

# Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

## Follow-up information from ICAS of 16 March 2024

Dear Convener

Further to last week's evidence session, you will recall I promised to feed back to Ministers on the outcome of the meeting that I arranged with HMRC on 15 March 2024, which was also attended by CIOT and LSS, in relation to the Section 130 FA 2008 [offsetting of tax debts and credits] point.

Happily, the meeting went ahead as planned, so I have set out some pointers below – which represent my own personal interpretation of the meeting.

Essentially, HMRC uses S.130 for day-to-day debt management and banking work, and there are two main scenarios:

- Within each head of duty, there may be debits and credits across the years. A good example of this is PAYE and NICs where in some years there are overpayments which can be offset against underpayments from the same entity. HMRC notifies the taxpayer and the offset takes place. Similarly, with VAT this happens regularly as well. It does happen with some other taxes too, as referred to in the Debt Management and Banking guidance manual, but these were the examples given by the officers present.
- Offsetting can happen across the taxes. For example, sometimes PAYE/NICs debts and credits are offset against VAT debts and credits. As HMRC does not have the automated process to deal with these matters the offsets are done by way of clerical resource. In HMRC's estimation, around 8 to 9% don't pay in time, and HMRC is equitable where they are aware that some of these taxpayers will have credits to offset across other taxes. In such a scenario, they write to the taxpayer to inform them of a forthcoming offset and make arrangements for time to pay the balance, if required.

Note that there is no official objection/complaints/appeals process – which seems to be inequitable. During Covid, a complaints process was temporarily installed due to hardship cases etc, but it has since been withdrawn and it is "business as usual" again. HMRC does have the power not to collect a debt however, and if this is the decision (e.g. if the debt is minuscule), the taxpayer is notified of this. However, a decision of this nature appears to be subjective and not subject to particular protocols to safeguard officers/ the taxpayer.

In the case of a customer who needs the money to be refunded to them due to cash flow difficulties, HMRC will accept applications of hardship provided the taxpayer can supply evidentiary support in the form of records.

Time to pay arrangements are considered but only based on some hard discussions with the taxpayer around repayments and preferential creditors etc.

Overall, the officers consider that S.130 represents the ability to offset across the taxes if “the right circumstances” exist. Once again, there appears to be an element of subjectivity in this decision-making process but it’s possible that in practice, precedents exist to aid objectivity.

It is (rightly) not possible to offset between different legal entities (e.g. an individual and a corporate body).

On a disputed debt, HMRC is not able to progress action due to that dispute.

In summary, my own conclusion was that where debts and credits exist within the same head of tax (e.g. as per above with PAYE/NICs, or within VAT), this represents a sensible and relatively simple “accounting” approach where an underpayment and an overpayment are offset.

I can see why HMRC, in dealing with the many taxes it administers across the UK as a whole, might need the power to offset across the taxes. Looking at economies of scale, it makes sense for them to ensure the public purse is protected - and their operations are of course, very large scale.

On balance, I consider that it might be appropriate for Revenue Scotland to offset debts and credits within the same head of tax. I still have my own doubts however, that it is necessary at this stage in the devolution process for Revenue Scotland to need powers to offset across the (currently two; soon to be four) devolved taxes. And – I would personally prefer to see such a power (whether within one or across several heads of tax) set out in a Finance Bill for the sake of transparency, rather than as a ‘sideshow’ in an unrelated Bill.

It may be the case that a power which emulates s.130 is needed in future, but right now, I opine that if deemed necessary, the Scottish Government may wish to consider looking at the offsetting power as set out within part 2 of this Bill with a view to re-configuring it to allow for debts to be offset against credits within the same head of tax. [Common law already allows for this in any event, so in my opinion, it is not technically necessary to specifically provide for this power.]

I hope this information helps the Finance and Public Administration Committee to further consider this point of debate prior to finalising the Bill and passing it into legislation.

Thank you for your kind attention,

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