

Finance and Public Administration Committee

9th Meeting 2024, (Session 6), Tuesday 5
March 2024

Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

Purpose

1. The Committee is invited to take evidence on the [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Bill](#) from—
 - Alan Doak, Director, Mineral Products Association (Scotland) Ltd,
 - Dougie Neill, Scottish Environmental Services Association, and
 - Jonathan Sharma, Policy Manager - Local Government Finance, COSLA.
2. This is the first evidence session on the Bill and follows the Committee's fact-finding visit to Brewster Brothers aggregates recycling facility, where Members discussed the impact of the tax on the use of virgin and recycled aggregates.
3. This paper provides background information on the Bill and a summary of the written submissions received. SPICe has produced a separate [briefing on the Bill](#).

Background

4. The Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance on 14 November 2023 and makes provision for a Scottish Aggregates Tax ("SAT"), a tax on the commercial exploitation of primary aggregates, to be administered by Revenue Scotland. The Bill also makes a number of amendments to the Revenue Scotland and Tax Powers Act 2014 (RSTPA) in relation to the administration of devolved taxes.
5. As explained in the [policy memorandum](#), the Bill was introduced primarily as a consequence of measures enacted in the Scotland Act 2016, which enabled the Scottish Parliament to legislate for a tax to replace the UK Aggregates Levy (UKAL) in Scotland. The Bill proposes that the SAT will be collected and managed by Revenue Scotland, as the tax authority responsible for the administration of devolved taxes in Scotland.

Outline of Bill provisions

6. Part 1 of the Bill establishes the new SAT and contains the following provisions:

Chapter 1 – The tax: defines the tax and gives responsibility to Revenue Scotland to administer and collect the tax;

Chapter 2 – Key concepts: defines the fundamental concepts underlying the tax, including—

- a) which aggregate is taxable,
- b) which aggregate is exempt from the tax,
- c) what is commercial exploitation, and
- d) who is liable to pay the tax;

Chapter 3 – Calculation of tax: 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: contains various provisions on tax administration, including regarding registration, tax returns, and special cases;

Chapter 5 – Penalties: 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: makes provisions about reviews and appeals of decisions by Revenue Scotland in relation to the tax; and

Chapter 7 – Interpretation: defines the key terms used in Part 1.

7. Part 2 of the Bill contains six substantive provisions, and one minor correction, making separate amendments to the RSTPA 2014, as follows:

- 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 LBTT;
- 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 communications from Revenue Scotland to taxpayers, including provision about the use of electronic communications;
- a power for the Scottish Ministers to make regulations on the use of automation by Revenue Scotland;
- a power for Revenue Scotland to off-set a taxpayer debit against a credit;
- a minor amendment to section 94, substituting the word “section” for “paragraph”.

8. The policy memorandum explains that the amendments in Part 2 will relate to Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLT) in

addition to SAT and are intended “to support the efficient and effective collection of all devolved taxes by Revenue Scotland”.

9. The memorandum further notes that the setting of the SAT rate, as well as detailed provisions for the administration of the tax, including the claiming of tax credits, are to be set out in subordinate legislation.

Policy aims

10. Commercial exploitation of primary aggregates¹ (mainly crushed rock, gravel and sand) has been subject to UKAL since its introduction in April 2002. Currently, 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. The definitions of commercial exploitation used in the Bill for the SAT align with those provided for in the UKAL.
11. The policy memorandum states that the proposed SAT retains the fundamental structure of UKAL, which, “offers a degree of continuity for taxpayers [...] while also ensuring that the devolved tax can evolve over time to support Scottish Government circular economy objectives”. It highlights general support for the continuity of the existing definitions of aggregate, taxable aggregate, commercial exploitation and exempt aggregate, given:
 - “the definitions had developed over a long period of time with extensive engagement between the UK Government and stakeholders,
 - they are widely understood by the industry, and
 - they had been considered and validated through litigation, including by the European courts”.
12. The Bill provides that SAT can be charged on taxable aggregate at any point of commercial exploitation, while aggregate imported to Scotland from outside the UK will be taxable at the first point of commercial exploitation to occur after the aggregate arrives in Scotland, an approach consistent with current arrangements for the UKAL.
13. In relation to cross-border movement of aggregates within the UK, “the UK Government have stated that movements of aggregate from Scotland would become subject to UKAL on the same basis as imports”, while “the Scottish Government intends that aggregate moved to Scotland from the rest of the UK should be subject to SAT”. The policy memorandum explains that “commercial exploitation of aggregate moved to Scotland from the rest of the UK will be taken to occur in Scotland. As a result, some aggregate producers based in the rest of

¹ The Policy Memorandum explains that primary aggregates, otherwise known as virgin aggregates, are produced from naturally occurring mineral deposits used for the first time. Secondary aggregates refer to the by-products of quarrying and mining operations or material arising as an unavoidable consequence of construction works, as well as manufactured aggregates obtained as a by-product of other industrial processes. Recycled aggregates are those arising from the processing of inorganic material previously used in construction.

the UK may have to register for SAT, but only where they are responsible for commercially exploiting aggregate moving to Scotland”.

14. According to the policy memorandum, aggregates are extracted and sourced across Scotland, with operating quarries found in nearly all 32 local authority areas. The memorandum states that the design and delivery of the SAT is built on the foundation of the Scottish Government’s Framework for Tax 2021 and its introduction will support the Scottish Government’s ambitions for a circular economy, through—

- encouraging the minimum necessary exploitation of primary aggregates
- maximising the use of secondary and recycled aggregates, and
- incentivising innovation and development of alternative materials.

Scottish Government consultation

15. The Scottish Government announced its intention to introduce a Scottish Aggregates Tax in 2021. Devolution of the tax had previously been delayed due to a court case against UKAL on state aid grounds which resulted in the European Commission finding the UKAL was lawful, apart for one exemption for shale (which was subsequently removed in 2015). The [UK Government then reviewed the levy](#). Prior to the commencement of the UKAL review, the Scottish Government commissioned its own [research into potential options for a SAT](#), with conclusions published in August 2020.

16. A [public consultation on proposals for the SAT](#) was held from 26 September to 5 December 2022 and received 24 responses. The consultation covered the context for a devolved Aggregates Tax, the scope of the tax, exemptions and reliefs, tax rates, a sustainability fund, and several tax administration and compliance questions. The policy memorandum notes that this was accompanied by a programme of stakeholder engagement, including meetings with aggregates industry representatives, COSLA and the Scottish Environment Protection Agency and quarry site visits.

17. An [analysis report](#) on the responses to the public consultation was published by the Scottish Government on 15 November 2023. According to that report, respondents, particularly those representing industry interests, expressed strong support for the tax to align closely with UKAL and retain current definitions, exemptions and reliefs. Some respondents, however, argued that the Scottish Government should introduce a distinctive tax with a broader scope, or could express the same scope more clearly in legislation. While the report notes broad agreement on the circular economy goals associated with the introduction of the SAT, the consultation responses highlight “complexities associated with creating two tax jurisdictions where there was previously one, including the treatment of cross-border movements of aggregate and the importance of avoiding double taxation”.

18. Following the consultation, an expert advisory group was established in January 2023. The group has met on five occasions and discussed the aggregates sector

in Scotland and the process to develop a SAT Bill, potential definitions of “aggregate” and “commercial exploitation”, exemptions and reliefs, the tax treatments of imports and exports of aggregates, rate setting, the potential to establish a sustainability fund linked to SAT and administration of the tax by Revenue Scotland.

19. In relation to proposals set out in Part 2 of the Bill, the policy memorandum notes that these “reflect detailed discussions with Revenue Scotland”, however, it further states that “no formal consultation with other tax stakeholders has been undertaken on these prior to their inclusion in the Bill”. The Scottish Government commits to future consultation on the provisions relating to automation and communications from Revenue Scotland to taxpayers prior to bringing forward regulations.
20. According to the policy memorandum, the provisions in the Bill are “not expected [to] have any impact on equal opportunities or fairness”, do not directly raise any relevant human rights concerns and are not expected to have an adverse impact on island communities. Full Equalities Impact Assessment, Fairer Scotland Duty Assessment, Island Communities Impact Assessment and Strategic Environmental Assessment were therefore not deemed necessary for this Bill.
21. A [Business and Regulatory Impact Assessment](#) (BRIA) for the Bill was published on 15 November. The BRIA considered three possible options in relation to establishing a replacement for the UKAL in Scotland:
 1. do not replace UKAL once it is disapplied in Scotland,
 2. introduce a replacement tax that retains the fundamental structure of UKAL while being tailored to Scotland’s needs, or
 3. provide for a replacement tax that takes a fundamentally different approach to the existing UKAL, redefining key concepts and introducing a different system for the administration of SAT.
22. The BRIA recommended the adoption of option 2, “on the basis that it will reduce the uncertainty for current and future taxpayers and their customers and make the transition between taxes easier for the businesses affected”. It further recommended the inclusion of the measures in Part 2 of the Bill due primarily to “the relative infrequency with which primary legislation on tax matters is brought forward for consideration by the Scottish Parliament” and “the views of Revenue Scotland on the benefits that the provisions could bring”.

Financial implications of the Bill

23. The [Financial Memorandum](#) (FM) assesses the overall costs of the Bill relating to the set-up and operation of SAT as a whole, rather than individual provisions. Calculations are based on the assumption that the tax rate set for the SAT is the same as that under the UKAL, currently charged at £2.00 per tonne, although this rate is expected to increase to £2.03 per tonne from April 2024.

24. Costs are expected to be incurred primarily by Revenue Scotland and, to a lesser extent, by the Scottish Fiscal Commission (SFC) and the Scottish Courts and Tribunals Service (SCTS). A summary of these cost estimates is available on pages 13-14 of the FM, showing a total of £3,385,000 - £4,320,000 to be incurred by the Scottish Administration (including Revenue Scotland and SFC) during the first three years (2024-25 to 2026-27) and approximately £26,000 to be incurred by the SCTS over the same period. The FM also includes a commitment from the Scottish Government that any additional costs incurred by Revenue Scotland to deliver the SAT will be met. No cost estimates are provided for provisions in Part 2 of the Bill, with the FM stating that “the measures would be broadly neutral in terms of Revenue Scotland’s costs of operation, relative to the counterfactual where they are not introduced”.
25. In relation to the impact of the SAT on the Scottish budget, the FM notes that a Scotland-specific breakdown of UKAL revenues is not currently available from HMRC. The SFC produced an illustrative forecast of Scotland’s share of the UKAL in May 2023, set out in Table 1 of the FM (page 5). According to SFC’s forecast, the estimated Scottish share of UKAL Revenue is expected to amount to £60 million in 2023-24, £60 million in 2024-25, raising to £61 million in 2025-26. The illustrative forecast, however, is based on limited data and a full forecast is expected in 2024.
26. Under the terms of the Fiscal Framework, the Scottish Government’s budget will be reduced once the tax is introduced to reflect the fact that the Scottish Government will retain receipts from the SAT. The FM does not discuss the Block Grant Adjustment for the SAT, noting this is yet to be agreed by the Scottish and UK governments.
27. The FM notes that the Scottish Government will need to reimburse the UK Government for any net additional costs incurred in ‘switching off’ the UKAL in Scotland. HMRC has confirmed that it expects there will be some additional costs for switching off the UKAL and that it will seek reimbursement from the Scottish Government for these costs, however, an estimate of these costs is not yet available.
28. The Presiding Officer wrote to the Cabinet Secretary on 16 November confirming that a financial resolution is required in respect of the Bill.

Written submissions

29. The Committee issued a call for views on the Bill (Annexe A) which ran for nine weeks, from 11 December 2023 to 9 February 2024 and received 9 responses, which have been published on [Citizen Space](#).
30. The submissions received reflect broad agreement with Part 1 of the Bill and the general principle that a tax be levied on the commercial exploitation of primary aggregates. Most respondents agree that the proposed SAT aligns with the Scottish Government’s Framework for Tax 2021, and the principles and strategic objectives that underpin the Scottish Approach to Taxation.

31. The definitions and exemptions used in the Bill, as well as the penalties and appeals processes set out in relation to the SAT and, more generally, consistency with the UK treatment of the tax, are generally welcome. The Mineral Products Association (MPA) Scotland notes that with “many companies that operate in both tax jurisdictions, [...] differences in definitions would introduce complexity and potentially perverse incentives and outcomes for no discernible benefit.” Resource Management Association Scotland, however, raises an issue regarding the definition, arguing that the phrase “extracted for use as bulk fill” is not inclusive enough and potentially misses many aggregate products and uses. In terms of exemptions, COSLA calls for exemptions to the SAT where there is a clear public benefit. On a wider point regarding the aims of the tax, MPA Scotland notes that “the tax has no effect on either the availability of recycled materials, or any other logistical and technical considerations, and therefore cannot directly minimise the exploitation of virgin aggregates.”
32. Several submissions raise concerns regarding the interaction of SAT and UKAL and cross-border transfers. As highlighted by the Chartered Institute of Taxation (CIOT), the need to ascertain the precise location of commercial exploitation in order to determine which tax applies may lead to confusion for site operators and businesses. CIOT notes that “the Scotland Act 2016 provides that the basis for SAT is situs² of commercial exploitation”, therefore SAT cannot be based on the source of the aggregate within the current framework. It further explains that “by basing the charge in whichever country the aggregate is subject to commercial-exploitation, Scotland is losing out on the export revenue of their natural resources, but it is at least consistent with the UKAL’s position with exports”.
33. Should rates vary between Scotland and the rest of the UK, CIOT warns of the potential for adverse cross border behavioural impacts. The Scottish Environmental Services Association and Resource Management Association Scotland argue in favour of an increased rate of the tax to incentivise the wider adoption of recycled aggregates and ask for the two governments to work together to bring about a UK-wide increase in the Aggregates Tax (and Levy).
34. While provisions in Part 1 of the Bill are generally welcome, submissions received from CIOT, Institute of Chartered Accountants of Scotland (ICAS) and the Law Society of Scotland raise concerns regarding Part 2 of the Bill, covering the administration of devolved taxes by Revenue Scotland.
35. Both CIOT and ICAS express disappointment at the lack of public consultation regarding the provisions in Part 2 of the Bill. While CIOT considers the provisions to be reasonable and proportionate, it calls for clarification regarding the use of automation (section 55), the repayment refusal and offset provisions (sections 52 and 56), whether this can involve a mixture of devolved taxes and whether/to what extent the set-off provisions apply when an overdue tax is subject to an appeal. In their submission, CIOT argues that the inclusion of these provisions in “an unrelated piece of legislation further demonstrates the case for Scotland to be

² Location

able to pass its own annual Finance Bills for administrative changes”. A similar case is made by ICAS in their submission to the Committee. The Law Society of Scotland also argues in favour of a process that allows for regular maintenance of the devolved taxes, suggesting that this could form part of the budget process

36. In relation to Revenue Scotland’s power to offset credits and debts across the taxes it administers, ICAS argues that this “appears somewhat heavy-handed” and notes that similar powers may not be used extensively by HMRC, although they are currently seeking clarification in this regard. Based on the understanding that offsetting provision is only to apply to fully devolved taxes, ICAS considers the measure to be unnecessary and “possibly premature at this stage of the devolution process”.
37. The Law Society of Scotland seeks similar clarifications to CIOT in relation to section 52 (repayment refusal) of the Bill and raises concerns regarding the “proportionality and necessity” of provisions in section 56 (set-off in relation to tax credits and debits). It highlights the apparent lack of safeguards for taxpayers in the legislation to address the situation should they disagree with a Revenue Scotland decision about whether an amount of tax is outstanding. The Law Society, similar to ICAS, notes that off-set provisions are rarely used by HMRC and that their introduction “is disproportionate in a tax system which only includes two devolved taxes (being LBTT and the Scottish Landfill Tax).”
38. The Law Society also proposes that the following technical legislative changes be included in the Bill— Land and Buildings Transaction Tax (LBTT) Group Relief and Scottish Share Pledges (clarifying the availability of LBTT group relief for transactions which took place before 2018 but where Scottish share pledges were in place), legislative changes in relation to the five year period for the purposes of sub-sale development relief (SSDR), in respect of the LBTT, and other issues relating to LBTT group relief and company demergers.

Fact-finding visit

39. As part of its scrutiny of the Bill, the Committee visited the [Brewster Brothers](#) aggregates recycling facility in Livingston on Tuesday 27 February. A range of issues were discussed, including:
- the impact of the rate of the SAT on the recycled aggregates industry. It was suggested that possible ways of delivering the environmental aims of the Bill might include a higher rate of SAT, increasing the tax over a number of years, or the introduction of tax credits for the use of recycled aggregates;
 - the impact of the tax on cross-border movement of aggregates and the pricing of aggregates including transport costs, which was suggested to amount to 40-60% of the delivered price;
 - the availability of virgin and recycled aggregates and their geographical distribution across Scotland. Members heard that 50% of construction

- sites in Scotland are located within the Central Belt, where there are 14 recycling wash plants, such as the Brewster Brothers site in Livingston;
- the process for obtaining recycled aggregates from brownfield excavation waste and greenfield soil from new built sites; as well as
 - the different uses and market share of recycled and virgin aggregates.

Next steps

40. The Committee will continue taking evidence on the Bill at Stage 1 at its meetings on 12 and 19 March 2024.

Committee Clerking Team
February 2024

Call for Views

The Committee's call for views on the Bill included the following questions—

1. Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates?
2. Does the proposed Scottish Aggregates Tax (SAT) align with the Scottish Government's [Framework for Tax 2021](#), which sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation? In particular, please set out the extent to which you consider that the proposed SAT reflects the principles of good tax policy making, included in the Framework for Tax, namely proportionality, certainty, convenience, engagement, effectiveness and efficiency.
3. In this Bill, the Scottish Government has chosen to use the same definition of aggregate for the SAT on the basis that "it is compatible with the intended objectives for the tax, is well understood by aggregate producers, and is supported by existing UK Aggregates Levy (UKAL) taxpayers". Do you agree with this approach of using the same definitions as UKAL for the Scottish Aggregates Tax?
4. Part 1, Chapter 2 of the Bill provides definitions of some terms such as aggregate. It also sets out exemptions to the SAT such as particular types of aggregate and excepted processes. Are these definitions and exemptions appropriate and will they deliver the strategic and policy objectives which the Scottish Government has set for the Bill?
5. Should the Bill be passed, aggregate moved to Scotland from the rest of the UK will be subject to SAT, while aggregate moved to the rest of the UK from Scotland is expected to be subject to UKAL on the same basis as imports. What are the main benefits and challenges that may arise in relation to the tax treatment of cross-border movement of aggregate? Do you foresee any cross-border issues, behavioural or revenue impacts arising from this proposed approach?
6. Are the arrangements for penalties and appeals as set out in the Bill appropriate?
7. Do you consider that the provisions set out in Part 2 of the Bill will support effective and efficient administration of devolved taxes by Revenue Scotland?
8. Are there other changes you would like to see included in Part 2 of the Bill to support the effective administration of devolved taxes in Scotland?
9. Do you consider that the estimated costs and savings set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?
10. One policy objective of the Bill is to minimise necessary exploitation of primary aggregates. Therefore, it appears that, similarly to the Scottish Landfill Tax, the policy objective of the Bill is to reduce revenues deriving from this tax power over time. Do you agree with this approach?



**Aggregates Tax and Devolved Taxes Administration Bill
Finance and Public Administration Committee – call for Evidence
COSLA Submission**

COSLA is pleased to provide written evidence to the Committee on the Aggregates Tax and Devolved Taxes Administration Bill. COSLA's evidence is presented by officers based on COSLA's existing politically agreed positions, as the Aggregates Tax specifically is yet to be tested politically.

1. Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates?

Whilst a specific position on the Aggregates Tax is still to be tested with our Members, COSLA's broad position is that such a Tax would contribute to our priorities, shared with the Scottish Government, to transform our economy through a just transition to deliver net zero, to protect the environment and encourage a sustainable economy through re-use and recycling.

COSLA notes that the Tax replaces the existing UK Aggregates levy and would concur that devolving the powers to Scotland enhances the scope for fiscal decisions to be made more effectively within a Scottish context.

Importantly, COSLA believes there is an opportunity to work with the Scottish Government and other stakeholders to shape the Aggregates Tax in a way which is more reflective of local circumstances going forward, even if initially the Tax may be implemented along similar lines to the existing UK levy.

We would need to understand whether there are any additional direct financial implications of the SAT (noting that Ministers will set the rate of SAT in due course), for instance for Councils in procuring aggregate materials or where they are operating an aggregates facility, as four local authorities do operate quarries. Should the intention be to increase the incentive to move away from sourcing primary aggregates to secondary recycled aggregates, then how might this impact on Councils' ability to procure at reasonable cost? The risk being that Councils simply face increased prices for purchasing aggregates, if options to source secondary aggregates are limited. Where Councils run their own quarries, commercial extraction does take place, however materials are also used for roads maintenance (including environmental measures such as cycle paths), which is for public benefit.

A question arises therefore as to exemptions which could form part of the SAT, where there is a clear public benefit. The Bill as it stands does not include any provision for exemptions, other than the tax credits for cross-border circumstances. Therefore, we would welcome close attention being paid to the merits of applying the SAT in these circumstances and to explore exemptions carefully. For example if a local authority is developing Active Travel routes, would it be appropriate to apply the Tax, part or in full? So in that case the strategic decision could be taken to remove or reduce the Tax, to encourage the investment required to achieve the overarching goal of active travel.

2. Does the proposed Scottish Aggregates Tax (SAT) align with the Scottish Government's [Framework for Tax 2021](#), which sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation?

In particular, please set out the extent to which you consider that the proposed SAT reflects the principles of good tax policy making, included in the Framework for Tax, namely proportionality, certainty, convenience, engagement, effectiveness and efficiency.

COSLA's broad view is that the SAT, as proposed to be introduced, does meet the underpinning principles of the Scottish Approach to Taxation. COSLA officers participated in an advisory group prior to the Scottish Government's consultation on the SAT, and advice was taken on board from a range of stakeholders in proposing the Tax in a way that meets the principles of good tax policy making.

COSLA officers are also represented on a SAT Programme Board which has been set up to ensure the tax design approach meets the principles and that key risks are properly addressed, and that there is effective engagement and communication.

COSLA would argue that there is scope to go beyond a SAT set nationally, to explore any merits in developing the SAT which gives greater local fiscal empowerment and to more effectively promote the aims of encouraging sustainable economic growth and supporting our circular economy. At this point we simply welcome any opportunity for that type of discussion and recognise that initially at least this will be a national Tax.

3. In this Bill, the Scottish Government has chosen to use the same definition of aggregate for the SAT on the basis that "it is compatible with the intended objectives for the tax, is well understood by aggregate producers, and is supported by existing UK Aggregates Levy (UKAL) taxpayers". Do you agree with this approach of using the same definitions as UKAL for the Scottish Aggregates Tax?

COSLA is aware through the advisory group that this is a wish from a number of stakeholders most directly impacted by the SAT, to keep the same definitions. There should nonetheless be opportunity to shape the SAT in the future in a way that may require a widening of the definition and objectives of the Tax. This could be about aligning more closely with complementary measures around waste and recycling.

4. Part 1, Chapter 2 of the Bill provides definitions of some terms such as aggregate. It also sets out exemptions to the SAT such as particular types of aggregate and excepted processes. Are these definitions and exemptions appropriate and will they deliver the strategic and policy objectives which the Scottish Government has set for the Bill?
5. Should the Bill be passed, aggregate moved to Scotland from the rest of the UK will be subject to SAT, while aggregate moved to the rest of the UK from Scotland is expected to be subject to UKAL on the same basis as imports. What are the main benefits and challenges that may arise in relation to the tax treatment of cross-border movement of aggregate? Do you foresee any cross-border issues, behavioural or revenue impacts arising from this proposed approach?

COSLA is aware that there has been substantive discussion about cross-border issues. Our view is that other respondents will have more expertise to bring to the detailed questions on operation, however we are due to hold engagement sessions with local authority professionals and this may generate further views. For instance we are aware that several Councils operate quarries and Councils are significant procurers of aggregates.

6. Are the arrangements for penalties and appeals as set out in the Bill appropriate?

The penalties and appeals processes seem appropriate, however we may have further comment from our ongoing engagement with local authority professionals.

7. Do you consider that the provisions set out in Part 2 of the Bill will support effective and efficient administration of devolved taxes by Revenue Scotland?

We consider that the provisions support effective and efficient administration of devolved taxes by Revenue Scotland. Our role on the SAT Programme Board and regular engagement with Revenue Scotland should enable us to comment if there is any divergence from the provisions.

8. Are there other changes you would like to see included in Part 2 of the Bill to support the effective administration of devolved taxes in Scotland?

We are unaware of any changes that would need to be made at this point.

9. Do you consider that the estimated costs and savings set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?

We can only comment on the costs on local authorities and, at this point, we are not aware that there are any significant direct additional costs, though we note there will be some additional administration costs for those Councils operating quarries.

Whether the SAT will have significant indirect costs for local authorities, where they have to continue to purchase primary aggregates, is unknown at this point. This will be dependent on Ministers' decisions regarding setting the rate of SAT. We have made comment in question 1 setting out our ask to give close consideration to where exemptions for local authorities could be applied.

10. One policy objective of the Bill is to minimise necessary exploitation of primary aggregates. Therefore, it appears that, similarly to the Scottish Landfill Tax, the policy objective of the Bill is to reduce revenues deriving from this tax power over time. Do you agree with this approach?

This approach is in line with COSLA's priorities as we have set out above.

About MPA Scotland

1. The Mineral Products Association Scotland (MPAS) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and industrial sand industries. MPAS Membership is made up of independent SME quarrying companies as well as major international and global companies. MPAS members provide 100% of cement production in Scotland, 90% of aggregates production, 95% of asphalt and over 70% of ready-mixed concrete production and precast concrete production.

Q1. Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates?

2. Extraction of primary aggregates in Scotland as in the rest of the UK is well-managed and heavily regulated. The industry has a strong environmental track record of managing sites in production and some spectacular restorations once extraction has ended. MPA Scotland members have contributed towards the creation of 80 square kilometres of priority habitat across the UK, including wetlands and other hard-to-create landscapes, with a further 110 square kilometres of priority habitat planned.
3. Virgin aggregate production in Scotland is over 20mt per annum on average. Demand is likely to grow over the coming years according to MPA research, providing further economic opportunity for Scotland, in particular in more remote rural parts of the country. This could be driven further by the very significant demands for aggregate and concrete arising from the expansion of offshore wind, a major potential growth sector for Scotland, and electricity networks, ports and other infrastructure to support it. Floating offshore wind in particular could be a big win for domestic mineral production, net zero and Scotland's economy, but would then be at odds with the aforementioned policy objective.
4. Recycled aggregates cannot replace primary sources in all applications, and while they have an important role in the sector this contribution should not be overplayed. Indeed, the Scottish Government's own research undertaken by Eunomia estimated that in 2017 the recycling rate of relevant construction and demolition (C&D) waste was around 87%. The research also showed that C&D related aggregates waste generation was forecast to grow from 1.2 mt in 2017 to 1.28 mt. Based on the current recycling rate of C&D waste the supply of recycled aggregates may grow from 1.05mt in 2017 to 1.12mt in 2030. These figures are some way short of the over 20mt of virgin aggregate required and reflect the fact that the contribution of recycled aggregate is limited by the availability of suitable feedstock.
5. MPA and MPA Scotland opposed the original introduction of the UK Aggregates Levy due to the flawed and misleading justification of offsetting the environmental damage resulting from extraction that was presented. The industry has a very strong track record on biodiversity, site management and restoration which has never been denied or refuted by any Government, yet the tax, which raises £350-400 million per year across the UK puts cost onto our members and ultimately their customers, a significant proportion of which are in the public sector.
6. Once the tax has been imposed however, it makes sense to levy it on commercial exploitation, and the design has proved to be functional. MPA Scotland and MPA were

pleased to see the Scottish Government avoiding the error of diverging for the sake of it and keeping the elements of the UK levy that are well-established and well-understood.

Q2. Does the proposed Scottish Aggregates Tax (SAT) align with the Scottish Government's Framework for Tax 2021, which sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation?

7. The SAT will be a revenue raiser, and as such meets the relevant principle of raising money to fund public service. Significant behaviour change is unlikely unless the Scottish Government decides to change the rate drastically, and even then there isn't an obvious supply of alternative materials available. Any approach with such a drastic rate change would have significant and severe implications for the Scottish construction sector, its customers, including the Scottish Government, and therefore the wider economy.
8. The Framework for Tax describes the behaviours changing impact of tax as increasing "the cost of harmful behaviours"; in as far as this applies to extraction of aggregates this is far too strong, and misrepresents the way the industry is managed, regulated and controlled. Our members have a strong track record on biodiversity management when sites are in use and on restoration afterwards, predating both the Landfill Tax and the Aggregates Levy. MPA recently celebrated fifty years of award-winning site restoration.
9. As a sales tax, the levy is simply a cost passed onto customers; it has no impact on the industry's environmental performance as it provides no incentive for an individual operator to improve performance. The environmental improvements made by operators over the past two decades have been driven by a range of other factors, for example the expectations of stakeholders and local communities and the commercial and sustainability benefits to businesses of operating to higher standards.
10. The tax is also a very expensive way to increase recycling. Comparing sales volumes of secondary and recycled aggregates after 2001 to that year as a baseline, and assuming half the increase is attributable to the incentive effect of the aggregates levy, the cost to end users per additional tonne of recycled and secondary aggregates comes to around £125 per tonne, over the period 2002-21. This cost is in the order of ten times higher than the market cost of a tonne of aggregates.¹
11. MPA believes Landfill Tax has been far more significant in driving up the recycling rate for construction and demolition waste, which is where the ability of tax to reduce harm is most impactful.

In particular, please set out the extent to which you consider that the proposed SAT reflects the principles of good tax policy making, included in the Framework for Tax, namely proportionality, certainty, convenience, engagement, effectiveness and efficiency.

¹ Sales of recycled materials in 2021 were an estimated 9.6 million tonnes higher than in 2001, prior to the introduction of the UK Levy (from 60 million tonnes in 2001 to 69.6 million tonnes in 2021). Between 2002 and 2021, the cumulative total increase in sales of recycled materials above the 2001 pre-Levy level of 60 million tonnes was 107.7 million tonnes. If we assume that 50% of this cumulative increase in sales of recycled materials was attributed to the Levy, it would mean that each additional tonne of recycled material supplied due to the Aggregates Levy over the period 2002/3 to 2021/22 would have had a Levy cost of around £125 per tonne (£6,725 million cumulative Levy cost over the 20 years to FY2021-22 divided by 53.9 million tonnes).

12. To the extent that it replicates the existing UK aggregates levy, and accepting that the tax does exist, it should meet those principles. Diverging from the design of the UK levy would be much riskier on several of these fronts; it could introduce substantial inefficiency and unfairness for Scottish producers, or undermine effectiveness for Revenue Scotland and ultimately the Scottish taxpayer.

Q3. In this Bill, the Scottish Government has chosen to use the same definition of aggregate for the SAT on the basis that “it is compatible with the intended objectives for the tax, is well understood by aggregate producers, and is supported by existing UK Aggregates Levy (UKAL) taxpayers”. Do you agree with this approach of using the same definitions as UKAL for the Scottish Aggregates Tax?

13. Yes. MPA Scotland and MPA consistently called for the Scottish Government to resist the temptation to change elements of the tax, without a very strong justification. There are many companies that operate in both tax jurisdictions and there is trade between both, so differences in definitions would introduce complexity and potentially perverse incentives and outcomes for no discernible benefit.

Q4. Part 1, Chapter 2 of the Bill provides definitions of some terms such as aggregate. It also sets out exemptions to the SAT such as particular types of aggregate and excepted processes. Are these definitions and exemptions appropriate and will they deliver the strategic and policy objectives which the Scottish Government has set for the Bill?

14. The definitions match the existing UK levy, which is the right decision. In terms of exemptions, those where there is no production in Scotland such as industrial lime, ball clay and china clay will not have an impact unless a company proposes to start production. For the objective of devolving the tax without undue distortion or disruption to existing markets, the definitions and exemptions seem appropriate.

Q5. Should the Bill be passed, aggregate moved to Scotland from the rest of the UK will be subject to SAT, while aggregate moved to the rest of the UK from Scotland is expected to be subject to UKAL on the same basis as imports. What are the main benefits and challenges that may arise in relation to the tax treatment of cross-border movement of aggregate? Do you foresee any cross-border issues, behavioural or revenue impacts arising from this proposed approach?

15. There would be significant potential for administrative cost from levying cross border flows. This may deter businesses from trading across the border, at least for smaller producers. This could reduce competition and thus raise costs for customers, including the Scottish Government. Many producers may find themselves having to deal with two different tax authorities; means to avoid this should be sought.
16. The impact would be more significant should there be a differential in the rates levied by the two jurisdictions, so requiring the difference to be paid. This could become market-distorting, by means of suppliers exiting a more highly-taxed market and making it less competitive. English producers may be keen to exploit any substantial increase in rates in Scotland.
17. There is no obvious benefit from creating a tax border for aggregate for a small (or no) differential in tax. It would be worth reviewing whether this is practically worth it for the volumes.

Q6. Are the arrangements for penalties and appeals as set out in the Bill appropriate?

18. No answer

Q7. Do you consider that the provisions set out in Part 2 of the Bill will support effective and efficient administration of devolved taxes by Revenue Scotland?

19. No answer

Q8. Are there other changes you would like to see included in Part 2 of the Bill to support the effective administration of devolved taxes in Scotland?

20. MPA Scotland would welcome the opportunity to work with Revenue Scotland in the detailed implementation of the Tax, following the effective collaboration in the Business Advisory Group. Whether in the Bill or simply as an undertaking, we urge the Scottish Government to continue the work of the SATBAG.

Q9. Do you consider that the estimated costs and savings set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?

21. It is not easy to assess likely costs until details are available, for instance if it is clear that there will be a change in the rate.

Q10. One policy objective of the Bill is to minimise necessary exploitation of primary aggregates. Therefore, it appears that, similarly to the Scottish Landfill Tax, the policy objective of the Bill is to reduce revenues deriving from this tax power over time. Do you agree with this approach?

22. Other than with punitive tax rises, the objective of reducing necessary extraction is unlikely to be met. Recycled and secondary aggregates make up around 28% of the GB market. This proportion has been fairly stable for some time, varying in line with construction and demolition activity. There are no obvious stockpiles of C&D waste that will be recycled as a result of this policy.

23. MPA scenario analysis show that significant and increasing tonnage of aggregates will be needed to supply our current and future construction needs: between 3.8 and 4.1 billion tonnes over 2022-35, which compares to 3.2 billion tonnes required over the 14-year period to 2021 (GB-wide figure). Recycled materials will continue to provide a valuable source of supply as it has done to date, but it cannot possibly fulfil all the demands created by construction activity.

24. The physical availability of recycled aggregates is determined by the potential for demolition activity, which enables construction, demolition and excavation wastes to then be processed. Their use will also depend on technical criteria and the ability to bring the material to markets, which rely on transport infrastructure. The tax has no effect on either the availability of recycled materials, or any other logistical and technical considerations, and therefore cannot directly minimise the exploitation of virgin aggregates.

25. The policy objective fails to recognise the diversity of use or specialism involved in both the extraction and production processes, or the specifications for many uses that require primary materials. The variety of uses is significant and underpins much of the economy, including infrastructure and manufacturing. Energy and transport infrastructure in particular have very specific requirements and meeting these relies

on a specialised sector delivering high quality aggregates to a precise specification for each project.

26. There is little scope to significantly increase the efficiency figure of 87% as much of the remaining 13% is silt and other soft wastes that are not recyclable. Tax incentives cannot increase the contribution of recycled materials in the absence of suitable feedstock to be recycled. Consideration should also be given to the uneven geographic distribution of the feedstock relative to overall market demand - given the availability and use tends to be focussed on existing urban areas where redevelopment is taking place. We are not aware of any research or evidence that demonstrates how the existing or potential future demand for aggregates can be satisfied by recycled material either in volume or quality terms. We are not aware of any research or evidence that provides projections on the future availability of material capable of being recycled.

Submission from Scottish Environmental Services Association

Information about your organisation

The Scottish Environmental Services Association (SESA) is the trade association which represents Scotland's waste management and secondary resources industry. SESA's Members provide a wide range of essential waste management and recycling services to local authorities and businesses, driving the management of waste up the waste hierarchy and helping Scotland towards its net zero ambitions.

SESA Members will not be taxpayers for the purposes of the new Scottish Aggregates Tax and therefore many of the administrative arrangements set out in the Bill do not apply to our sector. However, the production of recycled materials and secondary resources – key alternatives to the extraction of virgin aggregates – currently benefits from the UK Aggregates Levy. It is therefore essential that the Levy in Scotland (the Scottish Aggregates Tax) is maintained and also increased to ensure that recycled and secondary aggregates are competitive with primary aggregates in line with Scotland's resource efficiency aims.

As noted above, with no formal duties or obligations under the Scottish Aggregates Tax, we limit our response to questions 1, 4 and 5 of the call for views.

1 Do you agree, in principle, that a tax should be levied on the commercial exploitation of primary aggregates? (Yes / No)

Yes.

By reducing the environmental impacts of primary aggregates extraction, alternative secondary resources and recycled aggregates from construction and demolition (C&D) waste and incinerator bottom ash (IBA) play a crucial role in not only achieving sustainability in the construction industry but also the Scottish Government's wider circular economy objectives.

These secondary aggregates, and particularly Incinerator Bottom Ash Aggregate (IBAA) are strongly reliant upon the Scottish Aggregates Tax to remain competitive in a challenging market, allowing large-scale landfill diversion and avoidance of raw material extraction.

IBAA is recycled from the residues of Energy from Waste (EfW), a process for the incineration of residual waste which generates heat and power and avoids the environmental costs associated with sending waste to landfill. IBAA is used routinely to replace virgin aggregates for many applications and, given the location of EfW plants near to the source of waste generation, IBAA is generally produced close to aggregate markets. This reduces haulage traffic congestion and associated emissions. All IBAA used in construction diverts IBA from landfill, saving councils and businesses the cost of landfill tax,

moves waste up the waste hierarchy, and avoids the environmental costs of quarrying raw materials.

However, there are a number of challenges with using IBAA that means it would be severely damaged without the commercial attractiveness of avoiding a Scottish Aggregates Tax imposed on natural aggregates.

Unlike some other recycled aggregates, IBAA does not have a quality protocol to designate End of Waste. Therefore, even though it has a Position Statement from SEPA which allows IBAA to be used in certain construction applications provided it meets certain criteria, it remains classified as a 'waste' product rather than a 'recycled' product. As such it carries an ongoing liability for the project owners where IBAA is deployed. There is no such liability for users of natural and 'recycled' materials which are strictly non-wastes. Customers can therefore be less inclined to accept a waste product in their project, and therefore the Scottish Aggregates Tax will provide an important commercial incentive to use it.

4 Part 1, Chapter 2 of the Bill provides definitions of some terms such as aggregate. It also sets out exemptions to the SAT such as particular types of aggregate and excepted processes. Are these definitions and exemptions appropriate and will they deliver the strategic and policy objectives which the Scottish Government has set for the Bill?

We agree that the current exemption for recycled aggregate should be retained within the Scottish Aggregates Tax. The objectives of the Scottish Aggregates Tax should be to reduce the environmental costs associated with quarrying operations; cut demand for primary aggregates; and encourage the use of alternative materials where possible. We consider these objectives to be broadly aligned with the Scottish Government's aspiration to increase resource efficiency through waste reduction, re-use and recycling as set out in the current Waste Targets Routemap consultation. To remove the exemption for recycled aggregate would risk reversion of the success achieved to date; undermine the objectives of the Waste Targets Routemap; and potentially place secondary aggregates on a weaker competitive footing with primary aggregates.

5 Should the Bill be passed, aggregate moved to Scotland from the rest of the UK will be subject to SAT, while aggregate moved to the rest of the UK from Scotland is expected to be subject to UKAL on the same basis as imports. What are the main benefits and challenges that may arise in relation to the tax treatment of cross-border movement of aggregate? Do you foresee any cross-border issues, behavioural or revenue impacts arising from this proposed approach?

We have long maintained that the current rate of the UK Aggregates Levy is too low and that the benefits of the Levy (as noted above) would be enhanced if it were increased. This would help act as an added incentive for the construction sector to increase the wider adoption of recycled aggregates.

That said, the devolved powers present an additional layer of complexity to this argument and in order to avoid market distortion and reduce complexity for those operating under different tax authorities, the rates and structure of the Scottish Aggregates Tax would need to be maintained in close alignment to the UK Aggregates Levy. Due to the low rate of tax, the potential for market distortion from an increase in the Scottish Aggregates Tax (relative to the UK Levy) is perhaps less acute than changes to the rate of Landfill Tax. However, we nonetheless suggest that the Scottish Government works closely with the UK Government to bring about a UK-wide increase in the Aggregates Tax (and Levy), which is charged at a rate more in line with national and devolved Governments' resource efficiency aims.