Scotland update

General Features

01 February 2017

A consultation on the Draft Scottish Fiscal Commission (Modification of Functions) Regulations 2017. The Scottish Fiscal Commission will become a statutory body on 1 April 2017. The CIOT has responded to a consultation on regulations to expand the functions of the Commission from 1 April 2017.

The CIOT has responded to a consultation, published by the Scottish Government in October 2016, on draft regulations modifying the functions of the Scottish Fiscal Commission, which will become a statutory body with effect from 1 April 2017.

The CIOT response notes that the Commission will have an expanded remit from 1 April 2017, as a result of both these regulations and the Scottish Fiscal Commission Act 2016. It is therefore essential that the Commission is properly funded and resourced, to ensure it can fulfil its remit and provide the independent scrutiny needed as part of a robust fiscal framework.

The regulations serve to add further functions in order to reflect powers devolved through the Scotland Act 2016 and the content of the Fiscal Framework agreement. We agree with the addition of a social security forecasting function and agree with the approach in respect of onshore GDP forecasts. No changes to the remit are required however in order for the Commission to produce forecasts of revenue in the light of the increased income tax powers that take effect from April 2017.

There was a question on impacts on such areas as human rights, businesses, sustainable development and privacy. In respect of privacy, we recognise the need for the sharing of anonymous aggregate data. In principle, we agree that aggregate data, which cannot be manipulated in order to identify specific individuals, should be able to be disclosed, provided sufficient public benefit has been identified. We raise a concern that sophisticated modelling techniques could result in the identification of specific individuals, even from anonymous aggregate data. Where aggregate data is shared with specific third parties therefore, sufficient deterrents and safeguards

should be present.

The Scottish Government will have some time to consider responses before laying the final legislation in early 2017 – the intention is for the regulations to take effect on 1 April 2017.

The CIOT response is available to view on the CIOT website.

Tribunals (Scotland) Act 2014: consultation on draft regulations

The CIOT and LITRG have commented on draft regulations regarding the transfer of the Scottish Tax Tribunals to the Scottish Tribunals, which should take effect on 1 April 2017. The regulations include draft rules of procedure for the new First-tier Tribunal for Scotland Tax Chamber.

The Scottish Government published a consultation in October 2016 on draft regulations regarding three matters: 1) the transfer of functions and members of the Scottish Tax Tribunals to the Scottish Tribunals; 2) the rules of procedure for the First-tier Tribunal for Scotland Tax Chamber; and 3) the composition of the First-tier and Upper Tribunals for Scotland.

The First-tier Tax Tribunal for Scotland and Upper Tax Tribunal for Scotland were established by the Revenue Scotland and Tax Powers Act 2014, to deal with appeals in relation to the devolved taxes. The Tribunals (Scotland) Act 2014 creates a new, simplified statutory framework for tribunals in Scotland. It brings existing tribunal jurisdictions together and provides a structure for new jurisdictions. The first set of regulations within the consultation aim to transfer the functions and members of the existing Scottish Tax Tribunals into the Scottish Tribunals; the second set draw up the rules of procedure for the First-tier Tribunal Tax Chamber; the third set lay out the composition of both the First-tier and the Upper Tribunal for Scotland.

Our response welcomes the fact that these regulations are being consulted upon. We think that the approach that is being taken, in terms of transferring in existing functions, membership and composition, is reasonable and sensible.

For the most part, the proposed First-tier Tribunal Tax Chamber rules of procedure replicate the current rules of the First-tier Tax Tribunal for Scotland. Generally, we

welcome this approach, however there are areas where we think improvements could and should be made (and on which we have previously commented) and we draw attention to those areas in this response.
We have some concerns about the way in which time limits are expressed, while recognising that time limits are important in terms of ensuring efficient case management. We also note the significant omission of an important safeguard in rule 7, in relation to the Tribunal's ability to restrict a party's participation in proceedings. The proposed rules also introduce two new provisions, one of which allows parties to be accompanied by a supporter – we welcome the inclusion of this rule, which may be hugely helpful to unrepresented taxpayers.

We also drew attention to various drafting errors we identified in the different sets of draft regulations and rules.

In terms of the rules of procedure, we set out some important principles, such as the fact that the First-tier Tax Chamber must both actually be and perceived to be, totally independent from Revenue Scotland; the Tribunal system must be accessible to all; and appellants must be fully advised of their appeal rights and be provided with adequate and neutral guidance on Tribunal procedures.

We also noted the importance of effective case management, ensuring that special needs are catered for and that cases are heard efficiently and by the most appropriate panel. The response also suggested the possibility of the Tribunal system providing a facility for tax and accountancy professionals to assist on a *pro bono* basis. This would be with the aim of making professional help available to those whose inability to afford assistance might have dissuaded them from pursuing a meritorious appeal.

Expenses can be a serious barrier to accessing justice. The possibility of an adverse expenses award against them is a further disincentive for appellants to pursue their case. In the interests of justice, we favour an expenses-free environment at the First-tier Tribunal, and therefore welcome the fact that the rules provide for such a regime. We think, however, that the 'no expenses' regime should be capable of being overridden for wholly unreasonable behaviour and that it must be made clear to potential appellants that the rule can also be applied to Revenue Scotland (not just the appellant). We welcome the discretion available to the Tribunals to award some or all of the expenses, rather than it just being an all or nothing option.

We note that there are currently no fees in the Scottish Tax Tribunals and there are no plans to introduce fees in the First-tier Tribunal for Scotland Tax Chamber. We welcome this approach, as fees can also be a barrier to accessing justice.

It is expected that these regulations will be introduced into the Scottish Parliament in early 2017, with a view to them taking effect from 1 April 2017.

The response is available to view on the CIOT website and the LITRG website.

A submission on Clarifying the Scope of Scottish Income Tax Powers

The CIOT has submitted brief comments on the Technical Note and draft Statutory Instrument published by HMRC, to clarify the scope of the Scottish income tax powers that take effect from 6 April 2017.

The Technical Note confirms that the policy set out in earlier Technical Notes (published in May 2012 and December 2014) will apply in respect of the Scottish income tax powers introduced under the Scotland Act 2016.

The CIOT welcomed this approach and commented mainly on some typographical errors within the draft regulations.

The response is available to view on the CIOT website.