A Scottish approach to taxation

Call for evidence from the Scottish Parliament Finance Committee

Submissions from KPMG LLP in Scotland

KPMG LLP

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This report contains 17 Pages

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Basis of our submissions

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Glossary

APD	Air Passenger Duty
ATED	Annual Tax on Enveloped Dwellings
Devolved Taxes	Taxes imposed by the Scottish Parliament pursuant to its powers under the Scotland Act 1998, Part 4A (as amended by the Scotland Act 2012 and Scotland Act 2016)
EU	European Union
HMRC	HM Revenue & Customs
KPMG	KPMG LLP (UK)
LBTT	Land and Buildings Transaction Tax
NIC	National Insurance Contributions
RUK	Rest of the UK (i.e. excluding Scotland)
Scottish Taxpayer	An individual who is subject to the Scottish basic, higher, and additional rates of income tax for a particular tax year
SDLT	Stamp Duty Land Tax
SLfT	Scottish Landfill Tax
UEL	Upper Earnings Limit for NIC
UK	United Kingdom of Great Britain and Northern Ireland
VAT	Value Added Tax

1 Introduction

1.1 KPMG in Scotland

KPMG is a global network of professional firms providing audit, tax and advisory services with around 174,000 professionals working in 155 countries.

Over 14,000 KPMG partners and staff operate from 25 offices across the UK, with around 940 based in Aberdeen, Edinburgh and Glasgow (where our main UK tax centre of excellence is also based).

We contribute to the success of the Scottish economy through our work with the public, private and voluntary sectors.

1.2 Working with the Scottish Parliament

It is in the interests of each constituent part of the UK, as well as the UK as a whole, for the devolution of powers over taxation to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly to work; and to work well.

KPMG actively supports the Scottish Parliament, Scottish Government, HMRC and Revenue Scotland by contributing to consultations on devolved tax matters where it is appropriate for us to do so.

We therefore welcome the opportunity to respond to the Finance Committee's call for evidence on the approaches and principles which should be followed in developing Scotland's approach to devolved taxation.

1.3 Discussing our submissions

Please contact either Jenny Stewart or Jon Meeten should you wish to talk through any aspect of our submissions.

Jenny Stewart
Head of Infrastructure and Government, Scotland
KPMG LLP
Saltire Court
20 Castle Terrace
EDINBURGH
EH1 2EG

T: +44 (0)131 527 6922
M: +44 (0)7802 913677
E: jenny.stewart@kpmg.co.uk

Jon Meeten
Head of Tax, Scotland
KPMG LLP
St Vincent Plaza
319 St Vincent Street
GLASGOW
G2 5AS

T: +44 (0)131 527 6678
M: +44 (0)7788 503232
E: jon.meeten@kpmg.co.uk

2 KPMG's submissions

2.1 How can the Scottish Government's four principles to underpin Scottish taxation policy best be achieved?

As the Scottish Parliament's powers over income tax will, after commencement of the relevant provisions of the Scotland Act 2016, extend to the setting of rates and thresholds only, we understand this question to concern Devolved Taxes rather than the devolved elements of UK income tax.

2.1.1 Proportionate to the ability to pay

We consider this to be a matter of public policy and have no technical submissions to make on this point.

2.1.2 Providing certainty to the taxpayer

In relation to Devolved Taxes, we consider there to be a number of ways in which certainty can be provided to the taxpayer:

- legislation – it is important that the legislation in respect of Devolved Taxes is as clear and unambiguous as possible;
- guidance – it is also important that Revenue Scotland issues guidance that is comprehensive and practical (for example, including relevant examples) and, in our view, binding on Revenue Scotland;
- working together – to provide clarity on difficult technical points or confirm the application of legislation in unusual circumstances, it is helpful for there to be ongoing and open dialogue between Revenue Scotland, taxpayers, advisers and other stakeholders (the Devolved Tax Collaborative forum organised by Revenue Scotland is an example of this);
- consultation – before introducing new legislation or guidance, it is appropriate to consult with stakeholders in order to ensure that foreseeable areas of difficulty are addressed, and we welcome that the Scottish Government and Revenue Scotland already take this approach.

2.1.3 Providing convenience of payment

We welcome the commitment to providing convenience of payment and recommend that Revenue Scotland continues to explore all possibilities to make best use of available new technologies.

2.1.4 Efficiency

In our view, a significant contribution to efficiency would be made by maximising certainty for taxpayers and their advisers (as discussed above).

2.2 How does the current taxation regime and proposals for new devolved taxes align against these four principles?

We have no submissions to make on this point at this point in time.

2.3 Is there scope for a fundamentally different approach to taxation in Scotland?

2.3.1 The Scottish Parliament's approach to taxation

The ability of the Scottish Parliament to take a fundamentally different approach to taxation is circumscribed by the powers devolved to it by the Scotland Act 1998 (as amended by the Scotland Act 2012 and Scotland Act 2016).

It is for the Scottish Ministers to determine how those powers are to be exercised in order to deliver their programme for government, and the extent to which taxpayers would be willing to accept differences between their personal positions and those of taxpayers in the RUK.

The Scottish Parliament has already demonstrated the scope within its devolved powers for a fundamentally different approach to taxation in the design of LBTT as a progressive, rather than a 'slab' tax.

The fact that the UK Parliament subsequently reformed SDLT along similar lines illustrates how taking a fundamentally different approach can not only result in a better designed tax system for Scotland, but can also improve the tax system of the RUK.

Additionally, we note the Scottish Government has indicated that, if need be, it will use its prospective new powers under the Scotland Act 2016 to introduce a 0% starting rate of income tax for Scottish Taxpayers to ensure a minimum tax free income of £12,750 in 2021-22.[1]

The tax free personal allowance remains reserved under the prospective Scotland Act 2016 changes, and the proposed introduction of a 0% band further illustrates the potential for a different approach to be taken by the Scottish Parliament.

In determining how far its approach might differ from that taken by the UK Parliament and what factors might constrain this, in our view the Scottish Parliament should consider:

- the potential effect on taxpayers of the interaction between the devolved tax system on one hand and reserved taxes and NIC on the other; and

[1] Scottish Government, *Income tax rates to be frozen* (22 March 2016) [accessed 30 September 2016].

- the EU legal framework within which powers over taxation are devolved.

2.3.2 Interaction of devolved taxation with reserved taxes and NIC

Taxpayers subject to taxes set by the Scottish Parliament also remain subject to the majority of taxes set by the UK Parliament.

The interaction between devolved and reserved aspects of the overall UK tax system, as well as the interaction of NIC with income tax, could potentially expose taxpayers subject to taxes set by both Parliaments to a form of juridical double taxation.

Two examples of this are set out below.

2.3.2.1 Interaction of the higher rate income tax threshold and the NIC UEL

UK income tax and employee's NIC currently apply to employment income as summarised below.

Overview of income tax and NIC on employment income (2016-17)

Income tax			Employee's NIC	
Annual band	Scottish rates	RUK rates	Annualised band	Rates
£0 - £11,000	0%	0%	£0 - £8,060	0%
£11,001 - £43,000	20%	20%	£8,061 - £43,000	12%
£43,001 - £150,000	40%	40%	Over £43,000	2%
Over £150,000	45%	45%		

Source: KPMG analysis

The level of employment income above which the rate of income tax *increases* from the Scottish and RUK basic rates of 20% to the Scottish and RUK higher rates of 40% (i.e. the higher rate threshold) is currently £43,000.

Under the Scotland Act 2016, the Scottish Parliament will gain the power to set the higher rate threshold that will apply to Scottish Taxpayers.

The UEL above which the rate of NIC *decreases* from 12% to 2% (i.e. the upper earnings limit) is currently also £43,000. An increase in the UEL results in an overall *increase* in the amount of employee's NIC due, unless there is a corresponding increase in the NIC primary threshold (i.e. the level of earnings at which employee's NIC starts to be paid).

NIC, and the level at which the UEL is set, remains reserved to the UK parliament.

Proposed changes to the higher rate threshold for RUK taxpayers

The UK Government currently proposes that the higher rate threshold for RUK taxpayers will increase to £45,000 with effect from 6 April 2017.[2]

However, the Scottish Government currently proposes to maintain the higher rate threshold for Scottish Taxpayers at £43,000 in real terms, rising by a maximum of inflation.[3]

An UEL and higher rate threshold that differ for Scottish Taxpayers

If the Scottish Parliament sets the higher rate threshold for income tax purposes *below* the UEL set by the UK Parliament for NIC purposes, based on current income tax and employee's NIC rates Scottish Taxpayers would be subject to an effective combined rate of 52% on employment income that falls:

- above the higher rate threshold for Scottish Taxpayers; but
- below the UEL for employees subject to the UK social security system.

This is illustrated in the table below in relation to the £1,613 band of employment income that falls between an assumed UEL of £45,000 and an assumed higher rate threshold of £43,387[4] for Scottish Taxpayers for 2017-18.

	Scottish Taxpayer		RUK taxpayer	
	Rate %	Amount £	Rate %	Amount £
Income tax	40	645	20	323
Employee's NIC	12	194	12	194
Combined	52	839	32	517

Source: KPMG analysis

The assumed difference for 2017-18 is relatively small (£322).

However, it might raise questions as to Scottish Taxpayers' perception of horizontal equity amongst UK taxpayers generally (i.e. whether they are prepared to accept such differences with RUK taxpayers) and whether this might in time

[2] HMRC, *Income tax: personal allowance and basic rate limit for 2017 to 2018* (16 March 2016) [accessed 26 September 2016].
[3] Scottish Government, *Scottish income tax from 2017/18* (March 2016), page 1 [accessed 30 September 2016].
[4] Scottish Government, *Scottish income tax from 2017/18* (March 2016), page 2 [accessed 30 September 2016].

become a limiting factor on the extent to which the approach taken by the Scottish Parliament can differ from that taken by the UK Parliament.

This potential divergence between the positions of Scottish Taxpayers and RUK taxpayers based on the Scottish and UK Governments pursuing their stated policies as to the higher rate threshold is discussed in a presentation given by Carl Emerson of the Institute for Fiscal Studies to the David Hume Institute.[5]

2.3.2.2 Interaction of ATED and LBTT

The interaction of ATED and LBTT provides another illustration of devolved and reserved taxes in substance applying to the same subject matter, which could limit the Scottish Parliament's ability to follow a different taxation policy.

The transfer of shares is subject to *ad valorum* Stamp Duty at 0.5% of the amount paid for that sale.

As this is lower that the rates of SDLT that would apply to a sale of land and buildings, holding high value residential property in a company, and selling that company rather than selling the property itself, could result in a significant mitigation of taxes due on the transfer (i.e. Stamp Duty versus SDLT).

In order to reduce the tax incentive to hold high value residential property via a company, ATED was introduced in the Finance Act 2013 to impose a free standing annual tax charge on such 'enveloped' dwellings.[6]

ATED is therefore essentially a tax to counteract the avoidance of SDLT on residential property transactions, which remains in place in Scotland notwithstanding that SDLT itself has been replaced by LBTT.

We presume that the UK Parliament would consider the interaction of ATED and SDLT and therefore formulate its policy on those two taxes accordingly.

However, as the Scottish Parliament has no power over ATED, it would appear to be constrained to amending or maintaining the LBTT regime in order to minimise the risk of adverse interactions between those two taxes, which might restrict the extent that a LBTT could diverge further from SDLT.

We presume this is the reason that the Scottish Parliament has not extended LBTT to the transfer of interests in certain residential property holding companies.[7]

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[5] C Emerson, *Eliminating the deficit in this parliament?* (Institute for Fiscal Studies, 12 May 2016) slides 23-24 [accessed 30 September 2016].
[6] Finance Act 2013, Part 3.
[7] Provided for by the Land and Buildings Transaction Tax (Scotland) Act 2013, section 47.

2.3.3 The EU framework

The devolution of tax powers in the UK is subject to EU law, in particular:

- the devolution of tax powers must comply with the conditions established in the *'Azores'* case[8] as to the institutional, procedural and fiscal autonomy of the devolved jurisdiction; and
- the devolution of powers over VAT is precluded by EU law[9] (the Scotland Act 2016 provides for the *assignment* of VAT revenues identified as arising in Scotland to the Scottish Consolidated Fund).[10]

Compliance with the EU legal framework has influenced how devolution policy has evolved.

For example, the Commission on the Future Governance of Scotland established by the Scottish Conservatives to consider further devolution (the 'Strathclyde Commission') stated in its report that it would have been minded to recommend the devolution of power over VAT,[11] but recognised that this would not be possible.

If these provisions of EU law were to cease to apply to the UK, it might potentially be lawful to introduce a VAT system similar to the sales tax system in Canada, which provides for the imposition of separate federal and provincial sales taxes (this would be a public policy decision and we have no view on its potential merits).

However, the final positon will be determined by the outcome of negotiations as to the relationship between the EU and the UK after it ceases to be a member.

2.4 Should future tax changes be ring-fenced and if so, how? If not, why?

We understand this point to relate to tax hypothecation, that is: 'the process of assigning tax revenues to a specific end, or – in certain cases – ensuring that they are not spent on one particular end'.[12]

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[8] Case C-88/03 *Portuguese Republic v Commission of the European Communities* [2006] ECR I-7115.
[9] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L 347/1.
[10] Scotland Act 2016, section 16.
[11] Scottish Conservatives, *Commission on the Future Governance of Scotland* (May 2014) page 14.
[12] A Seely, *Hypothecated taxation* (House of Commons Library Standard Note SN01480, 27 September 2011) page 1.

On this basis, we consider this to be a matter of public policy and have no technical submission to make on this point at this time.

2.5 To what extent do potential behavioural responses limit options for tax changes in Scotland?

It is inevitable that changes in the tax system produce behavioural responses in taxpayers. This is not limited to devolved taxation.

These behavioural responses may be intended by the legislature in order to achieve a policy aim – for example taxpayers might choose not to purchase additional residential properties due to the associated supplementary LBTT[13] and SDLT[14] charges.

Alternatively, certain behavioural responses might not be intended by the legislature (for example parties accelerating completion of a house sale in order to avoid, say, an announced increase in LBTT rates), but be anticipated in the revenues projected to arise as a result of the relevant change.[15]

We assume that this question concerns the latter type of behavioural response (i.e. taxpayers altering their behaviour in a way that results in the relevant change raising less revenue than would otherwise be the case).

Given their respective subject matters, we consider it helpful to discuss separately the potential effects of behavioural responses to changes in:

- Devolved Taxes; and
- devolved aspects of income tax (i.e. the rates and bands that apply to relevant income of Scottish Taxpayers once the relevant provisions of the Scotland Act 2016 have come into force).

2.5.1 Devolved Taxes

Current Devolved Taxes have a clear geographical link with Scotland – i.e. the acquisition of land or buildings in Scotland (LBTT) or disposals to landfill sites in Scotland (SLfT).

The same is true for any proposed devolved replacement to APD and any devolved replacement to Aggregates Levy in Scotland (devolution of the power to

[13] Land and Buildings Transaction Tax (Scotland) Act 2013, section 26A and Schedule 21 (as introduced by the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016).
[14] Finance Act 2003, Schedule 4ZA (as introduced by Finance Act 2016).
[15] See for example Scottish Government, *Scottish income tax from 2017/18* (March 2016), pages 2-3 [accessed 30 September 2016].

tax the commercial extraction of aggregate was deferred[16] pending resolution of the EU's investigation into whether certain exemptions, exclusions and reliefs from the Aggregates Levy constituted illegal state aid).[17]

On this basis, the main behavioural response that would appear likely to limit the revenue raised by changes to Devolved Taxes would be for prospective taxpayers to choose to undertake chargeable activities outwith, rather than within, Scotland (or, potentially, not to undertake that chargeable activity at all).

All else being equal, taxpayers will legitimately seek to benefit from rate differentials between taxing jurisdictions (including overseas jurisdictions as well as other parts of the UK) insofar as they can, whether or not these result from a conscious decision by the relevant jurisdiction to engage in tax competition.

However, in practice all else seldom is equal and potential tax savings will not be considered in isolation. Taxpayers will make decisions as to where to undertake the relevant taxable activity based on the economic trade-off between the headline potential tax saving and the costs of modifying behaviour.

For example, a modest differential between the rates at which SLfT is charged compared to the rates at which Landfill Tax is charged in the RUK or, after 2018, the rates at which Landfill Disposal Tax in Wales is charged, is unlikely to result in disposals to landfill sites being redirected from higher to lower taxing jurisdictions if the potential headline savings were to be outweighed by increased transport costs.

However, particularly for sophisticated taxpayers such as large businesses, behavioural responses to tax changes will be multifactorial, and it is difficult to make meaningful generalisations.

2.5.2 Devolved aspects of income tax

An individual must be 'UK resident' for tax purposes in order to be a Scottish Taxpayer.

For the majority of UK resident individuals, whether or not they are a Scottish Taxpayer for a particular tax year depends on whether or not their home is located in Scotland during that year.

UK resident individuals who have more than one place of residence in the UK during a tax year (which includes individuals who move house, as well as those who own more than one dwelling) will be Scottish Taxpayers for that tax year if

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[16] Scotland Office, *Scotland in the United Kingdom: An enduring settlement* (Cm 8990, 2016) para 3.5.1.
[17] Commission Decision (EU) 2016/288 of 27 March 2015 on the aid scheme SA.34775 (13/C) (ex 12/NN) implemented by the United Kingdom – Aggregates Levy [2016] OJ L 59/87.

their main residence is in Scotland for at least as long as it is in any of England, Northern Ireland, or Wales.

Special rules apply for members of the Scottish, UK and EU Parliaments, and for individuals who are 'UK resident' for tax purposes, but who do not have a 'place of residence' in the UK (this is most likely to apply to internationally mobile employees seconded to the UK).

Therefore, it is likely that for the vast majority of individuals, their status as Scottish Taxpayers will, in summary, be determined by the location of their place of residence.

For such individuals, ceasing to be a Scottish Taxpayer in response to any future increase in the Scottish rates of income tax compared to the rates that apply to RUK taxpayers (or to taxpayers subject to Welsh rates of income tax should powers over income tax be devolved to the National Assembly for Wales) would involve moving their main place of residence outwith Scotland.

Again, any potential income tax savings associated with ceasing to be a Scottish Taxpayer would need to be weighed against the feasibility and costs (financial, social, occupational and personal) of moving the main place of residence.

Intuitively, for many individuals, in these circumstances any potential income tax savings of ceasing to maintain a place (or main place) of residence in Scotland are likely to be outweighed by the associated costs.

However, for the highest earners who currently pay tax on relevant income at the Scottish additional rate (45%), and who might already own or let residential properties in more than one part of the UK (e.g. those who work in London but live in Edinburgh),[18] ceasing to be a Scottish Taxpayer by moving outwith Scotland might be economically feasible.

Additionally, it is feasible, for example, to commute from Berwick-Upon-Tweed to Edinburgh.

Furthermore, for those who currently reside in other parts of the UK, but who are considering whether to move to work in Scotland, the prospect of being more highly taxed (albeit perhaps marginally) could act as a disincentive to move here unless it was clear what additional public services would be enjoyed as a result of that higher taxation (e.g. no tuition fees for students).

This might affect the ability of employers to attract skilled workers to Scotland to support the growth of the Scottish economy, or increase costs for businesses and

[18] See, for example, A Cochrane, _Charting the rise of the new Willies_ (New Statesman, 23 May 2014) [accessed 26 September 2016].

consumers as a result of such candidates requiring a 'weighting allowances' to compensate them for moving to a higher tax regime.

Another potential behavioural response to an increase in the Scottish rates of income tax would involve owner managers of incorporated businesses extracting value from the business in the form of dividends, which are not subject to the Scottish rates of income tax,[19] rather than in the form of increases salaries or bonuses which would be subject to the Scottish rates of income tax.

2.6 To what extent do the mechanisms for administering the Scottish income tax system via HMRC limit the scope for a different tax system in Scotland to develop?

We consider limitations on the scope for a different income tax system to develop in Scotland to be legal (in terms of the extent of the tax powers that have been devolved) and political, rather than administrative.

In summary, the Scottish Parliament's income tax powers currently comprise the power to set a single rate[20] to be used in calculating the basic, higher and additional rates of income tax that are paid by Scottish Taxpayers[21] on income other than dividends and interest.[22]

The Scotland Act 2016 will remove the requirement to set only a single rate,[23] therefore making the Scottish Parliament's rate setting powers more flexible, and will allow the Scottish Parliament to set the thresholds at which the various rates of income tax it sets will apply to relevant income of Scottish Taxpayers.[24]

Power over all other aspects of income tax paid by Scottish Taxpayers (e.g. what comprises taxable income and how it is calculated) remains reserved to the UK Parliament.

The taxation of income therefore remains a single UK wide system, unlike the taxation of transactions in land or disposals to landfill, and we do not therefore consider it accurate to refer to a 'Scottish income tax system'.

On this basis, in our view the continued administration by HMRC of income tax for Scottish Taxpayers, as for other UK taxpayers generally, is an essential aspect of the UK income tax system – not all individuals who work or live in

[19] Income Tax Act 2007, section 11A(5).
[20] Scotland Act 1998, section 80C(1).
[21] Income Tax Act 2007, section 6A.
[22] Income Tax Act 2007, section 11A.
[23] Scotland Act 2016, section 13(2).
[24] Scotland Act 2016, section 13(3).

Scotland at any point in time will be Scottish Taxpayers, and Scottish Taxpayers will work in other parts of the UK on a regular and/or extended basis.

We do not envisage any aspect of the UK wide income tax PAYE or self-assessment systems limiting the Scottish Parliament's rate or threshold setting powers, but recognise that this is for HMRC to confirm.

We also recognise that if the income tax rates and thresholds that apply to Scottish Taxpayers diverge substantially from those that apply to RUK taxpayers, the associated costs of collection incurred by HMRC and passed on to the Scottish Government might increase.

2.7 Are there any other administrative limitations to the emergence of a Scottish tax system?

We do not perceive there to be any specific administrative limitations to the development of a Scottish tax system.

However, as a general point, we would encourage both the UK and Scottish Parliaments, as well as both HMRC and Revenue Scotland, actively to consider the administrative burden that amendments to both the devolved and reserved tax systems might place on taxpayers, and minimise any unnecessary overlap and duplication.