also apply to further tax powers in the years to come.

As part of developing a Devolved Taxes Policy Framework, the consultation invited responses on an approach to the engagement, consultation and provision of information for the devolved taxes and a policy and legislative cycle through which changes to the fully devolved taxes would follow.

This report presents an overview of the responses to the consultation and sets out the Scottish Government's next steps. We would like to thank all respondents for their contributions. Where granted permission, responses have been published in full on the Scottish Government Consultation Hub website.⁵

³ www.revenue.scot/

⁴ <https://www.gov.scot/publications/devolved-taxes-policy-framework/>

⁵ <https://consult.gov.scot/financial-strategy/devolved-taxes-policy-framework/>

Consultation Events

We held four events in Glasgow, Aberdeen, Edinburgh and Inverness to encourage participation in the consultation. The events provided attendees with the opportunity to find out further information about the consultation from officials, to learn more about the devolved taxes and how tax powers have been used since 2015, and to provide feedback to help shape a new approach to the fully devolved taxes.

The events were led by the Scottish Government, with contributions from Revenue Scotland, the Institute of Chartered Accountants of Scotland (ICAS) and the Chartered Institute of Taxation (CIOT). The events were attended by a broad range of stakeholders, including representatives from the legal and tax professions, local government, business and academia. The Inverness event also provided an opportunity to hear from the Minister for Public Finance and Digital Economy, Kate Forbes MSP, on her views of the current tax landscape in Scotland.

There has been positive feedback provided about these events, with attendees appreciating the opportunity to discuss the consultation and a wider-range of tax matters. This is a forum which the Scottish Government intends to continue to utilise when consulting on devolved taxation.

The feedback gathered at these events is included in the analysis of consultation responses in this report.

2.2 Working Group on Devolved Taxes Legislation

Alongside this consultation, a [Working Group](#) made up of officials from the Scottish Government, Scottish Parliament, Revenue Scotland, the Scottish Fiscal Commission, and representatives from stakeholder organisations such as CIOT, ICAS, the Law Society of Scotland (LSoS), the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Stamp Taxes Practitioners Group has been convened.⁶ This Group was established to take forward two recommendations made by the Budget Process Review Group (BPRG) in its [Final Report](#).⁷

⁶ www.gov.scot/groups/devolved-taxes-legislation-working-group/

⁷ www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf

- Recommendation 50: The Group recommends that further work is undertaken by the Finance and Constitution Committee in consultation with the Scottish Government, Revenue Scotland and others to explore options for alternative legislative processes for devolved taxes legislation, particularly where tax measures need to be introduced quickly or where minor amendments are needed to existing primary legislation.
- Recommendation 51: The Group recommends that the Scottish Government in consultation with the Finance and Constitution Committee examines the need for a Finance Bill and brings forward any recommendations by the end of the current Parliament.

The outcome of this work will inform the timings of the phases in the future policy and legislative cycle, which will be embedded within the Devolved Taxes Policy Framework.

3. Approach to Engagement and Consultation

In establishing the Devolved Taxes Policy Framework, our aim is to build on our reputation for good and effective engagement with stakeholders and encourage wider and more meaningful engagement on tax policy matters. Therefore, the consultation set out proposals for a more strategic and open approach to engagement and consultation, and to the provision of information around the fully devolved taxes.

3.1 Question 1: Do you welcome the use of the DTC as an annual tax forum and agree with its stated purpose?

The consultation paper proposed the re-introduction of the Devolved Tax Collaborative (DTC), an annual event to bring together the tax advisory community and others with an interest in tax to discuss the Scottish Government's future tax policy priorities and the effectiveness of the tax system.

The majority of respondents were supportive of the re-introduction of the DTC. The Caithness Chamber of Commerce noted that early engagement with stakeholders is key and some respondents suggested that different branding and good promotion may widen the appeal and participation in such an event. In addition, eight of the responses mentioned the continued need for Revenue Scotland's LBTT and SLfT fora, to address the operational aspects of the individual devolved taxes.

3.1.1 Purpose and content

Some respondents suggested that there was a need to clearly define the purpose and scope of a DTC type event. The Association of Taxation Technicians (ATT) recommended a "clear agenda, circulated in advance, that clearly identifies the gap that the DTC is intended to cover", and PricewaterhouseCoopers stated that members would need "sufficient detailed information on the impact, effectiveness, and cost of tax proposals for their views to be meaningful". Responses on the content of a DTC suggested having a wide policy remit including new taxes, policy priorities and the performance of current taxes.

3.1.2 Frequency

Some responses suggested that more than one event may be necessary over the course of a year, for example if new taxes were to be introduced. In addition, ICAS proposed utilising an ongoing "review and reflect process", in order to take account of events throughout the year.

3.1.3 Participation

In terms of participation in such events there was some concern from respondents that accessibility and geography could be an issue. The Caithness Chamber of Commerce stated that “it is important that the views of stakeholders in every region of Scotland are captured”. The issue of geographical representation was also highlighted at the events held in conjunction with this consultation in Aberdeen and Inverness. The Scottish Council for Voluntary Organisations (SCVO) recommended using “digital platforms and more participative approaches to service design”, to overcome these issues.

Overall, the majority of respondents encouraged wide ranging engagement at such events, with the Scottish Human Rights Commission (SHRC) suggesting that they should be used to reach those whom “are often excluded from key decision making processes”.

3.2 Question 2: Do you have any other preferences as to how the Scottish Government should carry out engagement on the fully devolved taxes?

The majority of respondents answered this question, with many supporting wide engagement on tax matters.

3.2.1 Who to engage with?

ATT, ICAS and CIOT were positive about the constructive and regular engagement the Scottish Government has with professional bodies, and noted that their members appreciate this type of engagement. Other respondents suggested more engagement with independent bodies, academia, think tanks, local chambers of commerce, the FSB and the CBI.

Going beyond businesses, industry and professional bodies, some respondents wrote of the need to engage people and communities. For example, the Quakers of Scotland stated:

“Quakers in Scotland believe that tax is a fundamental lever to create a more equal and more just society, and as such it is imperative that the range of stakeholders consulted are reflective of society and represent communities of all identities as well as geography.”

3.2.2 How to engage?

Beyond using the DTC, some respondents proposed other methods of engagement. LSoS stated that social media should be used to communicate “changes to or important messages about the devolved taxes”, and that more information should be

available online as this is where many people access information about tax. At each of the events held alongside this consultation, the attendees also suggested that much more could be done to improve the provision of information for both professionals and the public and to promote events via social media.

In addition, CIOT and the Low Incomes Tax Reform Group (LITRG) highlighted the difficulty of reaching the general public and unrepresented taxpayers directly, and suggested that the Scottish Government could work with charities to reach broader audiences, and even use “simple online polls and surveys”. SCVO proposed a budget portal where citizens can engage with budget and tax proposals directly. The SHRC stated that due to the complexity of the subject:

“Facilitating meaningful engagement with those who have relevant lived experience of the impact of decisions on taxation and those who are perhaps not as familiar with the subject matter requires thoughtful consideration and resources.”

On the point of meaningful engagement, one respondent highlighted that engagement is a two way process, and beyond providing sufficient information the Scottish Government must also accept the feedback provided. The Quakers of Scotland expanded on this point stating that:

“True engagement and listening to what is being said are essential for citizens to feel ownership of policies which affect the distribution of wealth and resources.”

3.3 Question 3: Do you support the Scottish Government’s proposed approach to tax consultations, in particular consulting on issues collectively rather than on an individual basis?

The consultation set out a proposal to consult on issues collectively, rather than on an individual basis. This means that one consultation could be published per policy and legislative cycle, to gather views on all of the tax measures being explored at that time.

There were some positive comments about incorporating consultations into the policy cycle. For example, professional bodies stated that this would inform stakeholders as to when to engage with the Scottish Government and allow them to plan and resource their input.

There were mixed views on whether issues should be consulted on collectively or individually, and some suggestions were proposed as to how issues should be grouped for consultation.

3.3.1 Collective vs individual consultation

Arguments for consulting on issues collectively included: encouraging working across portfolios, to avoid unintended consequences and aid the examination of the cumulative impact of tax. Additionally, Homes for Scotland suggested that collective consultation offers the opportunity to include different sectors on general tax reform.

From the perspective of respondents to consultations, it was suggested that it is helpful to view all proposals together and the Caithness Chamber of Commerce suggested that it “would significantly reduce the administrative burden”, as they often gather views of members before responding to consultations. In addition, SCVO, the Quakers of Scotland and Revenue Scotland all suggested that consulting collectively would avoid “consultation fatigue”.

On the other hand, CIOT and LITRG stated that collective consultation may “place significant time pressure on certain stakeholders”. They also stated that incorporating all issues for consultation in one document could be “unwieldy” and may put off respondents. Other professional bodies agreed that despite being more practical, where all matters in a consultation are not relevant to a particular stakeholder, they may be less inclined to respond. Some respondents also suggested that having only one consultation per cycle risks individual issues not receiving adequate engagement, time and resource.

Some respondents also stated that they have a preference for both individual and collective consultations where appropriate, depending on the tax changes involved.

3.3.2 Grouping issues for consultation

CIOT and LITRG stated that it is unclear whether the proposal in the document is to group all issues for consultation into one document, or to issue separate consultations for each tax. ICAS also suggested that the topic under consideration may dictate the method of consultation. For example, where an issue is sector specific, such as SLfT, an individual consultation “may be more effective”.

ICAS also proposed that a distinction should be made between “policy consultations and consultations on draft legislation”. Some other respondents, including the LSoS, Scottish Land & Estates, Historic Houses, ATT and PricewaterhouseCoopers also make this distinction. PricewaterhouseCoopers stated that these types of consultation require different forms of “engagement and timing”.

ICAS stated that:

“There is likely to be a more diverse range of stakeholders with an interest in, and contributions to make to, policy considerations, whereas draft legislation

may be of interest to a more limited number of interested parties such as the professional bodies and their members.”

Some respondents explicitly supported consultations on draft legislation, for example ATT stated that it can reduce the need for future amendments and unintended consequences. Furthermore, the LSoS suggested that:

“In the event that there is limited opportunity for Parliamentary scrutiny of legislation, consultation with stakeholders on draft legislation in advance of its introduction to the Parliament may be of particular benefit.”

3.4 Question 6: Do you consider the existing documents that are published, and the Scottish Government’s approach to drafting them, as a sufficient means of clarifying the intention and impacts of a policy?

An important part of the approach to engagement on the devolved taxes is transparency and accountability. Part of this is fulfilled via the documents published alongside legislation, to provide detail on policy intention and impacts. One individual respondent stated:

“By publishing the expected impacts on equality, business, regulation and data protection, along with supporting evidence or documents, this will bring transparency to the expectations of The Scottish Government and, hopefully, allow any questions, contradictions or opposition to be tabled in response.”

Some respondents highlighted the quality of documents produced by the Scottish Government to accompany legislation to date. Additionally, ICAS stated that the publication of ‘The Role of Income tax In Scotland’s Budget’ was an approach that is “highly recommended” for substantively new or contentious proposals.

3.4.1 Accessibility

In terms of the accessibility of these documents the SHRC stated that:

“[T]hese supporting documents should also be fully accessible to all in order to support participation. This means making all documentation available in alternate forms (on and offline) including easy read, BSL etc.”

ICAS stated that:

“There are a number of different audiences for Scottish Government publications on tax, its policy intentions and impacts, and each audience may have differing needs.”

Some respondents also suggested that simple and summarised versions of complex information and documents should be published and shared widely.

3.4.2 Content

For the content of such documents, some respondents suggested that the rationale for change, the impact on peoples' outcomes and where priorities and principles have been balanced must be explained. Additionally, some respondents encouraged the full publication of any research and data that informs policy decisions, to increase transparency and accountability. The SHRC also suggested that there should be a focus on "tax avoidance (and evasion)" in the documents.

Overall, there was support for full and detailed documents to aid the engagement with and the effectiveness of the legislation. The LSoS stated that "the more detail which can be given about the policy intention of legislation, the more likely it is that the legislation will be effective and robust". Some also proposed that any post-implementation review can assess the outcomes and impacts of a policy against the initial assessments and documents.

3.4.3 Business and Regulatory Impact Assessments

Some respondents argued that Business and Regulatory Impact Assessments (BRIA) frequently need more consideration and should be published alongside evidence and available data.

3.4.4 Financial Memoranda

In relation to the Financial Memorandum, Audit Scotland suggested that it may be appropriate to set out any significant "changes in taxpayers' behaviour in response to a policy change" alongside expected financial costings. They also highlighted the importance of setting out any "forecasts of the revenues alongside forecasts of their [block grant adjustment]". CIOT and LITRG highlighted that amongst their members there is a concern over "whether the sources of data are always adequate". They also proposed that the forecasts within Financial Memoranda should be "carried out independently of Scottish Government, that is, by the Scottish Fiscal Commission (SFC)".

3.4.5 Equality Impact Assessments

Audit Scotland stated that Equality Impact Assessments should set out where analysis is not available and detail what this means for understanding the impact of tax proposals. SCVO and the SHRC both support the Scottish Government undertaking a Human Rights Impact Assessment, in addition to or in conjunction with the Equality Impact Assessment. The SHRC stated that:

“Given that tax revenues are the main source of income for governments to facilitate the execution of their legal obligations to protect, respect and fulfil human rights and therefore the key role of taxation policy – the Commission would argue of the critical importance of a human rights impact assessment.”

There is no legal requirement to complete a human rights impact assessment. However, when introducing or amending legislation there is a requirement to carry out an analysis of human rights and this is included in the policy memorandum.

4. Policy and Legislative Cycle

The Devolved Taxes Policy Framework will set out a policy and legislative cycle through which changes to the devolved taxes will follow, with a view to providing enhanced certainty and transparency in the tax policy making process. The approach to engagement and consultation proposed in the consultation paper will be embedded within the phases of the cycle. The consultation paper set out an indicative policy and legislative cycle for comment.

4.1 Question 4: What are your views on the proposed policy and legislative cycle?

The majority of respondents were supportive of the proposed cycle, with the LSoS stating:

“We welcome the proposed cycle and consider that this will help to ensure clarity and predictability for individuals and businesses as to when tax changes will take effect.”

CIOT and LITRG also recognised that the proposed cycle incorporates ‘some of the 10 steps towards making tax policy better, as set out in ‘Better Budgets - Making tax policy better’.⁸

The tax and legal professionals and business representatives present at the events held alongside this consultation were also positive about the proposed cycle and the certainty it provided them with.

4.1.1 Timeline of cycle

The first and second phase in the proposed cycle covers the period from the initial policy development and annual tax forum to the announcement of new legislation. There was little comment on these phases of the cycle directly, as much was covered in the questions relating to the approach to engagement. Homes for Scotland however commented on the levels of planned engagement throughout these phases and CIOT and LITRG suggested that the timescales proposed are the “minimum period of time required for these parts of the cycle in normal circumstances”.

⁸ https://www.instituteforgovernment.org.uk/sites/default/files/publications/Better_Budgets_report_WEB.pdf

In addition, ATT stated that:

“[T]his consultation timing would fall directly into the peak self-assessment season when it is very hard for our members to find the time to provide comments and feedback.”

The third phase in the cycle includes the Parliamentary process and the legislation taking effect. The LSoS stated that it is important that the “policy consultation cycle fits with the legislative process”. Some respondents made reference to the introduction of a Finance Bill, for example the Scottish Property Federation stated that “the introduction of a regular Finance Bill could aid the upkeep of current taxes and allow for changes in policy to be implemented more effectively”. This consideration and further legislative options will be examined by the Devolved Taxes Legislation Working Group.

Finally, Revenue Scotland proposed that the implementation of legislation by the tax authority should be embedded within the cycle, taking place in sequence, rather in parallel to the delivery of legislation.

4.1.2 Post-implementation review

Many respondents were particularly positive about the inclusion of the fourth phase of the cycle, a post-implementation review. In terms of the purpose of such a review, ICAS stated that this phase is:

“[I]mportant to enable an analysis to take place of whether the policy as implemented is meeting its objectives, whether there are any drafting defects, and to provide the opportunity to amend or remove any measures that are not fully effective.”

The LSoS also welcomed the inclusion of this phase “to ensure that legislation is operating in line with its policy aims”, and stated that where issues arise “it will be important that steps are taken to resolve problems with the legislation or to amend or remove provisions which are not effective”.

PricewaterhouseCoopers outlined some considerations for the operation of post-implementation reviews, stating that a review should be undertaken independently and that any outcomes and actions should be made public. Furthermore, ATT suggested that a DTC “would be a suitable place to discuss post-implementation reviews”.

ATT also suggested that three years between the implementation of the legislation and carrying out a review may be too long, and that an interim review 18 months after implementation may be beneficial. Homes for Scotland also suggested that

three years may be too long and that any “unintended consequences” must be picked up earlier. Revenue Scotland strongly supported post-implementation reviews and suggested that the timescale of such a review should take account of the time to implement legislation and be based on the nature of the change. For example, a review of a tax-relief may be possible after two years, whereas a review of a measure such as “three yearly reviews of leases the evaluation may take place much later, in, say, year 7”.

4.1.3 Wider taxation landscape

The Royal Society of Edinburgh commented on the scope of the proposed policy and legislative cycle in relation to the wider tax landscape in Scotland. It suggested that the cycle could take account of all devolved taxation, including any future taxes and current local taxes, in order to provide a more coherent approach.

PricewaterhouseCoopers also stated:

“We note that the framework as proposed covers fully-devolved taxes (currently LBTT and SLfT) but does not cover other taxes within the remit of the Scottish Government (business rates, council tax and new taxes such as the workplace parking levy and the transient visitor tax). The same concerns that taxpayers have over future changes to devolved taxes would also apply to the taxes noted above and consideration should be given to how policy-making in these areas can also be improved through the use of the proposed framework.”

4.2 Question 5: What are your views on how frequent the cycle should occur - annually or every two years?

Respondents to the consultation provided mixed responses on whether the policy and legislative cycle should occur annually or every two years.

4.2.1 Annual vs biennial cycle

One of the arguments from respondents for repeating the cycle annually is that it allows for changes to be made to taxes more efficiently. A number of respondents highlighted the need to make necessary ‘technical’ changes on an annual basis. For example, CIOT and LITRG highlighted that “when legislation is put into practice, it is often easier to then spot ways in which it does not quite operate as intended”.

A number of respondents also highlighted that the need for changes to devolved taxation can arise for multiple other reasons, including policy changes at a UK level or in order to react to market conditions, and that an annual cycle can enable greater responsiveness for the Scottish system to keep up with the broader landscape.

Some respondents however suggested that an annual cycle may lead to unnecessary changes being made whilst there are only two devolved taxes. For example, PricewaterhouseCoopers stated that an annual cycle “may drive change for the sake of change without adding to the quality of policy debate and decision-making”. Some responses reasoned that a biennial cycle may be sufficient for now, but others stated that an annual cycle would best cope with further devolved taxation.

In support of a biennial cycle, some respondents stated that it would allow for measures to be properly embedded and evaluated before any further changes are considered. Homes for Scotland argued that this ensures “long term consistency and stability going forward”. However, a number argued that the use of a biennial cycle may give rise to the ‘exceptions process’ (Question 7) being used more frequently, meaning that change could occur out with the proposed cycle, to ensure urgent matters can be dealt with. ICAS stated that any ‘exceptions process’ that has to be used “relatively frequently would undermine the regular process”.

Finally, some respondents suggested a flexible approach for some types of policy change. The LSoS suggested that some change may require more than 12 months to enact, requiring further periods of consultation, and Homes for Scotland suggested extensions to stakeholder engagement with industry or sectors, dependent on the scale of the proposed policy.

4.2.2 Regular and transparent cycle

Over and above the frequency of the cycle, a number of respondents highlighted that the most important factor is that there is a regular, predictable and transparent process for making changes to the devolved taxes. ICAS, CIOT and LITRG also suggested that the cycle is clear and visible to stakeholders and the public, to encourage meaningful engagement with the process.

4.3 Question 7: Do you agree with the Scottish Government’s approach to the circumstances set out in this section?

The consultation paper reinforced that our aim is to make most changes to the devolved taxes through the policy and legislative cycle, and set out the approach that will be taken when this is not possible (the ‘exceptions process’). Namely, where legislation is required at short notice to protect revenues or prevent distortions in markets or where there is a significant risk of forestalling. Measures will be assessed on a case-by-case basis and the need for transparency and certainty will be balanced against the risks present.

With the exception of one, every organisation answered this question and all accepted the need to use an 'exceptions process' and the need for flexibility when developing tax policy and legislation.

4.3.1 Use of the 'exceptions process'

Some respondents highlighted that the 'exceptions process' should only be used on limited occasions and where absolutely necessary.

One of the reasons given for this is that the proposed cycle offers certainty, and not following this process could lead to a lack of clarity for individuals, businesses and tax professionals. One individual also stated that using the 'exceptions process' too often would defeat the purpose of the proposed consultation process. Additionally, Scottish Land & Estates and Historic Houses stated that tax legislation should seek to be "proactive rather than reactive".

There were some mixed views on how prescriptive the 'exceptions process' should be, but the majority supported the approach outlined in the consultation. For example, CIOT and LITRG suggested that a checklist approach may be too restrictive and prevent the Scottish Government from adapting to change, however they do suggest that some may feel more comfortable with a commitment to "not making inappropriate use of such powers". PricewaterhouseCoopers however proposed that a detailed governance process over how decisions are made should be implemented, and the Caithness Chamber of Commerce recommended that the process should be as "carefully and narrowly defined as possible".

Where the 'exceptions process' is used, the LSoS suggested that where there is no full consultation the Scottish Government may be able to engage with "particular groups of stakeholders on specific matters, such as the detail of draft legislation".

4.3.2 Justification and review

Where the 'exceptions process' is used, some respondents suggested that the Scottish Government should be held to account and justify why this process was used and undertake appropriate review of any changes made. Audit Scotland stated that this is important in terms of the transparency of the process. SCVO suggested that:

"[T]here needs to be full transparency of data, papers and proposals in order for civil society to have trust that the decision have been taken in the best interests of people and communities."

An example of a suggestion for justification and review includes one from ICAS who stated that:

“Where the exceptions process is used, a part of this should be that a post-implementation review is conducted within a set, relatively short timescale on the change made under the exceptions process as such changes will not have been consulted on/challenged.”

Additionally, Homes for Scotland stated that:

“[W]e would emphasise that any changes made should be closely monitored thereafter with frequent engagement with any industry or individuals that could be affected to ensure that changes are having their desired effect and further that this isn’t having an adverse outcome on business.”

5. Other points raised

Some respondents raised important points which are not covered by the two broad categories of questions. Some of these are addressed here.

5.1 Human Rights Based Approach to Taxation

In its submission, the SHRC advocates for a human rights based approach to taxation, requiring fiscal policymakers to take into account international human rights obligations and treaties. It draws out three important human rights based principals that are relevant to the consultation, and to taxation more widely:

- the right to participation and principle of transparency;
- the right to equality and non-discrimination; and
- the principle of accountability.

The SHRC welcomed the commitment from the Scottish Government to being more open and accessible. In doing so, they noted that:

“The principles of transparency, participation, empowerment and accountability alongside equality and non-discrimination are the corner stones of a human rights based approach, and they are integral to the development of a devolved taxes policy framework that is shaped by Scotland’s existing international human rights obligations.”

5.2 National Performance Framework

Scotland's [National Performance Framework](#) (NPF) supports the delivery of the UN Sustainable Development Goals by seeking to articulate more clearly the link between performance information and fiscal decisions.⁹

Audit Scotland highlight that changes to devolved taxation can affect multiple National Performance Framework outcomes, and suggested that the impacts of policy on outcomes should be set out as part of the Devolved Taxes Policy Framework. They also highlight that it should be documented where priorities are balanced, for example:

“[R]ecent developments in Air Departure Tax have highlighted that while reducing the tax may help boost tourism and help economic outcomes, increased air traffic could work against environmental ones.”

⁹ <https://nationalperformance.gov.scot/>

The SCVO mentioned the importance of linking taxation to the NPF and highlighted their current project '[Achieving the Sustainable Development Goals in Scotland: Taxation and the Scottish National Performance Framework](#)'.¹⁰ In partnership with Covi, they will explore the voluntary sector's ideas and approach to devolved tax and how that can be aligned to the NPF and the delivery of the UN Sustainable Development Goals.

¹⁰ https://scvo.miraheze.org/wiki/Responsible_taxation_and_the_SDGs

6. Next Steps

We are extremely grateful to the respondents and the attendees of the events for their time and effort in participating in this consultation.

We would also like to acknowledge the survey CIOT, ATT and ICAS undertook of their members as part of their respective responses to the consultation. We found the evidence provided by the poll as a helpful means of supporting responses to the individual questions. We would like to thank CIOT, ATT and ICAS for undertaking the survey, and their members for taking part in it.

The feedback provided to the consultation will help to shape the future work on the Devolved Taxes Policy Framework, including the policy and legislative cycle and related approach to engagement and consultation. The next steps the Scottish Government will take in this work are outlined here.

6.1 Approach to engagement and consultation

At each of the consultation events, there was positive feedback about the speakers, both in terms of content and variety, and the opportunities for wider discussion on tax. There were also points for us to reflect on, such as the choice of venue and how we can better publicise the events. Building on what we have learned from these events and the responses to this consultation, it is our intention to hold a conference on taxation in early 2020. Further information on this will be provided in due course.

Later this year, the Cabinet Secretary for Finance, Economy and Fair Work and the Minister for Public Finance and Digital Economy intends to hold a series of roundtable events on tax with business and trade associations, tax and legal professionals, and research institutes. These events will provide stakeholders with the opportunity to support tax policy considerations in the lead up to the Scottish Budget.

A number of respondents suggested that more could be done to promote key messages through social media. We are keen to make better use of this channel of communication and will shortly be commencing a programme of social media activity to promote awareness of devolved taxes through the [@ScotGovEconomy](https://twitter.com/ScotGovEconomy) Twitter account.¹¹ Tweets will include highlights of the performance of existing taxes and

¹¹ <https://twitter.com/scotgoveconomy?lang=en>

provide information on future developments. We welcome any feedback on the content and how it has been received.

6.2 Policy and legislative cycle

As noted in section 2.2, the Devolved Taxes Legislation Working Group has been convened to consider the implications and timescales of a number of legislative options which seek to provide a more strategic approach to devolved tax legislation.

The consultation paper explained that our aim was to provide an analysis of responses to the consultation by late summer. This was to be followed by a Scottish Government response in late 2019 to coincide with the conclusion of the Devolved Taxes Legislation Working Group.

Due to the complexities and range of views the Group is considering, the Group will now publish an interim report in early 2020, which will act as a consultation and provide an opportunity for input from a wider-range of stakeholders. Following this, the concluding findings from the Group will be published in a final report in summer 2020.

As aforementioned, the point at which tax legislation will be introduced to Parliament and how long its parliamentary process will take are two of the matters being considered by the Group. These two points are fundamental to the timing of the proposed policy and legislative cycle. Therefore, following the Groups final report in summer 2020, we will publish the final Devolved Taxes Policy Framework including the complete policy and legislative cycle and associated approach to engagement and consultation.

6.3 Working with Revenue Scotland

The Scottish Government is responsible for all aspects of devolved tax policy and legislation, including the setting of tax rates and bands. Only the Scottish Government can bring forward legislation in relation to the devolved taxes.

Revenue Scotland is the tax authority responsible for the collection and management of the devolved taxes. To ensure that the administration of tax is independent and impartial, Revenue Scotland is directly accountable to the Scottish Parliament, rather than to Scottish Ministers.

Some respondents to this consultation mentioned the working relationship between the Scottish Government and Revenue Scotland, and there have previously been calls from stakeholders to adopt a 'policy partnership' to facilitate closer working,

particularly on the administrative aspects of tax policy. In its response, LSoS stated that:

“It is important that there is clear information for, and communication to, taxpayers not only as to the division of responsibilities between Scottish Government and Revenue Scotland but also as to how this will affect them.”

As noted in the consultation paper, the Scottish Government and Revenue Scotland have consistently worked together on the development of tax policy. This collaborative approach has ensured that tax policy is evidence based, that changes can be delivered on a practical level, and that legislation is informed by Revenue Scotland’s operational and technical experience.

We have used the consultation exercise as an opportunity to reflect on the terms of our working relationship in light of our experience of working together on the fully devolved taxes since 2015. The Scottish Government and Revenue Scotland will shortly be publishing a new agreement, *Working Together on Tax*. This document will set out principles to underpin the commitment of both organisations to continuing to work together to develop and maintain an effective and efficient tax system for Scotland.

7. Annex A

7.1 List of organisational responses

Organisation name	Link to response
Association of Taxation Technicians	Response
Audit Scotland	Response
Caithness Chamber of Commerce	Response
Chartered Institute of Taxation and Low Incomes Tax Reform Group	Response
Historic Houses	Response
Homes for Scotland	Response
Institute of Chartered Accountants in England and Wales	Response
Institute of Chartered Accountants of Scotland	Response
Law Society of Scotland	Response
PricewaterhouseCoopers	Response
Quakers in Scotland	Response
Revenue Scotland	Response
Scottish Human Rights Commission	Response
Scottish Land & Estates	Response
Scottish Property Federation	Response
Scottish Council of Voluntary Organisations	Response
The Royal Society of Edinburgh	Response



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