

POLICY NOTE

THE REVENUE SCOTLAND AND TAX POWERS ACT (ANCILLARY PROVISION) ORDER 2018

SSI 2018/346

The above instrument was made in exercise of the powers conferred by section section 255(1) of the Revenue Scotland and Tax Powers Act 2014. The instrument is subject to negative procedure.

Policy Objectives

1. The aim of this instrument is to provide that the sharing of protected taxpayer information by Revenue Scotland to the Welsh Revenue Authority (WRA) is a permitted disclosure under Section 15 of the Revenue Scotland and Tax Powers Act 2014 (RSTPA). Protected taxpayer information' ('PTI') means identifiable information about a person held by Revenue Scotland.

2. At the moment Revenue Scotland has a specific information sharing gateway with HMRC as a result of Para 4(3) of the Revenue Scotland and Tax Powers Act 2014 (Consequential Provisions and Modifications) Order 2014. Likewise, 'The Tax Collection and Management (Permitted Disclosures) (Wales) Regulations 2017' amended the Tax Collection and Management (Wales) Act 2016 to enable the Welsh Revenue Authority to disclose PTI to Revenue Scotland in connection with a function of WRA. However, there are currently no provisions in place for Revenue Scotland to reciprocate this sharing of information to the Welsh Revenue Authority, reflecting the fact that WRA was only established on a statutory basis on April 1st 2018.

3. Revenue Scotland may need to share this information with the WRA in a number of circumstances during the course of 'business as usual' to ensure the compliance of taxpayers in each of their jurisdictions. However, the rules in place under section 15 of the RSTPA are such that sharing of PTI with the WRA is currently tightly limited, which only allow non-consensual disclosure of PTI for the purposes of civil proceedings or criminal investigation. The Scottish Government's policy objective in introducing this legislation is to allow Revenue Scotland to share PTI in other relevant scenarios with the Welsh Authority, replicating the existing arrangements with HMRC. This would also enable Revenue Scotland, the WRA and HMRC to engage in tripartite discussions regarding compliance.

Alternative approaches

4. An alternative approach of taking no action was considered. However, there is potential for tax loss affecting both the Scottish and Welsh Governments without a specific provision for information sharing between Revenue Scotland and the Welsh Revenue Authority to facilitate compliance. Information sharing on individual cases enables joint compliance working primarily to understand taxpayer behaviours and to identify patterns and potential compliance risks. Liaison is also seen as desirable in respect of specific cases where both the Scottish and the Welsh devolved taxes apply, to ensure consistency in the provision of an opinion or an enquiry decision across all UK jurisdictions.

5. Whilst the Scottish Government aims to take a considered approach to legislative amendments for all the devolved taxes, the Scottish Government's view is that it would be prudent to take this legislative action to address this specific issue.

Consultation

6. There is no statutory requirement to consult on this instrument, and on this occasion the Scottish Government has not done so. The rationale for this is that the instrument does not impose any new burdens or costs on public bodies or business and the information gateway will support the effective operation of devolved taxes. The Scottish Government has however liaised with Revenue Scotland in the development of this legislation.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc

Equal opportunities

7. The Scottish Government has considered the impact of this legislation on the equalities agenda and does not expect that the provisions within the Order will have any negative impact on equality groups. The Order will apply to individuals who are already impacted by the Revenue Scotland and Tax Powers Act. Any impacts arising from revised tax returns, guidance or other documentation, or IT or other systems relating to the supplement will be a matter for Revenue Scotland in terms of its duties under the Equality Act 2010.

Human rights

8. There are not human rights implications emerging from this Order. The Order will apply to individuals who are already impacted by the Revenue Scotland and Tax Powers Act, which already complies with the European Convention on Human Rights (ECHR), as noted in the Policy Memorandum for the Revenue Scotland and Tax Powers Act 2013.

Island Communities

9. This Order is expected to have no disproportionate effect on island communities.

Local government

10. The Order will have no impact on local government in Scotland

Sustainable development

11. This Order will have no impact on sustainable development in Scotland

Data protection

12. The Scottish Government has considered the potential impact that this legislation would have on data protection. The implementation of this Order is an operational matter for Revenue Scotland. This instrument should not be interpreted as removing or reducing the existing legal obligations or responsibilities of either participant, for example, as data controllers under the

Data Protection Act 1998 (DPA). All of the personal data shared between Revenue Scotland and the Welsh Revenue Authority is subject to General Data Protection Regulations (GDPR) and any successor domestic legislation, any other applicable domestic and EU law.

13. Information disclosed by Revenue Scotland to the Welsh Revenue Authority, or by the Welsh Revenue Authority to Revenue Scotland, should be adequate, relevant and proportionate to the purposes in hand, and should be transferred in a secure manner, in line with the applicable provisions of the Revenue Scotland and Tax Powers Act (Scotland), the Tax Collection and Management (Wales) Act and GDPR.

Financial Effects

14. The Minister for Public Finance and Digital Economy has confirmed that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

15. Revenue Scotland will absorb any impacts arising from information-sharing activities as part of their on-going operational costs. There will be no added financial implications for the Scottish Government.

Scottish Government
Budget and Financial Sustainability Directorate

8 November 2018