

Memorandum of understanding between the Scottish Fiscal Commission and HM Revenue and Customs

Purpose

1. This document sets out a protocol for engagement between The Scottish Fiscal Commission (SFC, or “the Commission”) and HM Revenue and Customs (HMRC).

Context

2. From 1 April 2017 the SFC was constituted as a Non-Ministerial Department. The duties of the Commission are set out in the Scottish Fiscal Commission Act 2016. The key roles of the commission for 2018-19 onwards are to:

- Prepare independent forecasts of all revenue from fully devolved taxes including Land and Buildings Transactions Tax (LBTT) and Scottish Landfill Tax (SLfT); and Non-Domestic Rates income.
- Prepare independent forecasts of income tax receipts arising from the rate and threshold-setting powers devolved to the Scottish Parliament.
- Lay before the Scottish Parliament a report on its forecasts, at the same time as the Scottish Government publishes and lays before the Scottish Parliament its Draft Scottish Budget.
- Prepare independent forecasts of onshore GDP in Scotland.
- Prepare independent forecasts of expenditure on devolved demand led social security expenditure in Scotland.
- Set out the Commission’s assessment of the reasonableness of Scottish Minister’ projections as to their borrowing requirements.
- Conduct its business independently and within the bounds of relevant legislation as defined by the Scottish Fiscal Commission Act 2016.

3. HMRC administers taxes across the whole of the UK and also has a role in modelling and forecasting UK and Scottish tax revenues.

4. Given the roles of each organisation, there are a number of areas where engagement, collaboration and sharing of information will be beneficial to both organisations. This protocol sets out guidelines for engagement between the two organisations in areas including:

- Sharing data and information
- Developing data sources for modelling taxes in Scotland
- Developing models and analysis of taxes in Scotland

5. The Commission is independent from the Scottish Government. However, the Commission will work closely with the Scottish Government in delivering its functions - a formal protocol exists between the Commission and the Scottish Government. In general, where beneficial to their related functions, information and analysis shared between HMRC and the Commission may also be shared with the Scottish Government and vice versa (for information

shared between HMRC and the Scottish Government). However, this will need to be covered on a case by case basis where there are any sensitivities.

6. This protocol is not a contract and nor is it legally binding. It does not in itself create lawful means for the provision of information: it simply documents the processes and procedures agreed between the organisations. The agreement should not be interpreted as removing or reducing existing legal obligations or responsibilities on each party, for example as data controllers under the Data Protection Act.

7. Information will be shared between the Office of Budgetary Responsibility and the Commission around Budget events based in part on analysis produced by HMRC. This is covered by the MoU between the Commission and the OBR and not covered here. HMRC and the Commission will not share sensitive budget information directly in relation to UKG or SG Budgets.

8. The Commissioners for Revenue and Customs Act 2005 (CRCA) prohibits the disclosure of information held by HMRC except in specific circumstances.

9. These circumstances are detailed in section 18 CRCA, which provides for the disclosure of information by HMRC for the purpose of a function of HMRC (section (2) (a)). This MoU therefore proceeds on the basis that it is legal for HMRC to disclose information to support The Scottish Fiscal Commission fulfil its responsibilities in respect of devolved tax powers (see paragraph 2 above), since this will assist in HMRC's own taxes management function.

Principles

10. The protocol for engagement between the Commission and HMRC is based on the following principals:

- HMRC recognises that the Commission is an independent, apolitical and impartial analytical organisation and understands its functions.
- To that end, any data or information shared by HMRC with the Commission, and any broader collaboration and engagement with the Commission, will only be used by the Commission in delivering its functions as outlined in paragraph 2 and set out in the Scottish Fiscal Commission Act 2016. It is not within the Commissions functions to comment on HMRC activities, publications or analysis or UK Government policy more generally.
- HMRC will share relevant data with the Commission in a timely manner and with appropriate quality assurance.
- HMRC will seek the views of the Commission and engage with it in developing data related to the Commissions function.
- HMRC and the Commission will allow and encourage their analysts to collaborate in a positive manner where there is a shared interest.
- The data shared will either be in the public domain, anonymised or statistical.
- In general, information and data sharing, and model collaboration and development, between HMRC and the Commission, should be open also to

the Scottish Government, and vice versa between HMRC and the Scottish Government, where it relates to the Commission's function.

In practice

Named contacts

11. The Commission and HMRC will nominate a single point of contact (SPOC) who will be responsible for ensuring efficient and effective communication between the Commission and HMRC. Any new requests between the Commission and HMRC or on the supply of any deliverables should copy in the SPOC. Interim detailed or technical exchanges may not necessarily need to include the SPOC and can be judged on a case by case basis.

12. Requests for data, information or analytical collaboration should be made via email. Any verbal requests should be followed up in writing. Requests should be made directly to the person in HMRC or the Commission who is in the best position to respond. The SPOCs should be copied in to these requests.

Sharing data and information

13. Agreement on sharing of data will be on a case by case basis.

Survey of Personal Incomes data, historic and on-going

14. HMRC make publically available the Survey of Personal Incomes (SPI) Public Use Tape (PUT). However, the Commission require these data to a tighter timescale than the general public. When a new SPI dataset is finalised internally by HMRC, they will provide the PUT to the Commission within 8 weeks, or by the end of May in the year in which HMRC creates the SPI (so for SPI 2014-15, created by HMRC in early 2017, by the end of May 2017), whichever is earlier.

15. If for any reason there are unexpected delays in production of the internal SPI dataset, HMRC should notify the Commission in a timely manner about this. Both parties should subsequently agree a suitable revised timeline for HMRC to share the PUT with the Commission.

16. When it is agreed between both parties that this would be justified, HMRC will consider periodic reviews requested by the Commission comparing the PUT to SPI data on an ad hoc basis following the same methodology that was developed for comparing the two datasets in previous years.

17. HMRC will consider the production of the PUT for the missing years 2011-12 and 2012-13 when resources allow.

Other income tax data

18. Any real time information on PAYE income tax liabilities for monitoring Scottish income tax revenues, developed initially for the Scottish Government, will also be shared with the Commission.

Historic data for fully devolved taxes

19. HMRC will provide historic data and details of models for all taxes that were fully devolved, prior to this agreement being in place, and for future full devolution of taxes. Where appropriate, and subject to the agreement of both parties, this can include information already provided to the Scottish Government being passed to the SFC.

Data development

Survey of Personal Incomes

20. The Commission has an interest in how the SPI is developed in future years particularly in relation to records for Scottish taxpayers. HMRC statisticians working on the SPI will engage with analysts from the Commission in a timely way and consider developments to future SPI exercises.

21. Statisticians from HMRC will engage with analysts from the commission in the early stages of the SPI production cycle. This can be overseen by the SPOCs.

Analytical collaboration

22. The Commission and HMRC work on a number of related modelling and forecasting areas and analytical engagement may help with research and development in both organisations. To be effective, this engagement needs to be early in the model development process and the budget cycle.

23. Although the SPOCs will be involved in analytical requests, to facilitate analytical collaboration, analysts need to know who to talk to. HMRC and the Commission will regularly share lists of analytical leads including contact details covering staff working on:

- Income tax
- Land and buildings transactions tax (Scotland) or Stamp Duty tax (UK)
- Landfill tax
- Air Passenger Duty
- Social Security

24. Staff working in these areas will be made aware of this Protocol and in particular the respective roles of the Commission and HMRC in these areas. They will also be made aware of each organisation's work cycles in relation to the Scottish and UK budgets and made aware that engagement is unlikely to be forthcoming in busier periods.

25. Otherwise, analysts in each organisation will be encouraged to respond positively to requests for information about modelling processes and requests for collaboration on model research and development.

Relationship with the Scottish Government

26. Generally, any sharing or engagement between HMRC and the Commission should be open also to the Scottish Government. The MoU between the Scottish Government and HMRC means SPOCs should already be in place. These SPOCs should be copied in to any new requests and when deliverables are shared. However, analytical leads from the Scottish Government should also be copied in to important correspondence that relates to their area of work.

Resolving conflicts

27. If issues cannot be resolved through the SPOCs or in exceptional cases due to the seriousness of the issue or because prompt senior management action is required, either organisation may approach the signatories of this protocol or their successors.

Costs / charges

28. Generally, HMRC will not charge the Commission for information covered in this protocol in a standard format or breakdown.

29. However, if information requested by the Commission is not available to HMRC as standing data, and so would need a specific query of IT systems, HMRC will give the Commission an estimate of the cost of the query. In that case, the Commission may either agree to pay the cost of the query or withdraw the request.

Data protection, handling of sensitive information and FOI

30. The Commission is subject to the Data Protection Act 1998 and Human Rights Act 1998 with regards to restricted information it receives from HMRC (if any). The Commission has suitable procedures in place to protect personal data.

31. The Commission must also protect all information which is commercial in confidence. Privileged information and information which is marked as commercial in confidence must not be shared with external parties.

32. Information which has been passed to the Scottish Fiscal Commission by HMRC and which is held 'in confidence' is not subject to the FOISA, but is instead covered by the equivalent UK legislation. Information supplied by HMRC and intended to be held in confidence will normally be clearly marked or identified as such. However, the Scottish Fiscal Commission will need to determine the validity and extent of any "in confidence" or protective markings on a case by case basis in consultation with HMRC.

33. Routine or non-sensitive information provided by HMRC and not held in confidence is subject to FOISA. The Scottish Fiscal Commission will consult with HMRC before responding to requests for such information. However, this consultation is only a courtesy and must not lead to a breach of the statutory deadline for responding to the request. Also, the final decision on whether or not to

release the information must be made by the Scottish Fiscal Commission to whom the request was made.

Revisions to the Memorandum of Understanding

34. The document can be revised as and when appropriate to ensure effective engagement between HMRC and the Commission. Revisions can be made by mutual consent and the protocol can be abandoned if either organisation wishes.

Signed on behalf of their relevant organisations:



Katy Peters
Deputy Director Personal Taxes
HMRC Knowledge Analysis & Intelligence

Date: 6/11/2017



John Ireland
Chief Executive
Scottish Fiscal Commission

Date: 7/11/2017