

Revenue Scotland and Tax Powers Act 2014: A consultation on proposed subordinate legislation



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

ICAEW Scotland

Title Mr ☐ Ms ☐ Mrs ☒ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Ormiston

Forename

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2. Postal Address

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

☐

Please tick as appropriate

☒

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate
Yes ☒ No

following boxes

Yes, make my response,
name and address all
available ☐

or

Yes, make my response
available, but not my
name and address ☐

or

Yes, make my response
and name available, but
not my address ☐

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

X Yes

☐ **No**

CONSULTATION QUESTIONS

Question 1 – Planning period for Revenue Scotland’s first corporate plan.

Do you agree with the Scottish Government’s proposed approach in relation to setting the planning period for Revenue Scotland’s first corporate plan?

Yes ☒ No ☐

There appears to be a lacuna in the RSTPA 2014 legislation covering the corporate plan. S.11(3) requires Scottish Ministers to approve Revenue Scotland’s corporate plan, and S.11(4)(b) requires Revenue Scotland to lay the approved plan before the Scottish Parliament. However, there is no explicit provision in the legislation for performance against the plan to be reported to Scottish Ministers and the Scottish Parliament. Revenue Scotland’s annual report to Ministers and Parliament under S.12 is to cover “the exercise of its functions during that year”, whereas the corporate plan sets out “Revenue Scotland’s main objectives for the planning period” (S.11(2)(a)). We consider that performance against plan should be clearly included within the annual report process provided for by S.12 RSTPA 2014.

Question 2 – The Scottish Tax Tribunals: voting for decisions

Do you agree with the Scottish Government’s proposed approach in relation to voting for decisions in the Scottish Tax Tribunals?

Yes ☒ No ☐

Comments

Question 3 – The Scottish Tax Tribunals: time limit for seeking permission for an onward appeal.

Do you agree with the Scottish Government’s proposed approach in relation to time limit for seeking permission for an onward appeal?

Yes ☒ No ☐

Comments

Question 4 – The Scottish Tax Tribunals: offences in relation to proceedings.

Do you agree with the Scottish Government’s proposed approach in relation to the creation of offences in relation to proceedings?

Yes ☒ No ☐

Comments

Question 5 – Duty to keep and preserve records.

Do you agree with the Scottish Government’s proposed approach in relation to the duty to keep and preserve records?

Yes X No ☐

Comments

Question 6 – Record keeping in relation to an LBTT transaction that is non-notifiable.

Do you agree with the Scottish Government’s proposed approach in relation to Record-keeping in respect of an LBTT transaction that is non-notifiable?

Yes X No ☐

Comments

Question 7 – Prevention of a repayment of tax by Revenue Scotland that may lead to unjustified enrichment.

Do you agree with the Scottish Government’s proposed approach in relation to prevention of unjustified enrichment?

Yes X No ☐

(A) Regulation 9(3) of the draft Reimbursement Arrangements Regulations contains a typographical error - “...regulation 5(d) and (e) of these Regulations...” should read “...regulation 4(d) and (e) of these Regulations...”.

(B) Regulations 4(c) and 8(2)(b) require the claimant to reimburse the customer in cash or by cheque. Payment by electronic means e.g. online bank payment, BACS or CHAPS should be permitted. These are commonly used by businesses in preference to cheques or cash.

(C) We question whether the interest provision in S218 of the Act should be dis-applied for unpaid regulation 9 penalties. Failure to make repayment to Revenue Scotland would be a serious matter, as the penalty equivalent to 100% of the repayment recognises, and the claimant should not be able to mitigate the penalty cost by delaying payment.

Question 8 – Resolution of disputes relating to legal professional privilege.

Do you agree with the Scottish Government’s proposed approach in relation to resolution of disputes relating to legal professional privilege?

Yes X No ☐

(A) Regulation 6 of the Privileged Communications Regulations should require the designated officer to notify the taxpayer, third party or person acting on their behalf as soon as the sealed container has been delivered to the tribunal. The taxpayer should have the right to be informed of this important step in his case.

(B) Regulation 8(2) requires the tribunal to ensure that any document in dispute is not inappropriately disclosed to any person “pending the tribunal’s consideration of the status of the document”. Provision should be made for similar protection of any document subsequently found by the tribunal to be privileged.

Question 9 – Power to specify third parties in relation to inspections of business premises.

Do you agree with the Scottish Government’s proposed approach in relation to the power to specify an “involved third party” in relation to inspections of business premises?

Yes X No ☐

Comments

Question 10 – Setting the relevant date from which interest on unpaid tax would be due.

Do you agree with the Scottish Government’s proposed approach to interest on unpaid tax?

Yes X No ☐

Comments

Question 11 – Rates of Interest.

Do you agree with the Scottish Government’s proposed approach in relation to rates of interest?

Yes X No ☐

Comments

Question 12 – Fees for payment by credit card.

Do you agree with the Scottish Government’s proposed approach in relation to fees for payment?

Yes X No ☐

Comments

Question 13 – Postponement of tax, Interest and penalties pending a review or appeal.

Do you agree with the Scottish Government’s proposed approach in relation to postponement of tax, Interest and penalties pending a review or appeal?

Yes X No ☐

Comments

Question 14 – The Scottish Tax Tribunals eligibility criteria for ordinary members of the First-tier Tribunal.

Do you agree with the Scottish Government’s proposed approach in relation to eligibility criteria for ordinary members of the First-tier Tribunal?

Yes X No ☐

Comments

Question 15 – Powers that Scottish Ministers do not intend to use prior to April 2015.

Do you agree with the Scottish Government’s proposed approach in relation to the powers we do not intend to use prior to April 2015?

Yes X No ☐

Comments

Question 16 –Equality Act 2010 and Proceeds of Crime Act 2002.

Do you agree with the Scottish Government’s proposal that Revenue Scotland should be added to the list of bodies covered by the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and should be included within the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003?

Yes X No ☐

Comments