



# Scotland Act 2012

## 2012 CHAPTER 11

### PART 3

#### FINANCE

#### *Introductory*

#### **23 Taxation: introductory**

- (1) The 1998 Act is amended as follows.
- (2) Before Part 5 insert—

### “PART 4A

#### TAXATION

### CHAPTER 1

#### INTRODUCTORY

#### **80A Overview of Part 4A**

- (1) In this Part—
  - (a) Chapter 2 confers on the Scottish Parliament power to set a rate of income tax to be paid by Scottish taxpayers, and
  - (b) Chapters 3 and 4 specify the taxes about which the Scottish Parliament may make provision in the exercise of the power conferred by section 28(1).
- (2) The power to make provision about a devolved tax is subject to the restrictions imposed by—

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- (a) subsection (3), and
  - (b) the other provisions of this Part.
- (3) A devolved tax may not be imposed where to do so would be incompatible with any international obligations.
- (4) In this Act “devolved tax” means a tax specified in this Part as a devolved tax.

#### 80B Power to add new devolved taxes

- (1) Her Majesty may by Order in Council amend this Part so as to—
- (a) specify, as an additional devolved tax, a tax of any description, or
  - (b) make any other modifications of the provisions relating to devolved taxes which She considers necessary or expedient.
- (2) An Order in Council under this section may also make such modifications of—
- (a) any enactment or prerogative instrument (including any enactment comprised in or made under this Act), or
  - (b) any other instrument or document,
- as Her Majesty considers necessary or expedient in connection with other provision made by the Order.”
- (3) In section 93 (agency arrangements)—
- (a) after subsection (2) insert—
    - “(2A) The collection and management of a devolved tax is a specified function of the Scottish Ministers.”;
  - (b) in subsection (3), in the definition of “specified”, after “specified” insert “(subject to subsection (2A))”.
- (4) In section 127 (index of defined expressions), at the appropriate place insert—

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“Devolved tax	Section 80A(4)”.
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- (5) In Part 2 of Schedule 5 to that Act, in Section A1 (specific reservations: fiscal, economic and monetary policy), for “*Exception*” substitute “*Exceptions*” and after that heading insert— “Devolved taxes, including their collection and management.”
- (6) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate place insert—

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“Section 80B	Type A”.
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## 24 Amendments relating to the Commissioners for Revenue and Customs

- (1) The Commissioners for Revenue and Customs Act 2005 is amended as follows.
- (2) Section 18 (confidentiality) is amended as follows.
- (3) In subsection (2)—
- (a) omit “or” at the end of paragraph (g), and
  - (b) after paragraph (h) insert “, or

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- (i) which is made to the Scottish Ministers in connection with the collection and management of a devolved tax within the meaning of the Scotland Act 1998.”

<sup>F1</sup>(4) .....

<sup>F1</sup>(5) .....

- (6) In section 51 (interpretation) after subsection (2) insert—

“(2A) But a reference to the functions of the Commissioners or of officers of Revenue and Customs does not include a function which—

- (a) is conferred on them by or by virtue of an Act of the Scottish Parliament or an instrument made under such an Act, and
- (b) relates to a devolved tax within the meaning of the Scotland Act 1998.”

- (7) In section 1(1) of the Customs and Excise Management Act 1979 (interpretation), at the end of the definition of “assigned matter” insert “, except that it does not include any matter relating to a devolved tax within the meaning of the Scotland Act 1998;”.

**Textual Amendments**

**F1** S. 24(4)(5) omitted (1.1.2015) by virtue of [The Revenue Scotland and Tax Powers Act 2014 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3294\)](#), arts. 1(2), **4(2)**

*Scottish rate of income tax*

**25 Scottish rate of income tax**

- (1) The 1998 Act is amended as follows.
- (2) Part 4 (power to vary income tax rate) is omitted.
- (3) In Part 4A (as inserted by section 23), after Chapter 1 insert—

**“CHAPTER 2**

**INCOME TAX**

**80C Power to set Scottish rate for Scottish taxpayers**

- (1) The Scottish Parliament may by resolution (a “Scottish rate resolution”) set the Scottish rate for the purpose of calculating the rates of income tax to be paid by Scottish taxpayers.
- (2) Section 6(2B) of the Income Tax Act 2007 provides for the calculation of those rates.
- (3) A Scottish rate resolution applies—
  - (a) for only one tax year, and
  - (b) for the whole of that year.

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- (4) A Scottish rate resolution may specify only one rate.
- (5) The Scottish rate must be a whole number or half a whole number.
- (6) A Scottish rate resolution—
  - (a) must specify the tax year for which it applies,
  - (b) must be made before the start of that tax year, and
  - (c) must not be made more than 12 months before the start of that year.
- (7) If a Scottish rate resolution is cancelled before the start of the tax year for which it is to apply—
  - (a) the Income Tax Acts have effect for that year as if the resolution had never been passed, and
  - (b) the resolution may be replaced by another Scottish rate resolution.
- (8) Standing orders must provide that only a member of the Scottish Government may move a motion for a Scottish rate resolution.

#### 80D Scottish taxpayers

- (1) In any tax year, a Scottish taxpayer is an individual (T)—
  - (a) who is resident in the UK for income tax purposes, and
  - (b) who, for that year, meets condition A, B or C.
- (2) T meets condition A if T has a close connection with Scotland (see section 80E).
- (3) T meets condition B if—
  - (a) T does not have a close connection with any part of the UK other than Scotland (see section 80E), and
  - (b) T spends more days of that year in Scotland than in any other part of the UK (see section 80F).
- (4) T meets condition C if, for the whole or any part of the year, T is—
  - (a) a member of Parliament for a constituency in Scotland,
  - (b) a member of the European Parliament for Scotland, or
  - (c) a member of the Scottish Parliament.
- (5) In this Chapter “the UK” means the United Kingdom.

#### 80E Close connection with Scotland or another part of the UK

- (1) To find whether, for any year, T has a close connection with any part of the UK see—
  - (a) subsection (2) (where T has only one place of residence in the UK), or
  - (b) subsection (3) (where T has 2 or more places of residence in the UK).
- (2) T has a close connection with a part of the UK if in that year—
  - (a) T has only one place of residence in the UK,
  - (b) that place of residence is in that part of the UK, and
  - (c) for at least part of the year, T lives at that place.

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- (3) T has a close connection with a part of the UK if in that year—
- (a) T has 2 or more places of residence in the UK,
  - (b) for at least part of the year, T's main place of residence in the UK is in that part of the UK,
  - (c) the times in the year when T's main place of residence is in that part of the UK comprise (in aggregate) at least as much of the year as the times when T's main place of residence is in any one other part of the UK, and
  - (d) for at least part of the year, T lives at a place of residence in that part of the UK.
- (4) In this section “place” includes a place on board a vessel or other means of transport.

#### **80F Days spent in Scotland or another part of the UK**

- (1) T spends more days of a year in Scotland than in any other part of the UK if (and only if)—
- (a) the number of days in the year on which T is in Scotland at the end of the day  
equals or exceeds
  - (b) the number of days in the year on which T is in any other part of the UK at the end of the day.
- (2) But T is not to be treated as being in the UK at the end of a day if—
- (a) on that day T arrives in the UK as a passenger,
  - (b) T departs from the UK on the next day, and
  - (c) during the time between arrival and departure T does not engage in activities which are to a substantial extent unrelated to T's passage through the UK.

#### **80G Supplemental powers to modify enactments**

- (1) The Treasury may by order provide that subsections (2A) to (2C) of section 6 of the Income Tax Act 2007 are to be disapplied, or that their effect is to be modified, in relation to any enactment.
- (2) The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of or in connection with—
- (a) the power of the Parliament to set a rate under section 80C;
  - (b) the making of a Scottish rate resolution;
  - (c) an order under subsection (1).
- (3) An order under subsection (2) may, in particular, provide that a Scottish rate resolution does not require any change in the amounts repayable or deductible under PAYE regulations between—
- (a) the beginning of the tax year for which the resolution has effect, and
  - (b) such date (falling after the date of the resolution) as may be specified in the order.

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- (4) An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which the order is made.

#### 80H Reimbursement of expenses

The Scottish Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Chapter at any time after the passing of the Scotland Act 2012 by the Minister or department.”

- (4) The repeal by subsection (2) of Part 4 of the 1998 Act has effect so that a tax-varying resolution may not be passed so as to relate to any tax year following such tax year as is appointed by the Treasury by order under this subsection (as the last year for which that Part is to have effect).
- (5) A Scottish rate resolution made under the provisions inserted by subsection (3) may not apply for a tax year preceding such tax year as is appointed by the Treasury by order under this subsection (as the first year for which those provisions are to have effect).
- (6) The tax year appointed under subsection (4) must precede the tax year appointed under subsection (5).
- (7) Schedule 2 (which contains other amendments relating to the power to set a Scottish rate of income tax) has effect.

#### Commencement Information

- I1** S. 25(1)-(6) in force at 1.7.2012, see s. 44(2)(b)(3)(a)(4)(a).
- I2** S. 25(2)(4) has effect (as regards the appointed tax year) as specified by [The Scotland Act 2012, Section 25 \(Appointed Years\) Order 2015 \(S.I. 2015/2000\)](#), [art. 2](#)
- I3** S. 25(3)(5) has effect (as regards the appointed tax year) as specified by [The Scotland Act 2012, Section 25 \(Appointed Years\) Order 2015 \(S.I. 2015/2000\)](#), [art. 3](#)

#### <sup>F2</sup>26 Income tax for Scottish taxpayers

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#### Textual Amendments

- F2** S. 26 omitted (17.7.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 38 para. 17\(a\)](#)

#### 27 Definition of Scottish taxpayer for Scottish variable rate

- (1) In Part 4 of the 1998 Act (power to vary income tax rate), for subsections (1) to (6) of section 75 (Scottish taxpayers) substitute—

“Sections 80D to 80F (definition of Scottish taxpayer) apply for the purposes of this Part.”

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- (2) This section ceases to have effect at the end of the last year for which Part 4 has effect (see section 25(2) and (4)).

*Scottish tax on land transactions*

**28 Scottish tax on transactions involving interests in land**

- (1) In Part 4A of the 1998 Act (as inserted by section 23), after Chapter 2 (inserted by section 25) insert—

**“CHAPTER 3**

**TAX ON TRANSACTIONS INVOLVING INTERESTS IN LAND**

**80I Tax on transactions involving interests in land**

- (1) A tax charged on any of the following transactions is a devolved tax—
- (a) the acquisition of an estate, interest, right or power in or over land in Scotland;
  - (b) the acquisition of the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.
- (2) The tax may be chargeable—
- (a) whether or not there is any instrument effecting the transaction,
  - (b) if there is such an instrument, regardless of where it is executed, and
  - (c) regardless of where any party to the transaction is or is resident.

**80J Certain transactions not taxable**

- (1) Tax may not be imposed under section 80I on so much of a transaction as relates to land below mean low water mark.
- (2) The following persons are not to be liable to pay a tax imposed under section 80I—

*Government*

A Minister of the Crown  
 The Scottish Ministers  
 A Northern Ireland department  
 The Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government

*Parliament etc*

The Corporate Officer of the House of Lords  
 The Corporate Officer of the House of Commons  
 The Scottish Parliamentary Corporate Body  
 The Northern Ireland Assembly Commission  
 The National Assembly for Wales Commission  
 The National Assembly for Wales.”

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- (2) Tax may not be charged in accordance with the provisions inserted by this section on a land transaction within the meaning of Part 4 of the Finance Act 2003 unless section 29 (disapplication of UK stamp duty land tax) has effect in relation to that transaction.

## 29 Disapplication of UK stamp duty land tax

- (1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.
- (2) In section 48 (chargeable interests), in subsection (1)(a) for “the United Kingdom” substitute “England and Wales or Northern Ireland”.
- (3) In Schedule 3—
- (a) Part 1 contains further amendments relating to the disapplication of stamp duty land tax to Scotland, and
  - (b) Part 2 makes provision, in consequence of the disapplication of paragraph 1(1)(b) of Schedule 10 to the Finance Act 2003 (prescribed information in land transaction returns) to transactions relating to land in Scotland, about the supply of information to Her Majesty's Revenue and Customs.
- (4) This section has effect in relation to land transactions with an effective date on or after such date as is appointed by the Treasury by order under this subsection.
- (5) But this section does not have effect in relation to any transaction—
- (a) effected in pursuance of a contract entered into and substantially performed on or before the date on which this Act receives Royal Assent, or
  - (b) effected in pursuance of a contract entered into on or before that date and not excluded by subsection (6).
- (6) A transaction effected in pursuance of a contract entered into on or before the date on which this Act receives Royal Assent is excluded if—
- (a) there is any variation of the contract, or assignment of rights under the contract, after that date,
  - (b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (c) after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

### Commencement Information

- I4** S. 29 has effect as specified by [The Scotland Act 2012, Section 29 \(Disapplication of UK Stamp Duty Land Tax\) \(Appointed Day\) Order 2015 \(S.I. 2015/637\)](#), **art. 2**

### *Scottish tax on disposals to landfill*

## 30 Scottish tax on disposals to landfill

- (1) In Part 4A of the 1998 Act (as inserted by section 23), after Chapter 3 (inserted by section 28) insert—



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## “CHAPTER 4

### TAX ON DISPOSALS TO LANDFILL

#### 80K Tax on disposals to landfill

- (1) A tax charged on disposals to landfill made in Scotland is a devolved tax.
- (2) A disposal is a disposal to landfill if—
  - (a) it is a disposal of material as waste, and
  - (b) it is made by way of landfill.”
- (2) Tax may not be charged in accordance with the provision inserted by this section on a disposal if the disposal is made before the date appointed under section 31(4).

#### 31 Disapplication of UK landfill tax

- (1) Part 3 of the Finance Act 1996 (landfill tax) is amended as follows.
- (2) In section 40(1) (charge on taxable disposal), after “taxable disposal” insert “ made in England and Wales or Northern Ireland ”.
- (3) Schedule 4 contains further amendments relating to the disapplication of landfill tax to Scotland.
- (4) This section has effect in relation to disposals made on or after such date as is appointed by the Treasury by order under this subsection.

#### Commencement Information

- I5** S. 31 has effect as specified by [The Scotland Act 2012, Section 31 \(Disapplication of UK Landfill Tax\) \(Appointed Day\) Order 2015 \(S.I. 2015/638\)](#), **art. 2**

### *Borrowing*

#### 32 Borrowing by the Scottish Ministers

- (1) The 1998 Act is amended as follows.
- (2) Section 66 (borrowing by the Scottish Ministers etc) is amended as follows.
- (3) For subsection (1) substitute—
  - “(1) The Scottish Ministers may borrow from the Secretary of State—
    - (a) any sums required by them for the purpose of meeting a temporary excess of sums paid out of the Scottish Consolidated Fund over sums paid into that Fund,
    - (b) any sums required by them for the purpose of providing a working balance in the Scottish Consolidated Fund, and
    - (c) any sums which in accordance with rules determined by the Treasury are required by them to meet current expenditure because of a

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shortfall in receipts from devolved taxes, or from income tax charged by virtue of a Scottish rate resolution, against forecast receipts.

- (1A) The Scottish Ministers may, with the approval of the Treasury, borrow by way of loan any sums required by them for the purpose of meeting capital expenditure.
- (1B) A sum is required for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 70.”
- (4) In subsection (3) after “section” insert “ from the Secretary of State ”.
- (5) After subsection (4) insert—
- “(5) The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Scottish Ministers may borrow money.”
- (6) Section 67 (lending by the Secretary of State) is amended as follows.
- (7) In subsection (2) for “that section” substitute “ section 66(1) ”.
- (8) In subsection (3) omit “increased”.
- (9) After subsection (3) insert—
- “(3A) An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than £500 million.”
- (10) After section 67 insert—

**“67A Lending for capital expenditure**

- (1) The aggregate at any time outstanding in respect of the principal of sums borrowed under section 66(1A) shall not exceed £2.2 billion.
- (2) The Secretary of State may by order made with the consent of the Treasury substitute for the amount (or substituted amount) specified in subsection (1) such amount as may be specified in the order.
- (3) An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than £2.2 billion.
- (4) A person lending money to a member of the Scottish Government is not bound to enquire whether the member of the Scottish Government has power to borrow the money and is not to be prejudiced by the absence of any such power.
- (5) The Scottish Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 66(1A).
- This is subject to section 66(2).
- (6) Security given in breach of subsection (5) is unenforceable.”
- (11) In section 114(1) (powers which may be exercised by modifying the 1998 Act), after “sections” insert “ 66(5), ”.

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(12) In Schedule 7 (procedure for subordinate legislation), in paragraph 1, at the appropriate places insert—

“Section 66(5)	Type E”; and
““Section 67A(2)	Type E”.

**Commencement Information**

**I6** [S. 32](#) in force at 12.12.2014 by [S.I. 2014/3250](#), [art. 2](#)

*Reports on operation of this Part*

**33 Reports on the implementation and operation of this Part**

- (1) The Secretary of State must—
- make reports on the implementation and operation of this Part (see subsection (5)),
  - lay a copy of each report before each House of Parliament, and
  - send a copy of each report to the Scottish Ministers, who must lay a copy of it before the Scottish Parliament.
- (2) The Scottish Ministers must—
- make reports on the implementation and operation of this Part (see subsection (5)),
  - lay a copy of each report before the Scottish Parliament, and
  - send a copy of each report to the Secretary of State, who must lay a copy of it before each House of Parliament.
- (3) A report must be made under each of subsections (1) and (2)—
- before the end of the period of one year beginning with the day on which this Act is passed, and
  - thereafter, before the end of each subsequent period of one year until the final reports are made under subsection (4).
- (4) Final reports must be made on or as soon as practicable after—
- 1 April 2020, or
  - if later, the first anniversary of the day on which the last of the provisions of this Part comes into force.
- (5) A report on the implementation and operation of this Part must include—
- a statement of the steps which have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards the commencement of the provisions of this Part,
  - a statement of the steps which the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the commencement of the provisions of this Part,

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- (c) an assessment of the operation of the provisions of this Part which have been commenced,
- (d) an assessment of the operation of any other powers to devolve taxes to the Scottish Parliament or to change the powers of the Scottish Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part,
- (e) the effect of this Part on the amount of any payments made by the Secretary of State under section 64(2) of the 1998 Act (payments into the Scottish Consolidated Fund), and
- (f) any other matters concerning the sources of revenue for the Scottish Administration (within the meaning of section 126(6) of the 1998 Act) which the maker of the report considers should be brought to the attention of the Parliament of the United Kingdom or the Scottish Parliament.

**Changes to legislation:**

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