



The Revenue Scotland and Tax Powers Bill

Response to the Call for Written Evidence from the Scottish Parliament Finance Committee

The UNISON Scotland Submission to the Scottish Parliament's Finance Committee

February 2014

Introduction

UNISON is Scotland's largest public sector trade union representing 160,000 members delivering services across Scotland. UNISON members deliver a wide range of services in the public, community and private sector. We represent members in local government and in the Scottish Environment Protection Agency (SEPA), whose work will be affected by the provisions in the Bill.

General Comments

UNISON Scotland welcomes the opportunity to provide written evidence to the Finance Committee on the Revenue Scotland and Tax Powers Bill (RSTP Bill) and we will be giving oral evidence next month.

We will restrict our comments to areas of direct concern to our members' work and to the issue of tackling tax dodging. The latter has been of considerable public interest recently, with many well-known names including Google, Amazon, Starbucks and others managing to pay tiny amounts of tax. And many companies that invest in controversial PPP/PFI projects are registered in tax havens. This is of concern as a matter of principle, but is made even more galling at a time when austerity measures are creating financial hardship for so many, particularly the most vulnerable.

The Bill sets out powers, not just for the two devolved taxes, but for further devolved taxes, and so needs to be scrutinised with the possibility of further taxes in mind. We welcome the fact that the adviser to the Committee, Professor Gavin McEwen, says in his report:

“Tax avoidance has become a major concern around the world both with governments seeking to increase revenues and with citizens suffering reduced income and higher taxes as a result of the global recession. Any tax system should try and make the avoidance of tax by means of artificial schemes or arrangements as difficult as possible.”¹

The Scottish Government (SG), to its credit, has tried to go further than the much criticised UK Government's General Anti-Avoidance Rule (UK GAAR). Finance Secretary John Swinney assured the Tax Consultation Forum in October that the SG is committed to taking a tough stance on tax avoidance.² We hope that the Committee will agree that more should and could be done and will suggest toughening up the Bill to make any tax avoidance that comes under the remit of Revenue Scotland as difficult as possible.

SEPA

Revenue Scotland (RS) will delegate some operational functions to SEPA in the case of the Scottish Landfill Tax (SLfT) - and to Registers of Scotland (RoS) in the case of the Land and Buildings Transactions Tax (LBTT). UNISON believes it is appropriate for SEPA to do this

¹ www.scottish.parliament.uk/S4_FinanceCommittee/Adviser_Briefing.pdf P3, paragraph 14.

² www.scotland.gov.uk/Resource/0043/00439287.pdf Paragraph 12

work, but has concerns about ensuring there is adequate funding (in the face of ongoing budget pressures), and sufficient powers and protocols to allow staff there to do their work properly, in collaboration with counterparts in RS and RoS, and, as appropriate, those in other enforcement work in local government. Clarity is needed about if/how/when information is shared between the different organisations.

Among some concerns raised by our members, is the issue of illegal unregulated landfill sites. There was some anecdotal suggestion of instances where currently no action, far less enforcement action, was being taken. As SEPA will be responsible for some compliance work and for processing and administering SLfT from illegal dumping, it is important that SEPA fulfils these obligations vigorously and, of course, has the resources to do so.

A basic, but essential point also worth highlighting is ensuring compatibility of information systems - as SEPA pointed out in its 2013 response to the SG Consultation on Tax Management.³ We expect the Committee will want to seek reassurance that all the necessary systems will be fully functioning in time for the April 2015 'launch' of RS as the responsible tax authority for both taxes.

Finally, we note that, although SEPA also said in its response to the Consultation that it should have the powers to inspect domestic premises (arguing that "records involving illegal activities may well be held in any premise"), this power has not been included in the Bill. We would urge the Committee to support changes to allow this, providing there are appropriate safeguards and it is not used disproportionately.

Tax dodging

The RSTP Bill is of wider importance on tax powers than 'just' the administrative framework and powers needed to implement the LBTT and SLfT. As noted above, scrutiny needs to take account of the fact that the SG intends the framework and powers to be suitable for further devolved taxes. One of a range of functions of RS is detailed in section 3(2)(d): "protecting the revenue against tax fraud and tax avoidance". The Bill includes a General Anti Avoidance Rule (Scottish GAAR) which sets out rules enabling RS to counteract tax avoidance arrangements in relation to the devolved taxes that it determines are artificial.

UNISON has been vociferous, along with many others in the trade union movement and beyond, in calling for much tougher action to tackle the estimated £120 billion UK tax gap. We welcome the SG and Ministers' stated commitments to taking a strong stance on tax avoidance. We do not believe that the UK Government's action goes anything like far enough to tackle tax dodging. We refer members to strong criticisms of it in the TUC report 'The Deficiencies in the General Anti-Abuse Rule'⁴ (which says it "is likely to be wholly inadequate"), and we will cite recommendations from this report below. We have also called consistently for companies involved to be banned from eligibility for public contracts. We, along with many others, want to see the Procurement Reform (Scotland) Bill amended to that effect.⁵

³ www.sepa.org.uk (search for Consultation on Tax Management)

⁴ www.tuc.org.uk/sites/default/files/GAAR.pdf

⁵ www.unison-scotland.org.uk/briefings/MSPe-briefing_ProcurementReformBill_Feb2014.pdf

The UK Government should be doing more with stronger anti-tax-avoidance legislation, more tax staff and greater transparency in company accounts. Extending the Scottish and UK Freedom of Information legislation to cover companies delivering public services would also assist greatly. The STUC and others support a 'general anti-avoidance principle' that treats all tax avoidance as unacceptable and therefore open to challenge. The TUC says that the UK GAAR will still allow 99% of tax avoidance to continue.⁶

In this context, it wouldn't be hard for the SG to produce a better GAAR and we welcome the fact it has not been swayed by the majority Consultation response preferring a narrowly focused Scottish GAAR (a likely outcome, given those responding). The TUC Report describes what is needed from its recommended General Anti-Tax Avoidance Principle. While some of the recommendations there (much of them based on the European Commission Recommendation on "aggressive tax planning"⁷) are included in the Scottish GAAR, we would urge the Committee to support strengthening it in a number of ways including that it should cover, as relevant to Scotland now or in future, "international transactions of the sort that have been highlighted as abusive in so many press reports of late, but which are specifically *excluded* from consideration by the UK's Rule."

In addition, we suggest including from the EU criteria for assessing whether tax avoidance was taking place or not, two further situations where an arrangement or series of arrangements is artificial if:

"the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows"

"the expected pre-tax profit is insignificant in comparison to the amount of the expected tax benefit."

The TUC Report points out that the EU also says that if the criteria are met, then it is for the taxpayer to prove that the tax authority was wrong to take action, not for the tax authority to prove it was right to do so.

However, section 62 of the Bill puts the burden of proof on Revenue Scotland.

Finally, we make a small number of comments on specific issues.

DOTAS: Disclosure of Tax Avoidance Schemes. The SG says it is considering a DOTAS scheme for the SLfT, via a possible amendment at Stage 2. We would support this.

Tax Amnesty/Compromise Settlements: The Committee Adviser has suggested the Committee may wish to consider whether the function of collection and management gives clear power to RS to issue a tax amnesty to improve taxpayer compliance, to negotiate a compromise settlement with a taxpayer where there is a disputed liability or provide a specific or general concession where tax legislation has unintended consequences or results in hardship.

⁶ <http://touchstoneblog.org.uk/2013/12/general-anti-avoidance-rule-gaar-will-fail-to-stop-tax-avoidance>

⁷ http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf

UNISON Scotland recognises that these types of powers are normal but some high profile cases (e.g. Vodafone⁸) have understandably caused controversy and so this should only be done under close political scrutiny.

A GAAR panel of 'experts': The UK GAAR Rule requires the agreement of a panel of experts, but as the TUC report points out, they are all drawn from the tax avoidance industry, making consent by the panel unlikely in most cases. There may be pressure on Ministers to also include an advisory panel. If so, it must be done in a transparent way with truly independent members.

A Taxpayers Charter: The Charter of Standards and Values must include strict standards expected of all taxpayers, specifically highlighting some of the types of unacceptable practice by many well-known companies.

Conclusion

UNISON urges the Committee to recommend that Ministers take on board the widespread public concern about tax dodging and ensure they do everything possible to stamp it out.

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⁸ www.theguardian.com/commentisfree/2010/nov/14/vodafone-tax-evasion-revenue-customs