OFFICIAL REPORT
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# Finance and Public Administration Committee

**Tuesday 11 June 2024**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

# Tuesday 11 June 2024

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## FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
**21st Meeting 2024, Session 6**

**CONVENER**

*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

*Michael Marra (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

*Ross Greer (West Scotland) (Green)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*John Mason (Glasgow Shettleston) (SNP)
*Liz Smith (Mid Scotland and Fife) (Con)
*Michelle Thomson (Falkirk East) (SNP)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ivan McKee (Minister for Public Finance)

**CLERK TO THE COMMITTEE**

Joanne McNaughton

**LOCATION**

The Robert Burns Room (CR1)

# Scottish Parliament

## Finance and Public Administration Committee

*Tuesday 11 June 2024*

*[The Convener opened the meeting at 09:30]*

## Aggregates Tax and Devolved Taxes Administration (Scotland) Bill: Stage 2

**The Convener (Kenneth Gibson):** Good morning, and welcome to the 21st meeting in 2024 of the Finance and Public Administration Committee.

The only item on our public agenda today is consideration of the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill at stage 2. We are joined by the Minister for Public Finance, Ivan McKee. The minister is accompanied by Scottish Government officials. Although the officials will be present for this session, they are, under the standing orders, unable to participate in formal stage 2 proceedings.

I will briefly explain the procedure that we will follow during today's proceedings, for the benefit of anyone who is watching.

Members should have with them a copy of the bill, the marshalled list and the groupings of amendments, which are also available on the Scottish Parliament's website. I will call each amendment individually in the order on the marshalled list. The member who lodged the amendment should either move it or say "not moved" when it is called. If that member does not move it, any other member present may do so.

The groupings of amendments set out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. In each debate, I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call other members with amendments in the group to speak to, but not to move, their amendments, and to speak to other amendments in the group if they wish. I will then call any other members who wish to speak in the debate. Members who wish to speak should indicate that by catching my attention or that of the clerks. I will then call the minister if he has not already spoken in the debate. Finally, I will call the member who moved the first amendment in the group to wind up and to indicate whether he or she wishes to press or withdraw the amendment. If the amendment is pressed, I will put the question on it. If a member wishes to withdraw an amendment after it has been moved and debated, I will ask whether any member present objects. If there is an objection, I will immediately put the question on the amendment.

Later amendments in a group are not debated again when they are reached. If they are moved, I will put the question on them straight away. If there is a division, only committee members are entitled to vote. Voting is by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded their names.

The committee is also required to consider and decide on each section and schedule of the bill and the long title. I will put the question on each of those provisions at the appropriate point.

I am sure that that is clear to everyone who is watching. We will now begin the stage 2 proceedings.

*Sections 1 to 7 agreed to.*

### Section 8—Persons liable to pay tax

**The Convener:** Amendment 1, in the name of the minister, is grouped with amendments 2 to 5.

**The Minister for Public Finance (Ivan McKee):** Good morning. I urge members to support my amendments in this group. As noted in the evidence that has been given to the committee and throughout the stage 1 debate, stakeholders have consistently raised concerns about unauthorised and untaxed aggregate. Section 8(5) of the bill provides that, where there is a supply chain arising from an agreement to supply taxable aggregate, every person in the chain is liable to pay the total amount of tax chargeable on the aggregate as a result of the agreement. That will not apply to those who have acquired the aggregate from a supplier who is registered for tax under section 17 of the bill.

The purpose of this section of the bill is to reduce tax avoidance by encouraging the purchasing of taxable aggregate from registered producers. The amendments in the group are intended to provide certainty about the application of that provision and reduce the potential for future disputes.

Amendments 1 to 3 confirm that the agreement referred to in section 8(5) is the original agreement to supply between producer and customer and that any subsequent agreements to supply the same aggregate form part of one chain of supply. That is intended to prevent disputes about what constitutes a chain of supply.

Amendment 4 is intended to confirm that the relevant time at which a supplier's registration

status should be considered is the point at which aggregate is acquired. That is to ensure that liability includes a scenario in which aggregate is acquired from someone who registers for the tax only at a later date.

Finally, section 18 of the bill requires those who carry out taxable activities to register for the Scottish aggregates tax. Amendment 5 changes section 18(4), which obliges Revenue Scotland to register such persons, whether or not they have notified Revenue Scotland, from a requirement on Revenue Scotland to register such persons to a discretionary power to do so. The amendment has been informed by further engagement with Revenue Scotland, and it is intended to provide the revenue authorities with operational flexibility to focus compliance activity where it is most effective in a chain of supply.

I move amendment 1.

**The Convener:** Ross Greer wants to come in.

**Ross Greer (West Scotland) (Green):** I am sorry for indicating that rather late. I am just looking for a bit of clarity on the minister's final few lines. Amendments 1 to 4 all make complete sense, but could the minister explain the scenarios in which Revenue Scotland would not want to exercise that operational power? Why move from "must" to "may"? What are the situations in which it would not want to do so?

**Ivan McKee:** That is something that Revenue Scotland highlighted, as I understand it. If there is a chain of supply with a number of parties in it, Revenue Scotland wants the ability to identify where it is most likely to recover the tax from. It might look at the situation and decide whether to target that particular link in the chain as the most effective way of doing so, rather than being compelled to address every link in the chain, which might not be the most effective use of resource to recover the tax that is due.

**Ross Greer:** Thanks.

**The Convener:** No other colleagues have indicated that they wish to come in. Minister, do you want to wind up?

**Ivan McKee:** I have no further comment, convener.

*Amendment 1 agreed to.*

*Amendments 2 to 4 moved—[Ivan McKee]—and agreed to.*

*Section 8, as amended, agreed to.*

*Sections 9 to 17 agreed to.*

**Section 18—Duty to register for tax**

*Amendment 5 moved—[Ivan McKee]—and agreed to.*

*Section 18, as amended, agreed to.*

*Sections 19 to 29 agreed to.*

**Section 30—Notification of cessation of eligibility for group treatment or of having place of business in UK**

**The Convener:** Amendment 6, in the name of the minister, is grouped with amendments 7 and 13.

**Ivan McKee:** I urge members to support my amendments in the group. The bill enables groups of companies to register collectively for Scottish aggregates tax and sets out how groups of companies and members of such groups are to be treated with regard to tax liabilities and administrative processes.

Section 30 of the bill establishes that, where bodies corporate are treated as members of a group for the purposes of Scottish aggregates tax and one of them subsequently becomes no longer eligible for group treatment, that body is under a duty to notify Revenue Scotland of that fact.

Amendment 6 clarifies that that notification must be made immediately upon eligibility ceasing. That provides certainty about the timing of notification and avoids any dispute should a related penalty be issued by Revenue Scotland.

Amendment 7 inserts a requirement that a person or body that becomes aware of any inaccuracy in an application or notification regarding group treatment must notify Revenue Scotland immediately of that.

Amendment 13 creates a corresponding penalty of £250 for failing to do so. That matches the existing provision and penalty for the UK aggregates levy and is intended to encourage inaccuracies to be brought to the attention of Revenue Scotland.

I move amendment 6.

**The Convener:** No member has indicated that they wish to come in. I invite the minister to wind up.

**Ivan McKee:** I have no further comment, convener.

*Amendment 6 agreed to.*

*Section 30, as amended, agreed to.*

**After section 30**

*Amendment 7 moved—[Ivan McKee]—and agreed to.*

*Sections 31 to 40 agreed to.*

**Section 41—Failure to register for tax etc**

**The Convener:** Amendment 8, in the name of the minister, is grouped with amendments 9 to 12 and 14 to 17.

**Ivan McKee:** I urge members to support my amendments in the group. The amendments refine and add to the penalties relating to Scottish aggregates tax in part 1 of the bill. They integrate the penalties fully into the established devolved taxes penalty system and ensure consistency of approach with other fully devolved taxes.

Taxpayers are required by section 19 of the bill to notify Revenue Scotland when they cease to carry out any taxable activity so that they can be deregistered. Amendment 8 removes the penalty for failure to comply with that requirement. On reflection, I do not consider that a penalty is required, because there is no advantage to the taxpayer in remaining registered, and they will have to continue to fulfil other obligations until they are deregistered.

I turn to amendment 9. Section 211 of the Revenue Scotland and Tax Powers Act 2014 provides that the amount of certain penalties is to be reduced by the amount of any other penalty if it is applied and determined by reference to the same tax liability. Amendment 9 adds the penalty for failure to notify Revenue Scotland of exempt aggregate production to the penalties eligible for a reduction of that kind.

Section 20 of the bill requires taxpayers to notify Revenue Scotland of the production of specified types of exempt aggregate and to keep required records in support of that notification. Amendment 10 creates a penalty for failing to keep records as required. That penalty is necessary to ensure that record-keeping requirements are complied with.

Amendment 12 makes a consequential change to section 44 of the bill. Amendment 11 removes the penalty that was included in the bill at introduction for providing inaccurate documents in support of tax credit claims. Having taken into consideration the evidence that was provided during stage 1 and further engagement with Revenue Scotland, I am now satisfied that the penalty duplicates powers that are already available to Revenue Scotland and should be removed to avoid confusion.

Amendment 14 makes a minor change consequential to that removal. For specified penalties, Revenue Scotland or a tax tribunal can accept that there is a reasonable excuse for failing to comply with a statutory requirement. In such cases, there can be no liability if a penalty arises.

Amendments 15 and 16 apply the provision on reasonable excuse to the new penalties for failing to notify Revenue Scotland of exempt aggregate production and for failing to notify a change to group treatment.

Finally, amendment 17 relates to all the new penalties for the Scottish aggregates tax and specifies rules relating to the payment of the penalties and their assessment by Revenue Scotland. The amendment is intended to ensure that there are clear and consistent rules for all the new penalties.

I move amendment 8.

**The Convener:** No members have indicated that they wish to speak, so I invite the minister to wind up.

**Ivan McKee:** I have no further comments.

*Amendment 8 agreed to.*

*Section 41, as amended, agreed to.*

**Section 42—Failure to notify production of exempt aggregate**

*Amendment 9 moved—[Ivan McKee]—and agreed to.*

*Section 42, as amended, agreed to.*

**After section 42**

*Amendment 10 moved—[Ivan McKee]—and agreed to.*

**Section 43—Inaccurate documents in tax credit claim**

*Amendment 11 moved—[Ivan McKee]—and agreed to.*

**Section 44—Failure to request approval of tax representative appointment**

*Amendment 12 moved—[Ivan McKee]—and agreed to.*

*Section 44, as amended, agreed to.*

*Section 45 agreed to.*

**After section 45**

*Amendment 13 moved—[Ivan McKee]—and agreed to.*

*Section 46 agreed to.*

**Section 47—General provisions for penalties relating to Scottish aggregates tax**

*Amendments 14 to 17 moved—[Ivan McKee]—and agreed to.*

*Section 47, as amended, agreed to.*

*Sections 48 to 51 agreed to.*

### Section 52—Refusal of repayment claim where other tax not paid

**The Convener:** Amendment 18, in the name of the minister, is grouped with amendment 30.

**Ivan McKee:** I urge members to support amendment 18. The Revenue Scotland and Tax Powers Act 2014 provides that a taxpayer may make a claim for a repayment of tax, up to five years after the relevant tax return. Section 52 in this bill provides that a repayment of a claim can be refused in circumstances where a taxpayer has another amount of tax outstanding. That could relate to an undisputed amount of tax, an amount of tax due after a review or appeal or a failure to postpone payment in a review or appeal context. It adds to the existing list of circumstances set out in section 113 of the 2014 act.

Amendment 18 addresses a potential point of confusion that was raised during stage 1. It provides, as intended, that section 52 can be used when a taxpayer has a debit and a credit for the same devolved tax, as well as in situations that involve two different devolved taxes. I therefore urge members to support amendment 18.

09:45

Amendment 30, from Liz Smith, would have a much more fundamental impact on section 52. It would prevent Revenue Scotland from refusing a repayment claim in cases in which the taxpayer was disputing other outstanding debts through a review or appeal.

The Scottish Government's position is that, in the case of a live appeal on another amount that is owed by the taxpayer, section 52, as amended by amendment 18, is consistent with broader provisions in the Revenue Scotland and Tax Powers Act 2014, and should not be amended in the way that is envisaged by amendment 30. Specifically, section 245 of the 2014 act provides for the important principle that

"Where there is a review or appeal ... any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal."

As amendment 30 would delay the timeframe during which section 52 could be used, it undermines that principle.

We will come to discuss set-off provisions in the next grouping but, for clarity, while there was a dispute, any repayment would not be automatically set off against tax that was due; the proposed arrangements would, however, preserve the status quo until the appeal was resolved. If the amount that is owed by the taxpayer is extinguished in an appeal, section 52 would cease to be relevant and the repayment claim would be considered against the other grounds in section 113 of the 2014 act. If the amount that is owed by the taxpayer is upheld on appeal, any set-off would be regulated by section 56. Revenue Scotland would provide guidance on the detail of that.

Overall, the Scottish Government's view is that section 52, as amended by my amendment 18, would be more consistent with the existing legislation and would strike a better balance between the protection of the taxpayer and the protection of public revenues. For those reasons, I ask members not to support amendment 30.

I move amendment 18.

**Liz Smith (Mid Scotland and Fife) (Con):** I thank the minister for explaining amendment 18. As he will be aware, the concerns that have led me to lodge amendment 30 were raised by the Law Society of Scotland, which felt that, in the bill, the safeguards for taxpayers were not sufficient to address a situation in which there was a dispute between a taxpayer and Revenue Scotland about the amount of any tax that is outstanding. That is the reason for my lodging amendment 30. It is in line with the committee's desire, over a wide range of taxation, to be as transparent as possible.

As the minister will know, the Law Society of Scotland considers that the bill should make it clear that the set-off powers that the minister referred to would not apply when there is a dispute over the relevant tax amounts. That is the reason for my amendments 30 and 31, which relate to sections 52 and 56. I have listened carefully to what the minister has said on amendment 18, but we would welcome a little clarity about exactly how that amendment will cover the points that the Law Society has raised.

**The Convener:** Since no one else wants to comment, I invite the minister to respond.

**Ivan McKee:** The purpose of amendment 18 is to make sure that situations that involve two different devolved taxes are in scope, which is a clarification of the intent of the legislation. It closes that loophole. We will discuss set-off in more detail in the next group, and I know that Liz Smith has lodged an amendment on that.

The important point is that there are safeguards for the taxpayer. The key concerns are on the ability to appeal and the review processes that provide that safeguard, which will maintain consistency with the legislation that is in place at the moment—including the important principle that tax remains due until such time as the review process has been completed.

**Liz Smith:** I understand the issue about consistency, which is important. The Law Society's concern is about the safeguards for taxpayers. We

will come later not just to my further amendment but to John Mason's, which is about consistency with other devolved powers. However, it is on the point under discussion that the Law Society seeks that safeguard. If the minister can provide the assurance that his amendment will provide that transparency and safeguard, I am willing to remove amendment 30.

**Ivan McKee:** The situation as is, without Liz Smith's amendment 30, preserves the situation where the status quo applies; that is, where nothing is taken forward with regard to the situation until the appeal is resolved.

Amendment 22, which comes up in a later group, perhaps provides the reassurance that Liz Smith is seeking. Revenue Scotland gave commitments on that in its evidence. It is about putting into the legislation that the set-off is not applied until such time as any appeal process in relation to a dispute that might be in play in regard to a debit or money owed by a taxpayer to Revenue Scotland is resolved. It clarifies the point that the set-off would not take place until that happens. Amendment 22 therefore perhaps provides the reassurance that Liz Smith is seeking.

**The Convener:** I invite the minister to wind up.

**Ivan McKee:** I have covered all the points, thank you.

*Amendment 18 agreed to.*

*Amendment 30 not moved.*

*Section 52, as amended, agreed to.*

*Section 53 agreed to.*

### Section 54—Communications from Revenue Scotland to taxpayers

**The Convener:** Amendment 19, in the name of the minister, is grouped with amendment 20. I call the minister to move amendment 19 and to speak to both amendments in the group.

**Ivan McKee:** I will move amendment 19, and I urge members to support my amendments in this group.

Consultation is one of the four pillars of the Scottish approach to tax policy, and is key to ensuring that legislation is fit for purpose. I know that the fact that the provisions in part 2 of the bill were not consulted on was discussed at length during stage 1, but it has always been our intention to undertake a full public consultation before introducing any secondary legislation. That consultation would be wide-ranging, focusing on both policy and operational considerations relevant to the enabling powers.

I have heard the calls from the Delegated Powers and Law Reform Committee and others for that commitment to be stated explicitly in the bill, which is why I was pleased to lodge amendments 19 and 20.

Amendment 19 will amend section 54 of the bill, which gives ministers a power to make regulations about communications from Revenue Scotland to taxpayers, including provision about the use of electronic communications. Having a regulation-making power here will allow for detailed consideration and engagement—as well as updates as technology develops—to provide clarity and certainty to taxpayers. It makes good sense to have a requirement for consultation in the bill.

Amendment 20 will amend section 55 of the bill, which gives ministers a power to make regulations relating to Revenue Scotland's use of automation. That enabling power is intended to enable Revenue Scotland to automate those decisions that do not require an exercise of discretion or judgment. One such example of that would be Revenue Scotland's function to assess and notify a penalty where a land and buildings transaction tax return is late.

I am conscious that, although the use of digital systems is growing in all parts of life, it is essential that those who cannot use such systems are not excluded. For that reason, the Scottish Government has always been clear that we will undertake thorough consultation prior to the introduction of the secondary legislation. However, as with amendment 19, I hope that by putting a requirement to do so in the bill, I am able to offer reassurance to MSPs and stakeholders who have expressed concerns.

I move amendment 19.

**Liz Smith:** I am pleased to hear the minister acknowledge that we had a lot of issues about a lack of consultation in relation to part 2 of the bill. That point has been raised by other stakeholders, and I am sure that Mr Mason will speak more to that when he deals with his amendments.

It is critical that there is proper consultation. I received comment on the same issue from the Law Society of Scotland. It is good to see the amendment that the minister has lodged regarding increased consultation, because it is important that we keep tabs on that.

I put on record that one of the issues with the bill is not that anybody objects in principle but the fact that there is a lack of data to underpin the amount of revenue and the behavioural change that will emanate from it. That makes it quite difficult to scrutinise, so the minister has given an important guarantee in order to enhance the scrutiny and

ensure that we can track what is happening with the bill.

**Ivan McKee:** I thank Liz Smith for raising those important points and for welcoming amendments 19 and 20. Consultation is the crux of the issue, and the need for that is critically important. The lack of data has been recognised, including in the stage 1 debate and in committee. As more data becomes available, it will be important to use it to inform developments. It is important to have in place consultation provisions in the bill to allow that to happen effectively.

*Amendment 19 agreed to.*

*Section 54, as amended, agreed to.*

### Section 55—Use of automation by Revenue Scotland

*Amendment 20 moved—[Ivan McKee]—and agreed to.*

*Section 55, as amended, agreed to.*

### Section 56—Set-off by Revenue Scotland

**The Convener:** Amendment 21, in the name of the minister, is grouped with amendments 22, 31 and 23 to 25.

**Ivan McKee:** I ask members to support my amendments in this group. The bill introduces the ability for Revenue Scotland to set off taxpayer credits against taxpayer debits. That administrative process is aimed at streamlining the payment of tax and reducing the number of unnecessary transactions that are required for both Revenue Scotland and taxpayers. That will support the efficient and effective administration of devolved taxes.

That power is particularly appropriate in a self-assessed tax system such as Scotland's. The majority of the time, taxpayers will declare how much tax they owe to Revenue Scotland. There will, however, be occasions when either the taxpayer needs to amend the amount that they have declared or Revenue Scotland questions the declared or paid tax.

Revenue Scotland stated at committee that set-off would not be used where the amounts in issue are disputed. In such cases, taxpayers' interests are safeguarded. I have introduced amendment 22 to clarify that set-off will not be used if the sum that is due by the taxpayer can be varied or set aside on review or appeal.

I hope that that offers reassurance to stakeholders and members who raised concerns about section 56 during stage 1.

As with section 52, I am conscious of the need to look at section 56 in the context of the Revenue Scotland and Tax Powers Act 2014. The act contains a number of different definitions and processes for the management of devolved taxes, and there is a danger of amendments having unintended consequences for other parts of that act. It is on that basis that I cannot support amendment 31 from Liz Smith.

Amendment 31 infers an equivalence between credits, which are sums that are payable by Revenue Scotland to a taxpayer, and debits, which are sums that are payable by a taxpayer to Revenue Scotland. Debits arise either by the taxpayer having self-assessed their liability or by a decision made by Revenue Scotland. Rights of review and appeal exist for the taxpayer in respect of the latter.

Credits may follow from reviews or appeals finding in favour of the taxpayer or by Revenue Scotland agreeing a repayment claim, or they may arise from an amendment of a tax return. However, existing provisions regulate credits in those situations and there is a risk that amendment 31 would create inadvertent change and legal uncertainty.

Making the requirement to pay credits subject to review or appeal could also operate to the detriment of a taxpayer if, for instance, the taxpayer was incurring interest charges on a debit.

If the goal is to protect the taxpayer, which is a laudable one, it is only the definition of "debit" in section 56 that needs to be adjusted. For those reasons I ask the committee not to support amendment 31 and instead support my amendment 22.

Lastly in this group, amendment 24 provides that the set-off provisions may not be used to set a post-insolvency credit against a pre-insolvency debit. That ensures that Revenue Scotland will not be unfairly advantaged in insolvency provisions and that the normal rules of insolvency will apply.

Amendments 21, 23 and 25 are minor and consequential to amendment 24.

I move amendment 21.

**Liz Smith:** I lodged amendment 31 on the same basis as the previous one—that is, to enhance transparency. The minister, in speaking to his amendment 22, has clarified the situation. I understand the need for consistency with the 2014 act, so that is helpful.

**The Convener:** As no one else wants to contribute, I ask the minister to wind up.

**Ivan McKee:** I have no further comments.

10:00

*Amendment 21 agreed to.*

*Amendment 22 moved—[Ivan McKee]—and agreed to.*

*Amendment 31 not moved.*

*Amendments 23 and 24 moved—[Ivan McKee]—and agreed to.*

*Section 56, as amended, agreed to.*

**Section 57—Role of designated officer**

*Amendment 25 moved—[Ivan McKee]—and agreed to.*

*Section 57, as amended, agreed to.*

**After section 57**

**The Convener:** Amendment 32, in the name of John Mason, is grouped with amendments 33 to 35.

**John Mason (Glasgow Shettleston) (SNP):** As the minister has already said and as Liz Smith referred to, there was no consultation on part 2 of the bill. The Law Society of Scotland, which has proposed all the amendments in this group, had them ready to go, but, because there had not been consultation, it had not had the opportunity to put them forward. It therefore came along and suggested them at stage 2. That is broadly why the four amendments have been lodged.

I will start with amendment 33, which is perhaps the most straightforward, and come back to amendment 32 later. Amendment 33 means that the provisions that were inserted by the Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018 apply to chargeable transactions in respect of which the effective date is on or after 1 April 2015.

The amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013 by the 2018 order were intended to make it clear that land and buildings transaction tax group relief would be available where Scottish share pledges were in place. However, the amended provisions applied to chargeable transactions after 30 June 2018 and could not be made retrospective to 2015. The Government accepted that at the time and said that it would introduce legislation at an appropriate point in the future. However, that is now six years ago. The need for the change has been broadly agreed to, so it is just a question of whether this is the appropriate bill to make it in or whether that should be done somewhere else.

That highlights a point that Liz Smith has made many times. We need to have a mechanism whereby we can make relatively minor adjustments to existing tax legislation. You probably would not want a whole bill just for making such changes. However, this seems to be the first opportunity to make this change. I hope that the Government is willing to accept amendment 33. I would emphasise the need to consider whether we should have a finance bill to deal with such things annually or perhaps every couple of years.

The commencement date of schedule 10 to the 2013 act was 1 April 2015. I understand that making the change would be of great assistance to taxpayers who entered into chargeable transactions before 30 June 2018 and had looked to claim group relief, but, where share pledges were in place, group relief was not in fact available. The point arises in practice, for example, in due diligence reviews that are carried out in advance of purchase transactions and would provide welcome legal clarity.

Amendment 34, also in my name, gets a little complex. I am not a lawyer but will do my best. The aim of amendment 34 is to make clear that LBTT group relief is available on the transfer of a property to a company as part of non-partition demerger—I had to look that up—where stamp duty relief under section 75 of the Finance Act 1986 is available on the subsequent transfer of the demerged company.

The overall reason for amendment 34 is that LBTT has got out of line with what was intended under stamp duty land tax. There may be a question about whether that was intentional. If it was intentional, that is okay, but the Law Society's assumption is that it was unintentional. The minister will comment on that.

LBTT group relief is not currently available in such non-partition demergers—that is, in demergers where the same parties own both parts of the demerged business following the demerger. That is because paragraph 5(b) of schedule 10 to the Land and Buildings Transaction Tax (Scotland) Act 2013 provides that group relief is not available in a transaction in which the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a subsidiary of the seller or of a third company. I will not quote the act.

Paragraph 3 of schedule 10 provides that LBTT group relief

"is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain ... control of the buyer but not of the seller."

However, paragraph 3 of schedule 10 is modified by paragraph 4, which provides that it does not apply to arrangements to which paragraphs 9, 10 or 10A apply. The effect of that is that, in a capital reduction demerger where property is transferred into a company that is then demerged, group relief on that transfer is not blocked by paragraph 3, provided that stamp duty

relief under section 75 of the 1986 act is available on the subsequent demerger of the company to which the property is transferred.

There is no similar modification to paragraph 5(b). Therefore, as currently drafted, LBTT group relief is not available in a non-partition demerger, even though stamp duty section 75 relief is available on the transfer of the demerged company. As I said before, the question is whether that was intentional.

There is a similar issue in relation to the drafting of the provisions for stamp duty land tax group relief in schedule 7 to the Finance Act 2003, in which paragraph 2(1) is the equivalent to paragraph 3 of schedule 10 to the 2013 act for LBTT—it denies group relief if there is a change in control. Paragraphs 2(1)(a), (b) and (c) contain an exception where the arrangements are entered into with a view to a reconstruction where stamp duty reconstruction relief is available under section 75.

Paragraph 2(2)(b) of schedule 7 to the 2003 act is the SDLT equivalent of paragraph 5(b) of schedule 10 to the 2013 act for LBTT. As with LBTT, there is no similar carve-out of section 75 relief transactions. However, the accepted view is that it is implicit in the SDLT legislation that the exception to the change of control provisions for section 75 transactions also applies to the degrouping provisions in paragraph 2(2)(b) of schedule 7. If it did not, there would be no point in the exception to paragraph 2(1), because it would always be overridden by paragraph 2(2)(b).

There is quite an important point covered in the manual concerning SDLT from His Majesty's Revenue and Customs. Revenue Scotland has indicated that it would not be possible for it to issue guidance that is equivalent to the guidance issued by HMRC. I was uncertain about that point and questioned it with the Law Society. At stage 1, we heard that Revenue Scotland considers that it cannot issue such guidance because it does not have the legal powers to do so. Perhaps the minister could comment on that.

The effect of amendment 34 is to amend the LBTT group relief legislation to make it clear that paragraph 5(b) of schedule 10 to the 2013 act does not deny LBTT group relief on the transfer of a property to a company that is subsequently demerged in arrangements where section 75 relief is available.

**The Convener:** It is getting dark.

**John Mason:** I apologise.

My last of these three amendments, amendment 35, is a little more straightforward. In an example where A contracts to sell land to B and when, before that first contract has completed, B contracts to sell that land to C, B can claim LBTT sub-sale development relief under schedule 10A to the 2013 act, provided that various conditions are met.

One condition is that the significant development for commercial purposes of the subject matter of the qualifying sub-sale will be completed within the relevant period. The "relevant period" is defined in paragraph 4(3) of schedule 10A as

"the period of 5 years from the date on which the first buyer entered into the qualifying sub-sale."

The current drafting of paragraph 4(3) means that the end purchaser, C, has to complete significant development within five years of entering into a contract to purchase the land rather than within five years of the purchase being completed. In practice, development could not start until C owns the land, as C could not start development on land that it did not own. The amendment would therefore change the definition of "relevant period" so that the period of five years commences when C acquires the land, rather than from the date when B contracts to sell the land to C.

I hope that that is all clear to members.

Finally, moving back to amendment 32, there was some debate as to whether amendments 33 to 35 would be admissible, given the range of the bill, although the convener ruled that they are admissible. Therefore, amendment 32 was only a kind of cover or fallback position in case the Government did not accept amendments 33, 34 or 35. If the Government is willing to accept those amendments, I will seek to withdraw amendment 32. Thank you for your indulgence.

I move amendment 32.

**The Convener:** Thank you very much. I would have thought that it is all very obvious and straightforward, minister, but if you wish to respond, please do so.

**Ivan McKee:** I thank John Mason for lodging amendments 32 to 35. As the committee will know, it is standard practice for the Scottish Government to review all legislation to ensure that it remains fit for purpose as part of our day-to-day policy development, and that is very much the case for tax legislation, too. Revenue Scotland is fully engaged in that process, offering its operational expertise in devolved tax administration.

The part 2 provisions in the bill relate to the Revenue Scotland and Tax Powers Act 2014 and take account of that on-going process. The Scottish Government also recently introduced a series of amendments to the LBTT additional dwelling supplement following a detailed review. In

previous years, various Scottish statutory instruments have been introduced to Parliament that have amended the 2014 act as well as Scottish landfill tax and LBTT legislation in response to emerging issues, tribunal decisions and relevant developments in other parts of the United Kingdom.

In that context, the Scottish Government's view is that a provision in the bill related to legislative review is unnecessary. Given the potential scope of amendment 32, a one-year time period is also considered unrealistic and would not result in meaningful review in practice. However, I wish to explore the issue further with the member and particularly with the committee to understand whether there are specific issues that you would like to be prioritised as part of the Scottish Government's on-going commitment to review. The Scottish Government is also giving careful consideration to the possibility of making more formal commitments to legislative review as part of its proposed tax strategy. For those reasons, I ask John Mason not to press amendment 32 for the moment.

Amendments 33 to 35 would introduce amendments to the 2013 act and relate to specific issues that were raised by stakeholders during the stage 1 process. Mr Mason has comprehensively and thoroughly explained the details of the issues that are being considered, so I do not have to do so.

Amendment 33 would provide a retrospective effect for a 2018 change to LBTT group relief that was introduced by an SSI. I recognise that that reflects a ministerial commitment that was made by a previous Administration and that a change can be made only through primary legislation. On the basis of that prior commitment, and because it is purely an administrative matter with no implications for future tax revenues, I am content to support amendment 33.

Amendment 34 would provide for group relief to be available in LBTT in instances of non-partition demergers. I am sympathetic to the case for change but, given the complex nature of the subject—as we have witnessed—I wish to ensure that there is time to properly consider the wording of any amendment. That is to ensure that it does not introduce any unintended consequences to the legislation. As such, I invite John Mason not to move amendment 34 to allow for further consideration and engagement on the detail in advance of stage 3. I am keen to work with him on any potential amendment.

Amendment 35 is intended to provide absolute clarity on the timelines applying to LBTT sub-sale development relief. I am sympathetic to that, in particular as the intended effect appears to be in line with the policy intent for LBTT in this area and with the current Revenue Scotland guidance. I would of course wish to ensure that the wording of any amendment does not create any unintended consequences or other issues. I invite John Mason not to move amendment 35, to allow for further engagement in advance of any amendments being lodged at stage 3.

10:15

**The Convener:** I invite John Mason to wind up on the group.

**John Mason:** I had thought that other members would all want to take part in the debate, but there we go.

I very much welcome the minister's comments and commitment, which is extremely positive. I am pleased that he is accepting amendment 33 and is sympathetic towards amendments 34 and 35, but wants time to consider the proposals contained in them, which is fair enough, and I hope that we can come back to them at stage 3.

Given that, and given that amendment 32 represented a kind of fall-back position, I seek to withdraw it.

*Amendment 32, by agreement, withdrawn.*

*Amendment 33 moved—[John Mason]—and agreed to.*

*Amendments 34 and 35 not moved.*

**Section 58—Regulations**

**The Convener:** Amendment 26, in the name of the minister, is grouped with amendments 27 to 29.

**Ivan McKee:** I urge members to support this group of amendments in my name. They make changes in response to the stage 1 scrutiny of the bill by the Delegated Powers and Law Reform Committee.

Section 4 defines "excepted processes", the products of which are not considered to be aggregates for the purposes of Scottish aggregates tax. Included as an exempt process is any process by which a relevant substance is extracted or otherwise separated from aggregate. The bill sets out a list of relevant substances, which are generally industrial minerals not used for aggregate purposes. Section 4(4) provides Scottish ministers with a regulation-making power to allow them to add or remove a substance from the list. Amendments 26 and 29 make the use of that power subject to the affirmative procedure, as recommended by the Delegated Powers and Law Reform Committee.

Section 12 provides Scottish ministers with the power to set the rate or rates of Scottish

aggregates tax by regulations. The bill as introduced specifies that use of the power should be subject to the made affirmative procedure. Amendments 27 and 28 make the first use of the power subject to the ordinary affirmative procedure, as recommended by the Delegated Powers and Law Reform Committee, while subsequent regulations will remain subject to the made affirmative procedure. That is consistent with the approach taken for Scottish landfill tax.

I move amendment 26.

*Amendment 26 agreed to.*

*Amendments 27 to 29 moved—[Ivan McKee]—and agreed to.*

*Section 58, as amended, agreed to.*

*Sections 59 to 62 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill. I thank the minister and colleagues for their contributions. This is the end of the public part of today's meeting.

10:19

*Meeting continued in private until 10:37.*

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

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