



DEVOLVED TAXES: A POLICY FRAMEWORK FOR SCOTTISH TAX

Issued 6 June 2019

Text of response submitted on an online form by ICAEW in response to the **Devolved taxes: a policy framework** consultation published by the Scottish Government on 14 March 2019.

This response of 6 June 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 1.

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TEXT OF RESPONSES TO CONSULTATION QUESTIONS SUBMITTED ON SCOTTISH GOVERNMENT'S ONLINE RESPONSE FORM

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

1. Yes

Please explain your answer

2. An interactive forum would be a modern response to tax policymaking and how it impacts on the economy.

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

3. Yes

Please explain your answer

4. A broader set of stakeholders than proposed should be included in engagement. For example, the other chartered institutes of accountants and tax advisers should be included as well as other professional bodies and stakeholders that are affected by the legislation.
5. Investment decisions can be affected by tax policy hence it is vital that a broader business representation is included.
6. If the Scottish government wants to be able to use consultation responses to help improve tax policymaking, then those consulted need to be able to make general comments as well as answer specific questions, unlike the online response form provided for this consultation.

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?

7. No.

Please explain your answer

8. The broad approach to tax consultations appears reasonable.
9. However the consultation should be annual rather than biennial.
10. Dependent on the change it may be more appropriate to consult individual stakeholders rather than all stakeholders collectively, hence both options should be used.

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

11. The proposed policy and legislative cycle appears satisfactory assuming that the cycle can be adhered to. We particularly welcome Phase 4: post-implementation review.
12. However, we are concerned that during the consultation meeting Scottish Government representatives kept referring to 'exceptions' which they appeared to be at risk of making the norm.
13. We recommend that the Scottish tax system and all new tax policy proposals are tested against a benchmark like our *Ten Tenets for a Better Tax System*, summarised below in Appendix 1 and explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99** (see <https://goo.gl/x6UjJ5>).

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

14. Annually as changes in the economic and political environment can then be consulted upon. The consultation document referred to rapid changes hence annually should be the longest period between consultations.

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?

15. No.

Please explain your answer

16. On the whole existing documents will be sufficient provided they contain sufficient details but there may be a need to publish additional guidance or documents, for example when changes are agreed and/or secondary legislation is utilised if they result in material changes to initial guidance.

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

17. No.

Please explain your answer

18. In principle the approach sounds reasonable but in practice must be used sparingly otherwise taxpayers will suffer from a lack of clarity which would impact adversely on business confidence and foreign direct investment (see final para of answer to Q4).
19. As a matter of principle, we are opposed to tax-raising measures being given retroactive effect.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**.