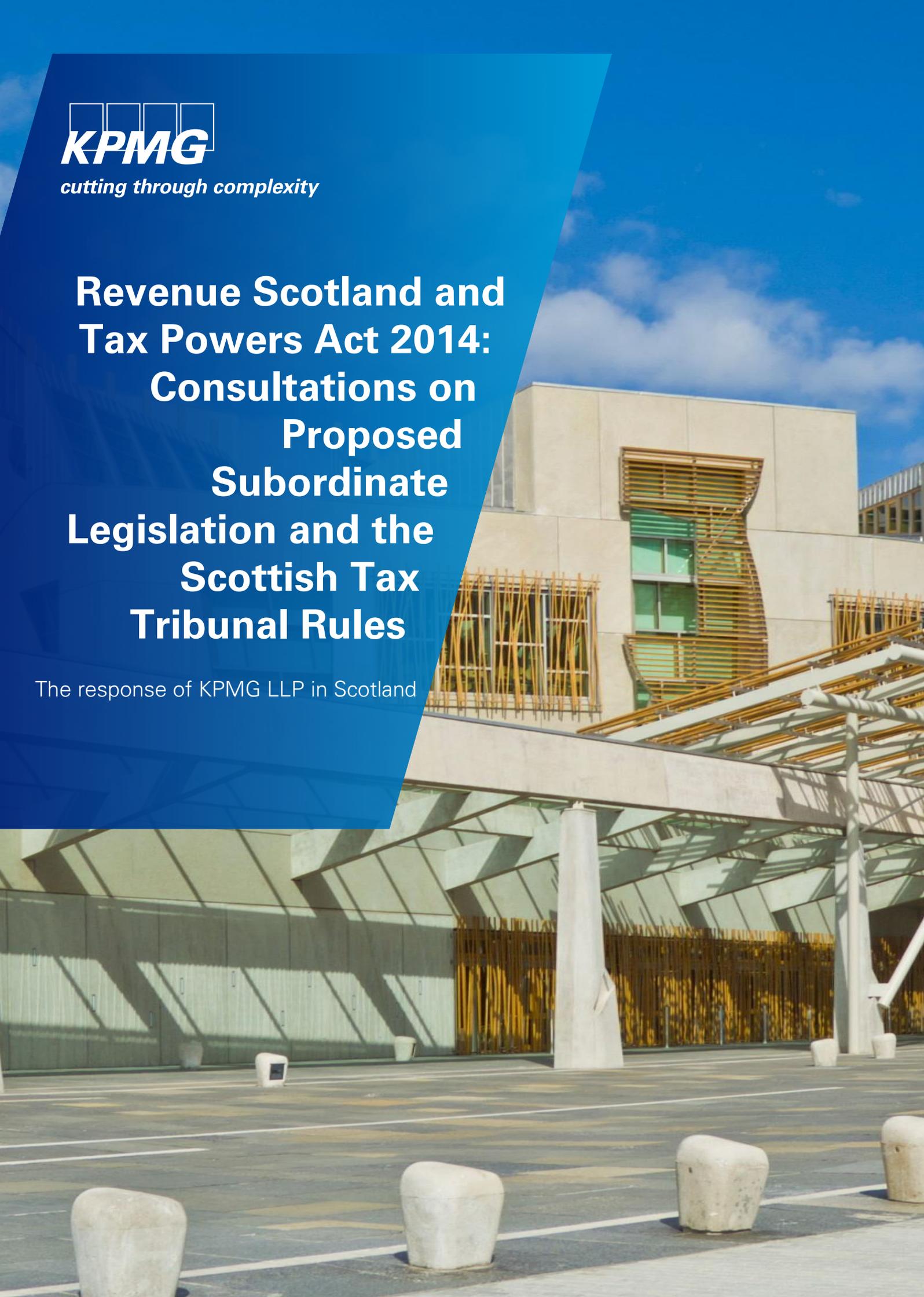




cutting through complexity

Revenue Scotland and Tax Powers Act 2014: Consultations on Proposed Subordinate Legislation and the Scottish Tax Tribunal Rules

The response of KPMG LLP in Scotland



Glossary

Devolved Taxes

Taxes imposed by the Scottish Parliament pursuant to its powers under Part 4A of the Scotland Act 1998 (as amended by the Scotland Act 2012)

HMRC

HM Revenue & Customs

LBTT

The Devolved Tax introduced by the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19)

LT(S)A Act 2014

Landfill Tax (Scotland) Act 2014

RoS

Registers of Scotland

RSTPA 2014

Revenue Scotland and Tax Powers Act 2014

SLfT

Scottish Landfill Tax

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1 Introduction

1.1 KPMG LLP in Scotland

KPMG is a global network of professional firms providing audit, tax, and advisory services. We operate in 155 countries and have 162,000 professionals working in member firms around the world.

KPMG LLP, a UK limited liability partnership, operates from 22 offices across the UK with approximately 11,500 partners and staff.

Our Scottish offices are located in Aberdeen, Edinburgh, and Glasgow – where our UK Tax Centre of Excellence is also based.

1.2 Working with the Scottish Government and Revenue Scotland

We welcome the opportunity to participate in the Scottish Government's consultations on the enabling powers contained within the RSTPA 2014 which the Scottish Government intends to exercise by 1 April 2015, and the draft Tribunal Rules which will regulate the practice and procedure of the First-tier and Upper Tax Tribunals for Scotland.

We look forward to participating in further consultation on the operation of Devolved Taxation in Scotland.

In the meantime, we would be very happy to discuss the points set out in our response with you in a meeting or by 'phone if you would find this helpful.

2 Revenue Scotland and Tax Powers Act 2014: Consultation on Proposed Subordinated Legislation

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

We have no view on the Scottish Government's proposed approach to setting the planning period for Revenue Scotland's first corporate plan.

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

The proposed approach in relation to voting for decisions in the Scottish Tax Tribunals appears reasonable.

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

We suggest that the proposed time limit of 30 days within which taxpayers may appeal a decision of Revenue Scotland to the First-tier Tax Tribunal should be amended to 56 days in line with the corresponding time limit for reserved taxes.

Whilst we accept that there will be differences between how Devolved Taxes and reserved taxes are administered, we can see no compelling reason for differing from the position for reserved taxes in this case.

We agree that the proposed time limit of 30 days within which taxpayers and Revenue Scotland may appeal a decision of the First-tier Tax Tribunal to the Upper Tier Tax Tribunal, which is in line with the corresponding time limits for reserved taxes, is reasonable.

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

The proposals in relation to the creation of offenses in relation to proceedings appear reasonable.

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

We agree that a definitive list of records and supporting documents which should be retained by a taxpayer for the purpose of the Devolved Taxes should **not** be included within the RSTPA 2014.

Given the possible changing nature over time of what would constitute appropriate records and supporting documents for the purposes of the

Devolved Taxes, and the likelihood of further Devolved Taxes being introduced in the future, we agree it is appropriate that the Scottish Ministers should use regulations to set out the obligations of taxpayers for record-keeping purposes.

We agree that the records and supporting documents for SLfT set out in the draft regulation appear reasonable to comply with section 74 and paragraph 3 of schedule 3 to the RSTPA 2014.

The proposed approach in relation to notifiable LBTT transactions appears reasonable, given the nature of land transactions that would fall within this category and the related filing requirements of taxpayers to RoS.

2.6 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?

We agree with the proposed approach in relation to record-keeping in respect of an LBTT transaction that is non-notifiable.

As a taxpayer will have effectively self-assessed that a LBTT transaction is non-notifiable, we agree it is appropriate that taxpayers retain sufficient and appropriate records and supporting documents in connection with the transaction to demonstrate that the transaction was non-notifiable.

Our view is that such record-keeping obligations of a taxpayer should be appropriate and proportionate to the circumstances of the transaction, so as not to place too great a burden on the taxpayer, particularly for low value transactions.

In not providing a definitive list of record and supporting documents within the draft regulation, our view is that the draft regulation should achieve this aim, though this will very much be dependent on how Revenue Scotland enforce this record-keeping obligation in practice. We look forward to reviewing any draft guidance to be issued by Revenue Scotland which comments on how this will be enforced in practice to ensure the correct balance is maintained.

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

The proposals in relation to unjustified enrichment appear reasonable, though we recommend some provision be considered to allow the recovery of reasonable costs of processing a reclaim and remitting funds to the relevant parties who ultimately bore the cost of the Devolved Taxes subsequently established not to be due (e.g. CHAPS fees for cash transfers).

We presume that the relevant undertakings to be given to Revenue Scotland would be addressed in a standard form to be produced by Revenue Scotland.

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

The proposed approach in relation to the resolution of disputes relating to legal professional privilege appears reasonable.

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

We suggest that the approach in relation to the power to specify an “involved third party” in relation to the inspection of business premises is reconsidered.

We recognise that there may be advantages to inspecting business records on-site. However, we consider that this could be achieved by agreement between the “involved third party” and Revenue Scotland without imposing an obligation on that party to allow Revenue Scotland access to business premises, with statutory powers to require the production of documents (and supporting sanctions) limited to cases of intransigence on the part of the relevant third party.

Regardless of this view, we recognise that the Scottish Government has considered it appropriate to provide for such a power¹ in relation to “involved third parties”, and specifically is proposing to enable this power in relation to the LT(S)A Act 2014.

However, the definition of an “involved third party” as “a person involved (in any capacity) with any taxable disposal (as defined for the purposes of the LT(S)A Act 2014)”² appears to be too wide a defined term for the purposes of compelling inspection of business premises and we suggest consideration be given to whether this definition could be narrowed.

Specifically, we suggest that Revenue Scotland’s power to inspect premises be limited to those of landfill site operator, the site operator’s customer, and any intermediary that has, for example, sorted or otherwise processed the relevant materials.

¹ RSTPA 2014, s142

² RSTP Act 2014: A Consultation on Proposed Subordinated Legislation, 6 October 2014, p.14

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

We have no comment on the proposed approach to interest on unpaid tax.

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

We note that the proposed approach in relation to rates of interest is generally consistent with the approach currently adopted by HMRC, and therefore should be familiar to taxpayers.

We have no further comments on the Scottish Government’s proposed approach.

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

We have no comment on the proposed approach in relation to fees for payment.

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

We agree that the proposed approach in relation to postponement of tax, interest and penalties pending a review or appeal for LBTT appears reasonable, and welcome the draft regulations providing the right for a taxpayer to appeal to the Scottish Tax Tribunals for a ruling where a request for postponement is not agreed to by Revenue Scotland.

However, it is not immediately clear to us why postponement of tax in dispute should be limited to “exceptional” cases, or what these cases might be. We recommend that this be clarified.

Additionally, our view for SLfT is that a similar provision should be introduced in the draft regulations to allow postponement of tax, interest and penalties in exceptional circumstances.

We acknowledge that generally a landfill site operator will have collected tax from persons depositing waste at the site in question, though our view is that this should not preclude a request for postponement in all circumstances.

In the absence of a mechanism which allows a taxpayer to apply for full or partial deferral of payment until a dispute is resolved, an obligation to pay an amount of tax which is the subject of a disputed assessment prior to that

assessment being settled could potentially disadvantage taxpayers in cases of hardship.

This could also lead to increased costs for Revenue Scotland enforcing the collection of tax which is ultimately found not to be due.

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

We note that a response to this question was requested by 31 October 2014.

2.15 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?

Our view is that any powers which the Scottish Government intend to use should be subject to an appropriate level of debate by the Scottish Ministers and consultation with relevant stakeholders prior to their introduction.

Given the tight timescales involved prior to the first Devolved Taxes being introduced on 1 April 2015, it would appear reasonable for the Scottish Government to defer the use of some powers available to it in the RSTPA 2014 until such time as this level of debate and consultation has taken place. This is subject to such a deferral not adversely impacting the operation of the Devolved Taxes.

2.16 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?

We have no comments on the proposal to add Revenue Scotland to the list of bodies covered by the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, or Revenue Scotland’s inclusion within the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003.

3 Revenue Scotland and Tax Powers Act 2014: Consultation on the Scottish Tax Tribunals Rules

3.1 Do you agree with the Scottish Government's proposed approach in relation to The Scottish Tax Tribunal?

We note that the approach taken by the Scottish Government is, as far as possible, to mirror the Tribunal Rules that currently apply to the UK tax system.³

We agree that this appears a reasonable approach, as the Tribunal Rules which apply to the UK tax system are generally well understood and familiar to most relevant stakeholders.

There would appear to be no compelling reason for the Scottish Tax Tribunals to deviate significantly from the UK Tribunal Rules currently in place given the similarity of the Devolved Taxes to those taxes which they will replace.

However, the appropriateness of the proposed Tribunal Rules for the Scottish Tax Tribunals should be reviewed over time, particularly should further taxes become Devolved Taxes and the taxes applicable to Scotland and the rest of the UK begin to diverge significantly.

³ The Tribunal Procedure (First-tier Tribunal) (Tax Chambers) Rules SI 2009/273 and the Tribunal Procedure (Upper Tribunal) Rules SI 2008/2698)

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