

EXPLANATORY NOTES

Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 (asp 14)

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These notes relate to the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 (asp 14)
which received Royal Assent on 12 November 2024

AGGREGATES TAX AND DEVOLVED TAXES ADMINISTRATION (SCOTLAND) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

CROWN APPLICATION

3. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless a provision expressly exempts it. The freestanding provisions in this Act apply generally to emanations of the Crown (i.e. public authorities with Crown status) in the same way as they apply to everyone else, but His Majesty the King is exempted in his personal capacity by section 63 of the Act.

4. This Act also amends the 2014 Act, which applies to the Crown generally, but with the same personal exemption for His Majesty the King – and this Act makes no change to the application of the 2014 Act to the Crown.

OVERVIEW OF THE ACT

5. Introduced in 2002 pursuant to the Finance Act 2001, the UK Aggregates Levy is an environmental tax that aims to reduce the extraction of primary (i.e. fresh or new) aggregate. It generally applies to the commercial exploitation of primary aggregates – mostly crushed rock, gravel and sand – used as bulk fill in construction. These materials can have been either dug from the ground, dredged from the sea in UK waters or imported. Commercial exploitation is triggered when the aggregate is removed from its originating site; part of a supply agreement; used for construction purposes; or mixed with another substance other than water. Aggregate exported outside the UK is exempt from the UK Levy.

6. The Scotland Act 2016 empowered the Scottish Parliament to legislate for a devolved tax to replace the UK Levy. This Act implements this power, with the same environmental aims.

7. Part 1 of the Act establishes the new tax on the commercial exploitation of aggregate in Scotland, and is broken down into the following Chapters:

- *Chapter 1 – The tax:* this Chapter defines the tax and gives responsibility to Revenue Scotland to administer and collect the tax;
- *Chapter 2 – Key concepts:* this Chapter defines the fundamental concepts underlying the tax, including what aggregate is taxable, what aggregate and processes are exempt from the tax, what is commercial exploitation, and who is liable to pay the tax;
- *Chapter 3 – Calculation of tax:* this Chapter sets out how the amount of tax is to be calculated and gives a power to the Scottish Ministers to set the rate of tax;
- *Chapter 4 – Administration:* this Chapter contains various provisions on tax administration, including regarding registration, tax returns, and special cases;
- *Chapter 5 – Penalties:* this Chapter imposes penalties in relation to the tax, for instance for failure to make a return, failure to pay tax, and failure to register for tax;
- *Chapter 6 – Reviews and appeals:* this Chapter makes provision on what decisions by Revenue Scotland in relation to the tax can be reviewed or appealed;
- *Chapter 7 – Interpretation:* this Chapter defines the key terms used in Part 1.

8. Part 2 of the Act contains 6 substantive provisions making separate amendments to the administration of devolved taxes by Revenue Scotland under the 2014 Act: a power for Revenue Scotland to refuse a repayment claim for tax where the claimant has failed to pay other devolved tax due; a provision clarifying the penalty in the 2014 Act for failure to pay land and buildings transaction tax; a provision clarifying the legal continuity of acts by different designated officers of Revenue Scotland and clarifying how summary warrants for the recovery of unpaid amounts of tax are to be executed; a power for the Scottish Ministers to make regulations on the use of electronic communications by Revenue Scotland; a power for the Scottish Ministers to specify by regulations the circumstances in which automation can play a role in tax collection; and a power for Revenue Scotland to off-set a taxpayer debit against a credit. It also contains provision giving retrospective effect to a change to group relief in relation to Land and buildings transaction tax made in 2018.

9. Part 3 of the Act contains general provisions which apply to both Parts 1 and 2.

COMMENTARY ON PROVISIONS

Part 1 – Scottish Aggregates Tax

Chapter 1 – The tax

Section 1: The tax

10. Subsection (1) establishes the tax and gives it the label of "Scottish aggregates tax", stating that is to be charged on aggregate when it is subjected to commercial exploitation in Scotland.

11. Subsection (2) gives Revenue Scotland the responsibility for the collection and management of Scottish aggregates tax.

Section 2: Overview of Part 1

12. This section gives an overview of Part 1 of the Act's provisions relating to the new tax.

Chapter 2 – Key concepts

Meaning of "aggregate"

Section 3: Meaning of "aggregate"

13. This section defines the meaning of the word "aggregate" for Part 1 of the Act: this definition is subject to section 4 on excepted processes however.

Section 4: Excepted processes

14. Subsection (1) makes further provision about the meaning of "aggregate" for the purposes of Part 1, stating that the term includes the spoil and by-products from the application of "excepted processes" to aggregate, but does not include anything else resulting from such processes.

15. Subsection (2) then defines what "excepted processes" are. This includes, for example, the manufacturing of cement from limestone, and any process by which a "relevant substance" is extracted or otherwise separated from any aggregate, with the "relevant substances" in question listed in subsection (3). Under subsection (4) the Scottish Ministers have the power to alter this list by regulations subject to the negative procedure.

Taxable and exempt aggregate

Section 5: Taxable aggregate

16. This section sets out the fundamental legal basis of the new Scottish aggregates tax, that tax is only to be charged on taxable aggregate as defined here: that is, on any occasion on which aggregate is subject to commercial exploitation in the circumstances set out in section 7 of the Act, it is taxable, unless specifically exempted under section 6.

Section 6: Exempt aggregate

17. This section defines the types of aggregate that are exempt from Scottish aggregates tax, setting out each exemption in subsections (2) to (8).

18. Subsection (2) provides that aggregate is exempt from the tax if it is, or derives from, any aggregate that has already been subjected to a charge to tax. Subsection (9) clarifies that for these purposes aggregate has already been subjected to a charge to tax, and therefore this exemption will apply, if there was no entitlement to a tax credit against at least some of the tax previously charged on the aggregate – or if there was, then the amount of the credit was less than the amount of the tax. So conversely, if there has previously been tax credit applied of the same amount than the amount of tax, then the exemption from tax under subsection (2) would not apply, and tax would be chargeable.

19. In addition, subsection (10) provides that previous tax credits relating to specific industrial or agricultural processes (see section 15(6) of the Act) are to be disregarded for these purposes, and so in such cases, the previous tax is effectively counted as tax in which there was no entitlement to tax credit – so the exemption under subsection (2) would still apply.

20. Finally, subsection (9)(b) provides that the exemption under subsection (2) would also apply where, before the date on which section 6 of the Act comes into force, there has been an occasion on which a charge to the UK aggregates levy has arisen under the Finance Act 2001.

21. Subsection (3) provides that aggregate is exempt from the tax if it has previously been used for construction purposes (including before the Act comes into force).

22. Subsection (4) provides that aggregate is exempt from the tax if, on the date on which this section comes into force, it is on a site other than either its originating site (see section 9) or a site that is required to be registered under section 18 under the name of the site operator.

23. Subsection (5) provides that aggregate is exempt from the tax if it consists wholly of aggregate won by being removed from the ground incidentally during the excavation of transport or utilities infrastructure (for instance during the building of roads), and in connection with the construction, modification or improvement of that structure or infrastructure.

24. Subsection (6) provides that aggregate is exempt from the tax if it consists wholly of aggregate won in the course of dredging carried out exclusively for the purpose of creating, restoring, improving or maintaining a river, canal, watercourse, channel or approach.

25. Subsection (7) provides that aggregate is exempt from the tax if it consists wholly of the spoil from any process by which coal, lignite, slate, or a substance listed in section 4(3) of the Act has been separated from other rock after being extracted with that other rock.

26. Subsection (8) provides that aggregate is exempt from the tax if it consists wholly or mainly of the substances listed, including coal.

Commercial exploitation of aggregate

Section 7: Commercial exploitation

27. This section sets out how the commercial exploitation of aggregate is defined for the purposes of Part 1 of the Act.

28. Subsection (1) provides that a quantity of aggregate is subjected to exploitation if it is removed from a site falling within subsection (2), i.e. from the originating site of the aggregate (see section 9); from a site which is not the originating site of the aggregate but is registered under the name of the same owner; or from a site not falling within those categories to which the quantity of aggregate had been removed for the purpose of having an excepted process (see section 4) applied to it, but at which no such process had in fact been applied to it.

29. A quantity of aggregate is also subjected to exploitation if it becomes the subject of an agreement to supply it to any person. For these purposes (as per subsections (5)-(6)) the time when a quantity of aggregate becomes the subject of an agreement to supply it to any person is either when the agreement is entered into, or in a case where the quantity of aggregate is not

separately identifiable when the agreement is entered into, at the time when it is appropriated to the agreement. However, any supply effected by the transfer or creation of land rights is not included within the definition of "supply" for the purposes of the tax.

30. A quantity of aggregate is also subjected to exploitation if it is used for construction purposes, e.g. in building sites.

31. A quantity of aggregate is also subjected to exploitation if it is mixed, otherwise than in permitted circumstances, with any material or substance other than water. Aggregate is often mixed with other substances in the production of materials such as concrete and asphalt. For these purposes (as per subsection (7)) a quantity of aggregate is mixed with a material or substance in permitted circumstances if the material or substance with which it is mixed consists wholly of a quantity of taxable aggregate that has not previously been subjected to commercial exploitation in Scotland, and the mixing takes place on a site which, in a case where it falls within subsection (2) in relation to any part of the aggregate included in the mixture, so falls in relation to every part of it.

32. Subsection (3) clarifies that exploitation is commercial exploitation if it is carried out in the course or furtherance of a business carried on by the person (or one of the persons) responsible for subjecting it to exploitation. For these purposes, "business" includes any activity of the Scottish Administration, the UK Government, local authority or charity.

33. Subsection (4) sets out exceptions to the definition of commercial exploitation for the purposes of Part 1 of the Act. This includes cases where aggregate is removed from one registered site to another, where both sites are registered under the name of the same person: this allows for circumstances where aggregate is moved between sites for processing or storage before being used or sold, Subsection (4) also includes cases where aggregate is moved to a registered site for the purpose of having an excepted process (as defined in section 4) applied to it on that site.

34. Subsection (8) provides that for the purposes of Part 1 of the Act, the exploitation of a quantity of aggregate is taken to occur in Scotland if the aggregate is in Scotland at the time when it is subjected to exploitation, or where aggregate is subjected to exploitation under subsection (1)(a) or (b) as a result of the movement of aggregate to Scotland from elsewhere in the UK.

35. Subsection (10) gives the Scottish Ministers a regulation-making power, subject to the affirmative procedure, in order to make further provision about the circumstances in which the exploitation of aggregate is taken to occur in Scotland for the purposes of subsection (8) of this section. Regulations under subsection (10) may amend subsection (8) and other provisions of the Act to make provision of that kind.

36. Subsection (12) applies to the occupation of a site by agriculture or forestry businesses. In such a case the exception to commercial exploitation at subsection (4)(d) applies in a modified form: so no commercial exploitation occurs if aggregate returns to the land at the site from which it was won, or at a site occupied by the same business, but the exception applies without the need for this to take place by virtue of the aggregate being used for a purpose connected with winning aggregate or other minerals from the site in question.

Section 8: Persons liable to pay tax

37. This section sets out the fundamental rule that the persons liable to pay the tax charged on a quantity of taxable aggregate are the persons responsible for subjecting it to commercial exploitation. Subsection (2) then defines responsibility for these purposes. This depends on the type of commercial exploitation that takes place: for instance, where commercial exploitation of aggregate takes place when is not on its originating site or a connected site, and the exploitation consists of using the aggregate for construction purposes, the person liable to pay tax is the person responsible for using it for those purposes; if the exploitation consists of supplying the aggregate, then the person liable to pay tax is the supplier.

38. Subsection (3) clarifies that exploitation of aggregate is only defined as commercial exploitation for the purposes of Part 1 of the Act if the exploitation takes place in the course of a business carried on by a person: and for these purposes this includes any activity of the Scottish Administration, the UK government, or of a local authority or charity).

39. Subsection (4) provides that the term "connected site", in relation to aggregate, means any site that falls within the description set out in section 7(2)(b): that is, any site which is not the originating site of the aggregate but is registered under the name of a person under whose name that originating site is also registered.

40. Subsection (5) provides that where there is a supply chain arising from an agreement to supply aggregate, every person in the chain is liable to pay the total amount of tax chargeable on the aggregate as a result of the original agreement, unless they have acquired the aggregate from a supplier who is registered for tax under section 17 of the Act (the purpose being to prevent the creation of an artificial chain in order to avoid liability for tax).

41. Subsection (6) provides for joint and several liability where more than one person is charged with the tax by virtue of this section: this means that each person involved is responsible for the full liability of the tax, and if one person is unable to pay, the others are liable for paying that person's share.

Sites and site operators

Section 9: Originating sites

42. This section defines the term "originating site" for the purposes of Part 1 of the Act. In the case of aggregate which has been won from the seabed, this means the site where it is first landed; and in the case of aggregate which results from the application of an excepted process (as defined in section 4), it means the site where that process was applied. In any other case, it means the site from which the aggregate was won, or was most recently won.

43. Where aggregate has been mixed on a site before the Act comes into force, subsection (2) states that that site is taken to be the originating site of all the aggregate comprised in the mixture.

Section 10: Operators of sites

44. This section sets out how an operator of an aggregate site is defined for the purposes of Part 1 of the Act. This means the occupier of a site and also, if any other person exercises control over aggregate on that site, that other person.

45. Subsection (2) provides that exercising control over aggregate means that the person wins aggregate from that site, stores it there, or carries out an excepted process (as defined in section 4) at that site.

Chapter 3 – Calculation of tax

Amount of tax

Section 11: Weight of aggregate

46. This section gives a regulation-making power to the Scottish Ministers to make provision about determining the weight of any aggregate for the purposes of calculating the tax. These regulations are subject to the affirmative procedure.

47. The regulations may specify rules for determining the weight directly, authorise rules for determining the weight to be specified by Revenue Scotland, or authorise rules for determining the weight to be agreed between taxpayers and a person designated by Revenue Scotland. Such rules may concern the method by which the weight is to be determined, the time by reference to which the weight is to be determined, and the discounting of constituent ingredients from the calculation of weight. The rules may be provided for as only applying in certain cases or on certain conditions.

Section 12: Rate of tax

48. Subsection (1) of this section provides that the amount of tax charged on taxable aggregate is calculated by multiplying the applicable rate of tax by the weight in tonnes of the taxable aggregate. Then subsection (2) clarifies that where a quantity of taxable aggregate weighs only part of a tonne, the amount of tax charged is to be reduced in proportion to the weight.

49. Under subsection (3), the Scottish Ministers may make regulations specifying the applicable rate (or rates) of tax for the purposes of this section. Under section 61(2) of the Act, these regulations are subject to what is known as the "provisional affirmative" or "made affirmative" procedure whereby the regulations are made by the Scottish Ministers, and therefore have effect from when they are made, but must be laid before the Scottish Parliament and will cease to have effect after 28 days unless they are approved by resolution of the Parliament.

Repayments

Section 13: Repayments of overpaid tax

50. This section of the Act amends section 108 of the 2014 Act, which relates to situations where subordinate legislation intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within 28 days of it being laid.

51. When such an instrument is made, the changes to the tax basis set out in it (which in the case of regulations under section 12 of the Act might be changes to the tax rate for aggregates tax) can apply immediately, so taxpayers' liability will change as soon as the instrument is made: but if the proposed changes are not approved by Parliament within 28 days,

then the instrument falls. Section 13 of the Act amends section 108 so that in such a situation, a taxpayer can make a claim for repayment of the amount of additional aggregates tax paid during the period when the instrument was in force.

52. The section also changes references to "order" to references to "instrument", reflecting that regulations are the preferred form of statutory instrument in modern drafting practice.

53. Subsection (2) of section 108 allows a taxpayer to make a claim to Revenue Scotland for the amount of additional tax paid because of the instrument that fell, and any related penalty or interest. Subsection (5) provides that any claim must be made within two years of the "relevant date" which is defined in subsection (6).

Section 14: Adjustment of contracts

54. Where a contract to supply aggregate has been entered into, and there is a change to the amount of tax chargeable in relation to the supply of the aggregate referred to in the contract, this section provides that the amount of payment due in return for the aggregate is to be adjusted so that the cost of the tax, to the extent that it would otherwise have been borne by the supplier, is borne instead by the person paying for the aggregate. However the parties to the contract can agree to disapply this rule.

Credits

Section 15: Tax credits

55. This section gives a regulation-making power, subject to the negative procedure, for the Scottish Ministers to create tax credits in relation to the payment of Scottish aggregates tax. Such tax credits would be offset against a taxpayer's liability to pay the tax: this section creates several categories of tax credit for the purposes of Scottish aggregates tax.

56. As per subsection (3), the regulations creating tax credits may include cases where any quantity of taxable aggregate is moved outwith Scotland to a place in the rest of the UK, or to UK waters. As per subsection (4), they may also include cases where any quantity of taxable aggregate is exported outwith the UK from a place in Scotland.

57. As per subsection (5), the regulations may include cases where any quantity of taxable aggregate has an excepted process applied to it – a term defined in section 4 of the Act. As per subsection (6) they may also include cases where any quantity of taxable aggregate is used in an industrial or agricultural process set out in the regulations. As per subsection (7) they may include provision cases where any quantity of taxable aggregate is disposed of (by dumping or otherwise) for purposes unrelated to construction.

58. In addition, as per subsection (8), the regulations may include cases where the whole or part of a debt which is due to the person liable to pay the tax is written off in the person's accounts as a bad debt, as defined in the regulations.

Section 16: Tax credits: further provision

59. This section makes further and general provision about the regulation-making power to create tax credits conferred on the Scottish Ministers by section 15.

60. This includes that regulations under section 15(1) may make provision as to how to make an application to claim tax credit, and that payment of credit can be made subject to such conditions as Revenue Scotland considers appropriate (see subsection (4)). In addition the regulations may provide that where a tax credit is due to a taxpayer who has previously failed to submit tax returns, Revenue Scotland may withhold payment of the credit until the taxpayer has complied with that requirement to submit a return (see subsection (2)).

Chapter 4 – Administration

Registration

Section 17: Scottish aggregates tax register

61. Subsection (1) of this section places a duty on Revenue Scotland to maintain a register containing whatever information it deems required for the purposes of the collection and management of Scottish aggregates tax. Subsections (2) to (6) set out the content of the register and make further provision on Revenue Scotland's powers concerning the register, including giving authorisation to Revenue Scotland to publish information in the register despite any prohibition within devolved competence that might otherwise apply.

Section 18: Duty to register for tax

62. Subsection (1) of this section imposes a duty to register for Scottish aggregates tax on a person who carries out a taxable activity: this is defined in subsection (2) as being responsible for subjecting a quantity of aggregate to commercial exploitation (see sections 7 and 8 of the Act).

63. Subsection (3) imposes a duty on a person who has not yet registered for tax to notify Revenue Scotland of their intention to carry out taxable activities, at either the point of carrying them out or, if earlier, the point of forming the intention to do so.

64. Subsection (4) deals with the time of registration by Revenue Scotland, fixing it to the point at which a person carries out taxable activities: where a person is liable to be registered by virtue of subsection (1), Revenue Scotland may register the person with effect from that time.

65. Subsection (5) gives a regulation-making power to the Scottish Ministers to grant exemptions from registration and related requirements. Such regulations will be subject to the affirmative procedure.

66. Subsection (6) makes further provision on what regulations under subsection (5) may contain, including for equivalent provision to section 74 of the 2014 Act (on record-keeping duties) to apply to persons who are exempt from registration.

67. Subsection (7) defines a registrable person for the purposes of Part 1 of the Act.

68. Subsection (8) clarifies the position on registration for groups of bodies corporate (see section 29 of the Act).

Section 19: Cancellation of registration for tax

69. Subsection (1) of this section imposes a duty on a taxpayer to notify Revenue Scotland if they cease to have the intention of carrying out taxable activities.

70. Subsection (3) empowers Revenue Scotland to cancel a person's registration where it is satisfied that a person has ceased to carry out taxable activities, with effect from the earliest practicable time afterwards.

71. Subsection (4) deals with the cancellation of registration after notification under subsection (1), providing that Revenue Scotland has a duty to cancel registration if satisfied that no tax is due from, or credit is due to, the person who carried out the notification.

72. Subsection (5) deals with the situation where a person has never carried out taxable activities and Revenue Scotland is satisfied that it never will do, providing that Revenue Scotland has a duty to cancel their registration in such circumstances.

73. Subsections (6) and (7) make provision on how Revenue Scotland is to cancel registration where a registered person becomes exempted from the requirement to be registered by virtue of regulations under section 18(5).

Section 20: Duty to notify Revenue Scotland of production of exempt aggregate

74. This section places a duty on a person who is not registered for Scottish aggregates tax and is subject to an exemption under section 18(5) – i.e. because they carry out the production of exempt aggregate – to notify Revenue Scotland of that fact in accordance with regulations. The circumstances for notification are to be set out in regulations.

Section 21: Registration by Revenue Scotland

75. This section concerns compulsory registration by Revenue Scotland. Where it appears to Revenue Scotland that a person is operating or using any premises, or intends to do so, for the purposes listed in subsection (2) relating to the production of aggregate, and has not already registered (perhaps due to an erroneous belief that they don't need to do so), Revenue Scotland is empowered to register those premises against that person's name in the Scottish aggregates tax register.

76. Subsection (3) provides that the particulars included in the register for premises subject to compulsory registration under subsection (1) must set out the boundaries of the site in a way best designed to prevent the avoidance of tax.

77. Subsection (4) provides that any question as to the boundaries of originating sites for the purposes of this Part of the Act are to be determined conclusively in accordance with the register.

Section 22: Registration: further provision

78. This section gives a regulation-making power to the Scottish Ministers to make further provision on registration for Scottish aggregates tax in the terms listed, including the specification of times for the making of notifications to do with registration in sections 18 to 20, and the form and content these notifications are required to take. Regulations under this section will be subject to the negative procedure.

Tax returns and record-keeping

Section 23: Duty to make returns and pay tax

79. This section gives a regulation-making power to the Scottish Ministers to provide that a registrable person must account for the payment of Scottish aggregates tax by reference to specific accounting periods; must make returns in relation to those periods; and must pay tax by the deadlines and in the manner set out in the regulations. Such regulations will be subject to the negative procedure and may make the further provision listed in subsection (2): including provision for tax to be treated, in particular circumstances, as due for a different period to the period it would ordinarily be accounted for; provision for the correction of errors in returns; provision for the relaxation of particular requirements; and provision for the calculation of interest.

Section 24: Form and content of returns

80. This section provides that tax returns for Scottish aggregates tax must meet Revenue Scotland's specifications in terms of their content and form.

Section 25: Communications from taxpayers to Revenue Scotland

81. This section provides that notices, applications or other communications that taxpayers make to Revenue Scotland must meet Revenue Scotland's specifications in terms of their content and form.

Non-resident taxpayers

Section 26: Appointment of tax representatives

82. This section of the Act gives a regulation-making power to the Scottish Ministers to make provision in order to ensure, where a taxpayer is not resident in the UK, that they arrange for the appointment of a person resident in the UK to act as their representative for the purposes of paying Scottish aggregates tax. Subsection (2) defines a "non-resident taxpayer" as a person who is not resident in the UK and who is registered, or is required to be, for the purposes of the tax (or would be required but for an exemption in regulations made under section 18(5) of the Act). The regulations will be subject to the negative procedure.

83. The regulations may make (but are not limited to) the kinds of provision listed in subsection (3): including a requirement for initial notification by taxpayers of a change in residence status to Revenue Scotland; a requirement for approval by Revenue Scotland of an appointment of a tax representative; and the creation of a process for requesting such approval. Failure to request approval may be penalised by virtue of section 216C of the 2014 Act, as inserted by section 45 of this Act.

Section 27: Effect of appointment of tax representatives

84. This section provides for the effect of the appointment of a tax representative by a taxpayer: they are entitled to act on a non-resident taxpayer's behalf and must make sure that the taxpayer complies with their legal obligations under the Act in relation to Scottish aggregates tax.

85. In addition, subsection (3) of this section makes a tax representative personally liable in respect of any failure of compliance by the non-resident taxpayer with the requirements of this Act, and imposes joint and several liability on the tax representative and the non-resident taxpayer in respect of any such failure (meaning that each person would be responsible for the full liability for the failure).

86. Subsection (4) clarifies that a tax representative does not themselves have to register for Scottish aggregates tax.

87. Subsection (5) provides that a non-resident taxpayer will themselves be liable in respect of any tax due as a consequence of fraud or error by their tax representative.

Section 28: Definition of "business premises" to exclude premises of tax representatives

88. This section of the Act amends section 141 of the 2014 Act to apply a new definition of "business premises" for the purposes of Scottish aggregates tax.

89. Generally this means premises that a designated officer of Revenue Scotland has reason to believe are used in connection with the carrying on of a business by or on behalf of a person. But in relation to Scottish aggregates tax, it does not include the premises of any tax representative within the meaning of this Act (i.e. the person who in accordance with regulations under section 26 acts as a taxpayer's representative for the purposes of Scottish aggregates tax).

90. Section 141(3B) of the 2014 Act clarifies that tax representatives may still be specified in regulations by the Scottish Ministers under section 142 of the 2014 Act as "involved third parties" whose business premises may be entered and inspected by designated officers of Revenue Scotland.

Special cases

Section 29: Groups of companies

91. This section provides for how groups of companies and members of groups are to be treated with regard to tax liabilities. This includes providing how groups of companies are liable through their representative member carrying out taxable activities (see section 18) and how corporate bodies can be considered a group.

92. Subsections (2) to (3) set out the conditions of the application for group treatment. An application for group treatment is made to Revenue Scotland under subsection (4) setting out which of the bodies corporate is to be the representative member. As per subsection (6) a successful application will take effect from the beginning of a particular accounting period. An application to vary or end the group treatment may be made under subsection (7) and, as per subsection (8), may be granted with effect from a time specified by Revenue Scotland in a written notice to the members of the group.

93. Subsection (9) provides that Revenue Scotland only has discretion to refuse an application under subsection (4) or subsection (7) if it appears necessary to do so for the protection of the revenue (i.e. to prevent the loss of tax revenue) – otherwise the application must be granted. However Revenue Scotland has no discretion at all to refuse an application under subsection (7)(b) to exclude a body corporate from group treatments.

94. Subsection (10) states that an application under this section must be made by the bodies or person controlling them and that the application should be made 90 days before the group status is to take effect.

95. Subsection (11) sets out the circumstances in which a corporate body or individuals will be deemed to control another corporate body, mainly if the corporate body is the latter body's holding company within the meaning of section 1159 and Schedule 6 of the Companies Act 2006 or, in the case of individuals, would be were the individuals a company.

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

96. This section provides that where bodies corporate are treated as members of a group for the purposes of Scottish aggregates tax, and one of them becomes no longer eligible for group treatment under section 29, that body is under a duty to notify Revenue Scotland immediately of that fact. In addition, this section places a duty on representative members of groups to notify Revenue Scotland before ceasing to have an established place of business in the UK.

Section 31: Group treatment: change to application or notification

97. This section applies where bodies corporate are treated as members of a group for the purposes of Scottish aggregates tax. A body corporate which has made an application under section 29(4) or (7) relating to group treatment, or a notification under section 30(1) or (2) concerning the cessation of its eligibility for group treatment or of its having a place of business in the UK, has a duty to notify Revenue Scotland immediately if any information contained in or provided in connection with that application or notification subsequently becomes inaccurate.

Section 32: Group treatment: substitution and termination

98. This section deals with the scenario where the representative member of a group of bodies corporate ceases to be treated as a member of the group, and no application to change the representative member under section 29(7)(c) has been granted by Revenue Scotland. In such a situation Revenue Scotland is required to substitute a different member of the group as the new representative member by notice to that member.

99. Subsection (3) provides that where a body corporate which is a member of a group ceases to be controlled by any person (see section 29(11)) for the meaning of control in this context) then Revenue Scotland must terminate the group treatment of that body by notice.

100. In addition, subsection (4) provides that if it appears to Revenue Scotland necessary to do so for the protection of the revenue, it has a general power to terminate the group treatment of a body corporate by notice. The time termination comes into effect must not be before the day on which notice is given to the representative member, as per subsection (5).

Section 33: Partnerships and unincorporated bodies etc.

101. This section of the Act gives a regulation-making power to the Scottish Ministers to make provision applying Part 1 of the Act to cases where a business is carried on in partnership or by an unincorporated body. Regulations under this section will be subject to the negative procedure. Under subsection (2), registration for tax can be in the name of the firm or body concerned (as opposed to being in the name of its members). A body corporate may have

several divisions which are themselves bodies corporate: under subsection (4), Revenue Scotland may determine what divisions of a particular corporate body are registrable for Scottish aggregates tax.

Section 34: Bankruptcy etc.

102. This section of the Act gives a regulation-making power to the Scottish Ministers to make provision requiring persons who are carrying on the business of someone who has died, become bankrupt or become incapacitated – or whose business is in liquidation, receivership or administration – to inform Revenue Scotland that they are doing so. The regulations may also make provision allowing such persons to be treated as the original taxpayer for the purposes of Scottish aggregates tax; and make provision applying Part 1 of the Act to such persons. These regulations will be subject to the negative procedure.

Section 35: Transfer of business as a going concern

103. This section of the Act gives a regulation-making power to the Scottish Ministers to make provision applying Part 1 of the Act to cases where a business is transferred to another person as a going concern (that is, it is assumed that the business is still able to meet its financial obligations when they become due). The regulations may include provision requiring notification to Revenue Scotland, and provision treating the transferee as the original taxpayer for the purposes of Scottish aggregates tax. These regulations will be subject to the negative procedure.

Provision of security

Section 36: Security required by individual direction

104. Sections 36 and 37 of the Act empower Revenue Scotland to issue directions requiring taxpayers (and, in some circumstances, tax representatives) to provide security for the payment of any tax that may become due. Revenue Scotland has the power to specify what type of security is appropriate, but it is expected that a written guarantee from a financial institution (such as a bank) will normally be acceptable.

105. A direction under section 36 made by Revenue Scotland applies to an individual taxpayer or tax representative. A direction under this section may require a taxpayer or tax representative to provide security, or identify the amount of security that a taxpayer would be required to provide to secure the approval of the appointment of a tax representative. In respect of any particular taxpayer, an individual direction under section 36 prevails over a general direction under section 37.

Section 37: Security required by general direction

106. A direction under section 37 of the Act made by Revenue Scotland applies to taxpayers generally. It may specify the amount of security, or a method for calculating the amount of security, that persons are required to provide to secure the approval of the appointment of an administrative tax representative. It is expected that a written guarantee from a financial institution (such as a bank) will normally be acceptable. In respect of any particular taxpayer, an individual direction under section 36 prevails over a general direction under section 37.

Delegation of functions

Section 38: Delegation of functions by Revenue Scotland

107. This section amends section 4 of the 2014 Act, allowing Revenue Scotland to delegate its functions relating to Scottish aggregates tax to a person specified in regulations by the Scottish Ministers (subject to the affirmative procedure). A delegation of this kind does not affect Revenue Scotland's ability to exercise that function or its legal responsibility for it, however (section 4(7)).

108. Under section 4(2), Revenue Scotland may give directions to the relevant person as to how a delegated function is to be exercised and the relevant person has a duty to comply with any such direction by Revenue Scotland. Section 4(2) provides that delegations or directions given under section 4 may be varied or revoked at any time.

109. Under section 4(4)-(5), Revenue Scotland has duties to publish information about delegations and directions given under this section, and to lay before the Scottish Parliament a copy of the information it publishes. However these duties do not apply to the extent that Revenue Scotland considers that publication of the information would prejudice the effective exercise of its functions, as section 4(6).

Chapter 5 – Penalties

Section 39: Failure to make return

110. This section amends section 159 of the 2014 Act, applying the penalty there for the failure to make a tax return by the statutory deadline to Scottish aggregates tax. The applicable deadlines are set in regulations under section 22 of the Act. Sections 164 to 167 of the 2014 Act, as amended by this section of the Act, create a sliding scale for the amount of penalty for failure to submit a return for Scottish aggregates tax.

Section 40: Failure to pay tax

111. This section amends section 168 of the 2014 Act, applying the penalties there for failure to pay tax to Scottish aggregates tax. Subsection (2) of section 168 provides that if a person's failure to pay tax falls under multiple heads of this provision then the person is liable to a penalty for each separate failure. Sections 170 to 173 of the 2014 Act, as amended by this section of the Act, create a sliding scale for the amount of penalty for failure to pay Scottish aggregates tax.

Section 41: Inaccuracies in taxpayer documents

112. This section amends section 182 of the 2014 Act, applying the penalties there for inaccuracies in taxpayer documents to Scottish aggregates tax: this includes a situation where a taxpayer has amended their tax return under section 83, and claims for repayment under sections 106 to 108. Under section 183 of the 2014 Act, the penalty would be 100% of the potential lost revenue for a deliberate inaccuracy, and 30% of the potential lost revenue for a careless inaccuracy.

Section 42: Failure to register for tax etc.

113. This section substitutes a new provision into section 209 of the 2014 Act on penalties for failure to register for tax, applying these penalties for failure to comply with the duties imposed by section 18 and 22 of the Act: i.e. the duties relating to registration on persons who carry out taxable activities. Under section 210 of the 2014 Act, the penalty would be 100% of the potential lost revenue for a deliberate failure to comply, and 30% of the potential lost revenue for a careless failure to comply.

Section 43: Failure to notify production of exempt aggregate

114. This section inserts a new Chapter 5A into Part 8 of the 2014 Act, creating a new penalty (section 216A) for a failure to notify Revenue Scotland of the production of exempt aggregate under section 20 of the Act. This would be a flat rate penalty of £1,000.

Section 44: Failure to keep records of production of exempt aggregate

115. This section inserts a new section 216B into the 2014 Act, creating a penalty for a failure to keep or preserve records or documents as required under regulations made under section 18(5) of this Act. This would be a flat rate penalty of £1,000.

Section 45: Failure to request approval of tax representative appointment

116. This section inserts a new section 216C into the 2014 Act, creating a penalty in relation to Scottish aggregates tax where a person has failed to seek Revenue Scotland's approval to appoint a tax representative where required to do so in regulations made under section 26(1) of the Act. This would be a flat rate penalty of £10,000. A defence of reasonable excuse is available, however, as set out in inserted section 216C(3).

Section 46: Failure to notify cessation of eligibility for group treatment or of having place of business in UK

117. This section inserts a new section 216D into the 2014 Act, creating a penalty in relation to Scottish aggregates tax where a person who fails to notify Revenue Scotland, that the person has ceased to be eligible to be treated as part of a group of corporate bodies, as is required under section 30(1) of the Act. This would be a flat rate penalty of £500.

Section 47: Failure to notify change to group treatment application or notification

118. This section inserts a new section 216E into the 2014 Act, creating a penalty in relation to Scottish aggregates tax where a person fails to comply with section 31 of this Act, requiring notification to Revenue Scotland of any changes to group treatment applications or notifications. This would be a flat rate penalty of £250.

Section 48: Failure to provide security

119. This section inserts a new section 216F into the 2014 Act, creating a new penalty for a failure to provide security for payment of Scottish aggregates tax when required to do so by Revenue Scotland under section 36 or 37 of the Act. This would be a flat rate penalty of £20,000.

Section 49: General provisions for penalties relating to Scottish aggregates tax

120. This section inserts a new section 216G into the 2014 Act, providing that liability under the penalty provisions relating to Scottish aggregates tax, as inserted by this Chapter of Part 1 of the Act, will not arise where the taxpayer can show that there is a reasonable excuse for their conduct; section 216G(2) makes further provision on what can and what cannot be claimed as a reasonable excuse for these purposes.

121. In addition, this section inserts a new section 216H into the 2014 Act, making provision about the assessment and payment of penalties under the penalty provisions relating to Scottish aggregates tax. Revenue Scotland is required to assess the penalty and notify the person who is liable and there is then a period of 30 days for payment. The assessment must be made by Revenue Scotland within 12 months of either the person becoming liable to the penalty or Revenue Scotland becoming aware of the person's liability (whichever is later), and is treated as an assessment to tax for enforcement purposes.

122. This section of the Act also inserts a new section 216I into the 2014 Act, giving the Scottish Ministers a regulation-making power to make changes to the new penalty provisions in Chapter 5A of Part 8 of the 2014 Act, as inserted by this Act. This is consistent with other powers in Part 8. The regulations will be subject to the affirmative procedure.

Chapter 6 – Reviews and appeals

Section 50: Reviews and appeals of decisions of Revenue Scotland

123. This section amends section 233 of the 2014 Act, setting out which decisions of Revenue Scotland in relation to Scottish Aggregates Tax are "appealable" under Part 11 of the 2014 Act, and therefore are subject both to review by Revenue Scotland on request under section 234, and appeal to the First-Tier Tribunal under section 241.

Chapter 7 – Interpretation

Section 51: Interpretation of Part 1

124. This section sets out the meaning of all the defined terms used in Part 1 of the Act. This includes, in subsections (2) to (5), specific definitions of references in the Act to the use of anything for construction purposes; references to winning aggregate; references to tax due from any person in relation to an accounting period; and references to a person being resident in the UK.

Section 52: Interpretation of the Revenue Scotland and Tax Powers Act 2014

125. This section amends reference to this Act into the interpretation provisions of the 2014 Act.

Part 2 – Devolved taxes administration

Section 53: Minor amendment of section 94 of the Revenue Scotland and Tax Powers Act 2014

126. This section corrects an erroneous reference in section 94 of the 2014 Act, so that the current reference to a "paragraph" becomes a reference to a "section".

Section 54: Refusal of repayment claim where other tax not paid

127. This section of the Act amends paragraph 12 of schedule 3 of the 2014 Act, which requires Revenue Scotland to give effect to a claim for repayment of tax as soon as practicable after it is made. An exception to this duty is added, allowing Revenue Scotland to withhold payment or postpone giving effect to such a claim where the claimant has failed to pay to Revenue Scotland an amount of tax other than the amount which is subject to the claim. This includes the ability to give partial effect to a claim, or to partially withhold repayment.

Section 55: Penalties for failure to pay tax

128. This section of the Act makes a change to the fourth column of the table in section 168(1) of the 2014 Act, which sets out the date when a taxpayer becomes liable to pay a penalty for failure to pay tax. The change relates only to penalties in respect of Land and buildings transaction tax and is to clarify that in the situation where a person has failed to submit a tax return by the filing date, the person becomes liable to pay a penalty 30 days after the filing date and not any later date.

Section 56: Communications from Revenue Scotland to taxpayers

129. This section of the Act creates a new regulation-making power in the 2014 Act, section 251A, allowing the Scottish Ministers to make provision about communications from Revenue Scotland to taxpayers (this would follow the existing section 251 about communications in the other direction, from taxpayers to Revenue Scotland). The regulations may make provision about the use of electronic communications in particular, meaning that they could be used in future to adjust any practical aspects of electronic communications from Revenue Scotland.

130. These regulations will be subject to the affirmative procedure and must be consulted on by Ministers before being laid. The regulations will be capable of modifying other enactments, including the 2014 Act itself.

Section 57: Use of automation by Revenue Scotland

131. This section of the Act creates a new regulation-making power in the 2014 Act, section 251B, allowing the Scottish Ministers to make provision about the use by Revenue Scotland of automation in carrying out functions conferred on designated officers or Revenue Scotland.

132. These regulations will be subject to the affirmative procedure and must be consulted on by Ministers before being laid. The regulations will be capable of modifying other enactments, including the 2014 Act itself.

Section 58: Set-off by Revenue Scotland

133. This section of the Act inserts section 251C into the 2014 Act. Section 251C will allow Revenue Scotland to set off a taxpayer's credit against the same taxpayer's debit. Doing so discharges the taxpayer's obligations to Revenue Scotland and Revenue Scotland's obligations to the taxpayer to the extent of this "set off". This new power of set-off does not affect any existing power Revenue Scotland has to set off credits against debits (for example, under the common law) and is also subject to section 251D on insolvency credits and debits.

134. Subsection (3A) of section 251C modifies the definition of "debit" for the purposes of the section, clarifying that a sum is not to be treated as payable – and so cannot be subject to the set-off power – if the sum can be varied or set aside on review or appeal.

135. This section of the Act also inserts section 251D into the 2014 Act. This qualifies section 251C by providing that the set-off power in that section may not be used to set a post-insolvency credit against a pre-insolvency debit. This is intended to make clear that the set-off power is not intended to have any effect on insolvency law and that Revenue Scotland will not be advantaged over other creditors in insolvency situations.

Section 59: Role of designated officer

136. This section provides for the legal continuity of the actions of designated officers of Revenue Scotland, inserting a new section 251E into the 2014 Act which sets out that anything begun by one designated officer may be continued by another officer (including anything in relation to legal proceedings).

137. This section also makes a specific amendment to section 225 of the 2014 Act so that where an application is being made to the court for a summary warrant in relation to unpaid tax, the procedural steps will need to be carried out by a designated officer but different designated officers may carry out different steps.

Section 60: Retrospective effect of amendments made by the Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018

138. Schedule 10 of the Land and Buildings Transaction Tax (Scotland) Act 2013 makes provision for the availability of group relief. Subject to certain rules, this provides relief from Land and buildings transaction tax for land transactions between companies within a group that would otherwise be chargeable to tax and on which tax would otherwise be payable.

139. Schedule 10 was modified on 30 June 2018 by the Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018 (S.S.I. 2018/222) to provide that relief will not be lost in relation to standard Scottish "share pledge" type arrangements and other analogous circumstances, so long as any right is not exercised. This section of the Act gives this rule retrospective effect as from 1 April 2015.

Part 3 – Final provisions

Section 61: Regulations

140. This section sets out the Parliamentary procedure for the regulation-making powers in the Act. The affirmative powers are listed in subsection (1) and the negative powers in subsection (3).

141. Subsection (2) sets out that regulations under section 12(3) on the rate of tax are subject to what is known as the "provisional affirmative" or "made affirmative" procedure whereby the regulations are made by the Scottish Ministers, and therefore have effect from when they are made, but must be laid before the Scottish Parliament and will cease to have effect after 28 days unless they are approved by resolution of the Parliament. The exception is the first set of regulations under section 12(3), which will be subject to the ordinary affirmative procedure.

Section 62: Ancillary provision

142. This section gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, or in connection with, or for giving full effect to, this Act or any provision made under it.

143. Subsection (2) allows such regulations to modify any legislation, including this Act itself: in doing so the regulations would be subject to the affirmative Parliamentary procedure. Otherwise they are subject to the negative procedure.

Section 63: Crown application

144. This section provides that nothing in this Act affects His Majesty the King in His personal capacity. As mentioned above however this Act does apply to emanations of the Crown generally.

Section 64: Commencement

145. This section provides that sections 62, 63 and 65, along with this section itself, come into force on the day after Royal Assent.

146. All other provisions are to come into force on a day appointed by regulations made by the Scottish Ministers. These regulations may make transitional, transitory or saving provision related to commencement and may make different provision for different purposes. These regulations are also required to be laid before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but they are not otherwise subject to any Parliamentary procedure.

Section 65: Short title

147. This section provides that this Act will be referred to as the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.

PARLIAMENTARY HISTORY

148. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
Introduction	
Bill as introduced	Aggregates Tax and Devolved Taxes Administration (Scotland) Bill - Introduced (parliament.scot)
Stage 1	
Finance and Public Administration Committee	
Meeting on 5 March 2024	Meeting of the Parliament: FPAC/05/03/2024 – Scottish Parliament Website

Proceedings and reports	***Reference***
Meeting on 12 March 2024	Meeting of the Parliament: FPAC/12/03/2024 – Scottish Parliament Website
Meeting on 19 March 2024	Meeting of the Parliament: FPAC/19/03/2024 – Scottish Parliament Website
Meeting on 23 April 2024 (private)	Meeting of the Parliament: FPAC/23/04/2024 – Scottish Parliament Website
Correspondence from the Head of Tax (Employment and Devolved Taxes), ICAS to the Convener of the Finance and Public Administration Committee – 16 March 2024	Aggregates Tax Bill followup correspondence from meeting on 12 March 2024 | Scottish Parliament Website
Correspondence from the Minister for Community Wealth and Public Finance t the Convener of the Finance and Public Administration Committee – 29 August 2024	Aggregates Tax and Devolved Taxes Administration Scotland Bill Letter of 29 August 2024 | Scottish Parliament Website
Stage 1 report on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill	Stage 1 report on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill | Scottish Parliament
Response to Stage 1 Report from the Minister for Public Finance	Letter from the Minister for Community Wealth and Public Finance to the Convener of 15 May 2024 (parliament.scot)
Delegated Powers and Law Reform Committee	
Meeting on 30 January 2024	Meeting of the Parliament: DPLRC/30/01/2024 - Scottish Parliament Website
Meeting 5 March 2024	Meeting of the Parliament: DPLRC/05/03/2024 - Scottish Parliament Website
Delegated Powers and Law Reform Committee Report	Delegated powers in the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill at Stage 1 | Scottish Parliament
Correspondence from the Convener of the Delegated Powers and Law Reform Committee to the Deputy First Minister and Cabinet Secretary for Finance – 1 February 2024	Aggregates Tax and Devolved Taxes | Scottish Parliament Website
Correspondence from the Minister for Community Wealth and Public Finance to the Convener of Delegated Powers and Law Reform Committee – 16 February 2024	Aggregates Tax and Devolved Taxes Administration Scotland Bill response from the Scottish Government | Scottish Parliament Website

Proceedings and reports	***Reference***
Consideration by Parliament	
Stage 1 Debate – 16 May 2024	Meeting of the Parliament: 16/05/2024 - Scottish Parliament Website
Stage 2	
Finance and Public Administration Committee	
Meeting on Amendments – 11 June 2024	Meeting of the Parliament: efw/11/06/2024 | Scottish Parliament Website
Bill as amended at Stage 2 – 11 June 2024	Bill as amended (parliament.scot)
Additional Information Following Stage 2	
Revised Explanatory Notes – 22 August 2024	Revised Explanatory Notes (parliament.scot)
Supplementary Delegated Powers Memorandum – 24 June 2024	Supplementary Delegated Powers Memorandum accessible (parliament.scot)
Delegated Powers and Law Reform Committee	
Meeting 10 September	Delegated Powers and Law Reform Committee 24th Meeting, 2024 | Scottish Parliament Website
Delegated Powers in the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill (as amended at Stage 2 – 19 September 2024	Delegated powers in the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill (as amended at Stage 2) | Scottish Parliament
Stage 3	
Debate on Proposed Amendment – 1 October 2024	Meeting of the Parliament: 01/10/2024 | Scottish Parliament Website
Final Debate on the Bill – 1 October 2024	Meeting of the Parliament: 01/10/2024 | Scottish Parliament Website
Bill as Passed – 1 October 2024	Bill as passed (parliament.scot)
Additional Information Following Stage 3	
Royal Assent	
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